

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

**Substantive Hearing**  
**Monday, 17 April – Friday, 21 April 2023**  
**Tuesday, 2 May – Friday, 5 May 2023**  
**Tuesday, 9 May 2023**  
**Wednesday, 19 July 2023**  
**Monday, 30 October – 31 October 2023**

Nursing and Midwifery Council  
2 Stratford Place, Montfichet Road, London, E20 1EJ  
(17 April – 5 May, 9 May and 19 July 2023)

Virtual Hearing  
(30 – 31 October 2023)

**Name of Registrant:** **Andrew Graham**

**NMC PIN** 86A1262E

**Part(s) of the register:** Registered Nursing - RN1  
Adult Nursing – May 2001

**Relevant Location:** Cornwall

**Type of case:** Misconduct

**Panel members:** Michelle McBreeze (Chair, Lay member)  
Susan Tokley (Registrant member)  
Alex Forsyth (Lay member)

**Legal Assessor:** Caroline Hartley

**Hearings Coordinator:** Anya Sharma (17 April – 5 May & 9 May 2023)  
Rene Aktar (19 July 2023)  
Xenia Menzl (30 – 31 October 2023)

**Nursing and Midwifery Council:** Represented by Tope Adeyemi, Case Presenter

**Mr Graham:** Present and unrepresented (17 April – 5 May  
2023, 9 May 2023, 19 July 2023 and 30 – 31  
October 2023)  
Not present and unrepresented (Tuesday 18 April  
2023)

**Facts proved:** 1a), 1d), 4a), 4d)

**Facts not proved:** 1b), 1c), 1e), 1f), 1g), 1h), 1i), 1j), 1k), 2, 3, 4b), 4c), 4e), 5, 6, 7a), 7b), 8, 9

**Fitness to practise:** Impaired

**Sanction:** **Conditions of practice order with review (12 months)**

**Interim order:** **Interim conditions of practice Order (18 months)**

## **Decision and reason on Rule 19**

During Ms Adeyemi's submissions there was some mention of private circumstances of one of the witnesses. Further, during your submissions you explained about your private circumstances.

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 decided of its own volition to go into private as and when such issues are discussed pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules) in order to protect the witnesses and your own privacy.

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

The panel heard an application made by Ms Adeyemi, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charges 1, 4c), 7a) and 7b).

It was submitted by Ms Adeyemi that the proposed amendments would provide clarity and more accurately reflect the evidence.

In relation to charge 1, the panel was of the view that the amendment as set out below would better reflect the evidence and provide consistency in relation to the rest of the charges. Ms Adeyemi submitted that she was in agreement with the panel's proposed amendment in regard to charge 1 as set out below and invited the panel to make the amendment.

That you, a registered nurse:

- 1) **While working as a nurse at the Grange University Hospitals** between 15 and 17 April 2021 in relation to Patient A breached professional boundaries in that you:

In relation to charge 4c), Ms Adeyemi submitted that the addition of the words 'when talking to colleague A' would provide consistency and invited the panel to make the following amendment:

- 4) Between 16 September 2021 and 17 September 2021 while working as a nurse at the Royal Cornwall Hospital you breached professional boundaries in that:
  - c) went into explicit detail **when talking to Colleague A** of a specific incident of rape involving a child and/or young person where the rape was shown on live stream;

In relation to charge 7a) and 7b), Ms Adeyemi submitted that an amendment to include Colleague B's name would provide consistency and better reflect the evidence.

- 7) On 13 November 2021, while working as a nurse at the Royal Cornwall Hospital you breached professional boundaries in that you:
  - a) **told Colleague B about** ~~discussed~~ child abuse and/or child pornography and/or images of child abuse online;
  - b) said **to Colleague B** that you knew an individual who was able to access these images and/or videos online;

You did not oppose the application to amend the charges.

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 amendments, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendments being allowed. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

### **Details of charge (as amended)**

That you, a registered nurse:

- 1) While working as a nurse at Grange University Hospitals Trust Between 15 and 17 April 2021 in relation to Patient A breached professional boundaries in that you:
  - a) while speaking with Patient A's mother said "*I won't give her [Patient A] a kiss from you as that you would be inappropriate*" or words to that effect; **[found proved]**
  - b) visited Patient A frequently during the course of the night shift and stayed in their room for lengthy periods of time which was not clinically justified; **[not found proved]**
  - c) told Patient A that you were interested in criminal law and in the subject of underage rape; **[not found proved]**
  - d) had a conversation with Patient A in which you discussed in detail a case involving the abduction and rape of a 13-year old girl; **[found proved]**
  - e) informed Patient A that you were researching and/or writing a book about the rape of an underage girl; **[not found proved]**

- f) described an incident of rape in graphic detail; **[not found proved]**
  - g) asked Patient A if Patient A would like to read your book and described the book as '*not quite pornographic but graphic and erotic*' or words to this effect; **[not found proved]**
  - h) told Patient A that as part of your research you had made contact with an underage girl and/or had obtained the girl's address; **[not found proved]**
  - i) behaved in a flirtatious manner towards Patient A; **[not found proved]**
  - j) read sexually graphic poems to Patient A; **[not found proved]**
  - k) on one or more occasion asked Patient A if they wished for you to wash their hair despite it being late at night; **[not found proved]**
- 2) Your conduct at Charge 1 was sexually motivated in that you sought sexual gratification **[not found proved]**
- 3) Your conduct at Charge 1 amounted to sexual harassment in that:
- i) it was unwanted; **[not found proved]**
  - ii) it was sexual in nature; **[not found proved]**
  - iii) it had the purpose or effect of violating Patient A's dignity and/or creating a hostile, degrading, humiliating or offensive environment for Patient A. **[not found proved]**
- 4) Between 16 September 2021 and 17 September 2021 while working as a nurse at the Royal Cornwall Hospital you breached professional boundaries in that:
- a) during a conversation with Colleague A discussed child abduction and/or child abuse and/or paedophilia despite being told by Colleague A that the topic caused upset; **[found proved]**

- b) told Colleague A that you were researching and/or writing a book about the rape and abduction of an 11 year old girl; **[not found proved]**
  - c) went into explicit detail when talking to Colleague A of a specific incident of rape involving a child and/or young person where the rape was shown on live stream; **[not found proved]**
  - d) discussed the dark web and/or asked Colleague A if they had been on the dark web and/or referred to incidents of abuse on the dark web; **[found proved]**
  - e) told Colleague A that some children liked being sexually abused and/or molested or words to that effect; **[not found proved]**
- 5) Your conduct at Charge 4 was sexually motivated in that you sought sexual gratification **[not found proved]**
- 6) Your conduct at Charge 4 amounted to sexual harassment in that:
- i) it was unwanted; **[not found proved]**
  - ii) it was sexual in nature; **[not found proved]**
  - iii) it had the purpose or effect of violating Colleague A's dignity and/or creating a hostile, degrading, humiliating or offensive environment for Colleague A. **[not found proved]**
- 7) On 13 November 2021, while working as a nurse at the Royal Cornwall Hospital you breached professional boundaries in that you:
- a) told Colleague B about child abuse and/or child pornography and/or images of child abuse online; **[not found proved]**
  - b) said to Colleague B that you knew an individual who was able to access these images and/or videos online; **[not found proved]**

- 8) Your conduct at Charge 7 was sexually motivated in that you sought sexual gratification: **[not found proved]**
- 9) Your conduct at Charge 7 amounted to sexual harassment in that:
- i) it was unwanted; **[not found proved]**
  - ii) it was sexual in nature; **[not found proved]**
  - iii) it had the purpose of effect of violating Colleague B's dignity and/or creating a hostile, degrading, humiliating or offensive environment for Colleague B; **[not found proved]**

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

### **Decision and reasons on application to admit hearsay evidence of Patient A, Patient A's mother and Colleague B**

The panel heard an application made by Ms Adeyemi under Rule 31 to allow the written statements of Patient A, Patient A's mother and Colleague B into evidence. Patient A, Patient A's mother and Colleague B were all not present at this hearing and, whilst the NMC had made sufficient efforts to ensure that these witnesses were present, they were unable to attend today.

The panel had sight of email correspondence between Patient A's mother and the NMC. [PRIVATE].

The panel also had sight of email correspondence between Patient A and the NMC. [PRIVATE].

You submitted that you do not oppose the application.



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.

The panel gave serious consideration to the application in relation to Patient A, Patient A's mother and Colleague B.

The panel noted that Patient A's mother's witness 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 ability*' and signed by her.

The panel considered whether you would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Patient A's mother to that of a written statement/allowing hearsay testimony into evidence.

The panel considered that you had been provided with a copy of Patient A's mother's statement. There were also public interest concerns in the issues being explored fully which supported the admission of this evidence into the proceedings. The panel considered that the unfairness in this regard worked both ways in that the NMC was potentially deprived, as was the panel, from reliance upon the live evidence of Witness 1 and you and the panel were deprived of the opportunity of questioning and probing that testimony. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In relation to Patient A and Colleague B, the panel took into account Ms Adeyemi's submissions as well as the information before it provided by the NMC. The panel determined that prior to it making a decision in relation to the applications made in regard to the evidence of Patient A and Colleague B, further efforts should be made by the NMC to contact Patient A and Colleague B for them to attend the hearing and give live evidence, and [PRIVATE].

The panel therefore adjourned until the next day, 18 April 2023, to allow the NMC time to make efforts to [PRIVATE] and successfully communicate with Patient A and Colleague B and before making a decision on the hearsay application.

### **Application to proceed in the absence of Mr Graham on 18 April 2023**

On day 2 of the substantive hearing, the panel had sight of email correspondence between Mr Graham and his NMC Case Coordinator dated 17 April 2023, in which he states that he will not be returning to the hearing. In light of this, the panel invited Ms Adeyemi to make an application in relation to proceeding in the absence of Mr Graham.

Ms Adeyemi invited the panel to proceed in the absence of Mr Graham. She submitted that Mr Graham has voluntarily absented himself. Ms Adeyemi provided the panel with a chronology of the case and informed the panel that this matter was initially listed to be heard in person in Cardiff, [PRIVATE]. The matter then changed to online because Mr Graham had said that he could facilitate attendance online. Mr Graham then got back in contact with the NMC and said he could not attend online, so the hearing was then relisted in person. Ms Adeyemi submitted that whilst Mr Graham has engaged with the NMC, the NMC has made many attempts to facilitate Mr Graham's attendance. She submitted that it is clear from Mr Graham's emailed dated 17 April 2023 that he has now decided that he does not want to attend, even though he is aware that all attempts have been made to ensure that he is able to participate.

Ms Adeyemi submitted that there is nothing to indicate that if this matter were adjourned, postponed or changed to some other method, that Mr Graham would come along. She submitted that another issue is that there is a public interest in this matter proceeding. The matters date back to 2021 and there are 10 witnesses who are scheduled to attend live at this stage to give evidence, and it may be that there will be more. Ms Adeyemi submitted that the longer this matter takes to be heard, the less sharp and helpful the recollections of the witnesses, who have taken time out to make themselves available and who are practising health care professionals in one capacity or another.

Ms Adeyemi submitted that for witnesses to have to come back on another date or for their availability to be rescheduled would be a significant undertaking and disproportionate in circumstances where you have an individual who appears to have made the decision not to participate. For all these reasons, Ms Adeyemi invited the panel to proceed in Mr Graham's absence.

The panel accepted the advice of the legal assessor.

The panel was of the view that Mr Graham had been provided with many opportunities to attend the substantive hearing. It determined that the case should proceed in the absence of Mr Graham, in light of the public protection and public interest concerns of the case.

The panel informed Ms Adeyemi that the Hearings Coordinator had emailed Mr Graham this morning in light of his non-attendance at the hearing, expressing the panel's disappointment that he had chosen not to attend and encouraging his attendance.

The panel therefore determined to proceed in the absence of Mr Graham.

### **Position of witnesses on 18 April 2023**

The panel then received an update from Ms Adeyemi that the NMC Case Coordinator as to the efforts made to secure Patient A and Colleague B as witnesses [PRIVATE]. Ms Adeyemi informed the panel that the NMC Case Coordinator had emailed Patient A this morning and was waiting on a response. A call has also been made to Patient A, but Patient A had not answered the call. Ms Adeyemi further explained that Colleague B was yet to be contacted, as the NMC Case Coordinator needed to have a discussion with her manager as Colleague B has expressed that he did not wish to participate in the hearing [PRIVATE].

The panel considered that it was in a position where it would need to wait for the response from Patient A, possibly from Colleague B or an update in regard to contacting Colleague B. The panel therefore was of the view that it would be appropriate to adjourn proceedings until an update can be provided, as the hearing cannot continue unless the panel knows if it will accept the hearsay statements.

The panel therefore adjourned the hearing until 19 April 2023. It was decided that the hearing would remain in person, in case Mr Graham had a change of mind and decided to attend the hearing in person like as he had done on day 1 of the hearing.

### **Mr Graham's attendance on 19 April 2023**

On 19 April 2023, day three of the substantive hearing, Mr Graham decided to attend the hearing virtually, having communicated with the Hearings Coordinator via email.

### **Update on position of witnesses**

Ms Adeyemi informed the panel that following the request of the panel on day two of the hearing, enquiries were made in regard to Patient A and Colleague B. A call was made to Colleague B to advise him to attend the hearing, and to get some further clarification from him as to why he did not wish to attend the hearing. Ms Adeyemi informed the panel that whilst Colleague B did engage in this conversation, he stated that he was concerned [PRIVATE], and the position is that he will not be attending the hearing.

Ms Adeyemi further set out that in relation to Patient A, an email was sent to her yesterday setting out the provisions available in terms of support, reiterating that the hearing would be virtual and inviting her to attend. Patient A has not responded. Ms Adeyemi informed the panel that further emails sent to Patient A were found which showed that this information had already been relayed in the past, and it seemed that at a point, Patient A had agreed to attend virtually. Ms Adeyemi submitted that it is the NMC's case that what has now changed is that [PRIVATE] Patient A no longer wishes to attend.

Ms Adeyemi submitted that this is the current position in regard to the witnesses and it is hoped that the panel will consider adducing their evidence as hearsay.

Ms Adeyemi informed the panel that a number of witnesses have been warned to attend today. She provided an update [PRIVATE].

### **Decision and reasons on application to admit hearsay evidence of Patient A and Colleague B on 19 April 2023**

In these circumstances, the panel came to the view that it would be fair and relevant to accept the hearsay evidence but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

### **Background**

Mr Graham has been a registered nurse since 1989. The charges involve nine allegations, consisting of 27 sub-particulars in respect of his conduct whilst he was working as a nurse between April 2021 and November 2021. The conduct giving rise to the allegations arose principally from Mr Graham's alleged actions in speaking about the topic of child pornography, rape and sexual abuse on separate occasions with a patient and two colleagues. There are three specific incidents that are reflected in the charges. All of them occurred when Mr Graham was working night shifts.

Charges 1 to 3, concern Patient A and took place in Wales, whilst Mr Graham was working at Grange University Hospital in Wales between 15 to 17 April 2021. [PRIVATE].

Late on 15 April 2021, crossing over to early morning on 16 April 2021, Mr Graham called Patient A's mother. Mr Graham, after speaking to Patient A's mother on her request and providing her with a short update regarding her daughter, concluded the conversation by saying, '*I won't give her a kiss from you as that would be inappropriate.*'

Throughout the night shift on 16 April 2021, Mr Graham visited Patient A in her room frequently. During those periods he would talk at length and there appeared to be no clinical justification for those visits.

As reflected in the charges, Mr Graham went on to speak to Patient A in detail about a child that had been abducted by a man and raped, describing the rape in graphic detail. He also told her that he had written a book on the subject of underage rape and invited Patient A to read it and described the content of the book as *'graphic and erotic.'*

Patient A states that Mr Graham went on to read her graphic poems and that at a point, he asked her whether she wished for him to wash her hair. At this stage it was the early morning of 16 April 2021 and Patient A declined the offer from Mr Graham. Despite her refusal, she has said Mr Graham made a further offer of washing her hair.

Patient A, [PRIVATE] describes feeling *'powerless, scared, violated, sickened and traumatised'* by Mr Graham's behaviour, amongst other things.

Charges 4 to 6 concern Colleague A and took place in Cornwall. As indicated, Mr Graham allegedly went on to repeat the behaviour, specifically in regard to speaking about the subject of child abuse.

[PRIVATE]... The conversation with Colleague A has given rise to the allegations reflected at charges 4 to 6 of the schedule of charge. Colleague A describes having a conversation with Mr Graham that was initially pleasant before it took a turn through Mr Graham's introduction of the subject of child abuse and paedophilia.

The panel will hear evidence from Colleague A that Mr Graham told her that he had written a book about an 11-year-old girl who had been abducted and held captive by a paedophile. He went on to describe to her a specific incident of the rape of a child which was shown by livestream, and to talk about a forum on the dark web. Particularly disturbing, and perhaps most harrowing for Colleague A, Mr Graham allegedly made

the observation that in his view, some children liked being sexually abused and/or molested.

When challenged about this point, Colleague A has stated Mr Graham argued with her. As with Patient A, Colleague A describes being scared during the conversation. She uses the word 'panicked' as well and considers the experience to have traumatised her.

The last set of allegations, charges 7 to 9, concern Colleague B, and again, happened when Mr Graham was working at the Royal Cornwall Hospitals. [PRIVATE].

It's Colleague B's evidence that Mr Graham talked to him for approximately 20 minutes about the topic of child abuse in the form of child pornography. During the conversation, it's Colleague B's evidence that Mr Graham stated that he knew individuals who have videos of children doing sexual acts. As with Patient A, Colleague A and Colleague B describes being '*angry, sickened, shocked and disgusted*' by Mr Graham's behaviour and left feeling traumatised.

Within the charges is the allegation that Mr Graham's conduct in talking about the subjects of child abuse and associated conduct is an allegation that it was sexually motivated and that he derived sexual motivation from doing so. A notable feature of the accounts given by Patient A and Colleague A is that they both say that Mr Graham appeared to enjoy talking about this subject.

The Panel will hear from Ms 1, an HR officer at the Royal Cornwall Hospitals, who interviewed Mr Graham on 3 December 2021, and states in her statement that:

*'Throughout the interview, it was extremely clear that Mr Graham was captivated and passionate about the subject matter of paedophilia and child abduction',*

adding *'Mr Graham was obsessed with the subject matter'* and *'It was as if he needed to talk about it.'*

In the disciplinary outcome letter sent to Mr Graham by Royal Cornwall Hospitals, dated 22 February, Royal Cornwall, in informing him that they had decided to terminate his worker's agreement, relayed that by stating he had:

*'shown a persistent, insatiable predilection for the discussion of inappropriate subject matter.'*

Mr Graham has engaged in the proceedings. His general position appears to be that his comments were made in order to raise awareness around the subject of child abuse. While he does not accept the entirety of what Patient A and Colleague A have said, he has made some general comments expressing regret if he upset them. He's made it clear, however, that he doesn't accept what Colleague B has to say at all.

[PRIVATE]

Mr Graham's position is summed up in the letter to the NMC dated 20 June 2022, in that letter, he makes some complaints about the NMC, and then goes on to say the following. *'What exactly have I done? Had a couple of conversations about a valid subject.'* Such a comment gets to the heart of the problem, which is that it's not accepted by the NMC that discussing issues of child abuse in graphic detail to colleagues and a vulnerable patient is a valid subject.



## Decision and reasons on facts

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

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: Deputy Charge Nurse for Royal Cornwall Hospitals NHS Trust
- Witness 2: Clinical Nurse Lead for Clinical Complaints Team at ACI Training and Consultancy Limited
- Patient A: Healthcare Support Worker for Royal Cornwall Hospitals NHS Trust
- Witness 3: Investigating Officer with Kernoflex
- Witness 4: Interim Matron at Royal Cornwall Hospitals NHS Trust
- Witness 5: Safeguarding Unit Manager for Torfaen County Borough Council

- Witness 6: Senior Staff Nurse at Royal Cornwall Hospitals NHS Trust
- Witness 7: Ward Sister at Cardiac Investigation Unit for Royal Cornwall Hospitals NHS Trust
- Ms 1 Assistant People Partner at Royal Cornwall Hospitals NHS Trust
- Ms 2 Third party
- Witness 9: Interim Head of Nursing (Urgent Emergency and Elder Care) at Royal Cornwall Hospitals NHS Trust

The panel also had sight of the written statements of the following witnesses:

- Patient A
- Patient A's mother
- Ms A

The panel also heard evidence from you under affirmation which was clear and consistent throughout. The panel were impressed with your efforts to explain the context of the conversations from your point of view and there was no intention to cause any distress to anyone.

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

The panel considered that Patient A had not attended the substantive hearing to give evidence, despite numerous efforts being made by the NMC to secure Patient A as a witness. The panel took into account the email correspondence it had been provided with in relation to why Patient A was unable to attend the substantive hearing [PRIVATE]. It took into account that the NMC had made efforts over a significant period of time. The panel took into account Patient A's slightly florid and hysterical language in her written statement and was of the view that it seemed partly [PRIVATE]. The panel was of the view that it would be difficult to assess how Patient A was impacted by this at the time.

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

### **Charge 1**

While working as a nurse at Grange University Hospitals Trust Between 15 and 17 April 2021 in relation to Patient A breached professional boundaries in that you:

- a) while speaking with Patient A's mother said "*I won't give her [Patient A] a kiss from you as that you would be inappropriate*" or words to that effect;

### **This charge is found proved.**

The panel noted that you have admitted that you said part of what is set out in charge 1(a) but had explained to the panel that you did not say that it was inappropriate, and that you did not '*snigger*' when you said this. To this extent, the panel accepted what you had said in your evidence in relation to this. You were consistent with your evidence in relation to this charge.

You maintained that this was said in jest as a joke and that this was something that you had often said during your years as a nurse. You told the panel that you had not previously received any complaints in relation to you making this comment in the past.

The panel noted that you had made this comment when you had just recently met Patient A and Patient A's mother, and Patient A had just recently come out of an operation [PRIVATE]. In this context, the panel was of the view that you had breached professional boundaries as it was an inappropriate remark for a nurse to make in the current climate.

**Charge 1b)**

- b) visited Patient A frequently during the course of the night shift and stayed in their room for lengthy periods of time which was not clinically justified;

**This charge is found NOT proved.**

The panel noted that you explained during your evidence that you had undertaken observations and that Patient A was very fragile given that she had just had surgery. In response to panel questions, you had explained that you had gone to Patient A's room six times at the most, as the health care assistant would have gone in and done some of the observations as well. The panel took into account that you would have had to go into Patient A's room once every two hours to do Patient A's observations to check her vital signs.

The panel considered that from a clinical point of view, you checking up on Patient A at this frequency was justified post-operatively and was not unreasonable. You had [PRIVATE] other patients to look after on this shift. You said that on this night shift, you were routinely busy and would not have had a lot of time on your hands to be spending more time than required with a specific patient.

The panel was therefore of the view that this did not breach professional boundaries.

### **Charge 1c)**

- c) told Patient A that you were interested in criminal law and in the subject of underage rape;

### **This charge is found NOT proved.**

The panel took into account that you deny this charge. You stated in your evidence to the panel that you never said that you were interested in criminal law:

*'I said no such thing, I referred to Chanel Miller's 'Know my name' who was raped and wrote a book. I thought we got on very well, we were chatting, and she told me that she was a former lawyer and why she had 'jacked it in' ... talked about social media sites hosted outside of the UK, certainly did not say that I was interested in underage rape... discussed the book I was writing..paedophiles hiding in plain sight. '*

You explained that Patient A had told you on the same night shift that she was a [PRIVATE], and that is why you had raised certain things/topics with her, which you would not have done had she not been a lawyer. You explained that you had got on very well with Patient A. Patient A had told you why she had left law, and you had made reference to a book called 'Know My Name' by Chanel Miller and also made reference to your own book [PRIVATE]. You stated that you did not say that you were interested in the subject of underage rape.

The panel noted that your whole premise is that you were trying to warn girls about giving out information on the internet, and that you wrote the book to warn girls about it.

Patient A in her witness statement set out that you were:

*'fascinated in criminal law... it did not strike me as odd to begin with that Mr Graham was interested by criminal law... particularly interested in cases about underage rape...'*

The panel was of the view that your denial was clear, and it can be seen from the context that your interest is in the protection of young girls within the context of these young girls being abducted and consequently raped.

#### **Charge 1d)**

d) had a conversation with Patient A in which you discussed in detail a case involving the abduction and rape of a 13-year-old girl;

#### **This charge is found proved.**

The panel took into account the written witness statement of Patient A, which states:

*'before I could even respond, [Mr Graham] began to tell me about a case that he had always been fascinated about which involved a 13-year-old girl who was abducted by a man and raped. He went into great detail of the case which made me feel immediately upset and uncomfortable.'*

During your evidence, you set out that you accept that there was a conversation with Patient A which detailed a case involving the abduction and rape of a 13-year-old girl. You explained that you felt that you got on very well with Patient A. You explained that you did speak about Ms 2 to Patient A, who was abducted and raped in 2002 at the age of 13 and referred to her interview in 2016 and her website. You explained that he had written a British version of her story. You said in your evidence that you did not go into

pornographic detail, that the words were Patient A's and not yours, and that the interest was in warning young girls about putting their personal details on the internet.

The panel took into account that given the information before it, this is not the right topic of conversation to be having and was not in an appropriate context given that you did not know Patient A and had only recently met her. It was therefore of the view your conversation with Patient A did cross professional boundaries.

#### **Charge 1e)**

- e) informed Patient A that you were researching and/or writing a book about the rape of an underage girl;

**This charge is found NOT proved.**

In reaching this decision, the panel noted that you explained in your evidence that you had finished writing your book [PRIVATE] in 2021, so you were no longer researching and denied the charge. You said to the panel that you were asking Patient A for her perspective as a [PRIVATE] about all of the pornographic material on the internet and how far the British law extended to protect the citizens of the UK from foreign websites such as the German dark website with a large number of paedophile members in the hope of warning young girls in sharing their personal information on the internet. You willingly provided the panel with a full copy of your book 'Sabin', which the panel have had the opportunity to review. The panel was of the view that you had written the book in 2021 and would have not needed to research further. The panel also noted that the subject of underage rape was incidental to the rest of your book.

#### **Charge 1f)**

- f) described an incident of rape in graphic detail;

**This charge is found NOT proved.**

The panel noted that you had denied this charge and explained to the panel that you had referred to Ms 2 when speaking to Patient A, but not in a graphic or detailed manner.

Patient A in her written statement states that you:

*'had explained that rape in extremely graphic detail and in an aggressive manner. I have blocked out a lot of other the details about his book that he told me as it was so disconcerting and horrific to hear'*

The panel bore in mind that that your book lacked graphic detail. It considered that '*graphic detail*' does not necessarily equate to it being inappropriate.

The panel considered that Patient A had not given live evidence and did not describe the graphic detail. The panel took note of the result of the safeguarding report which was unsubstantiated. In Patient A's absence, therefore the panel decided to apply less weight to her evidence.

The panel therefore find this charge not proved.

### **Charge 1g)**

g) asked Patient A if Patient A would like to read your book and described the book as '*not quite pornographic but graphic and erotic*' or words to this effect;

**This charge is found NOT proved.**

The panel noted that you completely deny that you described your book as pornographic or erotic, that Patient A's words were completely false and that you felt that she seemed to be making it up as she went along. You described your book to be '*graphic, not pornographic... there is no pornography in my book.*'



The panel took into account that you had asked Patient A if she wanted to read your book. Patient A stated;

*'the registrant also told me that his mother could only stomach a few chapters of book one...when the registrant returned to my room and said to me that he had just thought how I would like to read his book, I declined and said the subject made me very uncomfortable.'*

The panel took into account a letter from your mother, which states that she has not read any of your books.

In your evidence to the panel, you stated that you had offered Patient A the opportunity to read your book, and it was at that point Patient A said the subject made her feel uncomfortable and that there was no further discussion.

The panel was of the view that you did not describe your book with the words detailed in the charge and therefore find this charge not proved. The panel preferred your evidence to that of Patient A.

### **Charge 1h)**

h) told Patient A that as part of your research you had made contact with an underage girl and/or had obtained the girl's address;

### **This charge is found NOT proved.**

You provided the panel with an explanation of how you had got into contact with a girl on TikTok. You said that your contact with the girl on TikTok was 'random' and that the girl had contacted you first. You set out that you had asked the girl for her address, and when she was about to give her address, you stopped the girl and told her that she should not give her address out online.

The panel noted that you did not state that you got in contact with the girl on TikTok was part of your research.

The panel also took into account Patient A's witness statement, which set out the following:

*'... this research included talking to an underage girl who I believe he said was 12 or 13 years old. [Mr Graham] told me that he had asked the girl for her address and when she went to give it to him, he allegedly told her that she should not give her address to older men like him [Mr Graham] stated that his books were a lesson to underage girls to teach them not to do certain things such as giving out their addresses. At this point I was frightened and shocked. In my moment my exact thoughts were that [Mr Graham] was a paedophile. I remember lying there unable to move and [Mr Graham] was all I had for someone to help me.'*

The panel took into account that you deny in your statement that you said, *'to older men like me'*.

Whilst the panel considered that you had accepted that you had discussed this with Patient A, you did not contact the girl yourself, you did not obtain her address and you were not conducting any research. This charge is found not proved.

### **Charge 1i)**

- i) behaved in a flirtatious manner towards Patient A;

**This charge is found NOT proved.**

In reaching this decision, the panel took into account Patient A's written witness statement, where she explains how you had offered to wash her hair and was almost flirtatious with her. She stated:

*'I awkwardly told [Mr Graham] that I could not be bothered to have it washed. I told [Mr Graham] I was tired and needed to sleep, but he did not care, [Mr Graham] simply ignored me.'*

The panel also took into account your evidence in relation to this. You stated:

*'this is not true, we got on all night, we talked about [PRIVATE], my book, at the very first part of the shift I offered for her to read it, she seemed interested... [PRIVATE] ... she seemed to need a lot of attention and she got a lot of attention, I was not flirting with her in any way.'*

The panel considered that it was not unusual for a nurse to wash a patient's hair. It took into account that you explained that you had not raised the issue about Patient A's hair being greasy, she had raised this and that is when you offered to wash her hair early in the shift but did not have time to do it then. You then came back around 02:00 to Patient A's room and explained that you now had the time to wash her hair, which Patient A declined. You said you pursued it no further.

The panel noted that as Patient A was not in attendance at the hearing to give live evidence, it was unable to ask Patient A what she meant by a flirtatious manner. Therefore, the panel preferred your evidence to that of Patient A.

### **Charge 1j)**

j) read sexually graphic poems to Patient A;

**This charge is found NOT proved.**

In reaching this decision, the panel took into account that you had provided the panel with names of the poems.

The panel noted that Patient A did not specify what poems had been read to her.

The panel had sight of the poems to which you referred and determined that these poems were not sexually graphic. The panel found this charge not proved.

**Charge 1k)**

- k) on one or more occasion asked Patient A if they wished for you to wash their hair despite it being late at night;

**This charge is found NOT proved.**

In reaching this decision, the panel took into account your evidence and the evidence of Patient A.

The panel noted that during your live evidence to the panel, you explained that it was a:

*'shift like any other, 24 hours a day, late at night is not relevant, I said I could wash her hair if I had time..at 02:00, I told [Patient A] I could wash her hair now if she liked, she declined...she had raised the subject first, I looked after her for one night, the first night was literally an hour'.*

The panel took into account that Patient A stated in her written statement that

*'Mr Graham's personal offer to wash my hair was incredibly inappropriate... it is an intimate thing to wash someone's hair and I did not want to be in his company any longer'.*

The panel took into account that you agreed that you had discussed with Patient A on more than one occasion in regard to washing her hair, but that Patient A had raised this first by commenting that her hair was greasy. The panel considered that you were working a night shift and could not avoid it being late at night when you had said to Patient A that you could wash her hair.

The panel was of the view that it was not unreasonable, nor is it inappropriate for a nurse to offer to wash someone's hair if they raise it. The panel determined that you offered to wash Patient A's hair did not breach professional boundaries and that you had done this in response to Patient A's observation that her hair was greasy.

The panel therefore find this charge not proved.

## **Charge 2)**

Your conduct at Charge 1 was sexually motivated in that you sought sexual gratification

**This charge is found NOT proved.**

In reaching this decision, the panel took into account that you deny this charge, and that during your live evidence, you had told the panel:

*'absolutely not, simple as'.*

The panel considered all of the information it had before it and was of the view that it has no evidence before it from the NMC to support this charge. It considered its findings in relation to the only two sub charges the panel found proved, the panel found no evidence which would provide a leap to sexual motivation or wanting to achieve sexual gratification. The panel also took into account the background of your passion of wanting to warn underage girls of the dangers of giving out information over the internet, as well as the contents of your book [PRIVATE], the panel did not find this to be pornographic.

The panel therefore find this charge not proved.

### **Charge 3)**

Your conduct at Charge 1 amounted to sexual harassment in that:

- i) it was unwanted;
- ii) it was sexual in nature;
- iii) it had the purpose or effect of violating Patient A's dignity and/or creating a hostile, degrading, humiliating or offensive environment for Patient A.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account its findings in relation to charge 1, as well as the evidence of you and Patient A.

The panel considered that the test detailed in charge 3 is not met, given the limited number of sub charges within charge 1 that were found proved, as well as the nature of those sub charges. The panel was therefore of the view that the threshold has not been met.

The panel took into account that Patient A in her written statement sets out that your behaviour/conduct was unwanted, but it was of the view that your conduct/behaviour is not sexual in nature in the context of the case.

The panel noted that your live evidence to the panel was consistent and detailed throughout in your recollection of what happened. The panel took into account that your evidence explained what had happened very well from your perspective. It considered that you had stopped pursuing issues with Patient A, for example when she had declined your offer to read your book or for you to wash her hair.

The panel was of the view that this was not sexual in nature and was not your intention to violate Patient A's dignity or create a hostile, degrading, humiliating or offensive environment for Patient A. You in your evidence expressed that you thought you were getting along with Patient A and were having a good conversation and mentioned in your evidence that Patient A had no Wi-Fi or phone signal and was chatty with you.

The panel was therefore of the view, taking all of this into account, that this charge is not proved.

#### **Charge 4**

Between 16 September 2021 and 17 September 2021 while working as a nurse at the Royal Cornwall Hospital you breached professional boundaries in that:

- a) during a conversation with Colleague A discussed child abduction and/or child abuse and/or paedophilia despite being told by Colleague A that the topic caused upset;

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of you and Colleague A.

The panel also had sight of Colleague A's written witness statement, which sets out:

*'I was extremely surprised when [Mr Graham] told me this, and I told [Mr Graham] I would not read that type of material as I find it too upsetting.'*

The panel also took into account your evidence, which set out that:

*'Colleague A did not appear to be unhappy about the direction of the conversation, until right at the end when she the got the wrong end of the stick...*

*she was unhappy as she misunderstood what I was saying... I made a rod for my own back going into so much detail'.*

The panel took into account that Colleague A had also reported this and had been extremely upset at this point.

The panel had regard to your acceptance that you went into too much detail about a sensitive topic with a colleague you had never met before, without regard to with how such a conversation would make a person feel.

The panel therefore find this charge proved.

#### **Charge 4b)**

b) told Colleague A that you were researching and/or writing a book about the rape and abduction of an 11-year-old girl;

**This charge is found NOT proved.**

In reaching this decision, the panel took into account your evidence and the evidence of Colleague A.

The panel noted that during your evidence to the panel, you had explained that the girl in your book [PRIVATE] was a 14-year-old girl, not an 11-year-old girl which is what the charge suggests, and you question where this comes from. It was mentioned by you that the first draft of your book Sabin was finished in early 2021, and that the subject was at the very forefront of your mind. You had further set out that your book [PRIVATE] was more about the extreme stress of the parents and the girl, and that the girl was rescued by the police.



The panel accepted that the book had been completed earlier in the year and that the girl was of a different age. Therefore, the panel found this charge not proved.

#### **Charge 4c)**

- c) went into explicit detail when talking to Colleague A of a specific incident of rape involving a child and/or young person where the rape was shown on live stream;

#### **This charge is found NOT proved.**

In reaching this decision, the panel took into account your evidence and the evidence of Colleague A. Colleague A's evidence is that a conversation took place where you referred to a paedophile and a live stream.

The panel took into account your very clear evidence in relation to this:

*'...don't know what [Colleague A] is talking about, these things happen undoubtedly, not sure where she got that from'.*

You in your evidence deny that there was no detail in relation to live streaming from what you said.

The panel also took into account the evidence of Colleague A, which stated:

*'...However [Mr Graham] started to tell me about a man who had groomed a young girl for a year, the man then took this child to a place where there were cameras and raped her on a live stream. [Mr Graham] told me that the man had been caught because someone watched the live stream and reported him. [Mr Graham] seemed to be mad about the way the man had been caught, and now about the fact that the child had been raped and abused. I told [Mr Graham] that this was disgusting...'*

The panel noted that Colleague A was very upset from what you said to her. The panel also heard evidence from other witnesses who say that Colleague A was visibly upset.

The panel noted that it had not been provided with any explicit detail from Colleague A and had not been provided with specific detail of any incident of rape involving a child or anything to do with live stream.

The panel therefore find this charge not proved.

#### **Charge 4d)**

d) discussed the dark web and/or asked Colleague A if they had been on the dark web and/or referred to incidents of abuse on the dark web;

#### **This charge is found proved.**

In reaching this decision, the panel took into account your evidence and the evidence of Colleague A.

The panel took into account that you in your evidence stated that you deny this charge. You explained to the panel that the only reference you ever made to the dark web was the case of the German paedophile ring website with 400,000 members. You in your evidence explained that you had never been on the dark web and have no knowledge of it whatsoever.

Colleague A in her written statement sets out that:

*[Mr Graham] started to speak to me about the dark web and asked me if I had been on the dark web. I told him that I did not believe that I have, and I would not even know where to find it. [Mr Graham] said that there is a forum on the dark web where individuals can speak with mothers about their children to request that certain types of sexual abuse happen to the children'.*

Colleague A in her evidence also explained in detail about how you had told her about the code words used on the dark web.

The panel was of the view that you had accepted that you had discussed the dark web, asked a colleague if she had been on the dark web, and referred to the incidents of abuse on the dark web, however there is no evidence to suggest that you have accessed the dark web. Therefore, the panel finds this charge proved.

**Charge 4e)**

e) told Colleague A that some children liked being sexually abused and/or molested or words to that effect;

**This charge is found NOT proved.**

In reaching this decision, the panel took into account your evidence and the evidence of Colleague A.

The panel considered your evidence, where you had referred to information you had obtained from a Panorama programme about child sexual abuse and talked about how later in life, they blame themselves. You told the panel that you:

*'did not say that children like to be sexually abused, period.'*

The panel took into account that you in your evidence expressed that Colleague A had really misunderstood what you were trying to say that children that have been abused in later life blame themselves for what happened and how they felt at the time. The panel preferred your evidence, and therefore found this charge not proved.

### **Charge 5)**

Your conduct at Charge 4 was sexually motivated in that you sought sexual gratification

**This charge is found NOT proved.**

In reaching this decision, the panel took into account its findings in relation to charge 4, as well as the evidence of you and Colleague A.

You in your evidence stated:

*'untrue, completely untrue, entirely untrue. My book was specifically written as a warning to young girls not to share information on the internet, not remotely sexually motivated at all.'*

The panel took into account that Colleague A in her evidence does not say that your conduct was sexually motivated.

The panel accepted your evidence and Colleague A's evidence, and therefore finds this charged not proved.

### **Charge 6)**

Your conduct at Charge 4 amounted to sexual harassment in that:

- iv) it was unwanted;
- v) it was sexual in nature;
- vi) it had the purpose or effect of violating Colleague A's dignity and/or creating a hostile, degrading, humiliating or offensive environment for Colleague A.

**This charge is found NOT proved.**

The panel find this charge not proved, in light of its findings in relation to charge 5.

## Charge 7)

On 13 November 2021, while working as a nurse at the Royal Cornwall Hospital you breached professional boundaries in that you:

- a) Told Colleague B about child abuse and/or child pornography and/or images of child abuse online;

### **This charge is found NOT proved.**

In reaching this decision, the panel noted that Colleague B had not attended the hearing to give evidence despite the NMC's efforts. [PRIVATE]. Colleague B did not respond to further enquiries on the request of the panel to attend as a witness.

Your evidence is that you met a man on dog walk who discussed videos that contained acts of terrorism rather than child abuse and that you have never seen them, and you have no further knowledge of the man. Colleague B in his written statement referred to videos of sexual acts and you referred to these videos as '*snuff*' films. There was no suggestion of pornographic content online.

You in your evidence states that this conversation with Colleague B was a very short conversation. You mentioned in your evidence that you said nothing about the internet to Colleague B and that you do not feel that you crossed any professional boundaries. You were open during your evidence that you had a discussion with Colleague B and that no pornography had been discussed.

The panel took into account that it did not have the opportunity to hear live evidence from Colleague B or question him and were therefore inclined to prefer your evidence.

On the basis of your evidence, the panel found this charge not proved.

**Charge 7b)**

- b) said to Colleague B that you knew an individual who was able to access these images and/or videos online;

**This charge is found NOT proved.**

In reaching this decision, the panel took into account your evidence and its findings in relation to charge 7a).

The panel was of the view that on the basis of the wording of the charge, it is not proved. It considered that the information it had been provided from you provides that there were physical VHS videos, rather than videos online. You in your evidence maintained that these VHS videos were from some time ago and did not contain any content in relation to children. You in your evidence explained that you did not view these VHS videos, and you were told about the content of the videos by a dog walker you had come across, whose name you did not know.

### **Charge 8)**

Your conduct at Charge 7 was sexually motivated in that you sought sexual gratification:

**This charge is found NOT proved.**

The panel found this charge not proved, in light of its findings in relation to charge 7.

### **Charge 9)**

Your conduct at Charge 7 amounted to sexual harassment in that:

- i) it was unwanted;
- ii) it was sexual in nature;
- vii) it had the purpose of effect of violating Colleague B's dignity and/or creating a hostile, degrading, humiliating or offensive environment for Colleague B;

**This charge is found NOT proved.**

The panel found this charge not proved, in light of its findings in relation to charge 7 and charge 8.

**The Hearing resumed on 30 October 2023.**

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

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

### **Submissions on misconduct**

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

*‘The question that will help decide whether a professional’s fitness to practise is impaired is:*

*“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”*

*If the answer to this question is yes, then the likelihood is that the professional’s fitness to practise is not impaired.’*

Ms Adeyemi invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015)’ (the Code) in making its decision.



Ms Adeyemi identified the specific, relevant standards where your actions amounted to misconduct. She submitted that your behaviour fell far short of what is expected of a registered nurse and that the matters found proved were serious in nature, having a negative impact on the individuals involved.

Ms Adeyemi submitted that on two occasions you breached professional boundaries with two different individuals. She submitted that keeping professional boundaries was essential to professionalism and a cornerstone of creating a safe and comfortable environment enabling patients to recover effectively and colleagues to provide the care that they are supposed to, to the appropriate standard. The breach of boundaries is in itself serious, but Ms Adeyemi submitted that there were factors that elevate the seriousness of the instances. She submitted that the subject matter of the conversation was wholly inappropriate and the fact that you thought it was, did not mitigate against the impropriety of the subject. It was not a question of your intention but an objective assessment.

Ms Adeyemi submitted that there was a power imbalance between you and your junior colleague as well as the patient when having these conversations meaning that they may have felt less able to end the conversation. She submitted that the conversation was very detailed involving the abduction and rape of a 13 year old girl with individuals whose background and experience you did not know. Further, with regards to charge 4a) you continued the conversation despite Colleague A telling you that she was distressed.

Ms Adeyemi submitted that regarding charge 1a) whilst you considered this to be a joke you were talking to someone on the phone who you did not know, whose daughter was in hospital.

Ms Adeyemi invited the panel to find that your behaviour in charges 1a), 1d), 4a) and 4d) fell far below the standard expected of a nurse and did amount to misconduct.

## **Submissions on impairment**

Ms Adeyemi moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Adeyemi referred the panel to the NMC guidance and that a registrant's fitness to practise was their ability to practise safely, kindly and professionally. She submitted that the panel should not consider whether you may or may not repeat the act of talking about this exact topic with patients or colleagues again but rather whether you are likely to cross professional boundaries through your conversations with colleagues and patients.

Ms Adeyemi submitted that you have not demonstrated any insight into your failings and whilst there have been some brief expressions of remorse your position is that your conduct was appropriate. She submitted that the panel had no evidence from you setting out that you were able to reflect on matters from another person's perspective or that you expressed in any other manner what went wrong, nor did you explain how you would conduct yourself differently in the future. Ms Adeyemi submitted that at this moment your reflections are self-focussed with limited to no self-awareness and no demonstration of an ability to understand how your behaviour impacted on others.

Ms Adeyemi submitted that you have not demonstrated that you have undertaken any steps to develop your knowledge on professional boundaries and communications nor have you provided any references that would speak on your behalf.

Ms Adeyemi therefore invited the panel to find that there remained a risk of repetition.

Ms Adeyemi submitted that you acted in a way that suggests that there may be attitudinal problems, with no insight or any steps taken to remediate your behaviour.

She submitted that based on this, the panel could not be confident that you are currently able to practise kindly, safely and professionally without restriction. She also submitted that an informed ordinary member of the public would be shocked to find that someone who acted this way, has shown no insight or taken any steps to remediate their behaviour would be allowed to practise unrestricted. She therefore invited the panel to find that you are impaired on the ground of public interest to maintain proper standards of conduct and performance.

You submitted that you do have insight, based on the fact that you have been a nurse for 30 years. You stated that you were an excellent nurse during those 30 years and always communicated freely with patients in a warm and receptive way. You stated that you never worked in a cold, methodical way and that had benefited Patient A that night to a large degree. You acknowledged that during your conversation with Patient A you went too far and into too much detail but said that she did talk to you about her personal life. However, you stated that Patient A was lying and therefore not a reliable witness. You also stated that Colleague A was lying and therefore not a reliable witness and that you did not overstep the mark with her anyway. You explained the dynamic of hospitals and that HCA's like Colleague A were '*often in charge of wards*'.

You stated that you were not a monster with no awareness of anything but yourself but that it was difficult for you to prove otherwise as you were being lied about and unrepresented. You stated that the book you had written was clearly intended as a warning for girls against abuse and grooming on the internet. You explained that you do not think that raising this subject matter in itself is a problem and that you should have watched your back when talking to Patient A.

You explained that you are an emotional person and that you deal with being a nurse emotionally.

You told the panel about your personal circumstances since the last hearing date [PRIVATE].

When asked what you would do differently in the future you stated that you would not further discuss your book or go near this subject again. You stated that you needed to watch your back in nursing and that you unfortunately did not.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Cheatle v GMC* 2009 EWHC 645 (Admin) and *Grant*.

## **Decision and reasons on misconduct**

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

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

**‘1     *Treat people as individuals and uphold their dignity***

*To achieve this, you must:*

1.3     *avoid making assumptions [...]*

**2     *Listen to people and respond to their preferences and concerns***

*To achieve this, you must:*

2.6     *recognise when people are anxious or in distress and respond compassionately and politely*

**7     *Communicate clearly***

*To achieve this, you must:*

7.4     *check people’s understanding from time to time to keep misunderstanding [...] to a minimum*

**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*

- 20.5 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*
- 20.7 make sure you do not express your personal beliefs [...] to people in an inappropriate way'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. First, the panel looked at the charges which had been found proved individually.

The panel was of the view that the mischief in this case related to inappropriate communication and misjudging what is appropriate in conversations with patients and colleagues resulting in a breach of professional boundaries. It noted that there were no concerns raised regarding your clinical skills.

In relation to charge 1a) the panel took account of your rationale that you were just joking. It found that your comment was unwise and misjudged but did not fall so seriously below the standard to amount to misconduct.

In relation to charge 1d) the panel was of the view that it was inappropriate to discuss such a subject matter with a patient. It noted that you accepted that you went into too much detail when discussing the topic with Patient A, however, mitigated this by saying that she also shared personal information. The panel was of the view that discussing such a topic with a patient, no matter the circumstances, breached professional boundaries and amounted to serious misconduct.

In relation to charge 4a) the panel was of the view that you speaking to Colleague A about this topic was breaching professional boundaries, it noted that you carried on doing so, despite Colleague A stating that this was causing her distress. The panel concluded that you were not actively listening to Colleague A expressing her needs, [PRIVATE] , to the point where she had to remove herself from the situation.

The panel was of the view that this was a serious departure from the standards expected of a nurse and amounted to serious misconduct.

In relation to charge 4d) the panel was of the view that, similarly to charge 1d) you were discussing an inappropriate subject matter with Colleague A, breaching professional boundaries. It concluded that your actions in charge 4d) fell far below the standard expected of a nurse and amounted to serious misconduct.

The panel found that your actions in charges 1d), 4a) and 4d), individually and cumulatively did fall seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

### **Decision and reasons on impairment**

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To retain that trust 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 Patient A and Colleague A were put at a real risk and were caused emotional harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that you have not provided it with any formalised learning or review in regard to appropriate communication and breaching professional boundaries, nor have you provided it with any testimonies/references of colleagues speaking to your character and your development. Whilst you acknowledged that this was an inappropriate subject matter it was not convinced that you would be able to judge whether other subject matters would be appropriate to discuss with patients or colleagues. Further, the panel was of the view that you had not learned from

your mistakes in the first incident in charge 1 and have still not demonstrated what you have learned. It was not convinced that you reflected on your misconduct beyond how the fallout of it has affected you. It considered that you stated that you would now be more careful and cautious about the topics you would be raising at work. However, the panel noted that during your submissions you still deflected responsibility and placed a majority of the blame on Patient A and Colleague A. The panel was therefore of the view that you have only just started to develop insight into your misconduct.

The panel was satisfied that the misconduct in this case is capable of being addressed. It took account of your current difficult circumstances. However, the panel had no evidence before it, demonstrating that you have strengthened your communication skills or reflected on your breach of professional boundaries.

Therefore, the panel is of the view that there is a risk of repetition based on the lack of insight and remediation. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required. It was of the view that an informed ordinary member of the public would be shocked to find that a registered nurse who had caused emotional and mental distress to a patient and a colleague was not found impaired.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made where a nurse has caused emotional and mental distress to a patient and a colleague. It therefore also finds your fitness to practise impaired on the grounds of public interest.



Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

## **Sanction**

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of one year. The effect of this order is that your name on the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this order.

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

## **Submissions on sanction**

Ms Adeyemi outlined the mitigating and aggravating features of the case. She submitted that you have consistently engaged with the NMC proceedings and are making an effort to do so, you have also apologised to a degree and have told the panel about the difficulties that you are experiencing, [PRIVATE]. Further, whilst not mitigation, your previous long unblemished career goes in your favour.

However, Ms Adeyemi submitted you have repeated the misconduct identified in that you repeated the inappropriate discussions which occurred on two occasions, causing others emotional distress. She submitted that you have brought the profession into disrepute and show a lack of insight into your failings which is characterised by the almost contempt for the individuals who were affected in your submissions.

Ms Adeyemi submitted that sanction was a matter for the panel to determine. However, she submitted that nothing less than a period of suspension was adequate in the circumstances. She submitted that taking no further action or a caution order would be inadequate bearing in mind the risk of repetition arising from your lack of insight and remediation. She submitted that a conditions of practice order would seem unlikely to be

workable given your comments as to why you have only undertaken limited remediation or taken time to reflect. Ms Adeyemi submitted that a period of suspension in which the panel sets out its expectations as to what a future reviewing panel might like to see would be the most proportionate sanction and fulfil the overriding objective of protecting the public and addressing the public interest.

You told the panel that you are a capable and highly compassionate nurse who has worked in the profession for over 30 years. You explained to the panel that you wanted to help people and that you commenced your nursing training in Bath. You told the panel about the different settings you have worked in, including street clinics in Calcutta and in a hospital in India and also in Germany. You stated that you developed a reputation as a hard working, caring and humorous nurse working in acute surgical admissions and acute medical admissions. You have also worked as an agency nurse all over the UK.

You accepted that you mistook what you thought was a receptive patient and a friendly member of staff as far more at one with you than you sensibly should have. You stated that you have considered your behaviour played a part in your referral and you have accepted responsibility for the situation you found yourself in and that in the future you will be more careful about the topics you talk about with other people. You stated that you are willing to consider the way that you communicate with people and be more aware of their life histories and sensitivities before hitting them with your own perspectives. You told the panel that nursing has been a major part of your life which you are passionate about and that you would like to move forward with it in a constructive and reflective manner.

You told the panel that you are currently working as a pallbearer and are also trying to get your 6 manuscripts published. [PRIVATE].

[PRIVATE]. However, you stated that you are willing to take guidance on improving your knowledge and skills whether online or in person. You said that you would like the possibility of returning to nursing and to improve on yourself. You also explained what you would now do differently when talking to patients or colleagues and that you would

be more guarded and keep conversation to more mainstream topics and be more aware of the people you are talking to.

### **Decision and reasons on sanction**

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

The panel took into account the following aggravating features:

- Misconduct was repeated after being told not to talk about the topic again;
- Misconduct brought the profession into disrepute;
- Misconduct caused Patient A and Colleague A distress; and
- Your inability to understand the impact of this subject matter on other people.

The panel also took into account the following mitigating features:

- Engagement with the NMC proceedings despite difficult personal circumstances;
- Apologies to one of the affected parties;
- Some remorse, albeit about the negative effects on your own life;
- Developing insight;
- [PRIVATE]; and
- [PRIVATE].

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

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

The panel was of the view that whilst the incidents indicate some attitudinal issues, these are not deep-seated and you stated in your submissions that you are willing to address them.

The panel had regard to the fact that these incidents happened in one discrete area of your practice, with regard to your communication style in particular in the context of professional boundaries. It noted that, other than these incidents, you have had an unblemished career of 30 years as a nurse and that no clinical issues have been raised regarding your practice. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to practise as a nurse.

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

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

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case.

In making this decision, the panel carefully considered the submissions of Ms Adeyemi in relation to the suspension order that the NMC was seeking in this case. However, the panel considered that whilst this was not a single instance of misconduct it related to one specific area in your practice where your communication style needs development in the context of professional boundaries. The panel concluded that a suspension order would not support this development. It was also of the view that a conditions of practice order would sufficiently protect the public and address the public interest in your case. It was of the view that there were no deep-seated personality or attitudinal problems that required temporary removal from the register or were incompatible with being on the register. Further, the panel was of the view that you have demonstrated that your insight has developed during the course of the hearing.

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

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

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

1. You must limit your nursing practice to one substantive employer. This must not be an agency.
2. You must undertake the best available course on professional boundaries and communication as part of your professional development.
3. You must keep a reflective diary which you should discuss with your manager, supervisor or mentor during your monthly meeting.
4. You must work with your manager, supervisor or mentor to create a personal development plan (PDP). Your PDP must address the concerns about your communication style, in particular in the context of professional boundaries and how you communicate sensitive subject matters. You must:
  - a) Send your case officer a copy of your PDP within 4 weeks of creating it.
  - b) Meet with your manager, supervisor or mentor at least every month to discuss your progress towards achieving the aims set out in your PDP.
  - c) Send your case officer a report from your manager, supervisor or mentor 2 weeks before the substantive order review. This report must show your progress towards achieving the aims set out in your PDP and your compliance with condition 2 and 3.

5. You must provide the NMC with a reflective piece detailing how you would implement the learnings into your practice, having completed the courses outlined in condition 4, 2 weeks before the substantive order review hearing.
  
6. You must keep us informed about anywhere you are working by:
  - a) Telling your case officer within seven days of accepting or leaving any employment.
  - b) Giving your case officer your employer's contact details.
  
7. You must keep us informed about anywhere you are studying by:
  - a) Telling your case officer within seven days of accepting any course of study.
  - b) Giving your case officer the name and contact details of the organisation offering that course of study.
  
8. You must immediately give a copy of these conditions to:
  - a) Any organisation or person you work for.
  - b) Any employers you apply to for work (at the time of application).
  - c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
  
9. You must tell your case officer, within seven days of your becoming aware of:
  - a) Any clinical incident you are involved in.
  - b) Any investigation started against you.
  - c) Any disciplinary proceedings taken against you.

10. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
  - a) Any current or future employer.
  - b) Any educational establishment.
  - c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 12 months.

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

Any future panel reviewing this case would be assisted by:

- Your continued engagement with the NMC proceedings.

This will be confirmed to you in writing.

### **Interim order**

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



### **Submissions on interim order**

The panel took account of the submissions made by Ms Adeyemi. She submitted that an interim order is necessary to protect the public for the reasons identified by the panel earlier in their determination until the substantive conditions of practice order comes into effect. She therefore invited the panel to impose an interim conditions of practice order for a period of 18 months to cover the 28 day appeal period and any period of appeal.

You did not oppose this application.

### **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, so as to maintain public confidence in the profession and its regulatory process. In reaching a decision to impose an interim order the panel had regard to facts found proved, to the risk which it had identified of potential harm to patients and the reasons set out in its decision for the substantive order. The panel took account of the impact, financial and professional, an interim order will have on you.

The panel concluded that the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order. The period of that order is 18 months, to allow for the time which may elapse before an appeal may be heard.

The panel is satisfied that this order, for this period, is appropriate and proportionate in the circumstances of your case.

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

That concludes this determination.