

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

**Substantive Hearing
Monday 27 February – Friday 10 March 2023**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant: Henry Munro

NMC PIN 9510519S

Part(s) of the register: Registered Nurse – Mental Health Nursing (August 1998)
Specialist Practitioner – Community Mental Health Nursing (August 2003)

Relevant Location: Durham

Type of case: Misconduct

Panel members: Judith Webb (Chair, lay member)
Kathryn Smith (Registrant member)
Paul Leighton (Lay member)

Legal Assessor: Charles Conway

Hearings Coordinator: Alice Byron

Nursing and Midwifery Council: Represented by Raj Joshi, Case Presenter

Mr Munro: Not present and unrepresented

Facts proved: Charges 1 (in its entirety), 2.1 (in its entirety), 2.2.3, 2.2.4, 2.2.5, 3 (in its entirety), 4 (in its entirety), 5 and 6

Facts not proved: 2.2.1, 2.2.2

Fitness to practise: Impaired

Sanction:

Striking-off order

Interim order:

Interim Suspension Order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Munro was not in attendance and that the Notice of Hearing letter had been sent to Mr Munro's registered email address by secure email on 26 January 2023.

Further, the panel noted that the Notice of Hearing was also sent to Mr Munro's representative at the time at the Royal College of Nursing (RCN), on 26 January 2023. The panel had regard to an email from the RCN to the NMC, dated 8 February 2023, which states that the RCN had ceased to represent Mr Munro.

Mr Joshi, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Munro's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Munro has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Munro

The panel next considered whether it should proceed in the absence of Mr Munro. It had regard to Rule 21 and heard the submissions of Mr Joshi who invited the panel to continue in the absence of Mr Munro.

Mr Joshi referred the panel to a letter from Mr Munro's former representative at the RCN, dated 8 February 2023, which states:

"Mr Munro has indicated that he is now retired and has not practised as a nurse for almost six years. He instructs that he does not intend to return to nursing and will not be engaging with the NMC FTP Hearing."

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'*.

The panel has decided to proceed in the absence of Mr Munro. In reaching this decision, the panel has considered the submissions of Mr Joshi, the representations made on Mr Munro's behalf, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones (Anthony William) (No.2)* [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Munro;
- The RCN, on Mr Munro's behalf, has confirmed that he has received the Notice of Hearing and is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Nine witnesses are due to attend this hearing to give live evidence;

- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2016;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There may be some disadvantage to Mr Munro in proceeding in his absence. The evidence upon which the NMC relies will have been sent to him at his registered email address, and he has previously responded to some of the allegations before the panel. Mr Munro will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Munro's decisions to absent himself from the hearing, waive his right to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Munro. The panel will draw no adverse inference from Mr Munro's absence in its findings of fact.

Details of charge

That you, a Registered Nurse

1. During a consultation with Patient A on 3 March, 2016:

- 1.1 used words to the effect of one or more of:
 - 1.1.1 telling Patient A how attractive and desirable she was **[Proved]**
 - 1.1.2 asking Patient A questions about her sex life **[Proved]**

2. During a consultation with Patient A on 11 March 2016
 - 2.1 Did one or more of the following things:
 - 2.1.1 cuddled Patient A **[Proved]**
 - 2.1.2 cuddled Patient A on an occasion other than at 2.1.1 **[Proved]**
 - 2.1.3 stroked the back of Patient A's neck **[Proved]**
 - 2.1.4 kissed Patient A on the head **[Proved]**

 - 2.2 Used words to the effect of one or more of:
 - 2.2.1 asking Patient A who took the lead when she had sex **[Not proved]**
 - 2.2.2 asking Patient A what sexual position she preferred to be in **[Not proved]**
 - 2.2.3 advising Patient A to use a vibrator at night to help her get to sleep **[Proved]**
 - 2.2.4 inviting Patient A to let him cuddle her for a second time **[Proved]**
 - 2.2.5 suggesting to Patient A that they could go for a cup of coffee **[Proved]**

3. Your behaviour and/or use of words at one or more part of 1 and/or 2 above was
 - 3.1 sexual in nature and/or otherwise in breach of professional boundaries **[Proved]**
 - 3.2 sexually motivated. **[Proved]**

4. For some or all of the time between about the end of October 2016 and about the end of August 2021 were in a relationship with Patient B which was

4.1 in breach of professional boundaries **[Proved]**

4.2 sexual in nature **[Proved]**

5. You failed to escalate the existence of the relationship at 4 above to a senior member of staff **[Proved]**

6. Between 26 August 2016 and 23 July 2017 accessed patient records when there was no clinical reason to do so. **[Proved]**

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

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

At the outset of the hearing, Mr Joshi made a request that parts of this case be held in private on the basis that proper exploration of Mr Munro's case involves reference to [PRIVATE] in this matter. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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 [PRIVATE], as and when such issues are raised.

Decision and reasons on application to admit the written statements of Patient B and Person B as Hearsay Evidence

The panel heard an application made by Mr Joshi under Rule 31 to allow the written statements of Patient B and Person B into evidence.

Mr Joshi told the panel that Patient B is one of the complainants in this case. He said that it is alleged that Mr Munro commenced a sexual relationship with Patient B [PRIVATE].

Mr Joshi outlined to the panel the attempts made by both the hearings coordinator and the NMC witness liaison team to re-engage Patient B, and seek her attendance at the hearing. However, he invited the panel to have regard to her emails, dated 27 February 2023, which state:

“I have been thinking over the weekend. Mr Munro isn't even being represented, or attending. He had already retired from the profession. He won't be held accountable. Its all too little too late. [sic]

[PRIVATE].”

*“I'm not coming
He hasn't even got representation. Not accountable. Not interested. Doesn't affect him as retired. Only affects me. [PRIVATE]. You guys are so awfully impaired and quite awful.*

Please don't contact me again. The NMC do not care or understand victims.”

Mr Joshi submitted that, although it would be preferable for Patient B to attend to give evidence in person, the NMC has done its best to seek her engagement, and she has made it clear that she will not attend the hearing. [PRIVATE]. He reminded the panel that Patient B has not suggested that she has retracted her evidence, but instead has disengaged due to the impact that attending the hearing would have on her.

Mr Joshi moved on to his application in respect of Person B, who is Patient B's husband. He said that this witness is material as it is alleged that he became aware of the alleged relationship between Patient B and Mr Munro, which resulted in a physical altercation between Person B and Mr Munro. He told the panel that Person B exhibits a large bundle of text messages, allegedly between Mr Munro and Patient B.

Mr Joshi invited the panel to consider the attempts made by the NMC to engage Person B to attend the hearing. He said that the panel may consider that this case is different to that of Patient B as, despite efforts by the hearings coordinator and NMC witness liaison team, there is no information before the panel as to the reason for Person B's non-attendance at the hearing. Mr Joshi reminded the panel that it has the power to request the attendance of a witness, either physically or virtually, which it may consider relevant to Person B.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

Panel Decision and Reasons in respect of Patient B

The panel gave the application in regard to Patient B serious consideration. The panel noted that Patient B's statements had been prepared in anticipation of being used in these proceedings and contained the paragraph, 'This statement ... is true to the best of my

information, knowledge and belief' and signed by her, and dated 15 August 2020 and 10 November 2021.

The panel considered whether Mr Munro would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Patient B to that of a written statement. The panel noted that one of the charges relates directly to the alleged relationship which Mr Munro had with Patient B, therefore was satisfied that her evidence is plainly relevant to this matter.

When considering if admitting Patient B's statements would be fair, the panel considered the fairness to Mr Munro, the NMC and Patient B. [PRIVATE]. The panel accepted that this was a cogent reason for her non-attendance at this hearing. It concluded that the NMC has taken all practicable steps to secure her attendance, and any further requests or attempts to re-engage her would be unlikely to lead to her participation at the hearing, but may risk further harm to Patient B's health.

Furthermore, the panel concluded that Patient B's evidence is not sole and decisive, as it is due to hear live evidence from further witnesses who speak to the charge which concerns this witness.

The panel considered that as Mr Munro had been provided with a copy of Patient B's statements and, as the panel had already determined that Mr Munro had chosen voluntarily to absent himself from these proceedings, he would not be in a position to cross-examine this witness in any case. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, given that Patient B has not retracted her complaint, the panel came to the view that it would be fair and relevant to accept into evidence the written statements of Patient B. The panel will give appropriate weight to this evidence once it has heard and evaluated all of the evidence before it.

Panel Decision and Reasons in respect of Person B

The panel gave the application in regard to Person B serious consideration. The panel noted that Person B's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, 'This statement ... is true to the best of my information, knowledge and belief' and signed by him, and dated 24 January 2023.

The panel considered whether Mr Munro would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Person B to that of a written statement and the annexed exhibits. The panel noted that Person B exhibits before the panel a large number of text messages allegedly between Patient B and Mr Munro. The panel therefore found Person B's statement and exhibits to be relevant to the charge alleging a relationship between Mr Munro and Patient B

When considering if admitting Patient B's statement would be fair, the panel considered the fairness to Mr Munro and the NMC. The panel bore in mind there is no information before it to indicate the reason Person B has disengaged from the hearing, however it had regard to the complex nature of the allegations in this matter.

The panel concluded that the NMC has taken all practicable steps to secure Person B's attendance, including making travel and accommodation arrangements, and attempting to engage Person B on the day of the hearing. The panel considered that there was no information to suggest that any further attempts to engage Person B would be successful, and bore in mind that this may also lead to a delay, which could impact on other witnesses scheduled to attend this hearing.

Furthermore, the panel concluded that Person B's evidence is not the sole and decisive evidence in relation to charges concerning Patient B, as it is due to hear live evidence from further witnesses who speak to these charges.

The panel considered that as Mr Munro had been provided with a copy of Person B's statement and, as the panel had already determined that Mr Munro had chosen voluntarily to absent himself from these proceedings, he would not be in a position to cross-examine this witness in any case. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances the panel came to the view that it would be fair and relevant to accept into evidence the written statement and exhibits of Person B. The panel will give appropriate weight to this evidence once it has heard and evaluated all of the evidence before it.

Decision and Reasons on Application for Virtual Attendance of Witnesses

Mr Joshi made an application for the virtual attendance of several witnesses. He told the panel that they were based in Durham, which would require them to travel over two separate days and stay in London overnight. He said that witnesses have requested to attend virtually for cogent reasons [PRIVATE].

The panel accepted the advice of the legal assessor.

The panel accepted the application for virtual attendance of witnesses. It concluded that there is no prejudice to Mr Munro in these witnesses giving their evidence virtually, especially given its finding that Mr Munro has voluntarily absented himself from this hearing.

Decision and reasons on application to amend the charge

When making its decision on facts, the panel noted an error contained within charge 2, which states "during a consultation with Patient A on 10 March 2016". It had regard to

Patient A's records in the exhibit bundle, which notes that appointments between Mr Munro and Patient A took place on 25 February 2016, 3 March 2016 and 11 March 2016. Accordingly, the panel invited Mr Joshi to make submissions on this issue

Mr Joshi invited the panel to amend charge 2 to properly reflect the date contained within Patient A's records. He submitted that the proposed amendment would correct a typographical error and would properly reflect the evidence.

"That you, a Registered Nurse:

[...]

2. During a consultation with Patient A on ~~40~~ 11 March 2016

[...]

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

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Munro and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to correct a typographical error and ensure clarity and accuracy.

Background

The charges arose whilst Mr Munro was employed as a registered nurse by Tees Esk and Wear Valleys NHS Foundation Trust (the Trust) as a Band 6 Liaison Nurse.

It is alleged that, in March 2016, Mr Munro acted inappropriately towards a female Patient, Patient A, in that he told her she was attractive and desirable, asked about her sex life, touched her inappropriately and suggested that they could go for a cup of coffee outside of a clinical setting, as outlined in the charges.

Mr Munro denies that he had any physical contact with Patient A, and alleges that any sexual conversation was instigated by her.

It is further alleged that, between the end of October 2016 and around the end of August 2021, Mr Munro was in an inappropriate and sexual relationship with a vulnerable patient, Patient B, and that he failed to escalate the existence of the relationship to a senior member of staff.

Although Mr Munro accepts that he had some contact with Patient B following her discharge from his care, he denies any sexual relationship, although he accepts that he did not escalate the existence of any contact to a senior member of staff.

It is finally alleged that, between 26 August 2016 and 23 July 2017, Mr Munro accessed patient records, including records of deceased patients, when there was no clinical reason to do so. Mr Munro denies this allegation and said that he accessed such records as part of multidisciplinary team meetings, save for some which he claims that he might have accessed in error.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Joshi on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Mr Munro.

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: Community Clinical Manager employed by the Trust, and Investigating Officer into the allegations concerning Patient B
- Witness 2: Detective employed by Northumbria Police responsible for investigating the allegations concerning Mr Munro
- Witness 3: Mental Health Liaison Nurse employed by the Trust
- Witness 4: Social Worker employed by Newcastle City Council involved with Patient B's family

- Witness 5: HR Manager employed by the Trust, and Investigating Officer into the allegations concerning Patient A
- Witness 6: Community Psychiatric Nurse involved in the care of Patient B
- Witness 7: Consultant Psychiatrist involved in the care of Patient B
- Witness 8: Patient A's General Practitioner
- Witness 9: Reverend in the Church of England and Patient A's friend

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 the NMC. It had regard to Mr Munro's responses to the allegations and reflections, which were before the panel at this hearing.

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

Charge 1.1.1

That you, a Registered Nurse

1. During a consultation with Patient A on 3 March, 2016:

1.1 used words to the effect of one or more of:

1.1.1 telling Patient A how attractive and desirable she was

[...]

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard to the evidence of Witness 5, including his investigation report, and the evidence of Witness 8, which spoke directly to this charge.

The panel considered the date on which it is alleged that this incident took place. It had regard to Patient A's medical notes, which set out that Patient A attended an initial assessment with Mr Munro on 25 January 2016, with a first follow up on 3 March 2016, which Patient A describes in her statement as the "*first proper meeting*", and a second follow up appointment on 11 March 2016, which Patient A describes in her statement as "*the last session*".

The panel first considered the account of this incident which Patient A gave to Witness 5 on 22 April 2016, in which she said:

"The first proper meeting (2nd meeting) [...]. He told me I was attractive. [...]"

And

"[...] At the first meeting he just basically was trying to find out why I ended up in casualty. He'd asked about my job, made mention of why on earth should somebody like yourself, you're an attractive lady, you've got lots to give other people etc. [...]"

The panel also had regard to Patient A's record of police interview, dated 8 September 2017, in which she stated:

"He commented on how attractive she looked and how any man would find her attractive. He said that he found her attractive."

The panel also had regard to the police witness statement of Person A, dated 22 March 2018, which states:

“The following week my mother rang me and said that she had just had her follow up appointment with the same mental health worker [...]. She also mentioned that he had told her that she was attractive and she should show off her body”.

The panel bore in mind that neither Patient A, nor Person A provided a witness statement or gave evidence for the purpose of these NMC proceedings. However, it considered that Witness 5 provided a clear and cogent account of what Patient A said to him during the investigatory meeting on 22 April 2016.

Furthermore, the panel found that Patient A’s account of this meeting was supported by the evidence of Witness 8. It had regard to Witness 8’s letter of complaint to the Crisis Team Manager at the Trust, dated 23 March 2016, in which she stated:

“[Patient A] saw Harry Munroe [...]. She saw him on 2 occasions. During the first occasion he told her how attractive she was and that any man would find her attractive and desirable”.

The panel took account of Witness 8’s subsequent police statement, dated 26 March 2018, in which Witness 8 repeated the same wording, that Patient A had told her that Mr Munro told Patient A *“how attractive she was and that any man would find her attractive and desirable”*. The panel found Witness 8’s oral evidence to be clear and consistent with her contemporaneous account of what Patient A had said to her.

The panel bore in mind that Mr Munro is not present or represented at this hearing and has not formally responded to the charges, save for his denial of this charge in his completed case management form, dated 8 February 2021. The panel had regard to the information before it in respect of Mr Munro’s responses to this allegation during his

disciplinary meeting with Witness 5 on 31 March 2016, during which time Mr Munro was asked if he told Patient A if she was attractive, to which he responded “no”.

The panel concluded that the evidence provided by Patient A, Person A and Witness 8 were clear and consistent in support of this charge, even when taking into account the passage of time between the initial complaint and later statements to the police. It was satisfied that this complaint related to the appointment on 3 March 2016. The panel found this evidence to be preferable to the bare denials provided by Mr Munro.

The panel concluded that, on the balance of probabilities, Mr Munro, during a consultation with Patient A on 3 March, 2016 used words to the effect of one or more of telling Patient A how attractive and desirable she was.

The panel therefore found this charge proved.

Charge 1.1.2

That you, a Registered Nurse

1. During a consultation with Patient A on 3 March, 2016:

1.1 used words to the effect of one or more of:

[...]

1.1.2 asking Patient A questions about her sex life

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard to the evidence of Witness 5, including his investigation report, and the evidence of Witness 8 and Witness 9 which spoke directly to this charge.

The panel considered the date on which it is alleged that this incident took place. It had regard to Patient A's medical notes, which set out that Patient A attended an initial assessment with Mr Munro on 25 January 2016, with a first follow up on 3 March 2016, which Patient A describes in her statement as the "*first proper meeting*", and a second follow up appointment on 11 March 2016, which Patient A describes in her statement as "*the last session*".

The panel first considered the account of this incident which Patient A gave to Witness 5 on 22 April 2016, in which she said:

"Going back to the first week he'd said to me, some of the discussion had been around the fact that I don't feel successful in relationships [...] That's when he got on to the sexual side; he said 'in your relationship, did you enjoy sex?' [...] He said 'who takes the lead role when you're making love', again I thought these were questions that needed to be asked. [...] He said 'do you dominate or do you like being dominated?' [...] He said 'do you wear sexy underwear?' [...]. He said 'do you like being blindfolded, tied up?' [...]. He then said 'do you have any quirky bits you wouldn't share with anybody when you're making love' [...] he said 'is your sex always normal, normal entry that kind of thing?' [...]. That was it for the first session where he was asking personal questions"

The panel also had regard to Patient A's record of police interview, dated 8 September 2017, which stated:

"He has spoken to her about sex with her husband, asked if she liked it rough, role play or if she liked to be tied up"

The panel bore in mind that Patient A did not provide a witness statement or give evidence for the purpose of these NMC proceedings. However, it considered that Witness

5 provided a clear and cogent account of what Patient A said to him during the investigatory meeting on 22 April 2016.

Furthermore, the panel found that Patient A's account of this meeting was supported by the evidence of Witness 8. It had regard to Witness 8's letter of complaint to the Crisis Team Manager at the Trust, dated 23 March 2016, in which she stated:

“[Patient A] saw Harry Munroe [...]. She saw him on 2 occasions. During the first occasion [...]. He asked her about her sex life. [Patient A] was a little perturbed by the consultation [...].”

The panel took account of Witness 8's subsequent police statement, dated 26 March 2018, in which Witness 8 repeated the same wording, that Patient A had told her that Mr Munro *“asked her [Patient A] about her sex life and she said she was perturbed by this”*. The panel found Witness 8's oral evidence to be clear and consistent with her contemporaneous account of what Patient A had said to her.

The panel bore in mind that Mr Munro is not present or represented at this hearing and has not formally responded to the charges, save for his denial of this charge in his completed case management form, dated 8 February 2021. The panel had regard to the information before it in respect of Mr Munro's responses to this allegation during his disciplinary meeting with Witness 5 on 31 March 2016, during which time Mr Munro was asked if he asked Patient A questions about her sex life, including who took the lead when she had sex and what position she preferred to be in, to which he responded *“no”*.

The panel also had regard to Mr Munro's reflections in respect of the regulatory concern that he behaved inappropriately and/or asked inappropriate questions to Patient A during a consultation, which was provided to the NMC by his former RCN representative on 2 November 2020. In his reflections, Mr Munro said:

“Mr. Munro will say he assessed Patient A and as standard practice offered follow up appointments [PRIVATE]. During one of the follow up appointments Patient A disclosed without prompting that she used a website which she called POF. She then disclosed that she had met men from this website and engaged in bondage sex with a younger man and also some other sexual practices. As this did not present as relevant to her presentation or the assessment, he was completing he steered the conversation back to the subject matter of the session. Following the appointment, he informed his colleague [Witness 3] who was a Mental Health Liaison nurse at the Trust (Tees ,Esk & Wear Valley NHSFT) as he felt it was out of context of the session. [Witness 3] has confirmed this in her statement to the NMC [...]. Mr Munro will say that at the time he did not believe this [PRIVATE] was relevant [PRIVATE] and therefore did not warrant inclusion in the clinical documentation or further discussion.

Mr Munro will say that he [PRIVATE] and does not then recall having any further input or contact with her. The alleged incident was subject to police investigation in the course of which the police took all his electronic devices including mobile phone and these were subject to forensic examination which demonstrated that he had not engaged in any contact with either Patient A or B. Mr Munro will say that the mobile phone seized by the police was the only mobile phone he owned.”

The panel bore in mind that Witness 3 confirmed, in her oral evidence, that Mr Munro had told her about this alleged conversation with Patient A.

The panel concluded that the evidence provided by Patient A and Witness 8 were clear and consistent in support of this charge, even when taking into account the passage of time between the initial complaint and later statements to the police. It was satisfied that this complaint related to the appointment on 3 March 2016. The panel found this evidence to be preferable to the account proffered by Mr Munro.

In making this determination, the panel had regard to the oral evidence of Witness 9, who described Patient A to be a reserved lady and spoke of her strong Christian faith. The panel found this evidence to be credible, and the panel therefore found it unlikely that Patient A would have commenced any conversation pertaining to her sex life.

The panel concluded that, on the balance of probabilities, Mr Munro, during a consultation with Patient A on 3 March, 2016 used words to the effect of asking Patient A questions about her sex life.

The panel therefore found this charge proved.

Charge 2.1

That you, a Registered Nurse

[...]

2. During a consultation with Patient A on 11 March 2016:

2.1 Did one or more of the following things:

2.1.1 cuddled Patient A

2.1.2 cuddled Patient A on an occasion other than at 2.1.1

2.1.3 stroked the back of Patient A's neck

2.1.4 kissed Patient A on the head

These charges are found proved.

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard to the evidence of Witness 5, including his investigation report, and the evidence of Witness 8 and Witness 9 which spoke directly to this charge.

The panel considered the date on which it is alleged that this incident took place. It had regard to Patient A's medical notes, which set out that Patient A attended an initial assessment with Mr Munro on 25 January 2016, with a first follow up on 3 March 2016, which Patient A describes in her statement as the "*first proper meeting*", and a second follow up appointment on 11 March 2016, which Patient A describes in her statement as "*the last session*".

The panel first considered the account of this incident which Patient A gave to Witness 5 on 22 April 2016, in which she said:

"At the last session [...]. Then I got upset [PRIVATE]. That's when he said 'oh I didn't mean to upset you, don't cry come and have a cuddle'. He stood up and I went over to him and he put his arms round me, I just put his head on my chest but the cuddle was too intense, he cuddled me right into him but he didn't let me go and I thought, this isn't right, this is a cuddle from a female friend or a possible boyfriend or something. Then he got his arms round me and tickled my neck with his finger. That's right he said 'what do you enjoy about being in a relationship?' When he was cuddling me he said 'you told me you like cuddles is this nice?' At that point my excuse was my mascara was running on his shirt. He said 'no come on come back and have a cuddle till you feel better'. He cuddled me again and kissed my head."

The panel bore in mind that Patient A did not provide a witness statement or give evidence for the purpose of these NMC proceedings. However, it considered that Witness 5 provided a clear and cogent account of what Patient A said to him during the investigatory meeting on 22 April 2016. It noted that this disclosure was recorded by Witness 5 in narrative form, which corresponds with Witness 5's oral evidence, that Patient A disclosed the events of this appointment with minimal questioning.

The panel also had regard to Patient A's record of police interview, dated 8 September 2017, which stated:

"She stated that at some point during the session she had become upset and he has pulled her in towards him and wrapped his arms round her and kissed her head and stroked her hair. She remembers leaving a wet tear stained patch on his shirt. When she has gone to pull away he has pulled her back in."

The panel also had regard to the police statement of Person A, dated 22 March 2018, which states:

"The next time we spoke, I can't remember when but mum rang telling me about another session she had had with the same mental health worker [...]. She said after the session ended he had cuddled her and kissed her on the head. She said that this made her very uncomfortable and felt it wasn't right, this embrace, and said when he kissed her on the head she felt very uncomfortable".

The panel bore in mind that neither Patient A, nor Person A provided a witness statement or gave evidence for the purpose of these NMC proceedings. However, it considered that Witness 5 provided a clear and cogent account of what Patient A said to him during the investigatory meeting on 22 April 2016.

Furthermore, the panel found that Patient A's account of this meeting was supported by the evidence of Witness 8. It had regard to Witness 8's letter of complaint to the Crisis Team Manager at the Trust, dated 23 March 2016, in which she stated:

"[...] During the consultation when she became distressed he gave her a cuddle. [...], he then said that she continued to look upset and said come

here I will give you another cuddle which he did, then stroked the back of her neck and kissed the top of her head.”

The panel found Witness 8’s oral evidence and police witness statement, dated 26 March 2018 to be clear and consistent with her letter of complaint. It bore in mind that, in her oral evidence, [PRIVATE] that, although Patient A questioned her own judgment at the first appointment, she was certain that Mr Munro was behaving inappropriately on 11 March 2016.

The panel also had regard to the evidence of Witness 9, who told the panel that Patient A said that her mental health support worker had *“put his hand on her shoulder and gave her a hug a couple of times”*.

The panel bore in mind that Mr Munro is not present or represented at this hearing and has not formally responded to the charges, save for his denial of these charges in his completed case management form, dated 8 February 2021. The panel had regard to the information before it in respect of Mr Munro’s responses to this allegation during his disciplinary meeting with Witness 5 on 31 March 2016, during which time Mr Munro was asked if he gave Patient A a cuddle, stroked the back of her neck and kissed the top of her head, to which he responded *“no”*. When asked if he wanted to add any other detail which may be relevant to the investigation, he said: *“There was never any physical contact with her. At the end of the third meeting I asked her has this been okay for her, and I’m sure she replied that it had helped her greatly, she had got benefit from it”*.

The panel concluded that there was clear and cogent evidence from a number of independent sources to support these charges. It noted that, despite the passage of time between the initial complaint and police statement, Patient A’s account of this appointment remained consistent, as did Witness 8’s recollection of what was disclosed to her by Patient A; that Mr Munro cuddled her on at least one occasion, including instigating a cuddle by invitation when Patient A had sat down away from Mr Munro. Accordingly, the panel found this evidence to have more probative value than the bare denials provided by

Mr Munro. Accordingly, the panel found that, on the balance of probabilities, during a consultation with Patient A on 11 March 2016, Mr Munro cuddled Patient A, cuddled Patient A on an occasion other than at 2.1.1, stroked the back of Patient A's neck and kissed Patient A on the head.

The panel therefore found these charges.

Charges 2.2.1 and 2.2.2

That you, a Registered Nurse

[...]

2. During a consultation with Patient A on 11 March 2016:

2.2 used words to the effect of one or more of:

2.2.1 asking Patient A who took the lead when she had sex

2.2.2 asking Patient A what sexual position she preferred to be in

[...]

These charges are found NOT proved.

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard to the evidence of Patient A, Witness 5 and Witness 8.

The panel considered the date on which it is alleged that this incident took place. It had regard to Patient A's medical notes, which set out that Patient A attended an initial assessment with Mr Munro on 25 January 2016, with a first follow up on 3 March 2016, which Patient A describes in her statement as the "*first proper meeting*", and a second follow up appointment on 11 March 2016, which Patient A describes in her statement as "*the last session*".

The panel first considered the account of this incident which Patient A gave to Witness 5 on 22 April 2016, in which she said:

“Going back to the first week he’d said to me, some of the discussion [PRIVATE]. [...] That’s when he got onto the sexual side; he said ‘in your relationship, did you enjoy sex?’ [...]. He said, ‘who takes the lead role when you’re making love’, again I thought these were questions that needed to be asked. [...]. He said ‘did you suggest anything’, [...] I was starting to get embarrassed. He said ‘do you dominate or do you like being dominated?’ [...]. he said ‘is your sex always normal, normal entry that kind of thing?’ [...] That was it for the first session where he was asking personal questions”

The panel bore in mind that Patient A did not provide a witness statement or give evidence for the purpose of these NMC proceedings. However, it considered that Witness 5 provided a clear and cogent account of what Patient A said to him during the investigatory meeting on 22 April 2016.

Furthermore, the panel found that Patient A’s account of this meeting was supported by the evidence of Witness 8. It had regard to Witness 8’s letter of complaint to the Crisis Team Manager at the Trust, dated 23 March 2016, in which she stated:

“During the second appointment [Patient A] says that the CPN asked her further questions about her sex life, which included who took the lead when she had sex, what position she preferred to be in [...].”

The panel found Witness 8’s oral evidence and police witness statement, dated 26 March 2018 to be clear and consistent with her letter of complaint.

The panel bore in mind that Mr Munro is not present or represented at this hearing and has not formally responded to the charges, save for his denial of these charges in his completed case management form, dated 8 February 2021. The panel had regard to the

information before it in respect of Mr Munro's responses to this allegation during his disciplinary meeting with Witness 5 on 31 March 2016, during which time Mr Munro denied asking these questions, and said that it was Patient A who initiated sexual conversations.

The panel also had regard to Mr Munro's reflections in respect of the regulatory concern that he behaved inappropriately and/or asked inappropriate questions to Patient A during a consultation, which was provided to the NMC by his former RCN representative on 2 November 2020. In his reflections, Mr Munro said:

“Mr. Munro will say he assessed Patient A and as standard practice offered follow up appointments [PRIVATE]. During one of the follow up appointments Patient A disclosed without prompting that she used a website which she called POF. She then disclosed that she had met men from this website and engaged in bondage sex with a younger man and also some other sexual practices. As this did not present as relevant to her presentation or the assessment, he was completing he steered the conversation back to the subject matter of the session. Following the appointment, he informed his colleague [Witness 3] who was a Mental Health Liaison nurse at the Trust (Tees ,Esk & Wear Valley NHSFT) as he felt it was out of context of the session. [Witness 3] has confirmed this in her statement to the NMC [...]. Mr Munro will say that at the time he did not believe this [PRIVATE] was relevant [PRIVATE] and therefore did not warrant inclusion in the clinical documentation or further discussion.

Mr Munro will say that he referred her on [PRIVATE] and does not then recall having any further input or contact with her. The alleged incident was subject to police investigation in the course of which the police took all his electronic devices including mobile phone and these were subject to forensic examination which demonstrated that he had not engaged in any contact with either Patient A or B. Mr Munro will say that the mobile phone seized by the police was the only mobile phone he owned.”

The panel bore in mind that Witness 3 confirmed, in her oral evidence, that Mr Munro had told her about this alleged conversation with Patient A.

The panel had regard to the evidence before it and was satisfied that, on the balance of probabilities, Mr Munro asked Patient A who took the lead when she had sex, and what sexual position she preferred to be in. However, the panel noted that Patient A's evidence suggests that this conversation took place on the first meeting, on 3 March 2016, whilst Witness 8's letter outlines that this was on the second appointment, on 11 March 2016. The panel had regard to Witness 9, who also gave evidence in relation to this charge, but found that his evidence could not assist in determining at which appointment these comments were made. The panel concluded that there was insufficient evidence before it to satisfy it on the balance of probabilities that Mr Munro made these comments on 11 March 2016 as charged and the NMC has not discharged its burden of proof in relation to these charges.

The panel therefore finds these charges not proved.

Charge 2.2.3

That you, a Registered Nurse

[...]

2. During a consultation with Patient A on 11 March 2016:

2.2 used words to the effect of one or more of:

[...]

2.2.3 advising Patient A to use a vibrator at night to help her get to sleep

[...]

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it. It had particular regard to the evidence of Patient A, Witness 5, Witness 8 and Witness 9.

The panel considered the date on which it is alleged that this incident took place. It had regard to Patient A's medical notes, which set out that Patient A attended an initial assessment with Mr Munro on 25 January 2016, with a first follow up on 3 March 2016, which Patient A describes in her statement as the "*first proper meeting*", and a second follow up appointment on 11 March 2016, which Patient A describes in her statement as "*the last session*".

The panel first considered the account of this incident which Patient A gave to Witness 5 on 22 April 2016, in which she said:

"I was telling him I'm at the stage [PRIVATE] to go to bed so I put it off as long as possible and I take my laptop up to bed with me so I can watch things on iplayer [PRIVATE]. He said 'what do you do to help?' I said I have an alcoholic drink, not that I enjoy it, just more as medication; he asked 'how much coffee do I drink'. He said 'what else do you do', he said 'do you masturbate and let me ask you this have you got a vibrator' and I answered him and he said 'because having an orgasm is one of the best ways you can relax and get off to sleep and that's what I would suggest you doing'."

The panel also had regard to Patient A's record of police interview, dated 8 September 2017, which stated:

"A few days later she attended her second pre-arranged appointment [...]. He also asked her about pleasuring herself with vibrators etc."

The panel bore in mind that Patient A did not provide a witness statement or give evidence for the purpose of these NMC proceedings. However, it considered that Witness

5 provided a clear and cogent account of what Patient A said to him during the investigatory meeting on 22 April 2016.

Furthermore, the panel found that Patient A's account of this meeting was supported by the evidence of Witness 8. It had regard to Witness 8's letter of complaint to the Crisis Team Manager at the Trust, dated 23 March 2016, in which she stated:

“During the second appointment [Patient A] says that the CPN [...] advised her to use a vibrator at night to help her get to sleep”.

The panel noted that Witness 8 used this same wording *“advised her to use a vibrator at night to help her get to sleep”*, in her police statement, dated, 26 March 2018.

The panel had regard to the oral evidence of Witness 9, who told the panel, without being directly questioned on the subject, that Patient A disclosed to him that Mr Munro had asked her about using a vibrator, and explained that Patient A's demeanour demonstrated discomfort when discussing this matter. The panel noted that Witness 9 was visibly embarrassed when speaking on this matter, and explained that it was not in his previous witness statement to the police, dated 9 January 2019, as he was unsure at that time whether Patient A had spoken to him about this issue in his capacity as a member of the clergy, or as a friend. He explained that he was therefore unsure as to what Patient A consented to him disclosing to the police. The panel accepted this explanation as reliable, and a cogent reason for previously not disclosing this matter to the police.

The panel bore in mind that Mr Munro is not present or represented at this hearing and has not formally responded to the charges, save for his denial of these charges in his completed case management form, dated 8 February 2021. The panel had regard to the information before it in respect of Mr Munro's responses to this allegation during his disciplinary meeting with Witness 5 on 31 March 2016, during which time Mr Munro denied asking these questions, and said that it was Patient A who initiated sexual conversations, he said:

“We also discussed relaxation techniques [PRIVATE] and I enquired what she did to relax. The wording might not be exact but she said ‘I can’t believe I’m telling you this’, that’s when she disclosed she had a vibrator. My reply was, as again I felt uncomfortable and I stated I had meant that she should listen to music, have a hot milky drink or a warm bath as relaxation techniques. My understanding was she misunderstood the question as she laughed at this.

[PRIVATE].”

The panel also had regard to Mr Munro’s reflections in respect of the regulatory concern that he behaved inappropriately and/or asked inappropriate questions to Patient A during a consultation, which was provided to the NMC by his former RCN representative on 2 November 2020. In his reflections, Mr Munro said:

“Mr. Munro will say he assessed Patient A and as standard practice offered follow up appointments [PRIVATE]. During one of the follow up appointments Patient A disclosed without prompting that she used a website which she called POF. She then disclosed that she had met men from this website and engaged in bondage sex with a younger man and also some other sexual practices. As this did not present as relevant to her presentation or the assessment, he was completing he steered the conversation back to the subject matter of the session. Following the appointment, he informed his colleague [Witness 3] who was a Mental Health Liaison nurse at the Trust (Tees ,Esk & Wear Valley NHSFT) as he felt it was out of context of the session. [Witness 3] has confirmed this in her statement to the NMC [...]. Mr Munro will say that at the time he did not believe this [PRIVATE] was relevant [PRIVATE] and therefore did not warrant inclusion in the clinical documentation or further discussion.

Mr Munro will say that he referred her on [PRIVATE] and does not then recall having any further input or contact with her. The alleged incident was subject to police investigation in the course of which the police took all his electronic devices including mobile phone and these were subject to forensic examination which demonstrated that he had not engaged in any contact with either Patient A or B. Mr Munro will say that the mobile phone seized by the police was the only mobile phone he owned.”

The panel had regard to all of the evidence before it and found Witnesses 8 and 9 gave clear and cogent evidence which supported Patient A’s account of what was said between Mr Munro and Patient A at the appointment on 11 March 2016. The panel did not find Mr Munro’s account to be credible and, having accepted the evidence of Witness 9, who described Patient A to be a reserved lady and spoke of her strong Christian faith, the panel found that, on the balance of probabilities, Mr Munro initiated the conversation surrounding a vibrator, and used words to the effect of advising Patient A to use a vibrator at night to help her get to sleep.

The panel therefore found this charge proved.

Charge 2.2.4

That you, a Registered Nurse

[...]

2. During a consultation with Patient A on 11 March 2016:

2.2 used words to the effect of one or more of:

[...]

2.2.4 inviting Patient A to let him cuddle her for a second time

[...]

This charge is found proved.

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

The panel had regard to its finding in respect of charge 2.1, including that Mr Munro invited Patient A to give him a cuddle.

The panel therefore found this charge proved.

Charge 2.2.5

That you, a Registered Nurse

[...]

2. During a consultation with Patient A on 11 March 2016:

2.2 used words to the effect of one or more of:

[...]

2.2.5 suggesting to Patient A that they could go for a cup of coffee

This charge is found proved.

The panel considered the date on which it is alleged that this incident took place. It had regard to Patient A's medical notes, which set out that Patient A attended an initial assessment with Mr Munro on 25 January 2016, with a first follow up on 3 March 2016, which Patient A describes in her statement as the "*first proper meeting*", and a second follow up appointment on 11 March 2016, which Patient A describes in her statement as "*the last session*".

The panel first considered the account of this incident which Patient A gave to Witness 5 on 22 April 2016, in which she said:

"He said 'I better have your mobile number if I'm gonna do that referral. I won't see you anymore I'm moving to Morpeth or Cramlington', somewhere

and ‘this will be the last time I see you’. He said ‘If I see you in the street we can go for a coffee or something’.”

The panel also had regard to Patient A’s record of police interview, dated 8 September 2017, which stated:

“At the end of this last session he has told her that he won’t be seeing her again as he was moving to Northumberland but suggested that if they bumped into each other in town they would go for a coffee and a chat.”

The panel bore in mind that Patient A did not provide a witness statement or give evidence for the purpose of these NMC proceedings. However, it considered that Witness 5 provided a clear and cogent account of what Patient A said to him during the investigatory meeting on 22 April 2016.

Furthermore, the panel found that Patient A’s account of this meeting was supported by the evidence of Witness 8. It had regard to Witness 8’s letter of complaint to the Crisis Team Manager at the Trust, dated 23 March 2016, in which she stated:

“At the end of the consultation he said that if she caught him outside she could take him for a cup of coffee”

The panel noted that this was consistent with Witness 8’s police statement, dated, 26 March 2018, in which she said that *“he [Mr Munro] had invited her [Patient A] to buy him a coffee if they met on the street”*.

The panel had regard to the evidence of Witness 9, who stated in his witness statement to the police, dated 9 January 2019, that Patient B said that Mr Munro suggested that she meet him for coffee at a later date. The panel found this account to be credible and consistent with his oral evidence.

The panel bore in mind that Mr Munro is not present or represented at this hearing and has not formally responded to the charges, save for his denial of these charges in his completed case management form, dated 8 February 2021. The panel had regard to the information before it in respect of Mr Munro's responses to this allegation during his disciplinary meeting with Witness 5 on 31 March 2016, during which time Mr Munro was asked if he advised Patient A that she could take him for a cup of coffee outside of the appointment head, to which he responded "no".

The panel found that this charge is supported by the evidence of a number of credible, consistent and reliable witnesses who clearly and independently of each other recalled Patient A telling them about this incident. The panel found Mr Munro's denial of these allegations to lack credibility, and therefore found, on the balance of probabilities, that, during a consultation with Patient A on 11 March 2016, Mr Munro used words to the effect of suggesting to Patient A that they could go for a cup of coffee.

The panel therefore found this charge proved.

Charge 3.1

That you, a Registered Nurse

[...]

3. Your behaviour and/or use of words at one or more part of 1 and/or 2 above was

3.1 Sexual in nature and/or otherwise in breach of professional boundaries

[...]

This charge is found proved.

In reaching this decision, the panel took into account of its findings in respect of charges 1 and 2, save for charges 2.2.1 and 2.2.2, which the panel found not proved.

The panel had regard to the evidence of the professional witnesses in this case as to what the expectation would be for professional boundaries. The panel found that Witness 5 especially gave clear evidence as to this matter.

The panel determined that, Mr Munro's behaviour or use of words in respect of all of the charges found proved amounted to a breach of professional boundaries, in that he acted and used words in a manner which would not expected of a registered nurse in the course of professional meetings with a patient.

The panel further considered that all Mr Munro's behaviour or use of words in respect of all of the charges found proved save for charge 2.2.5 were sexual in nature, in that the words and actions used were inherently sexual. In respect of charge 2.2.5, the panel considered that suggesting to go for a coffee with Patient A could be properly considered as an platonic invitation. It concluded that, despite it being inappropriate, it could not be satisfied, on the balance of probabilities, that this was sexual in nature.

The panel therefore found this charge proved.

Charge 3.2

That you, a Registered Nurse

[...]

3. Your behaviour and/or use of words at one or more part of 1 and/or 2 above was

[...]

3.2 Sexually motivated.

This charge is found proved.

In reaching this decision, the panel took into account of its findings in respect of charges 1 and 2, save for charges 2.2.1 and 2.2.2, which the panel found not proved.

Having rejected Mr Munro's account as implausible and unreliable. The panel concluded that, on the balance of probabilities, Mr Munro's behaviour or use of words in respect of all of the charges found proved was sexually motivated in that it was done in pursuance of sexual conversation, sexual contact, or for Mr Munro's own sexual gratification.

Although the panel found that Mr Munro's behaviour at charge 2.2.5 was not sexual in nature, it concluded that it was sexually motivated, in that, on the balance of probabilities, it was done in pursuance of future sexual conversation or contact with Patient A.

The panel therefore found this charge proved.

Charge 4

That you, a Registered Nurse

[...]

4. For some or all of the time between about the end of October 2016 and about the end of August 2021 were in a relationship with Patient B which was
 - 4.1 In breach of professional boundaries
 - 4.2 Sexual in nature

This charge is found proved.

In reaching this decision, the panel took into account all of the documentary evidence before it. It had particular regard to the evidence of Patient B, Person B, Ms 10 (whose statement was taken during the investigation carried out by Witness 2 and was adduced by Witness 2 for the purpose of these proceedings), Witness 1, Witness 2, Witness 4, Witness 6 and Witness 7, who addressed this charge.

The panel first considered whether Mr Munro commenced a relationship with Patient B between the relevant dates. The panel first had regard to the first witness statement of Patient B, dated 11 August 2020, in which she stated:

“In September of 2016, I [PRIVATE] went to Newcastle RVI A&E department and was assessed by a mental health professional named Harry Munro.

[...]

HM [Harry Munro] was so patient and a calming influence. He spoke to me like I was a human being and was probably the only mental health professional that calmed me and listened without judgement. I found it very easy to open up to him. On my follow up appointments, I looked forward to our interactions. On the last session where he discharged me to secondary services, I was upset sad as he gave me the courage to work on myself. I became obsessed, and really wanted to pursue a relationship with him. Even if this was one sided on my part. I [PRIVATE] felt flattered. I lied to my friends and told them I had a relationship with HM when this was untrue. I advised that I kissed him at an appointment which was a lie. HM was always professional and friendly.

Sometime after my discharge from his service, I did see in him at the Metrocentre in Marks and Spencers café [sic]. I sat beside him and he looked shocked to have seen me. I asked how he was and thanked him for his support. I advised that he was an amazing nurse and asked if I could see

him again. He advised that he was flattered and appreciated the kind comments, but he did not think that was a good idea. I was really hurt and confused. At around the same time, I started an inappropriate relationship with a school teacher [Teacher] from my daughters school and I was out of control. The guy in question was in my friendship group and was also in a relationship with a friend. I told my closest friends that also were in this friendship group that the mystery man I was seeing was HM when it wasn't. Reasons being, I did not want them to find out about the relationship with [Teacher], and I really didn't think that it would make any difference but allowed me to talk about it and I elaborated the truth. I am disgusted with myself [PRIVATE].

When the relationship ended with [Teacher] I reached out to HM via social media and advised that I was in a bad place and only he could help me. I begged him to meet for a coffee [PRIVATE]. HM met with me and I spoke with him [PRIVATE]. He was always very honest that he was uncomfortable seeing me, but I pressed it and placed him in an impossible position. [PRIVATE]. I thought that we became friends. We did spend time together and talk. Sometimes about him, mostly about me. I really liked him. But he absolutely drew the line when it came to anything remotely romantic. [PRIVATE].

The panel also had regard to Patient B's supplementary witness statement, dated 6 November 2021, in which she said:

"At the 4th paragraph of my statement dated 11 August 2020, I confirm that the following is untrue. Sometime after my discharge from his service, I did see in him at the Metrocentre in Marks and Spencers café [sic]. I sat beside him and he looked shocked to have seen me. I asked how he was and thanked him for his support. I advised that he was an amazing nurse and

asked if I could see him again. He advised that he was flattered and appreciated the kind comments, but he did not think that was a good idea.

After my discharge in October 2016, he said to me he said to me that a such and such a time he's be at M&S café if you want to buy me a coffee [sic]. I did arrange to meet the registrant at the Metrocentre after my discharge. When I met him he said that he would buy himself a new mobile phone to keep in touch. He said because I was discharged he didn't see the relationship as a problem. At the three appointments I had with him. We got on very well.

Also at the 4th paragraph of my statement, there was no inappropriate relationship with the school teacher.

[...]

I confirm I originally wrote the statement dated 11 August 2020 because I was in a relationship with the registrant for just short of 5 years and wanted it over and done for him. [...]

I confirm I was in a relationship with the registrant from the end of October 2016 to 28 August 2021 and the relationship did have a sexual element to it. It was a normal relationship in terms of having sex. [...].”

The panel had regard to the evidence of the other witnesses in this matter to assist with the weight which it could attribute to Patient B's supplementary statement, given that it was inconsistent with her previous statement. The panel bore in mind the evidence of Witness 7, [PRIVATE].

The panel further had regard to the evidence of Person B, Ms 10 and Witness 4, who set out in their evidence that Patient B had disclosed to them that she was in an inappropriate

relationship with Mr Munro. The panel also heard evidence from Witnesses 6 and 7, who outlined that Patient B disclosed to them that she was having an extra-marital relationship with an unnamed man.

The panel bore in mind that Mr Munro is not present or represented at this hearing and has not formally responded to the charges, save for his denial of this charge in his completed case management form, dated 8 February 2021, although Mr Munro's former RCN representative indicated that he may accept that he had contact with Patient B. The panel had regard to the information before it in respect of Mr Munro's responses to this allegation during his local disciplinary meeting with Witness 1 on 14 February 2018, during which time Mr Munro provided no comment to questions relating to his relationship with Patient B, on the legal advice of his representative. The panel drew no adverse inference from Mr Munro's lack of response to questions put to him in the local investigatory and police interviews, on legal advice.

The panel also had regard to Mr Munro's reflections in respect of the regulatory concern that he failed to maintain professional boundaries in that he had an inappropriate relationship with Patient B which was sexual in nature over a period of time, which was provided to the NMC by his former RCN representative on 2 November 2020. In his reflection, Mr Munro said:

"Mr Munro will say that in September of 2016, he assessed Patient B at the RVI, Newcastle. [PRIVATE]. In accordance with protocol, he offered a follow up appointment [PRIVATE]."

Mr Munro will say that he later encountered Patient A [sic] in December whilst he was Christmas shopping at the Metrocentre, Gateshead. On this occasion he had taken a break from his shopping and was sat having a coffee in the Marks and Spencer's Café, when Patient B approached his table and then sat down at the table where she reintroduced herself to him. Out of courtesy he asked how she was getting on [PRIVATE]. She advised

that she was in a relationship with a married man, and that she was afraid that people she knew would find out, [PRIVATE]. She asked if they could meet up again and Mr Munro advised, I would have to decline. She persisted and asked for his telephone number, and again he declined to give her that.

A few weeks later Patient B managed to track down Mr Munro through social media and messaged him through the Facebook messenger application where she asked if he would meet her for a coffee [PRIVATE]. He initially refused to do so but [PRIVATE] agreed to meet her for a coffee and a chat. [PRIVATE] with hindsight Mr Munro now realises that he, at this point he should have disclosed this situation to his line manager. He [PRIVATE] will admit that he met Patient B on about 5 or 6 occasion in cafes, once in his car (to come in out of the rain) and in a public house, the Twin Farms, near Kingston Park, Newcastle and that a platonic friendship developed. He will say that he did not engage in any type of sexual activity with Patient B at any time either when she was a patient of his or thereafter. Mr Munro will say that he has never expressed any words or intended any communications to be construed by Patient B as anything other than a platonic friendship.

[PRIVATE]. Mr Munro will say that whenever he had contact with Patient B it was as far as he was concerned a completely platonic friendship, and any romantic suggestions made by Patient B were rebuffed by him.

At one-point Patient B returned from a holiday in Turkey with her family and had purchased a number of fake “designer” items which she indicated that intended to give as gifts or sell. She insisted that Mr Munro accepted a fake wallet and watch which he left unused in his car. As Mr Munro attempted to end the friendship with Patient B, she became unreasonable and threatened to ‘end his marriage’ and ‘end his career’. He was frightened of her actions, because when he did try to extricate himself from the friendship and break contact with Patient B he saw that his marriage and career were in jeopardy.

In November 2017, after he was suspended from his post, he received a communication from Patient B advising how sorry she was and how she would like to talk to him and apologise for what she had done and the lies that she had told. He will say that he reluctantly agreed to meet with her and hear her out in the Twin Farms public house. When he arrived, he bought a drink and sat down, Patient B arrived and joined him, she kissed him on the lips this was unsolicited, and Mr Munro did not reciprocate. Patient B was very upset and apologetic. Shortly after, her husband entered the pub, he appeared intoxicated and threw a car wing mirror at Mr Munro. At this point, people including security and bar staff joined to restrain him and Mr Munro left the public house as Patient B attended to her husband. Once outside he discovered that his car had been vandalised.

Mr Munro will say that he has never sent the WhatsApp screenshot that was provided to him by the police. He was not a party to this conversation in any way and he strongly denies kissing Patient B at any point whilst under his care. Mr Munro believes that Patient B's husband wrongly thought that it was Mr Munro that was his wife's lover when in fact it was another person, who has since been identified as a teacher, this is evidenced in the latest statement received by the NMC from Patient B. Mr Munro suspects the WhatsApp screenshot sent by Patient B's husband to the police is fabricated and a malicious attempt by Patient B's husband to discredit Mr Munro who he wrongly believed was having a sexual relationship with Patient B. Mr Munro is of the belief that in fact the teacher with whom Mrs Munro was having an affair was her daughters schoolteacher, and also a close friend of the family. Mr Munro will say that as a part of their investigation the police seized all electronic devices from his home at the time of arrest, and there was no evidence of any contact between him and Patient B discovered. Mr Munro will say this is because he did not conduct a sexual relationship with Patient B.

The subject matter of both regulatory concerns have been investigated locally in the case of patient A the Trust (Tees Esk and Wear Valley) concluded there was no case to answer and Mr Munro's then new employer NTW satisfied themselves that there were no ongoing concerns by delaying the start of his employment to consider the allegations in respect of Patient A before ultimately allowing Mr Munro to take up his post. Both allegations were subject to investigation by the police and the CPS decided in each case that there was no case to answer.

There is no direct credible evidence to support the regulatory concerns and patient B has recently provided the NMC with a statement dated 11 August 2020 which clearly states that she was infatuated with Mr Munro " I became obsessed, and really wanted to pursue a relationship with him.....I lied to my friends and told them I had a relationship with HM when this was untrue. I advised that I kissed him at an appointment which was a lie. HM was always professional and friendly." She corroborates what Mr Munro says about how they met in Marks and Spencer by chance and that she was having a sexual relationship at that time with a schoolteacher [...] from her daughter's school. She states that she lied to friends telling them the person she was having a relationship with was Mr Munro to protect the identity of her true lover who was in her friendship group."

The panel further had before it a bundle of around 500 pages of text message correspondence between Patient B and Mr Munro, which related to a period of around a month, starting from December 2016. The panel had regard to the content of these messages, and noted that they contained details about Mr Munro's name, job role as a mental health nurse, as well as his workplace. The panel therefore rejected Mr Munro's account that these messages were fabricated by Person B and/or attributable to any third party with whom Patient B was having an extra-marital affair. Although it rejected Mr Munro's account of the relationship with Patient B, the panel also bore in mind that his

admission to meeting Patient B in a platonic setting around five or six times, would also constitute a relationship for the purpose of this charge.

The panel had regard to the oral evidence of Witness 2, who said that there had never been any doubt, during the course of the police investigation that Mr Munro was the person involved in the text messages and relationship with Patient B.

The panel was satisfied, that, on the balance of probabilities, for some or all of the time between about the end of October 2016 and about the end of August 2021 Mr Munro was in a relationship with Patient B.

The panel went on to consider whether this relationship was in breach of professional boundaries. The panel considered the evidence of the professional witnesses in this matter, including nursing colleagues such as Witness 6, who confirmed that such contact with a patient or former patient would amount to a breach of professional boundaries, as there is no justification to meet a patient outside of a clinical setting.

The panel bore in mind Mr Munro's admission in his reflection that he should not have met Patient B outside of work, although he denied a relationship. The panel rejected his account. It bore in mind that there is no evidence of a clinical record of these interactions, which would be expected of a professional meeting. Furthermore, the panel found that Mr Munro's account lacks credibility in that there is evidence before the panel, including text messages, which demonstrate that the relationship between Mr Munro and Patient B continued beyond that which he admitted to.

The panel was satisfied, that, on the balance of probabilities, the relationship between Mr Munro and Patient B was in breach of professional boundaries.

The panel finally considered whether this relationship was sexual in nature. Having satisfied itself that the text messages attributable to Mr Munro, the panel had regard to their content. It noted that a large proportion of these text messages contained overtly

sexual themes, including indecent images, which were encouraged and reciprocated by Mr Munro. In light of this, the panel was satisfied that, on the balance of probabilities, the relationship between Mr Munro and Patient B was sexual in nature.

The panel therefore found this charge proved.

Charge 5

That you, a Registered Nurse

[...]

5. You failed to escalate the existence of the relationship at 4 above to a senior member of staff

This charge is found proved.

In reaching this decision, the panel took into account all of the documentary evidence before it. It had particular regard to Mr Munro's completed Case Management Form, dated 8 February 2021.

The panel had regard to the police statement of Ms 10, which was adduced by Witness 2, in which Ms 10 said that Patient B had disclosed that she had commenced a relationship with Mr Munro, who Ms 10 named in her statement. In the same statement, Ms 10 stated that her brother disclosed this relationship to the police on 30 June 2016, who subsequently informed the Trust of this allegation.

The panel bore in mind that, although Mr Munro denied a "*relationship*" with Patient B, on his case management form, dated 8 February 2021, he admitted this charge. The panel had regard to the information before the panel as to Mr Munro's response to this charge since this date, and concluded that there was no information before it which would indicate that Mr Munro has retracted this admission. Accordingly, having found charge 4 proved,

the panel also found, on the balance of probabilities, that Mr Munro failed to escalate the existence of the relationship at charge 4 to a senior member of staff.

The panel therefore found this charge proved.

Charge 6

That you, a Registered Nurse

[...]

6. Between 26 August 2016 and 23 July 2017 accessed Patient records when there was no clinical reason to do so.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard the evidence of Witness 1, who spoke directly to this charge.

The panel bore in mind that there was no evidence before it to support this charge in respect of the period between 4 and 23 July 2017, therefore considered this charge in respect of the period between 26 August 2016 and 3 July 2017 only.

The panel had regard to the witness statement of Witness 1, which set out:

“There were a number of clinical records that Harry accessed for patients who were deceased at the time of access. There was no clinical rationale evident for doing so. If there is no active referral to a team on RiO a box comes up and you would input your reason for assessing the notes here. Harry gave the explanation that these patients were discussed in MDT [multi-disciplinary team] meetings however it would not be practice to discuss deceased patients in an MDT meeting.

Harry was identified as accessing notes of patients where there was no clear reason why. These would usually be patients who were being seen by colleagues but is against our governance for you to accessing [sic] records for people that are nor [sic] your patients. Harry said that he had gone into these records as they were needed for the purpose of a MDT discussion. However you would still need to say why you were accessing these patients so there is an audit trail. RIO record [...] was accessed on Christmas day and RIO record [...] accessed on New Year's Day. Both of these patients had previously been assessed and were not readmitted on these days. When these examples were highlighted to Harry he could not give a rationale as to why he was looking at them.

Some notes appear to have been accessed in error but have not been recorded as such. Harry acknowledged that he may have incorrectly entered the wrong ID digits by mistakes when searching for patients. Although this is plausible I would not expect it to come up as many times as it did with Harry.”

The panel found Witness 1's oral evidence to be consistent with her witness statement. She told the panel that her investigation found that Mr Munro's account recorded 48,000 keystrokes when accessing patient records, which was excessive, and that there was no clinical justification to access records some of which related to patients who were deceased.

The panel bore in mind that Mr Munro is not present or represented at this hearing and has not formally responded to the charges, save for his denial of this charge in his completed case management form, dated 8 February 2021. The panel had regard to Mr Munro's responses to this allegation during his disciplinary meeting with Witness 1 on 14 February 2018, in which he denied this allegation. Mr Munro said that he would access patient records as part of multi-disciplinary team meetings, and an access reason was not

always recorded, and that he did not know why he had accessed records for patients who were deceased, save in error.

The panel found the evidence of Witness 1 to be clear, cogent, consistent and supported by documentary evidence, including her audit of this concern. The panel found Mr Munro's denial of this concern, including his claim that the records accessed were as a result of error, to be implausible when considering the volume of patient records which are documented to have been accessed by Mr Munro. Accordingly the panel found, on the balance of probabilities, that between 26 August 2016 and 23 July 2017 Mr Munro accessed patient records when there was no clinical reason to do so.

The panel therefore found this charge proved.

Fitness to practise

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

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

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the

circumstances, Mr Munro's 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.*'

Mr Joshi invited the panel to take the view that the facts found proved amount to misconduct. He invited the panel to consider the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code).

Mr Joshi identified the specific, relevant standards where Mr Munro's actions amounted to misconduct. He said that the misconduct in this case is in clear breach of professional boundaries with Patients A and B, and invited the panel to have regard to the Council for Healthcare Regulatory Excellence ("CHRE") guidance "Clear Sexual Boundaries between Healthcare Professionals and Patients". With reference to this guidance, Mr Joshi submitted that Mr Munro breached clear sexual boundaries as outlined in the guidance, in that he:

- *Asked for or accepted a date*
- *Made inappropriate sexual or demeaning comments, or asking clinically irrelevant questions, for example about their body or underwear, sexual performance [...]; and*
- *Requested details of sexual [...] preferences that are not necessary or relevant.*

Mr Joshi submitted that Mr Munro deliberately chose to take an unreasonable risk to the safety of patients under his care, and invited the panel to make a finding of misconduct in relation to the charges which concern Patients A and B.

Mr Joshi submitted that Mr Munro took advantage of two [PRIVATE] individuals [PRIVATE] and he abused their trust.

In respect of charge 6, Mr Joshi submitted that Mr Munro failed to respect the privacy and confidentiality of patients at the Trust, when accessing their records inappropriately. He submitted that this also amounts to misconduct.

Submissions on impairment

Mr Joshi 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.

Mr Joshi invited the panel to consider the NMC guidance FTP-3: *“how we determine seriousness”*. He said that Mr Munro’s behaviour raises fundamental concerns about his trustworthiness, and demonstrates a deep-seated attitudinal issue.

With reference to this guidance, Mr Joshi submitted that Mr Munro’s behaviour demonstrated a serious concern which is more difficult to put right in that he breached his duty of candour in respect of Patients A and B.

Mr Joshi submitted that there are serious concerns which are difficult to put right in relation to this matter. [PRIVATE]. In relation to the CHRE guidance, Mr Joshi submitted that breaches of sexual boundaries with patients can result in significant and enduring harm to these patients, including damage to the reputation of the healthcare provider, and the NMC as a regulator. [PRIVATE].

Mr Joshi submitted that harm was caused to Patients A and B from the time which Mr Munro decided to breach his professional boundaries. [PRIVATE].

Mr Joshi submitted that Mr Munro has not, at any stage, admitted his breach of boundaries towards Patients A and B. He said that, instead, Mr Munro has sought to minimise and/or negate the valid feelings of [PRIVATE] Patients A and B [PRIVATE].

Accordingly, Mr Joshi submitted that a finding of impairment is required on the ground of public protection.

In respect of public interest, Mr Joshi said that Mr Munro's behaviour failed to promote professionalism and trust, and did not uphold the standards and values set out in the Code. Accordingly, Mr Joshi submitted that a finding of current impairment is also required on the grounds of public interest.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, and *Johnson and Maggs v Nursing and Midwifery Council* [2013] EWHC 2140 (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 Mr Munro's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Munro's actions amounted to a breach of the Code. Specifically:

"20 Uphold the reputation of your profession at all time

To achieve this, you must:

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

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 was of the view that Mr Munro’s failure to respect professional boundaries led to a clear finding of misconduct, in relation to charges 1 – 5.

The panel had regard to its findings on facts, and determined that Mr Munro abused his position of trust [PRIVATE].

The panel concluded that Mr Munro had formed a long-standing sexual relationship with Patient B, and, by his actions, sought to have a sexual relationship with Patient A. It found that he prioritised his own interests and personal gratification over the interests of his [PRIVATE] patients.

In respect of charges 1 to 5, the panel concluded that the facts found proved were extremely serious and that both members of the public and other members of the nursing profession would find Mr Munro’s conduct to be deplorable. It therefore found misconduct.

In respect of charge 6, the panel found that it is not the expected behaviour of a registered nurse to inappropriately access patient records when not clinically required to do so. However, taken in isolation, this charge may not have amounted to serious misconduct, However, taken with the other charges, it amounted to misconduct.

The panel found that Mr Munro’s actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional 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; and/or*
- d) *[...]*

The panel finds that patients were put at risk of and caused harm as a result of Mr Munro's misconduct. [PRIVATE].

The panel concluded that Mr Munro's 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 Mr Munro's breach of professional and sexual boundaries extremely serious.

Regarding insight, the panel bore in mind that the only evidence of Mr Munro's views in relation to these allegations is an undated reflective piece which was provided to the NMC by his former RCN representative on 2 November 2020. The panel concluded that, in his reflection, Mr Munro concentrates on the impact which the allegations had on him [PRIVATE], and does not address the regulatory concerns or the damage which these may have on his patients, or the public confidence in the nursing profession. Further, the panel found that his reflective piece contradicts the panel's findings on the facts, and therefore lacks credibility. Accordingly, the panel concluded that Mr Munro has demonstrated no insight.

The panel had concerns that the misconduct identified relates to deep seated attitudinal issues, which are difficult to address. The panel carefully considered the evidence before it in determining whether or not Mr Munro has taken steps to strengthen his practice and could not identify any evidence of any activity, such as training, which Mr Munro may have undertaken to strengthen his practice.

The panel bore in mind that Mr Munro is not present or represented at this hearing and, although it is open to the panel to consider evidence which an absent registrant may provide, Mr Munro has not provided any documentary evidence as to his current circumstances or views towards the allegations since his reflection provided in November 2020.

Accordingly, the panel is of the view that there is a risk of repetition based on Mr Munro's lack of insight and failure to demonstrate steps that he has strengthened his practice. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case, given that Mr Munro abused his position of trust and breached professional and sexual boundaries towards [PRIVATE] patients. The panel therefore also finds Mr Munro's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Munro's fitness to practise is currently impaired.

Sanction

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

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

Submissions on sanction

Mr Joshi informed the panel that in the Notice of Hearing, dated 26 January 2023, the NMC had advised Mr Munro that it would seek the imposition of a striking off order if it found Mr Munro's fitness to practise currently impaired.

Mr Joshi submitted the following matters as aggravating features in this matter:

- Abuse of a position of trust;
- [PRIVATE];
- Mr Munro's lack of insight into his failings;
- Mr Munro's lack of remorse;
- Mr Munro's pattern of misconduct over a period of time, [PRIVATE]; and
- Conduct which puts patients at risk of suffering harm.

Mr Joshi said that there are no mitigating features present in this matter, [PRIVATE], which the panel may consider as personal mitigation.

He invited the panel to have regard to the NMC guidance “*Considering sanctions for serious cases*”, which sets out:

“Conduct ranging from criminal convictions for sexual offences to sexual misconduct with patients, colleagues or patients’ relatives could undermine a nurse, midwife or nursing associate’s trustworthiness as a registered professional.

[...]

Sexual misconduct will be particularly serious if the nurse, midwife or nursing associate has abused a special position of trust they hold as a registered caring professional. It will also be particularly serious if they have to register as a sex offender. The level of risk to patients will be an important factor, but the panel should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses, midwives and nursing associates.

[...]

Panels deciding on sanction in cases about serious sexual misconduct will, like in all cases, need to start their decision-making with the least severe sanction, and work upwards until they find the appropriate outcome. They will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse, midwife or nursing associate from the register. If the panel decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision very clearly and very carefully. This will allow people who have not heard all of the evidence in the case, which includes the victims, to properly understand the decision”

He submitted that this guidance is relevant in this matter when considering the appropriate sanction for both public protection, and also in the wider public interest. He submitted that, in this case, the only appropriate sanction is a striking-off order.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Abuse of a position of trust with patients [PRIVATE];
- Mr Munro's pattern of misconduct over a period of time, including misconduct towards more than one patient;
- Mr Munro's lack of insight or remorse; and
- Patients were caused harm.

[PRIVATE].

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. 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 and nature of the misconduct identified, and the public protection issues identified, an order that does not restrict Mr Munro's 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 Mr Munro's misconduct was far from the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Munro's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel had regard to its finding that the misconduct identified in this case was not something which can be addressed through retraining, and Mr Munro demonstrated a deep-seated attitudinal issue in his interactions with Patient A, and relationship with Patient B. The panel took into account that Mr Munro has not provided evidence of any insight or remorse into his failings, and the panel has been told that he has now retired from nursing. In light of this, the panel could not be satisfied that, even were it able to formulate any conditions of practice, that any such conditions would be workable. Furthermore, the panel concluded that the placing of conditions on Mr Munro's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It could not identify any of the factors identified in the SG where a suspension order may be appropriate. The panel found that this would not reflect the gravity of the misconduct and is incompatible with the seriousness and nature of the charges found proved.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Munro's actions is incompatible with Mr Munro remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Mr Munro's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Munro's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Munro's actions in bringing the profession into disrepute by adversely affecting the public's view of how registered nurses should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Mr Munro in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. 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 Mr Munro's own interests until the striking-off 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 Mr Joshi. He submitted that an interim suspension order for a period of 18 months is required to cover any possibility of potential appeal of this order that Mr Munro may make. He said that this interim order is necessary for both public protection and also in the public interest.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the period of any potential appeal which Mr Munro may make.

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

That concludes this determination.