

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

**Substantive Hearing  
Monday 15 April 2024 – Tuesday 23 April 2024**

Virtual Hearing

<b>Name of Registrant:</b>	<b>Louise Lungowe Rebekah John</b>
<b>NMC PIN</b>	13F0259E
<b>Part(s) of the register:</b>	Registered Nurse – Adult RNA – 14 November 2013
<b>Relevant Location:</b>	Lewisham
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Wayne Miller (Chair, lay member) Claire Martin (Registrant member) Christopher Reeves (Lay member)
<b>Legal Assessor:</b>	Attracta Wilson
<b>Hearings Coordinator:</b>	Jack Dickens
<b>Nursing and Midwifery Council:</b>	Represented by Jane Carver, Case Presenter
<b>Ms John:</b>	Present and unrepresented at the hearing (Monday 15 April 2024 – Monday 22 April 2024)  Not present as excluded from the hearing and not represented (Monday 22 April 2024 – Tuesday 23 April 2024)
<b>Facts proved:</b>	1(a), 1(b), 1(c), 2(a), 2(b)
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off
<b>Interim order:</b>	Interim suspension order (18 months)

## **Details of Charge**

That you, a registered nurse:

1. After 3 November 2019:

- a. Entered into an intimate and/or sexual relationship with Person A, a relative and carer of Patient A
- b. Moved into Patient A's house to live with their relative and carer, Person A
- c. Paid for groceries and household items whilst living with Person A in Patient A's house

2. On 14 February 2020 at a Court hearing concerning Patient A's welfare:

- a. Attended in the company of Person A
- b. Indicated to parties at the court hearing that you would nurse Patient A at his home

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

## **Decision and reasons on recusal.**

During the hearing on Wednesday 17 April 2024, you informed the panel that you requested a new Chair as you thought you were being treated unfairly. You said that the Chair was interrupting you excessively and he did not interrupt others.

The panel invited Ms Carver, on behalf of the Nursing and Midwifery Council (NMC), to make submissions on this matter. She submitted that although there is no formal application, it is fair and appropriate to consider this in light of the comments made by you in the hearing. Ms Carver outlined the law in *Porter v Magill* [2002] 2 AC 357.

Ms Carver submitted that the interruptions were reasonable and appropriate and that the panel Chair was required to interject as you were not answering the questions that were posed to you. Further she said that in respect of your comments that you were being treated differently due to the colour of your skin, when asked by the Chair about this comment you would not answer the question directly. She submitted that the panel should not recuse themselves, and that a fair minded and informed observer would conclude that the panel were entitled to proceed in this case.

The panel heard legal advice. The legal assessor advised that the test to be applied in considering bias is that set out in the case of *Porter v Magill* [2002] 2 AC 357 as follows:

*'Would a fair minded and informed observer, having considered all the facts, conclude that there was a real possibility that the tribunal was biased.'*

She mentioned that bias extends to conscious bias, unconscious bias and the perception of bias.

She reminded the panel that the fair minded and informed observer would be balanced and would be neither complacent nor unduly sensitive or suspicious. They would be aware of all the circumstances of this case and the manner in which it has been managed to date.

The legal assessor also reminded the panel that there is an expectation that those sitting in a judicial capacity will remain objective at all times.

In summary she advised the panel to apply the test in *Porter v Magill*, and the chair to satisfy himself that there is no risk either consciously or unconsciously departing from the standards of objectivity required.

The panel considered whether the chair should recuse himself.

The panel was unanimously of the view that the chair has conducted the hearing fairly and has applied the same standards to all parties. The panel further considered

the conduct of this hearing overall and took into account that numerous attempts were made by the chair to encourage you to focus on the questions that had been asked, to reply to those questions and to desist from straying into matters that were unrelated to the questions. It considered that a well-informed and fair-minded observer would be of the opinion that the chair has conducted this hearing fairly and impartially and in line with the NMC's values. Therefore, the panel determined that the chair should not recuse himself.

### **Decision and reasons on application to exclude Witness 1 as an observer**

The panel were informed of an application for the exclusion of Witness 1, set out in an email from you dated 16 April 2024. The email stated:

*'Also, I will not continue this hearing if [Witness 1] is listening in as a "member of the public" as this is what is affecting me and the injustice of this hearing and malicious referral.'*

In light of this email the panel heard submissions from Ms Carver, on behalf of the NMC, and you.

Ms Carver submitted that she objects to the exclusion of Witness 1 as it would not be in the interests of open justice to exclude all members of the public. Further, she said there does not appear to be any legal principle on which the case should be heard in private. It has never been decided in law that a member of the public who is observing with no suggestion of doing anything wrong should be excluded.

You submitted that it is unfair for Witness 1, who was the referrer and main NMC witness in this case, to observe the rest of the hearing. You said that it is provocative and that it is not fair for the observer to have a dual rule. You submitted that you would like the rest of the hearing to be in private as the observer's presence is making you uncomfortable and is unfair.

The panel heard legal advice. The legal assessor referred the panel to Rule 19 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (the Rules). Rule 19 provides that hearings unrelated to health, shall be held in public except where this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest. She reminded the panel that the purpose of this rule is to ensure openness and transparency in regulatory proceedings. She also reminded the panel that if your application were to be treated as a Rule 19 application, the effect if granted, would be that the public as a whole rather than an individual would be excluded from the hearing. She therefore advised that the panel would need to give careful consideration as to whether this would be an appropriate use of Rule 19, and in doing so to balance the public interest in openness and transparency against your interest.

The legal assessor also referred the panel to Rule 20(5) which confers a discretionary power to exclude from the whole or part of the hearing, any person whose conduct, in its opinion, has disrupted or is likely to disrupt the proceedings. In considering the application of Rule 20(5), the test to be applied is whether there is any evidence that the observer has, or is likely to, disrupt the proceedings.

The panel considered the submissions from Ms Carver and you, and the advice of the legal assessor, carefully in reaching its decision. It considered the application under rules 19(3) and 20(5).

Rule 19(3) provides that:

*'Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied:*

*(a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and*

*(b) having obtained the advice of the legal assessor,*

*that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest’.*

The panel was of the view that there is a public interest in this case and this extends to transparency of proceedings. It balanced the public interest in an open hearing against your interests as described by you in your submission to exclude Witness 1. Having considered submissions from yourself and Ms Carver, it determined that it would be an inappropriate use of Rule 19 to rely on it simply to exclude the observer, as the effect would be that the entirety of the public would be excluded rather than just the individual observer. The panel rejected the application on this basis.

The panel proceeded to consider its powers to exclude individuals from the hearing under Rule 20(5).

Rule 20(5) provides that:

*‘The Committee may exclude from the whole or part of the hearing, any person whose conduct, in its opinion, has disrupted or is likely to disrupt the proceedings.’*

The panel noted that this rule specifically refers to a person’s conduct. The panel considered that there is no evidence that the observer has disrupted proceedings to date. Further, as Witness 1 camera and microphone are disabled, there is no possibility that Witness 1 could disrupt proceedings going forward. In the unlikely event of disruption by the observer, the panel will reconsider the application.

The panel considered your submissions and those of Ms Carver. It took into account the fairness of proceedings more generally. Fairness includes fairness to the NMC and to you. It determined there were no compelling reasons to exclude Witness 1 in all the circumstances of this case.

The application to exclude an observer is rejected.

## **Decision and reasons on obtaining further evidence.**

The panel heard an application from you to obtain a transcript from the Court of Protection when you attended a hearing on 14 February 2020. You submitted that it was necessary for a fair hearing to establish whether you spoke in Court, as alleged in the charges and as alleged under oath by Witness 1, which you say was untrue.

Ms Carver said that the wording of the charge is such that it is irrelevant whether you spoke during the court hearing, or in an antechamber. She outlined a chronology of the NMC's attempts to obtain the transcript which culminated in the Court informing the NMC on 14 November 2020 that it could not obtain the transcript as the NMC was not a party to the proceedings. Ms Carver submitted that the obtaining of the transcript from the Court of Protection is not necessary as it is not relied on for their case.

The legal assessor reminded the panel that the burden of proof rests with the NMC and does not shift to you at any time. She also advised the panel to take into account the following matters:

- (i) the NMC do not seek to rely on the transcript,
- (ii) the efforts made by the NMC to obtain the transcript,
- (iii) whether the panel considered the transcript key to the determination of charge (2)(b),
- (iv) the impact on proceedings of directing the production of the transcript at this stage, and in particular whether that would involve a lengthy adjournment causing delay, and potentially expense,
- (v) fairness to both parties.

The panel considered this application carefully, taking into account submissions from you and Ms Carver. The panel considered that the burden of proof is on the NMC

and they are not relying on this evidence. It considered that the transcript is not key evidence and would not provide the panel with any further assistance in this case. It noted the efforts made by the NMC, as outlined by Ms Carver, to obtain this transcript. It considered the practicalities of obtaining the transcript and decided that if the panel were to order disclosure an adjournment would follow whilst this is obtained. It considered that it would be disproportionate to the disposal of the proceedings and would not be in your interests or the interests of the public. The panel determined that the disclosure of the court transcript is not necessary and therefore the application to order disclosure of the transcript is rejected.

## **Background**

You first entered the Nursing and Midwifery Council register as a Level 1 Adult Nurse on 14 November 2013.

You were a nurse at Lewisham University Hospital from 14 September 2018 to the 26 June 2020. Whilst there you acted as a nurse for Patient A on Alder Ward for some of the time that he was in the hospital.

Patient A was a vulnerable patient and Person A was his relative and carer.

You met Person A in August 2019, and it is alleged that you began an intimate and/or sexual relationship after 3 November 2019. You and Person A subsequently became engaged in February 2020 and you are now married.

You went on leave from the hospital from January 2020 until you resigned in June 2020.

Patient A left the hospital to move into a home on 9 March 2020 and he sadly died on 26 May 2020.

It is further alleged that you moved into Patient A's house to live with Person A and that you paid for groceries and household items whilst living with Person A in Patient A's house.





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

### **Charge 1(a)**

*That you, a registered nurse, After 3 November 2019, entered into an intimate and/or sexual relationship with Person A, a relative and carer of Patient A*

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

The panel found this charge proved to the extent that you entered into an intimate relationship with Person A. In reaching this decision, the panel took into account the Oxford English Language Dictionary's definition of intimate which is '*having a close and friendly relationship*'. The panel noted that you met Person A in the context that he was a relative of Patient A and was visiting him on the ward where you worked as a nurse. Patient A was under your care at the relevant time. The panel noted and accepted your account as to how your friendship developed and that initially you went to Church together as brother and sister in Christ. The panel was satisfied on the balance of probabilities that from 3rd November 2019 you met Person A socially outside of a professional context, and that this amounted to an intimate relationship within the dictionary definition of the word.

The panel noted that there was no evidence before it, from the NMC, of a sexual relationship between you and Person A.

In reaching its determination the panel considered all the evidence before it, including:

- Your undated letter to the NMC which stated:
  - *'I first met Person A in August 2019, and he asked me out on a date. Our first date was on 3 November 2019. We have been officially dating since November 2019.'*
- Person A's undated letter to the NMC which stated:

- *'I asked her out on a date and we started dating from 3 November where I fell deeply in love with Louise.'*
- Your and Person A's evidence under oath in which you both stated you were engaged in early February 2020.
- Written and oral evidence from Witness 2 stating:
  - *'she stated that she was in a relationship with [Person A].'*

For the above reasons, the panel found that on the balance of probabilities, after the 3 November 2019, you were in an intimate relationship with Person A, a relative and carer of Patient A, proved.

### **Charge 1(b)**

*That you, a registered nurse, After 3 November 2019, moved into Patient A's house to live with their relative and carer, Person A*

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

Having considered the evidence in the round, the panel is satisfied on the balance of probabilities that after 3 November 2019 you moved into Patient A's house with Person A who was a carer for Patient A. The panel noted and accepted your evidence that the purpose of you moving in was to support Person A in cleaning the house, which was in an extremely squalid condition so as to make it suitable and safe for Person A to return to following his discharge from hospital. The panel noted and accepted your evidence that it was Patient A's wish to return to his own home.

In reaching its determination the panel considered all the evidence before it, including:

- Your email to the NMC dated 25 August 2022, stating:
  - *'I had moved in with [Person A], I reluctantly moved into the house in January 202 by the way because it's not a comfortable house.'* (sic)

- *'I am here to support [Person A] who has asked me to live with him.'*
- Your email to the NMC dated 12 September 2022, stating:
  - *'My fiancé [Person A] has inherited this house that I live in now with him. [...] I live here because my fiancé [Person A] asked me to move in with him.  
[...] this house belongs to [Person A] my beloved husband to be [...] It's an ordeal living here, and there is no running hot water. To sum up, [Person A] has inherited this house. [...] We were in lockdown together and we formed our Covid bubble together during the pandemic. [...] [Person A] formed a bubble with me in his house which he has inherited. This is now [Person A's] house. Not the patient's house'*
- Your evidence under oath:
  - When questioned whether you had moved in to Patient A's house to live:
    - *'Q: you had moved in in January 2020. It is that not correct?*
    - *A: Not entirely, no 'cause [...] I still spend time with my relatives, houses, my family's houses. [...] so I was entirely in the heavily squalid house. No, it's not entirely correct [...] as assisting [Person A] clear up his squalid house. But I didn't spend all my time there.'* (sic)
    - *'I did not live there 24/7. I spent weekends away weeks away [...] I was not living there constantly.'*
    - *'It's also [Person A's] house, [...] by which point [Person A's] has already proposed to me in February, March time frame, and it's normal for two fiancées to be together under the same roof [...] It wasn't only Patient A's house. It's also [Person A's] home.'*

For the above reasons, the panel found that on the balance of probabilities, after the 3 November 2019, you moved into Patient A's house to live with their relative and carer, Person A, proved.

### **Charge 1(c)**

*That you, a registered nurse, After 3 November 2019, paid for groceries and household items whilst living with Person A in Patient A's house*

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

In reaching its determination the panel considered all the evidence before it, including:

- Receipts evidencing the purchase of groceries and household items.
- Your email to the NMC dated 26 October 2020, stating:
  - *'From January 2020 to June 2020, I paid for groceries to support [Person A]'*
- Your evidence under oath:
  - *'I'd help him buy [...] groceries for his house or cook him a meal which was very hard to cook a meal.'* (sic)
  - *'Occasionally I'd help [Person A] with groceries.'*

For the above reasons, the panel found that on the balance of probabilities, after the 3 November 2019, you paid for groceries and household items whilst living with Person A in Patient A's house, proved.

### **Charge 2(a)**

*That you, a registered nurse, On 14 February 2020 at a Court hearing concerning Patient A's welfare, attended in the company of Person A*

**This charge is found proved.**

The panel accepted your evidence that you attended the court hearing at the request of Person A and for the purposes of supporting Person A.

In reaching its determination the panel considered all the evidence before it, including:

- Your statement to Witness 2 dated 22 May 2020, stating:
  - *'I explained to you the reason why I went to the Court of Protection. The reason why I went is still the same one to this day. My fiancé [Person A] asked me to escort him. That's the only reason why I went.'*
  
- Witness 1's statement:
  - *'On 14 February 2020, Louise accompanied [Person A] to a hearing at the Court of Protection.'*
  
- Witness 2's statement:
  - *'The Trust formally confirmed that Louise did not attend the hearing as a representative of the Trust but she went in a personal capacity.'*
  
- Person A's statement
  - *'Louise supported me at the Court of Protection'*
  
- Person A's evidence under oath stating you attended court with him for the purposes of providing support.

For the above reasons, the panel found that on the balance of probabilities, on 14 February 2020 at a Court hearing concerning Patient A's welfare, you attended in the company of Person A, proved.

**Charge 2(b)**

*That you, a registered nurse, on 14 February 2020 at a Court hearing concerning Patient A's welfare, indicated to parties at the court hearing that you would nurse Patient A at his home.*

**This charge is found proved.**

The panel took into account the wording of the charge in its deliberations. It considered that being '*at a court hearing*' includes being in the court antechamber prior to the hearing. Further, it considered that '*indicated to parties*' should be taken to mean parties present and not necessarily the Judge.

In reaching its determination the panel considered all the evidence before it, including:

- That you told the panel that you spoke in the antechamber of the Court and said that if the Judge decided that Patient A could return home you would help nurse him at his home.
- Person A's second statement to the NMC, stating:
  - '*Louise said nothing at Court, but did say this in the court's antechamber beforehand*'

For the above reasons, the panel found that on the balance of probabilities, on 14 February 2020 at a Court hearing concerning Patient A's welfare you indicated to parties at the court hearing that you would nurse Patient A at his home, proved.

**Decision and reasons on the exclusion of the registrant pursuant to Rule 20(5) of the Rules.**

Prior to the commencement of the hearing on Monday 22 April 2024, the panel considered excluding you under Rule 20(5) of the Rules. Rule 20(5) provides a discretionary power to the panel and states:

*'(5) The Committee may exclude from the whole or part of the hearing, any person whose conduct, in its opinion, has disrupted or is likely to disrupt the proceedings.'*

It considered this in the context of your repeated instances of unacceptable behaviour and offensive language which continued throughout this hearing despite numerous warnings, and which culminated in the comment you made on Friday, 19 April 2024 where you said: *'I don't wanna see that bitch's face'*.

The panel heard submissions from you and Ms Carver.

You submitted that you did not wish to attend this hearing and you expressed your belief that the panel had already decided the outcome of this hearing. You outlined in the emails that you sent to the Hearings Coordinator that you did not wish to attend the hearing. At this point, you walked away from the camera.

Ms Carver referred the panel to the NMC Guidance entitled *'Case management during hearings'* (CMT-9) and the Rules. She reminded the panel that a final warning was previously given.

The legal assessor referred the panel to Rule 20(5) which confers on it a discretionary power to *'exclude from the whole or part of the hearing, any person whose conduct, in its opinion, has disrupted or is likely to disrupt the proceedings'*. In considering the application of Rule 20(5), the test to be applied is whether there is any evidence that any person has, or is likely to, disrupt the proceedings. She reminded the panel that it should consider this issue with the utmost care and caution, and particularly so at the misconduct and impairment stage of proceedings. She advised that although there is no burden of proof relative to misconduct and impairment, submissions and/or evidence from the registrant regarding insight, reflection and remorse will be very relevant to the panel's deliberations.

The panel very carefully considered the submissions from you and Ms Carver and the NMC guidance entitled *'Case management during hearings'* (CMT-9). It noted that you have had numerous warnings, including a final warning on Wednesday, 17



April 2024, where the Chair said: *'I'm going to warn you that your disruptive behaviour now may [...] result in your exclusion from all or part of the hearing going forward (sic)'*. The panel further noted that during your submissions regarding this application that there was no indication of remorse or insight into your behaviour throughout this hearing.

The panel was of the view that your unacceptable behaviour had escalated to a point where it was extremely disruptive and your language was overtly offensive. The panel balanced your right to a fair hearing and the interests of the NMC and the public. This is why the panel gave you numerous warnings to afford you an opportunity to modify your behaviour.

The panel took into account that it was about to consider misconduct and impairment and that a registrant's participation often greatly assists the panel at this stage. The panel considered the legal advice to proceed with the utmost care and caution. Due to the exceptional and serious nature of your unacceptable behaviour during this hearing as well as your use of offensive language, and the fact that the panel's warnings have had no effect, the panel decided to exclude you from the remainder of the hearing under Rule 20(5).

### **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 Ms John'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 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, Ms John's fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct**

Ms Carver invited the panel to take the view that the facts found proved amount to misconduct. She referred to the following sections of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' ('the Code') in making her submissions:

*8. Work co-operatively*

*To achieve this, you must:*

*8.6 share information to identify and reduce risk*

And

*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*

*20.6 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*

Ms Carver submitted that Ms John's conduct was so serious that it was misconduct and fell far short of the standards expected of a nurse by entering into a relationship with a patient's carer. She said that Ms John should have maintained professional boundaries, and her conduct calls into question her professionalism and that of the profession. Accordingly, she submitted that the facts proved amounted to misconduct.

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

### **Decision and reasons on misconduct**

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

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

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

*‘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*

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct and it therefore applied its mind to the seriousness of the breach, considering each charge in turn.

### **Charge 1(a)**

*That you, a registered nurse, After 3 November 2019, entered into an intimate and/or sexual relationship with Person A, a relative and carer of Patient A*

**The panel considered this amounted to misconduct.**

On this point the oCde is clear and unequivocal: nurses must ‘*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*’, and for good reason.

Intimate relationships with patients, families and/or carers, create a real risk of adversely affecting a nurse's objectivity and their ability to make safe and informed clinical decisions, for all patients, based on clinical facts and evidence.

In this case Ms John, whilst in a position of trust, entered into an intimate relationship with Person A. She knew Person A to be a relative and carer of Patient A, as she met him on the ward whilst he was visiting Patient A, who was a vulnerable patient in her care at the time. Having exercised its professional judgement and taking into account all the circumstances in this case, it considered that this was a clear breach of professional boundaries and so serious of a departure from the Code and the standards expected of a registered nurse as to amount to misconduct. The panel further noted that a member of the public would likely find that this conduct was unprofessional and undermines a fundamental tenet of the nursing profession. For these reasons it found that Ms John's conduct in relation to Charge 1(a) amounted to misconduct.

### **Charge 1(b)**

*That you, a registered nurse, After 3 November 2019, moved into Patient A's house to live with their relative and carer, Person A*

### **The panel considered this amounted to misconduct.**

The panel accepted that Ms John moved into Patient A's house with Person A to try to make it suitable for Patient A to return on discharge from hospital. However, for a nurse to move into a patient's house, whilst or very shortly after providing direct care for that patient, is a clear breach of professional boundaries. Above, the panel have explained why it is important to maintain professional boundaries and the possible consequences of not maintaining those boundaries. For these reasons it found that Ms John's conduct in relation to charge 1(b) was in breach of the Code and was so serious as to amount to misconduct.

### **Charge 1(c)**

*That you, a registered nurse, After 3 November 2019, paid for groceries and household items whilst living with Person A in Patient A's house*

**The panel considered this amounted to misconduct.**

The panel recognised that paying for groceries and household items is a natural consequence of, or invariably flows from, 'moving in to live with' someone and, as such, seems to be a refinement of charge 1(b). That said, for the same reasons given above for charge 1(b) to the extent that Ms John purchased groceries 'whilst living' with Person A in Patient A's house, it considered it to be a breach of professional boundaries and so serious as to be misconduct.

**Charge 2(a)**

*That you, a registered nurse, On 14 February 2020 at a Court hearing concerning Patient A's welfare, attended in the company of Person A*

**The panel considered this did not amount to misconduct.**

The panel accepted Ms John's evidence, which was corroborated by the evidence of Person A, that she attended Court to support her then fiancé, Person A, and did not attend in her capacity as a nurse or a representative of the hospital. Understood in this context, it considered that attending Court to support one's fiancé is not, in and of itself, unreasonable and not necessarily a breach of the Code. For these reasons it found that Ms John's conduct in relation to Charge 2(a) did not amount to misconduct.

**Charge 2(b)**

*That you, a registered nurse, on 14 February 2020 at a Court hearing concerning Patient A's welfare, indicated to parties at the court hearing that you would nurse Patient A at his home*

**The panel considered this did not amount to misconduct.**

The panel was not clear as to the context in which Ms John indicated to parties at the Court hearing that she was a nurse and would nurse Patient A at his home. Ms John may have offered this information voluntarily, it may have been a passing comment, or it may have been in response to a question posed to her. The panel also accepted that Ms John attended as Person A's fiancée and there is no finding that she took any part in the hearing beyond giving an indication that she would nurse Patient A at his home. The panel considered that for Ms John to indicate that she was a nurse and would nurse Patient A at his home is not, in and of itself, a breach of the Code or a departure from the standards expected of a nurse. For these reasons, the panel determined that Ms John's conduct in relation to Charge 2(b) did not amount to misconduct.

### **Submissions on impairment**

Ms Carver 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. Ms Carver referred the panel to the relevant case law.

Ms Carver referred the panel to the Fitness to Practise Library, updated on 27 February 2024, 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 Carver submitted that a finding of impairment should be made for public protection as the conduct raises concerns that are attitudinal in nature and are not easily remediable as they are not related to clinical practice. She said that there was

a potential for disadvantage to other patients by having an intimate relationship with Patient A's carer. Ms Carver said there was no evidence before the panel to demonstrate insight or that Ms John has reflected on the issues and how her breach of professional boundaries may have an impact on the public. She reminded the panel that Ms John had made clear during the course of the hearing that she did not accept the breaches and she maintained that she had done nothing wrong, stating that it was her right to enter into a relationship with Person A. Ms Carver submitted that there is a risk of Ms John transgressing professional boundaries in the future, which could lead to a diminution in trust between patients, their family and other healthcare professionals and put patients at risk of harm.

Ms Carver submitted that a finding of impairment should also be made in the wider public interest. She said that nurses hold a position of privilege and trust in society and they are expected, at all times, to be professional. She submitted that Ms John's actions have brought the profession into disrepute and a finding of impairment is needed to uphold professional standards.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Cohen v General Medical Council* [2008] EWHC 581 (Admin), *Council for Healthcare Regulatory Excellence V NMC and Grant* [2011] EWHC 927 (Admin) which adopted the well-known formulation of Dame Janet Smith in the Fifth Shipman report and *Sayer v General Osteopathic Council* [2021] EWHC 370 (Admin).

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

The panel considered if as a result of the misconduct, Ms John's fitness to practise is currently impaired and if so on what grounds.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 February 2024, 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.’*

Nurses occupy a position of privilege and trust in society and are expected *at all times* (emphasis added) to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients’ and the public’s trust in the profession.

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

In 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 noted that whilst there was no evidence of harm caused, Ms John's conduct had the potential to put patients at risk of significant harm by not maintaining professional boundaries. This risk is heightened in the absence of any insight, reflection, or remorse, as that increases the likelihood of repetition. Further, it considered that Ms John by reason of her misconduct failed to uphold the high standards expected of registered nurses thereby bringing the nursing profession into disrepute.

The panel considered that there is real potential for significant harm to be caused to patients if Ms John's misconduct is repeated. Lack of objectivity, which is a likely consequence of a failure to maintain professional boundaries, has real potential to adversely impact on clinical decision making and the provision of nursing care.

Further Ms John has not demonstrated any insight into her behaviour, and throughout these proceedings has continued to state that she has done nothing wrong. She consistently sought to maintain that her relationship with Person A, who was at the relevant time a carer for Patient A, was to be treated the same as a relationship between colleagues, failing to appreciate the inherent vulnerability of

patients. The panel also took into account Ms John's failure to acknowledge at any stage in the proceedings that there was any impropriety in her moving into a patient's house with the carer of that patient who had been under her care. The panel considered that these factors demonstrate a complete lack of understanding of the importance of maintaining professional boundaries.

The panel noted the character testimonials provided by Ms John but determined that these did not address the specific concerns regarding professional boundaries before the panel.

For these reasons the panel concluded that Ms John's fitness to practise is impaired and such a finding is needed for the protection of the public.

In light of Ms John's clear breaches of the Code and her lack of insight, reflection, and remorse, the panel further determined that public confidence in the profession and the NMC would be undermined if it were not to make such a finding of impairment. Therefore, the panel also makes a finding of impairment on public interest grounds, which includes the upholding of high standards and maintaining trust and confidence in the nursing profession.

The panel determined that a reasonable and well-informed member of the public, in light of the clear breaches of the Code coupled with a lack of insight, reflection or remorse, would expect a finding of impairment on public interest grounds.

Having regard to all of the above, the panel was satisfied that Ms John's fitness to practise is currently impaired on both public protect and public interest grounds.

## **Sanction**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Ms John off the register. The effect of this order is that the NMC register will show that Ms John 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 and last updated on 27 February 2024. The panel bore in mind that the SG is guidance and although it promotes a consistency of approach to the imposition of sanctions, it is not to be interpreted as a rigid tariff.

### **Submissions on sanction**

Ms Carver informed the panel that the NMC's sanction bid is a striking-off order. She submitted that a striking-off order is appropriate and proportionate as Ms John's misconduct is fundamentally incompatible with ongoing registration. Ms Carver submitted that no further action or a caution order would not be suitable as Ms John presents a continuing risk as the panel have identified.

Ms Carver submitted a conditions of practice order would not be appropriate as there is an indication of harmful or deep-seated personality or attitudinal problems which has been evident throughout this hearing. Therefore, Ms Carver submitted that a conditions of practice order would not adequately reflect the seriousness of the conduct or address the concerns raised by Ms John's misconduct.

Ms Carver submitted that a suspension order is not appropriate as this is not a singular incident as the relationship with Person A has continued and they are now married. She submitted it would not be appropriate to impose a suspension order as Ms John lacks insight and maintains she has done nothing wrong.

Ms Carver submitted that in light of this a striking-off order is the appropriate order given the questions raised about her professionalism, and the need to maintain public confidence in the profession and to protect patients and members of the public, and to maintain professional standards.

The panel accepted the advice of the legal assessor.

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

Having found Ms John'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 considered there to be the following aggravating features:

- Abuse of a position of trust.
- Lack of remorse, reflection, or insight into the concerns; including the lack of willingness to reflect.
- Conduct which puts patients at risk of suffering harm.

As well as considering the guidance, and the three categories of mitigation mentioned therein, the panel also thought more broadly about any points Ms John might have made at this stage. Ms John made it clear to the panel that she is committed to nursing and has provided testimonials to this effect. However, the panel did not consider this to be mitigation, or that there were any other mitigations in this case.

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. The panel also determined that taking no further action would not protect the public.

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 Ms John'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 Ms John'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 Ms John's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case, as it is attitudinal in nature, was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Ms John's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction as the panel were of the view that there was evidence of harmful deep-seated personality or attitudinal problems, and the panel were not satisfied that the Ms John has insight. Further it was satisfied that Ms John does pose a significant risk of repeating the behaviour.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious

breach of the fundamental tenets of the profession evidenced by Ms John's actions is fundamentally incompatible with Ms John remaining on the register.

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?*

Ms John's actions were 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 Ms John's actions were serious 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 effect of Ms John's actions in bringing the profession into disrepute and the fact that they fell seriously short of the high standards expected of a registered nurse, the panel has concluded that nothing short of a striking-off order would be sufficient in this case.

The panel considered that this order was necessary to protect the public and to maintain public trust and confidence in the profession. It was of the view that a striking-off order would send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Ms John in writing.

## **Interim order**

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

## **Submissions on interim order**

The panel took account of the submissions made by Ms Carver. She submitted that an 18-month interim suspension order is necessary for the protection of the public and is otherwise in the public interest, and this will cover the 28-day appeal period.

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

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

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

The panel concluded that 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 striking-off order. The panel therefore imposed an interim suspension order for a period of 18 months to protect the public and to address the public interest in light of the findings made by this panel.

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

That concludes this determination.