

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

**Substantive Meeting
Wednesday, 24-25 May 2023**

Virtual Meeting

Name of Registrant:	Samantha Bourton
NMC PIN	94D0321E
Part(s) of the register:	Registered Nurse – Effective Mental Health Nursing – March 1997
Relevant Location:	Shropshire
Type of case:	Misconduct
Panel members:	Bernard Herdan (Chair, lay member) Kathryn Smith (Registrant member) Peter Wrench (Lay member)
Legal Assessor:	Peter Jennings
Hearings Coordinator:	Renee Melton-Klein
Miss Bourton:	Not present and not represented
Facts proved:	Charges 1a, 1b, 2, 3a, 3b, 4b
Facts not proved:	Charges 4a
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Miss Bourton's registered email address by secure email on 24 April 2022.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and the fact that this meeting was heard virtually.

In the light of all of the information available, the panel was satisfied that Miss Bourton has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

'That you, a registered nurse:

1. On or around 10 May 2021:
 - a) had sex with Patient A;
 - b) visited Patient A outside of your working hours.

2. On or around 12 May 2021 visited Patient A outside of your working hours.

3. On or around 16 May 2021:
 - a) visited Patient A outside of your working hours;
 - b) failed to escalate Patient A's report of suicidal thoughts.

4. Your conduct in Charges 1b) and/or 2 and/or 3a) was
 - a) sexually motivated in that you sought to pursue a sexual relationship
 - b) A breach of professional boundaries

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

misconduct.’

Background

The NMC received a referral on 22 September 2021 from South Staffordshire and Shropshire Healthcare NHS Foundation Trust (the Trust) in regard to Miss Bourton who was a Registered Mental Health Nurse with the Trust.

It is alleged that Miss Bourton breached sexual boundaries with a patient by having sexual intercourse with him at his accommodation on 10 May 2021 while he was a patient in her care. The patient informed his social worker on 18 May 2021 that he had sexual intercourse with Miss Bourton, his care coordinator, and that she made contact with him using her personal number and visited him at his accommodation out of hours. Miss Bourton is said to have admitted in a statement provided to her line manager on 19 May 2021 and later during investigation interviews that she had sexual intercourse with the patient, and visited him on two subsequent occasions at his accommodation.

During the local investigation, Miss Bourton accepted that she was the patient’s care coordinator at the time of the incidents. She said that the patient told her during a telephone conversation that he was suicidal and said that he was violent when she later visited him on 16 May 2021. It is alleged that she did not report these concerns at the time.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC and from Miss Bourton.

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

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Operational Lead in the Community Intervention Pathway (CIP) Team at the Trust.
- Witness 2: Mental Health Social Worker at the Trust: Provides secondary support to service users who may have complex mental health needs.
- Witness 3: Operational manager for Community Intervention Pathway East and West. Conducted the investigation for the Trust.

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

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

Charge 1a

That you, a registered nurse: On or around 10 May 2021:

- a) had sex with Patient A;

This charge is found proved.

In reaching this decision, the panel took into account that Miss Bourton did not dispute that she had sex with Patient A on or around 10 May 2021. In her handwritten statement she says:

“I have approached my manager today to make him aware of an incident that has occurred. This involves...a patient who is currently under that care of CIP. This had occurred approx. 2 weeks ago.

Following his discharge from hospital he was housed at [Location 1]...I went out of work hours, I was concerned he wanted to see me. I attended. This is when we slept together.”

Furthermore, Witness 1 in his statement says:

“...we sat in Sam’s (Miss Bourton’s) front room and Sam explained that she had had sexual intercourse with a service user. Sam did not go into much detail but disclosed that she had visited him 2 weeks ago outside of work hours, and during that visit they had slept together. Following this, Sam visited him again on two further occasions. Sam explained that following the last visit, the service user had messaged her threatening to ruin her life.”

The panel also had before it the written statement of Witness 2 who reports the following from her conversation with Patient A:

“Patient A went on to state that Sam had visited him outside of hours at [Location 1]. Sam tried it on with him and they slept together.”

The panel was satisfied that, given what Miss Bourton had stated and what the witnesses reported, she did have sex with Patient A on or around 10 May 2021 and found this charge proved.

Charge 1b

That you, a registered nurse: On or around 10 May 2021:

b) visited Patient A outside of your working hours.

This charge is found proved.

The panel again took into account Miss Bourton’s own statement in which she says:

“Following his discharge from hospital he was housed at [Location 1]...I went out of work hours, I was concerned he wanted to see me. I attended.”

Furthermore, Miss Bourton answered the following questions, which were put to her during the Trust investigation and exhibited in the Summary of Trust Investigation Interview with Samantha Bourton dated 09 July 2021:

“5. When was contact made - What date and what time?”

It was a Monday that I was second Shift Co, which would have been the week before I did the statement that I gave to [Person 1]. The week before 19th May. I went around about 5:30pm.

7. Your statement says you were concerned he wanted to see you so why did you go out of work hours (how did he make contact with you?)

I couldn't fit in an appointment with everything else going on and it was good to hear someone who was doing well”

The panel understood the charge as meaning ‘ordinary working hours’ rather than an out of hours visit, which would apply for example to a crisis team. The panel noted that Patient A’s account is consistent with the visit being outside normal working hours. Accordingly, the panel was satisfied in the basis of the information before it that Miss Bourton did visit Patient A outside of her working hours around 10 May 2021 and found this charge proved.

Charge 2

That you, a registered nurse: On or around 12 May 2021 visited Patient A outside of your working hours.

This charge is found proved.

In reaching this decision, the panel took into account that Miss Bourton began a period of annual leave earlier that day. The panel had before it, in the statement of Witness 1, the following evidence that Miss Bourton had taken 12 May 2021 and the rest of the week off work:

“On 12 May 2021, Sam attended work and attempted to contact me via Microsoft Teams at 11:14am asking to speak urgently. I messaged her back at 11:15am to explain I was facilitating a staff debrief, but would call her as soon as I was available. Whilst I do not have the exact time, I believe we spoke within the following hour. Sam presented as tearful, reporting she had a very difficult contact with a patient and felt "overwhelmed". She acknowledged that this was "building up for a while" and felt that following on from the events of the previous day she "couldn't hold it together". It was clear that Sam was not fit for work at that time and we agreed that the Shift Coordinator would follow up in relation to the aforementioned patient contact and Sam would take annual leave for the remainder of the week.”

Furthermore, in the Summary of Trust Investigation Interview with Samantha Bourton dated 09 July 2021 she confirmed that she did visit Patient A on this date during what would have been outside her working hours had she not been on annual leave:

“3. The second occasion you met the patient was detailed in your previous meeting as an evening — could you provide the date and time?”

The Wednesday - 12th May around 7:00pm to 7:30pm”

Accordingly, the panel was satisfied that Miss Bourton had visited Patient A outside of working hours, on or around 12 May 2021, and found this charge proved.

Charge 3a

That you, a registered nurse: On or around 16 May 2021:

- a) visited Patient A outside of your working hours;

As in Charge 2, the panel took into account the statement from Witness 1 which states that Miss Bourton took annual leave from 12 May 2021 for the rest of that week:

“On 12 May 2021, Sam attended work and attempted to contact me via Microsoft Teams at 11:14am asking to speak urgently... It was clear that Sam was not fit for work at that time and we agreed that the Shift Coordinator would follow up in relation to the aforementioned patient contact and Sam would take annual leave for the remainder of the week.”

The panel also took note of the evidence provided during the Trust investigation that she went to visit Patient A in the early hours of the morning:

4. The third occasion you described as the Saturday night/Sunday morning in the early hours — again could you confirm the date and time?

Yes, it was after midnight it would be the Sunday 16th May around 1:00am — 2:00am

The panel was satisfied based on the information before it that Miss Bourton did visit Patient A on or around 16 May 2021 and that this visit did occur outside her working hours. Accordingly, the panel found this charge proved.

Charge 3b

That you, a registered nurse: On or around 16 May 2021:

b) failed to escalate Patient A’s report of suicidal thoughts.

This charge is found proved.

The panel had before it the written statement of Witness 1 and Miss Bourton’s own agreed statement from the Trust investigation. In her handwritten statement Miss Bourton wrote:

“The second time was when he called in the early hours. He said he was suicidal, I went to [Location 2]. He was under the influence of alcohol and cocaine. He was

angry he threatened (sic) me said he would ruin my life. He was violent smashing up his flat. He had me against the door and headbutted but went into the door. I got away and left.”

In the Trust investigation interview from 9 July 2021, Miss Bourton answered the following questions:

“12. Why did you choose to meet him two more times? - Why did you feel compelled to go?

To try to clear up the mess, as I knew it was a mistake and I tried to extract myself from the situation and explain that I could not see him anymore. I said I would hand my notice in at work, as I do not want to be seeing him for any reason. He kept saying he wanted the opposite which wasn't going to happen in my mind.

14. Can you explain what the Trust process is for anyone who feels suicidal?

If it were during hours to speak to Care Co or the Access Team, if it was out of hours, the Crisis Team would be involved but out of hours initially would be Access Team.

15. What services did you refer him to?

I had previously, to the Crisis Team.

16. Why did you visit when he was suicidal, knowing the Trust processes?

I visited because I thought it was to do with all of this and I thought I could try to sort it out but I do not think it was this. I think he had made up his mind then about what he was going to do”

The panel was of the view that as a mental health nurse she would have been aware of how to escalate a situation where a patient is in crisis or reports suicidal thoughts. The panel also took note of the following statement from Miss Bourton in which she explains

why she was hesitant to contact the Police regarding Patient A's violent and threatening behaviour:

23. What instigated the violence on the 'second occasion' and what verbal exchange took place?

He was angry he was drunk and he was smashing his flat up and punching things - he head butted the door.

24. Did you report this to the police?

No.

25. Why didn't you report this?

I should not have been there; I should not have been in that situation with him.

The panel bore in mind that Witness 1 states that the action to be taken when a service user discloses suicidal thoughts depends on a number of factors. Patient A had previously, including quite recently, attempted suicide and had incidents of self-harm. In the panel's view Miss Bourton's own statement and answers indicate that escalation was required in his case and that the first step should have been to contact the Access Team, who would then involve the Crisis Team, if required.

The panel concluded, on the balance of probabilities that Miss Bourton did fail to escalate Patient A's report of suicidal thoughts and found this charge proved.

Charge 4a

That you, a registered nurse: Your conduct in Charges 1b) and/or 2 and/or 3a) was
a) sexually motivated in that you sought to pursue a sexual relationship

This charge is found NOT proved.

The panel was of the view that this charge is not proved. This charge does not relate to the act of intercourse itself but to the after-hours visits. The panel determined that the NMC

has not provided enough evidence to show that Miss Bourton's visits were sexually motivated.

There is no evidence to show that the sexual intercourse on 10 May 2021 was pre-mediated or that Miss Bourton wanted it to be repeated. On her account, the subsequent visits were misguided attempts to manage the consequences of the events of 10 May 2021. The panel has seen no evidence that contradicts this account and finds Miss Bourton's account plausible.

The panel took note of her statement to the Trust Investigation date 9 July 2021 about the reasons she went to visit Patient A:

"I couldn't fit in an appointment with everything else going on and it was good to hear someone who was doing well which does sound silly now, but at the time was nice to hear other than crisis issues.

I wish I had but I feel like I wasn't in a good place myself at all, and to do that given how long I have been a Mental Health Nurse doesn't make any sense to let my career be destroyed for all of those years."

The panel also took into account Miss Bourton's handwritten statement in which she says:

"Following his discharge from hospital he was housed at [Location 1]...I went out of work hours, I was concerned he wanted to see me. I attended. This is when we slept together. At no point was I expecting this to happen. He instigated this and at no point did I feel he was unable to make decisions..."

Whilst the panel noted from Witness 2's statement that Patient A said Miss Bourton had "tried it on" it also noted the description she gave of her visit to see Patient A:

"This was the only time I met with on a one to one basis. I remember feeling slightly uncomfortable as Patient A was over friendly, he would call me love or sweetheart and it was as if he did not understand that I was there as a professional and not as a friend."

The panel also bore in mind that on 10 May 2021 Miss Bourton was the second shift coordinator and was expected to keep the afternoon clear of other appointments, so that any visit that day would necessarily have been after normal working hours.

The evidence of Witness 1 was that on 12 May 2021 Miss Bourton presented as tearful, reported a difficult contact with a patient, and was clearly unfit for work. Miss Bourton's account for her reasons for the visits of 12 and 16 May 2021 is in essence that she was trying to "sort out the mess" from the first incident. It is not alleged that sexual contact took place on those two occasions and her account is consistent with the evidence of Witness 1 about 12 May 2021.

On the balance of probabilities and the evidence before it, the panel is not persuaded that Miss Bourton's visits were sexually motivated. It found this charge not proved.

Charge 4b

That you, a registered nurse: Your conduct in Charges 1b) and/or 2 and/or 3a) was
b) A breach of professional boundaries

This charge is found proved.

The panel was of the view that visiting the patient after hours without informing anyone, in her personal time, and without writing up the outcome of the visit, was a breach of professional boundaries. Furthermore, the panel noted that during this first visit Miss Bourton gave Patient A her personal telephone details, which is also a breach of the professional boundaries expected of a registered nurse. The panel had evidence before it, from the written statement of Witness 1 that Miss Bourton was an experienced nurse in working with challenging patients:

"I know Sam in a professional capacity only. I first met Sam in April 2019, when I was employed by the Trust as a Band 6 Team Lead Mental Health Nurse at HMP Stafford. Sam was a Band 5 Nurse on the team and was under my direct management. Sam and I worked together for approximately 8/9 months. The prison population presented as a challenging patient group and it was key that

staff maintained appropriate boundaries. The prison is for individuals who have committed sexual offences and it is common that you could encounter residents who would present as charming and ingratiating, often these behaviours being present at the time of their offending. I felt proud of Sam's work, she was always very professional, patient focused, worked to strict boundaries, and was someone who would challenge negative views or opinions in meetings."

The panel also noted that Miss Bourton was clear in the Trust investigation that she not only knew what the professional boundaries were but also that she had broken them:

*27. What is your understanding of what professional boundaries are?
I overstepped them and broke them. The physical contact with patients and patients having personal phone numbers is not acceptable. The times I saw him after the first occasion are all overstepping."*

Accordingly, the panel concluded that Miss Bourton did breach professional boundaries as alleged in Charges 1b and 2 and 3a and 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 Miss Bourton'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 do amount to misconduct, the panel must decide whether, in all the

circumstances, Miss Bourton's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

The NMC invited the panel to take the view that the facts found proved amount to misconduct and referred it to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ("the Code").

The NMC submitted that the breaches of the Code amount to misconduct because Miss Bourton's failings involved a very serious departure from the standards expected of a registered professional. It submitted that failing to maintain professional boundaries with a vulnerable patient, by having a sexual relationship, constitutes misconduct.

The NMC invited the panel to bear in mind its overarching objective to protect 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. The panel was referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Miss Bourton's fitness to practise impaired. The NMC set out the questions outlined by Dame Janet Smith in the 5th Shipman Report as endorsed in the case of *Grant*, and submitted that these are relevant in all cases when assessing past conduct and future risk:

1. has [Miss Bourton] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or

2. has [Miss Bourton] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or

3. has [Miss Bourton] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or

4.

The NMC made the following submissions in its written statement of case:

It is the submission of the NMC that the above questions can be answered in the affirmative.

a) The failure to escalate a report of suicidal thoughts and having a sexual relationship with a patient under the care of the mental health services has the potential to put vulnerable patients at risk of harm. In this case, emotional harm was caused to the patient.

b) 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. Nurses must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. Miss Bourton's failings relate to professional boundaries. As such her misconduct is liable to bring the profession into disrepute.

c) The nursing profession is a caring profession. Miss Bourton has breached the fundamental tenets of maintaining professional standards and providing safe care for patients. Further, the individual provisions of the professional Code constitute fundamental tenets of the nursing profession. The conduct involved engaged, and breached, the above provisions.

The panel should also consider the comments of Cox J in Grant at paragraph 101:

"The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case".

Miss Bourton has clearly brought the profession into disrepute by the very nature of the conduct displayed. Nurses occupy a position of trust and must act and promote integrity at all times, which have been breached in this case. The public

has the right to expect high standards of registered professionals.

Impairment is a forward thinking exercise which looks at Miss Bourton's practice poses in the future. With regard to future risk, it may assist to consider the comments of Silber J in Cohen v General Medical Council [2008] EWHC 581 (Admin) namely (i) whether the concerns are easily remediable; (ii) whether they have in fact been remedied; and (iii) whether they are highly unlikely to be repeated.

The NMC guidance entitled "Serious Concerns which are more difficult to be put right" FTP-3a, says that a small number of concerns are so serious that it may be less easy for the nurse to put right the conduct. This guidance includes 'sexual assault or relationships with patients in breach of guidance on clear sexual boundaries'.

Due to the nature of the allegations there is a risk that there could be repetition of Miss Bourton's actions. The allegations demonstrate conduct that raises concerns about Miss Bourton's professionalism. The seriousness of the misconduct is such that it calls into question her professionalism in the workplace. This, therefore, has a negative impact on the reputation of the profession and, accordingly, has brought the profession into disrepute.

The provisions of the code constitute fundamental tenets of the profession and Miss Bourton's actions have clearly breached these in so far as they relate to upholding the reputation of the profession and Miss Bourton upholding her position as a registered nurse. Further, Miss Bourton's actions in failing to escalate suicidal thoughts did not provide safe care for a patient.

Insight is an important concept when considering impairment. It can be said that Miss Bourton has shown some insight by making full admissions at a local level and accepted that she had breached s20 of The Code. However there has been no engagement with the NMC and it cannot be said that Miss Bourton has fully reflected upon her actions and the impact of such behaviour upon patients and upon the public confidence. Further, no evidence has been provided of training

certificates in the relevant area of professional boundaries. We note Miss Bourton has not worked in a nursing capacity since the issues of concern occurred (sic).

For all the reasons detailed above, whatever the Panel decide in respect of future risk, it is submitted that, Miss Bourton's actions are so serious that a finding of current impairment is required in order to protect the public, maintain public confidence in the profession and NMC and to uphold proper professional standards. Public confidence in the profession and the NMC as its regulator would be undermined if that behaviour was allowed to pass effectively unremarked. A nurse who breaches professional boundaries so comprehensively by having a sexual relationship with a vulnerable patient under the care of the mental health services and who fails to escalate suicidal thoughts in such a patient, places members of the public at risk of harm and such failures raise fundamental concerns about Miss Bourton's safety as a registered professional which can damage the reputation of the profession."

Decision and reasons on misconduct

The panel accepted the advice of the legal assessor which included reference to the principles derived from a number of relevant judgments.

In coming to its decision, the panel had regard to the case of *Roylance v GMC (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.'

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 Miss Bourton's actions did fall significantly short of the standards expected of a registered nurse, and that Miss Bourton's actions amounted to a breach of the Code. Specifically:

"8 Work co-operatively

To achieve this, you must:

8.3 keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff

8.6 share information to identify and reduce risk

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

13.1 accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care

13.4 take account of your own personal safety as well as the safety of people in your care

15 Always offer help if an emergency arises in your practice setting or anywhere else

To achieve this, you must:

15.3 take account of your own safety, the safety of others and the availability of other options for providing care

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other health and care setting and use the channels available to you in line with our guidance and your local working practices

16.2 raise your concerns immediately if you are being asked to practise beyond your role, experience and training

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

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

17.2 share information if you believe someone may be at risk of harm, in line with the laws relating to the disclosure of information

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel determined that, despite the breaches occurring over short period of time and being out of character for her, Miss Bourton’s behaviour was a serious departure of the standards expected of a registered nurse and amounted to serious misconduct.

The panel concluded that both an informed member of the public and a member of the nursing profession would find Miss Bourton’s behaviour to be deplorable and damaging to the public’s trust in nurses, and to undermine professional standards.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Bourton'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 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.'

The panel accepted the NMC's submissions in regard to the questions set out in Dame Janet Smith's "test" as set out in the case of *Grant*.

The panel finds that a patient was put at risk of physical and emotional harm as a result of Miss Bourton's misconduct as the patient was a vulnerable mental health patient and she did not report his worsening condition, which included being violent and reporting that he was suicidal. It also the view that for a nurse to have sexual intercourse with a mental health patient under her care itself put the patient at a risk of harm. The panel regarded Miss Bourton's failure to escalate the patient's condition as a least in part motivated by her own wish that what occurred on 10 May 2021 should not get out. Miss Bourton's misconduct has breached the fundamental tenets of the nursing profession of acting with integrity and putting patients' interests first and has brought its reputation into disrepute.

The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find the charges extremely serious.

The panel considered that the misconduct in this case had a number of elements. First, having sex with a patient. Then, there was both a failure to deal properly with the initial misconduct and also a failure to escalate his worsening health due to her concern about her own situation.

Regarding insight, the panel considered that Miss Bourton had made admissions at the local level. However, there has been no evidence to demonstrate that she has sought to strengthen her practice. The panel noted that she has shown some remorse and apologised but considered that there is nothing further to show that risk has been reduced in this case. The panel concluded that it could not be confident that she would not repeat misconduct of the sort found proved.

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

The panel considered that an informed member of the public would expect that a finding of impairment be made. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds Miss Bourton's fitness to practise impaired on the grounds of public interest.

As the panel concluded that as Miss Bourton could be liable to repeat similar behaviour there remains a risk to the public. The panel therefore decided that a finding of impairment is also necessary on the grounds of public protection.

Having regard to all of the above, the panel was satisfied that Miss Bourton'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 Miss Bourton off the register. As a result of this order the NMC register will show that Miss Bourton 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.

Representations on sanction

The panel noted that Miss Bourton had been sent the NMC's statement of case in which it advised that it would seek the imposition of a strike-off order if the panel found Miss Bourton's fitness to practise currently impaired.

Decision and reasons on sanction

Having found Miss Bourton'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
- Vulnerable patient
- Conduct which put a patient at risk of suffering harm.
- Putting her own needs above those of a vulnerable patient

The panel also took into account the following mitigating features:

- Previous good character

- Personal mitigation regarding stressful working conditions and home life.
- Miss Bourton reported at a local level that she was feeling overwhelmed.
- Miss Bourton's case load had increased sharply.

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 action.

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

The panel next considered whether placing conditions of practice on Miss Bourton's registration would be a sufficient and appropriate response. The panel is of the view that given the nature of the findings in this case, conditions of practice would not be a sufficient response and concluded that placing of conditions on Miss Bourton's registration would not adequately address the seriousness of this case.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

The conduct, as highlighted by the facts found proved, was a very significant departure from the standards expected of a registered nurse. In the panel's judgment the serious breach of the fundamental tenets of the profession evidenced by Miss Bourton's actions is entirely incompatible with Miss Bourton remaining on the register. While the panel noted that her actions were out of character, and there has been no repetition since these events, it was such a serious lapse that, particularly in the absence of engagement, or of any indication of the strengthening of her practice, a suspension order would not meet the public interest in this case.

In this particular case, the panel determined that a suspension order (which can be for no longer than 12 months) 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?*

The panel found that Miss Bourton's actions were very significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register.

The panel was of the view that the findings in this particular case demonstrate that Miss Bourton's actions were totally unacceptable and to allow her 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 appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Miss Bourton's actions in bringing the profession into disrepute by adversely affecting the

public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel concluded that this order was necessary to mark the importance of maintaining public confidence in the profession, and to declare to the public and the profession the standards of behaviour required of a registered nurse. The panel is satisfied that this order is appropriate and properly balances the protection and interests of the public with the impact on Miss Bourton.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Bourton's own interests. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC that:

“If a finding is made that Miss Bourton's fitness to practise is impaired on a public protection basis is made and a restrictive sanction imposed, we consider an interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise 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. In reaching the decision to impose an interim order, the panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive 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 allow sufficient time to conclude any appeal.

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

That concludes this determination.

This will be confirmed to Miss Bourton in writing.