Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing

19 – 28 October 2022 & 3 – 4 & 8 – 10 November 2022

22 – 26 May & 26 – 30 June & 31 July – 4 August 2023

30 October & 1 – 2 November 2023

11 – 13 December 2023

25 - 27 March 2024

Virtual Hearing

Name of registrant:	**Demosthenes (Dennis) Nacino**
NMC PIN:	01K2079O
Part(s) of the register:	Nurses part of the register Sub part 1 RN1: Adult nurse, level 1 (19 October 2001)
Relevant location:	Portsmouth and Hampshire
Type of case:	Misconduct
Panel members:	Christina McKenzie (Chair, registrant member) Diane Gow (Registrant member) Barry Greene (Lay member)
Legal Assessor:	Paul Hester (19 - 28 October 2022 3, 4, 8 – 10 November 2022, 22 - 26 May 2023 26 - 30 June 2023, 31 July - 4 August 2023, 30 October, 1 – 2 November 2023) John Bromley-Davenport (11 – 13 December 2023 and 25 - 27 March 2024)
Hearings Coordinator:	Tyrena Agyemang (19 - 28 October 2022, 3, 4, 8 - 10 November 2022, 22 - 26 May 2023 26 - 30 June 2023) Shela Begum (31 July - 4 August 2023) Sherica Dosunmu (30 October & 1 – 2 November 2023, 11 & 13 December 2023) Catherine Blake (12 December 2023) Catherine Acevedo (25 – 27 March 2024)

Nursing and Midwifery Council:	Represented by Muneeb Akram (19 – 28 October, 3, 4, 8-10 November 2022 and 22 – 26 May 2023) and Represented by Leeann Mohamed (26 - 30 June and 31 July - 4 August 2023), Case Presenters Represented by Ben Edwards (2 November 2023) Represented by Leeann Mohamed (13 December 2023 & 25 – 27 March 2024)
Mr Nacino:	Present and represented by Tom Phillips, instructed by the Royal College of Nursing (RCN)
Facts proved by admission:	Charges 3b and 15 i
Offer of no evidence:	Charge 1b
No case to answer:	2a, 2b, 3a, 4, 8a and 14
Facts proved:	3c, 7a, 12i, 12ii, 12iii, 12iv, 12vi, 12vii, 12xi, 12xii, 12xiii, 12xiv,13, 15iv, 15v, 15vi, 15vii, 15viii, 15ix, 16
Facts not proved:	5a, 5b, 6, 7b, 7c, 7d, 9, 10, 11, 12viii, 12ix, 12x 12xv, 15ii,15iii, 17, 18
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Application on admissibility of evidence in relation to Patient A and Patient B

The panel heard an application made by Mr Phillips on your behalf under Rule 31(1) to exclude the evidence pertaining to Patient A and Patient B. He submitted that neither witness has provided a formal written and signed statement to the Nursing and Midwifery Council (NMC). He submitted that the evidence in relation to both witnesses is unfair and should therefore be excluded.

Mr Phillips outlined the circumstances which lead to charges 1 and 2 in relation to Patient A. He went on to outline the circumstances which led to charge 3a and 4 in relation to Patient B in the form of written submissions.

Mr Phillips referred the panel to Rule 31(1) of the Fitness to Practise Rules 2004 (the Rules), which sets out the test for the admissibility of evidence in these proceedings. He submitted that it is clear from Rule 31(1) that relevance and fairness are conditions precedent to the admissibility of evidence:

> *"31. (1) Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place). (emphasis added)"*

Mr Phillips also referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) (*Thorneycroft*), which he submitted provides further guidance in respect of the admission of evidence from an absent witness. In that case, the Court summarised the principles emerging from the authorities which were summarised at paragraph 45 of its judgment as follows:

> *"1.1. The admission of the statement of an absent witness should not be regarded as a routine matter. The FTP rules require the Panel to consider the issue of fairness before admitting the evidence.*

1.2. The fact that the absence of the witness can be reflected in the weight to be attached to their evidence is a factor to weigh in the balance, but it will not always be a sufficient answer to the objection to admissibility.

1.3. The existence or otherwise of a good and cogent reason for the nonattendance of the witness is an important factor. However, the absence of a good reason does not automatically result in the exclusion of the evidence.

1.4. Where such evidence is the sole or decisive evidence in relation to the charges, the decision whether or not to admit it requires the Panel to make a careful assessment, weighing up the competing factors. To do so, the Panel must consider the issues in the case, the other evidence which is to be called and the potential consequences of admitting the evidence. The Panel must be satisfied either that the evidence is demonstrably reliable, or alternatively that there will be some means of testing its reliability." (emphasis added)

Mr Phillips submitted in his written skeleton, that the evidence pertaining to Patient A is unfair for all of the following reasons:

"i. Patient A has never provided a written or formal statement in relation to the oral allegations made by her (in fact she refused to do so);

ii. Patient A behaved extremely bizarrely during Witness B's investigation when she lifted her top and asked her to touch her stomach. This behaviour raises concerns in respect of her reliability, particularly in circumstances where one of the oral allegations made by Patient A against you was that you touched her stomach;

iii. You are therefore unable to challenge the evidence of Patient A in any meaningful manner."

Mr Phillips submitted that further references to this allegation within the evidence are simply further rehearsals of the oral allegations made by Patient A to Witnesses H and C. He submitted that the evidence is therefore equally, if not more, unreliable and consequently unfair.

Mr Phillips went on to address the evidence of Patient B in his skeleton argument. He submitted that the evidence pertaining to Patient B is unfair for all of the following reasons:

> *"i. Patient B has never provided any statement whatsoever in relation to the incident;*
>
> *ii. Patient B's identity is unknown;*
>
> *iii. Witness G's evidence stems only from a partial observation of the assessment being undertaken. Witness G could not even recall what the assessment was for and her evidence therefore lacks any meaningful context;*
>
> *iv. Witness G never spoke with Patient B and in reality, the height of her evidence is therefore an opinion which she formed about Patient B's thoughts on the basis primarily of a facial expression;*
>
> *v. There is no evidence from Colleague D who was present for the entirety of the assessment;*
>
> *vi There is no opportunity for you to challenge the evidence by way of questioning Patient B or indeed Colleague D."*

Mr Phillips submitted that the evidence in question is not only unfair but is also inherently unreliable as it is predicated on an opinion formed primarily on the basis of a facial expression, which was not verified with Patient B at the time. He submitted that the unreliability is compounded by Witness G's lack of awareness of the wider context and it is, that it is notable that Witness J who investigated the issue concluded that she

would have expected you to react in the manner described if dealing with an anxious patient.

Mr Phillips submitted that further references to this allegation within the evidence are simply a rehearsal of Witness G's evidence and are therefore equally, if not more unreliable and unfair.

Mr Phillips submitted in conclusion that the evidence pertaining to both Patient A and Patient B is unfair and inadmissible for all of the reasons set out above. He therefore invited the panel to exclude the evidence.

Mr Akram on behalf of the NMC also referred the panel to Rule 31(1) of the Rules and to the case of *Thorneycroft.* He specifically referred the panel to 1.3 of paragraph 45 of Thorneycroft and quoted:

> *"The existence or otherwise of a good and cogent reason for the nonattendance of the witness is an important factor. However, the absence of a good reason does not automatically result in the exclusion of the evidence."*

Mr Akram submitted that the panel must make a careful assessment of the evidence before it. He submitted that there is no sole and decisive evidence and that the evidence comes from more than one source.

Mr Akram submitted that the panel must consider the issues in this case and the potential consequences in not being able to question and cross examine the evidence in relation to the two patients should it be excluded. He told the panel that there are a number of sources and witnesses that can be questioned, and in the event of inconsistencies, questions can be put that would test the reliability of the evidence.

Mr Akram submitted in relation to charge 1a, that as he understood the evidence, you accept that you touched Patient A's stomach but have suggested that there was a good clinical reason for doing so. In relation to charge 1b, you deny this charge.

Mr Akram took the panel through the evidence before it, highlighting where the evidence which supports the charges in relation to Patient A can be found. Mr Akram told the panel in relation to charge 1, that he accepted Mr Phillips submissions which outlined the chronology of Patient A's complaint. He told the panel that Witness B made written notes of the conversation with Patient A and that these notes cannot amount to being a formal statement. However, he submitted that it is good evidence of the conversation Witness B had with Patient A as the notes were taken contemporaneously during the conversation between Patient A and Witness B.

Mr Akram submitted that there is a good reason for the non-attendance of Patient A. He told the panel that it is not the normal practice of the NMC to "*compel*" witnesses to give evidence before a panel and in any case the panel and Mr Phillips will be able to put questions to Witness B and Witness H.

Mr Akram submitted that there is no sole and decisive evidence in relation to Patient A. He submitted that there are a number of sources, which can be challenged by cross examination, in any half time submissions or in closing submissions on facts.

Mr Akram submitted that the evidence is reliable and that there are means of testing the reliability.

Mr Akram went on to address the evidence in relation to Patient B. He submitted that the NMC are seeking to establish the motive behind the charges 3i and 4 was of a sexual nature. He told the panel that it must draw a distinction between Patient A and B. He submitted that the evidence for Patient A centres around an absent witness, however in relation to Patient B, there was never a complaint or allegation directly from Patient B. He told the panel that the charges arise from an observation made by another member of staff. There is no discussion that informs what she saw. He further submitted that *Thorneycroft* does not apply in relation to Patient B.

Mr Akram referred the panel to the relevant evidence in the bundle and submitted that there are no grounds for inadmissibility, as Witness G gives an account of her own

observation. She directly observed Patient B looking uncomfortable with you in close proximity.

Mr Akram accepted that Witness G's account is from a partial observation and that it is correct she never spoke to Patient B after the incident. He submitted her observations are still a valid assessment and that Mr Phillips will have the opportunity to cross examine Witness G on her observations in due course.

Mr Akram went on to address charge 4. He submitted that it is fair to allow an experienced nurse to comment from her experience on what she saw you doing on the day in question and Mr Phillips will also have the opportunity to ask questions on your behalf.

Mr Akram submitted the primary challenge to Witness G evidence comes from her witness statement, where she states:

> *"The fact that the patient did this, and the uncomfortable look on her fact [sic], made me believe she was very uncomfortable with the Registrants close proximity."*

Mr Akram accepted Patient B has never made a formal complaint. He referred the panel to more supporting evidence in relation to this charge. He submitted that you accept that you undertook an assessment of Patient B, but that you deny that you were too close to the Patient B at any stage of the assessment.

In answer to questions from the panel Mr Akram outlined what efforts were made to contact both Patient A and B. He told the panel that in relation to Patient B, that the NMC had made enquiries as to the identity of Patient B, and for a statement to be taken from the patient, but those requests were not fruitful and the identity of Patient B is unknown to date.

In the relation to Colleague D and whether a statement was or could be obtained from her in relation to the incident outlined in charges 3i and 4. Mr Akram told the panel that

he would take instructions and refer back to the panel. He said that he would also made enquiries as to whether any reasonable steps were taken to obtain a formal statement from Patient A.

After making his enquiries, Mr Akram provided the panel with additional documents that included an email chain with Patient A and an unsigned draft witness statement. These documents he submitted had not been placed in the final bundle before the panel but had not been used and placed in an unused material bundle.

After further investigation Mr Akram told the panel that Patient A was approached by the NMC and after giving her initial statement to the NMC, a draft was sent to Patient A by the NMC. Patient A made amendments and comments on the draft which she forwarded to the NMC on 11 October 2021. On 21 October 2021 Patient A emailed the NMC saying she no longer wished to participate in the investigation and did not wish to sign her draft statement.

Mr Akram submitted that after Patient A disengaged, stating that she no longer wants to participate, all versions of her statement were placed in the unused material bundle. On 22 October 2021, the NMC responded to Patient A's email and said she would not be contacted again. This was the last and most recent contact with Patient A.

Mr Akram submitted that reasonable and practicable steps were taken by the NMC to secure a statement from Patient A. He told the panel that the NMC did try to secure her attendance at the hearing but given Patient A's expression of not wanting to be contacted and [PRIVATE], the NMC made the decision to not contact her again.

Mr Akram next made submissions in relation to Patient B and the newly acquired information from the NMC. He told the panel that Witness G was unable to remember Patient B's name and he outlined the difficulties in locating and speaking to the patient. Mr Akram referred to the Case Examiners report dated 30 November 2021, which detailed the attempts made to locate Patient B.

The report stated:

- *"In August 2021 the investigating firm requested the contact details for Patient B from the Hospital. The Hospital provided what they believed to be Patient B's contact details. On 17 August 2021 a call was made to Patient B. During this call Patient B confirmed she did attend the Hospital on 07 July 2020, however she could not recall the incident involving Mr Nacino*."

Mr Akram submitted that the NMC took no action thereafter to establish if a statement was taken or could be taken.

Mr Akram referred the panel to further information in the report which states the following in relation to Colleague D:

- *"Witness G refers to another witness, Colleague D, who was present during the incident…, however the Trust investigation documents confirmed they had approached Colleague D for evidence however she could not remember the incident. In light of this the investigating firm agreed with the NMC that Colleague D would not be approached as a witness."*

Mr Akram submitted that in these circumstances, the appropriate course of action was taken when a witness cannot remember the incident.

Mr Phillips submitted that the evidence in relation to Patient B is not hearsay. He told the panel that Witness G's assertion is of what she saw and then she gave her opinion. He submitted that the issues in relation to this evidence is fairness. He submitted that the evidence is devoid of context and is poor. He further submitted that this evidence only adds more prejudice.

Mr Phillips submitted that it is therefore unfair to admit this evidence.

Mr Phillips went on to address the evidence in relation to Patient A. He submitted that the panel must consider the reliability of this evidence. He referred the panel to the email chain with Patient A and raised concerns with the introduction email that had been

sent to Patient A. He told the panel that the email had the potential to *"contaminate"* the evidence. He told the panel that the content is wholly inappropriate in detailing the facts of the investigation to the patient.

Mr Phillips told the panel that the inappropriate approach is continued throughout the correspondence with Patient A. Mr Phillips also raised concerns with the questions asked to Patient A, in that they were leading questions and not open questions. He submitted that the proper approach is to ask the witness if they recall, but that was not the approach that was taken.

Mr Phillips referred the panel to a response from Patient A:

> *"I do not believe he would have done any of these things but they were not appropriate to say to a patient"*

Mr Phillips submitted that Patient A's response was relevant. He further submitted that in the draft witness statement, important information was omitted and anything helpful to you had been left out.

Mr Phillips told the panel that the omitted information provided relevant context to the incidents and that is concerning. He submitted that considering all this information, Patient A expressed that her statement was not accurate and when not corrected, she decided to disengage from the process.

Mr Phillips submitted that the NMC did not follow up Patient A when she said that she did not wish to participate any further on 21 October 2021. He submitted that the option for the NMC was to allow time to elapse so that Patient A may be well enough to further engage and at that stage the NMC ought to have contacted her.

Mr Phillips referred to his earlier submission and stated that there are not multiple sources of evidence, but one which is directly from the patient. Anything else he submitted, was indirect hearsay evidence.

The panel heard and accepted the legal assessor's advice.

The panel carefully considered Mr Phillips' written and oral submissions, Mr Akram's oral submissions and the unredacted bundles. The panel noted Rule 31(1) of the Rules and the legal authority of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin).

The panel considered this application on admissibility separately in respect of Patient A and then Patient B.

Patient A

The panel noted that Mr Phillips did not submit that the evidence in respect of Patient A was not relevant. The panel considered the evidence subject to this application in respect of Patient A to be relevant. The panel therefore considered the application solely in respect of fairness under Rule 31(1) of the Rules. In this regard, the panel considered fairness to the NMC and to you.

The panel noted the Patient A has not provided a signed written statement to the NMC. Further, Patient A refused to provide a formal written statement in response to the local investigation.

The panel noted the hearsay evidence which the NMC seeks to rely upon. On 8 July 2019, Patient A made a verbal complaint to Witness F who was working as a nurse in the same department as you. Witness F informed the Ward Manager who passed the complaint onto the Duty Matron Witness B. Witness B then met with Patient A and took notes from Patient A as to what had occurred. Witness B later typed up these notes.

The panel considered that the escalation of Patient A's complaint within the department appears to have been efficient, effective and timely. No criticism therefore attaches to these witnesses and their actions.

In determining whether it is fair to admit the hearsay evidence surrounding Patient A's complaint the panel carefully considered the principles set out in *Thorneycroft* at paragraphs 45 and 56 of the judgement.

The panel noted that the admission of hearsay evidence when the principle witness is absent should not be regarded as a routine matter. It noted that *Thorneycroft* underscores that the fitness to practise rules require the panel to consider the issue of fairness before admitting the evidence.

The panel also noted that the absence of a primary witness can be reflected in the weight to be attached to their evidence is a factor to weigh in the balance, but it will not always be a sufficient answer to the objection to admissibility. In this regard, the panel noted that the NMC has not obtained any signed statement from Patient A and no statement was obtained during the local investigation.

The panel next considered whether there is a good and cogent reason for the non-attendance of Patient A. The panel noted that in *Thorneycrof*t this principle is described as an *"important factor"*. The panel also noted that the absence of a good reason does not automatically result in the exclusion of the evidence.

As already stated, in this decision there is no signed statement from Patient A. In response to panel questions, the NMC produced an email trail as between the NMC and Patient A together with a file note from the NMC's agent investigators. The panel carefully considered the interaction of the NMC with Patient A.

On 19 August 2021, the NMC interviewed Patient A over the telephone so that a statement could be drafted. Following this call a statement was drafted by the NMC for Patient A and sent to her on 6 October 2021. Patient A returned the draft with amendments on 11 October 2021. The NMC produced an amended statement.

On 21 October 2021, Patient A emailed the NMC saying that she no longer wished to participate in the investigation and did not wish to sign any NMC statement. The draft statements remain unsigned and in the NMC unused material schedule.

Patient A in her email of 21 October 2021 stated that the NMC draft statement was not accurate and that she was not content with the NMC process of obtaining a statement. Further, she stated that [PRIVATE] to sign the draft *"…or to continue [with the NMC] in the near future"*. Patient A then stated that she did not wish to be contacted *"…via telephone any further".*

The NMC responded to Patient A by email on 22 October 2021. The NMC noted that the second draft NMC statement "… *didn't correspond with* [Patient A's] *voice*" and wrote "*Please be sure* [the NMC] *will not be contacting you again for this matter*…". The NMC have not sought to contact Patient A since this email.

In reviewing the email trail between the NMC and Patient A the panel noted that up to the 21 October 2021 Patient A appeared willing and able to provide a statement to the NMC addressing the events on 8 July 2019. The panel noted that Patient A sought to make nine amendments in writing to the first draft statement. Thereafter, it appears from Patient A's email dated 21 October 2021 that she lost confidence in the NMC process and became disillusioned. Further, Patient A cited [PRIVATE] for withdrawing.

Whilst the panel noted the response to Patient A on 22 October 2021, and the NMC's decision not to pursue matters, the panel is nevertheless concerned that the NMC did not seek to persuade Patient A, a vulnerable witness, to continue or re-engage in the process. It appears that there was no enquiry of Patient A as to what could be done to restore Patient A's confidence in the process. Further, the panel has not been provided with [PRIVATE]. The NMC has not contacted Patient A since 22 October 2021 to enquire [PRIVATE] and whether she is, in light of the serious allegations, willing to re-engage with support. In this regard the panel noted paragraph 56 of *Thorneycroft* and the need for a prosecutor to take "*reasonable steps*" in securing a witness's attendance.

In light of the above, the panel decided that, whilst the NMC has made some efforts to obtain a witness statement from Patient A, there is insufficient good and cogent reason for not obtaining a signed statement and therefore her attendance. The panel is

concerned that part of Patient A's reason for withdrawing may have been because of the handling of Patient A, a vulnerable witness, during the prosecutor's process.

The panel next considered whether the evidence is the sole and decisive evidence in relation to charge 1 and 2 and weighed up the competing factors.

The panel decided that the evidence was not of itself demonstrably reliable. The evidence relied upon what Patient A told Witness F who informed the Ward Manger who then passed the information on to Witness B. The complaint was also relayed to Witness B by Patient A who took written notes from Patient A which were written up shortly thereafter. In these circumstances, the panel decided that whilst there is no statement from Patient A there is near contemporaneous and a written record of the complaint which is capable of being tested as to reliability. In the panel's view, the witnesses could be fairly cross-examined testing their consistency and reliability, the consistency of the account from Patient A to Witness F and thereafter Patient A to Witness B.

The panel noted your response to the allegations during the local investigation. You accept touching Patient A's stomach but stated that there was a good clinical reason for doing so. Otherwise, the nature and extent of your challenge to charges 1 and 2 is absolute.

The panel took into account the seriousness of charges 1 and 2. Charge 1 in isolation is a serious charge. Charge 2 alleges sexual motivation in relation to charge and is therefore very serious. Charge 1, if found proved, would in all likelihood attract a significant sanction; if charge 2 was proved then a sanction maybe imposed towards the top end of the sanction spectrum. Consequently, the panel decided that the charges, if found proved, may well have a significantly adverse effect upon your nursing registration and career.

The panel having considered each of the various principles in *Thorneycroft* decided overall to rule that the evidence in relation the Patient A is inadmissible. Having balanced the various *Thorneycroft* factors, the panel placed significant weight on its

finding that, in the circumstances of this case, the NMC has not established a sufficiently good and cogent reason for not obtaining a signed statement from Patient A and her attendance at this hearing. In this regard and on overall balance of the *Thorneycroft* factors, the panel decided that it would be unfair to you to admit the evidence relating to Patient A.

Patient B

The panel noted that initially Mr Phillips submitted that the evidence relating to Patient B was hearsay. Mr Phillips revised his submissions and advanced that the evidence was not hearsay but that it was unfair to admit the evidence under Rule 31(1) of the Rules.

The panel noted that the NMC has not obtained any statement from Patient B although Patient B may have been identified in August 2021.

The evidence which the NMC seeks to rely upon is that of Witness E. Witness E's evidence in her statement stems from a partial observation of the assessment being undertaken by you of Patient B. This, in the panel's view, is direct observation by Witness E and therefore admissible. Materially, the panel noted that Witness E does not in her statement seek to relate anything that may have been said by Patient B or by you.

The panel noted Mr Phillips' submission that Witness E cannot recall what the assessment was and that evidence therefore lacks any meaningful context. The panel decided that it would not be unfair to hear Witness E's direct observation evidence which can be fairly tested by cross examination as to any lack of context. Further, Witness E can relate without interpretation, any physical reaction that she may have observed from Patient B at any stage. Furthermore, the panel noted that Colleague D, who was present at the assessment, when approached by the NMC for a statement said that she could not remember the incident.

The panel could find no unfairness to you in admitting Witness E's evidence. In doing so, it will carefully bear in mind that there is no statement from Patient B and that

Witness E's evidence is the sole evidence which is capable of supporting charge 3i. Further, if Witness E's evidence is tenuous then a half time submission can be made and, if rejected, full time submissions on the facts will be carefully considered.

In all the circumstance the panel could find no unfairness to you in admitting the evidence with Witness E which can be fairly tested.

Application to amend the charges

The panel heard an application made by Mr Akram, on behalf of the NMC, under Rule 28 of the Rules to amend the wording and/or numbering of charges 3i, 3 ii, 3 iii, 7a, b, c and d, 12 v, vi and vii.

Mr Akram first sought to amend charge 3. He submitted that the amendments to change the roman numerals in charge 3 would result in the sub-charges then reading as a, b and c, which would be consistent with the lettered format in charges 4, 5, and 6.

In relation to charges 7a, b and c, Mr Akram submitted that the amendments applied for are to delete the wording "*February 2020"* in the stem of the charge and replace it with *"Or around"* and then to insert *'February 2020'* at the beginning of sub charges a, b and c. He told the panel that in relation to charge 7d that the proposed amendment is to add in the wording *"The end of 2018"* at the beginning of the charge. He submitted, it was clear from the Colleague B's witness statement that the incident referred to in sub charge 7d allegedly occurred at the end of 2018 and not in February 2020.

Mr Akram moved on to the proposed amendments to sub charges 12 v, 12vi and 12vii. He submitted that the amendment is to remove sub charge 12v as there was a clinical justification during the pre-assessment for you asking Patient C whether she was pregnant or breastfeeding. Mr Akram submitted that as there was clinical justification for you asking this question, the NMC acknowledges that this question to Patient C cannot in the context of pre-assessment amount to misconduct and therefore this charge should be removed. He submitted that the question asked of Patient C in sub charge 12v could be fairly added as a contextual stem to sub charges 12vi and 12vii.

Mr Akram submitted in the round that the proposed amendments were not significant and would not cause any unfairness to you.

The panel then of its own volition invited submissions on an amendment to charge 17. The panel noted that the name of the hospital referred to in charge 17 was stated as being the Queen Elizabeth Hospital. The panel noted from the material before it that the name of the hospital appears to be Queen Alexandra Hospital.

Mr Akram considered the matter and accepted the invitation to amend charge 17 as suggested by the panel. He submitted that the proposed amendment to charge 17 would cause no injustice or prejudice to you, but solely correct the name of the hospital.

The panel heard submissions from Mr Phillips who did not oppose the NMC's application to amend the charges or the panel's suggestion as to the amendment of charge 17. He submitted that the amendment to charge 12 had been put forward by himself to Mr Akram and that he is content with the other amendments including that of the panel.

The panel accepted the advice of the legal assessor.

Decision and reason on application to amend the charges

The panel gave careful regard to Rule 28 of the Rules. The panel was of the view that the amendments, as applied for, would not create any unfairness to you and could be made without injustice. The amendments ensure, in the panel's view, that the charges are clearer, more accurate and better accord with the evidence that the panel may hear.

In light of the panel's decision to allow the amendments, the amended charges now read as follows:

"That you, a registered nurse:

3. On**:** ~~7 July 2020~~,

~~i~~ **a. 7 July 2020** whilst taking Patient B's blood pressure, put your knee in between her legs when there was no need be so close to Patient B to take her blood pressure.

~~ii~~ **b. 7 July 2020** slapped Colleague A on the bottom.

~~iii~~ **c. 8 July 2020** shouted "would you fucking look at me when I am trying to talk to you", at colleague A

7. in ~~February 2020~~ **or around**:

a. **February 2020,** breached patient confidentiality by accessing Colleague A's personal medical records without her consent and/or clinical reason to do so

b. **February 2020,** said "me and my wife would try this", to Colleague A before giving a detailed description of you having sex with your wife.

c. **February 2020,** touched Colleague A above the pubic area

d. **The end of 2018,** stroked Colleague B's back whilst saying you were feeling "horny", wanted to go home to "shag" your wife and "you know what I am like".

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C:

v. …
vi. **having asked Patient C whether she was pregnant or breastfeeding,** asked how long Patient C had breastfed for
vii. **having asked Patient C whether she was pregnant or breastfeeding,** asked Patient C whether she enjoyed breastfeeding

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

Application for the hearing to be held in private

The panel heard an application from Mr Akram that parts of this case be held in private. Mr Akram submitted that some of the charges in this case refer to identifiable patients. Therefore, Mr Akram submitted that the patients' names, [PRIVATE] and medical records should be heard in private. Mr Akram submitted that this application is justified by the interests of the patient and outweighs the interests of any other party.

Mr Phillips did not object to the application.

The legal assessor advised 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.

Decision and reason on the application for the hearing to be held in private

Having heard the application, the panel determined that any reference to patients' names, [PRIVATE] and their medical records should be heard in private. The panel decided, in order to protect the privacy of the patients, to go into private as and when such matters are raised during the course of the hearing.

Application to offer no evidence

Mr Akram, applied to offer no evidence in respect of charge 1b, on the basis that there is no longer a realistic prospect of proving the factual allegation. He referred the panel to the NMC Guidance on Offering no evidence, which states that the NMC will *"only apply to offer no evidence against a nurse, midwife or nursing associate in the following circumstances:*

- *When a particular part of the charge adds nothing to the overall seriousness of the case.*
- *When there is no longer a realistic prospect of some or all of the factual allegation being proved.*
- *When there is no longer a realistic prospect of a panel finding that the nurse, midwife or nursing associate's fitness to practise is currently impaired."*

Mr Akram submitted that in light of the panel's earlier ruling as to the inadmissibility of Witness F and Witness B's evidence relating to what Patient A may have said, there is now no longer any evidence which can be put before the panel that is capable of supporting charge 1b. Accordingly, Mr Akram submitted that it was proper to offer no evidence in respect of charge 1b.

Mr Phillips did not object to the application and submitted that following the panel's earlier decision on admissibility, that charge 1b is now incapable of being proved.

The panel accepted the advice of the legal assessor.

Decision and reasons on the application to offer no evidence.

The panel gave careful regard to the NMC guidance *"Offering no evidence"*.

The panel noted that charge 1b relies on the evidence of Patient A. There is no written signed statement from Patient A who is not attending this hearing. The panel has already ruled that the evidence of Witness F and Witness B as to what Patient A may have said to them is inadmissible hearsay. The panel carefully considered whether there is any other evidence which is capable of supporting charge 1b. The panel could find nothing and therefore decided that charge 1b can be safely removed from the charges.

Application to amend the charges

Mr Akram made a further application to amend the wording of the stem of charge 2 and sub charge 2a by removing *"and/or asking questions relating to her sex life"* and *"questioning"* respectively. He submitted that this amendment flows from the NMC's decision to offer no evidence in respect of charge 1b which has now been removed from the charges by the panel.

Mr Akram also made an application to amend charge 5. He submitted that the amendment is to add in the wording "*and/or"* at the end of 5a, therefore linking sub charge 5a to sub charge 5b. He submitted that this amendment makes charge 5 clearer and would not cause any unfairness to you.

Mr Akram applied to amend charge 6 by inserting the word "*at*" after "*Your actions*" so that the charge reads correctly.

Mr Akram applied to amend sub charges 9a, 10a and 11a by adding *"; and/or"* at the end of the sub charge, so that sub charges are clear.

The panel heard from Mr Phillips, who did not oppose the amendments.

The panel accepted the advice of the legal assessor.

Decisions and reason on the application to amend the charges

The panel gave careful regard to Rule 28 of the Rules and the requirement that any amendment should not cause any unfairness or injustice.

The panel decided that the proposed amendments to the stem of charge 2 and sub charge 2a are an evidential consequence of the NMC's decision to offer no evidence in respect of charge 1b. The panel could find no unfairness in acceding to the amendments to charge 2 and sub charge 2a. Accordingly, the panel allowed the amendments.

In respect of the application regarding sub charge 5a, the panel could find no unfairness in making such amendment. Accordingly, the panel granted the amendment to sub charge 5a.

In respect of the application in regarding charge 6, the panel decided that this is no more than a grammatical change and causes no unfairness. Accordingly, the panel granted the amendment to charge 6.

In respect of the application in regarding sub charges 9a, 10a and 11a, the panel decided that this amendment adds clarity to charges 9, 10 and 11 by stating the relationship between each of the respective sub charges within each charge. Accordingly, the panel granted the amendments to sub charges 9a, 10a and 11a.

In making the above amendments and the removal of charge 1b, the panel noted that the stem of charge 2 now relates to a single action in charge 1b and that "*were*" should now read as "*was*". The panel also noted that in respect of sub charge 2b, "*though*" should read "*through*". Further, the panel noted the omission of the word "*that*" in the first line of charge 4.

The panel invited submissions on the panel's above suggestions from the parties. Neither Mr Akram or Mr Phillips objected to these proposed amendments. Accordingly, the panel made their amendments as they cause no unfairness to the parties.

The amended charges, including the removal of sub charge 1b, now read as follows:

That you, a registered nurse,

1. on 8 July 2019, whilst conducting a pre-assessment with Patient A:

    a. touched Patient A's stomach when there was no clinical reason to do so.
    b. …

2. Your action~~s~~ as set out at charge 1**a** ~~were~~ **was** sexually motivated in that in touching Patient A's stomach ~~and/or asking questions relating to her sex life~~ you were:

    a. seeking to obtain sexual gratification from the touching**;** and/or ~~questioning~~.
    b. attempting to groom Patient A for a future sexual relationship ~~though~~ **through** the normalising of intimate touching and/or conversations.

4. Your actions at charge 3a were sexually motivated in **that** you were seeking to obtain sexual gratification from your invasion of Patient B's personal space.

5. Your actions at charge 3b were:

    a. sexually motivated in that you were seeking to obtain sexual gratification from touching Colleague A's bottom~~.~~**; and/or**
    b. intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

6. Your actions **at** charge 3c were intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

9. Your actions at charge 7b were:

    a. sexually motivated in that you were seeking to obtain sexual gratification from discussing your sex life with Colleague A~~.~~**; and/or**
    b. intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

10. Your actions at charge 7c were:

a. sexually motivated in that you were seeking to obtain sexual gratification from touching Colleague A~~.~~**; and/or**
b. intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

11. Your conduct at charge 7d was:

a. sexually motivated in that you were seeking to obtain sexual gratification from touching Colleague B and/or making inappropriate comments to her~~.~~**; and/or**
b. intended to violate Colleague B's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C

i. asked Patient C what her eye and hair colour was
ii. asked Patient C whether she had tattoos
iii. asked Patient C whether she had a boyfriend
iv. stated Patient C was just your type
v. …
vi. **having asked Patient C whether she was pregnant or breastfeeding,** asked how long Patient C had breastfed for
vii. **having asked Patient C whether she was pregnant or breastfeeding,** asked Patient C whether she enjoyed breastfeeding
viii. commented that you had your own family but Patient C "had to be careful"
ix. commented that due to Patient C's previous relationship you will take care of her
x. commented that "boys can be a little bit naughty"
xi. shouted "fuck off I'm on the phone" to someone present at the hospital with you
xii. said to Patient C "to save you from getting into more mischief I will bring the paperwork round"
xiii. said to Patient C "oh so you have not had sex for a year"

xiv. commented to Patient C “oh I bet you miss it loads” referring to her not having had sex for a year

xv. told Patient C you would give her a “good seeing to”

17. Informed Colleague C of [PRIVATE] Recruitment that you had been dismissed from Queen ~~Elizabeth~~ **Alexandra** Hospital due to a complaint about your English.

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

Second application on admissibility of evidence

The panel heard a second application by Mr Phillips on your behalf under Rule 31(1) of the Rules to exclude further evidence.

Mr Phillips referred the panel to paragraph 11 of Colleague B’s witness statement which contains the following passage:

> *“Furthermore, as far as I was made aware, there was no record in the patient’s notes that the Registrant asked Patient A for consent or whether she wanted a chaperone.”*

Mr Phillips referred to some comments on a draft witness statement which was prepared for Colleague B at the NMC investigation stage. This draft statement was not provided to the panel but the passage was agreed as between the parties and came from the unused material schedule. Person 1, who was taking the statement from Colleague B, commented on the above passage from Colleague B’s draft statement as follows: “*Are you able to supply these notes?”.* Colleague B replied to this query from Person 1 by writing: “*No, this is what I have been told so ?hearsay”*.

Mr Phillips submitted that the person who “*told*” Colleague B is not identified and is therefore anonymous hearsay which is “*dangerous and unreliable”*. Mr Phillips

submitted that it would be unfair to admit this hearsay into evidence under Rule 31(1) of the Rules. He further submitted that to admit this evidence would be contrary to the principles in *Thorneycroft*.

Mr Phillips moved on to address Witness B and referred the panel to paragraph 13 of her witness statement which states:

> *"On 08 July 2019 I spoke with the Registrants line manager, [Person 2] about how to conduct pre-assessments. [Person 2] told me that assessing a patient's stomach for constipation was not an expected task during a preassessment."*

Mr Phillips submitted that there is no witness statement from Person 2 in evidence. He submitted that Person 2 is an identifiable registered nurse and that the NMC appears to have provided no good reason as to why a witness statement has not been obtained from her. In these circumstances, he submitted that it would be unfair to allow the passage from Witness B's statement into evidence.

Mr Akram referred the panel to Rule 31(1) of the Rules and to *Thorneycroft* and the principles that the panel has to consider when contemplating the admissibility of evidence.

Mr Akram accepted that Colleague B's passage in paragraph 11 of her statement is anonymous hearsay. However, he submitted that this passage could be tested by asking the various NMC witnesses as to whether they were the person who made Colleague B aware of there being no record in the patient's notes that you had asked Patient A for her consent or whether she wanted a chaperone. Mr Akram accepted that it appears that the NMC investigator did not ask Colleague B who gave her this information, but again submitted that one of the other NMC witnesses *"may be able to confirm who gave Colleague B that information during questioning in the hearing."* Further, Mr Akram informed the panel that there are no notes in Patient A's case file and there is no reference to any attempt by the NMC to obtain them.

Mr Akram addressed Mr Phillips submission in relation to Witness B and Person 2. Mr Akram accepted that the NMC has not sought to obtain a witness statement from Person 2. He submitted that although the evidence is hearsay, there is no reason to conclude the information has been fabricated. He further submitted that this evidence adds to *"the evidential picture of the case"*.

Mr Akram submitted that although there were no attempts made to obtain a statement from Person 2, there is "*good reason for her non-attendance"*. He submitted that it is a "*discreet issue"* and maintained that the passage from paragraph 13 of Witness B's statement should remain in evidence before the panel.

The panel accepted the advice of the legal assessor.

Decisions and reasons on the second application on admissibility of evidence

The panel gave careful consideration to Rule 31(1) of the Rules and the principles in *Thorneycroft*.

The panel firstly considered the passage in paragraph 11 in Colleague B's witness statement.

The panel decided that this is anonymous hearsay as there is no identification of the person or persons who made Colleague B aware of the information. Further, this passage was identified as being hearsay by the NMC at the investigation stage. The panel accepted that anonymous hearsay is particularly dangerous and unreliable.

The panel noted that the medical notes of Patient A have not been obtained and there is no way to compare or challenge the anonymous hearsay. Further, it does not appear that Colleague B has seen or inspected Patient A's medical notes herself. Furthermore, there is no evidence before the panel from Patient A. The allegation in relation to this passage is serious in that it is alleged that your conduct in respect of sub charge 1a was sexually motivated. The panel therefore decided that whilst this passage was relevant, it would be unfair to admit it. Accordingly, the panel decided to rule the passage as inadmissible.

The panel next considered paragraph 13 of Witness B's witness statement.

The panel noted that Person 2 is named within the passage of paragraph 13 and that Person 2 is a senior registered nurse. The panel considered whether there is a good and cogent reason for the NMC not obtaining a statement from Person 2 and securing her attendance at this hearing. The panel noted Mr Akram's submissions and that there was no good reason as to why a witness statement was not obtained.

The panel gave careful regard to the passage in paragraph 13 and noted that Person 2 had said to Witness B *"that assessing a patient's stomach* [PRIVATE] *was not an expected task during a pre-assessment".* The panel was of the view that the phrase *"not an expected task"* was not entirely clear. The panel decided that this passage could only be admitted if there was a fair opportunity for you to cross examine Person 2 as to what she meant by "*not an expected task*". Consequently, whilst relevant the panel determined that it would be fair in the absence of Person 2 to admit this passage of Colleague B's witness statement.

The passage relates to an allegation which is serious in that it alleges sexual motivation. For this and the above reasons the panel decided that it would be unfair to admit the passage in paragraph 13 of Witness B's statement.

This is the second application as to the admissibility of evidence. In making its decisions in respect of both admissibility applications the panel has carefully considered the NMC guidance Directing further investigation during a hearing and the legal authority *The Professional Standards Authority for Health and Social Care v The Nursing and Midwifery Council, Ms Winifred Nompumelelo Jozi* [2015] EWHC 764 (Admin) and whether there is important evidence available that is missing or that the NMC have not put before the panel and whether the panel could direct the obtaining of that further evidence.

The panel noted the various considerations set out in the guidance as to when a panel should direct further investigation. The panel also noted in *Jozi* that panels can be "*proactive"* where there is insufficient but obtainable evidence.

The panel carefully balanced the various considerations as to when a panel should direct further investigation and decided not to make any directions or to adjourn this hearing on day nine. In coming to this decision, the panel carefully considered amended charges 1 and 2, which are serious. Whilst amended sub charge 1b is not being pursued by the NMC, amended sub charge 1a remains together with amended charges 2a and b. The stem of amended charge 2 still alleges sexually motivated conduct. The gravity of amended charges 1 and 2 therefore remains and there is other evidence which the panel can properly consider beyond the evidence which has been ruled as inadmissible in relation to charges 1 and 2.

The panel in coming to this conclusion carefully weighed its overarching duty to protect the public and the panel's duty to make a decision that satisfies this objective in a fair and proportionate way. In this regard, the panel carefully considered the overall fairness of the proceedings in relation to both parties and the public interest in the expeditious disposal of your case. The panel noted that there are now 12 witnesses who have been called by the NMC, two of whom are vulnerable witnesses. The panel decided that there would be considerable inconvenience caused by any delay to your case which alleges matters starting in July 2019. This inconvenience would impact on you, the vulnerable witnesses, the witnesses generally and upon powers of recollection. Accordingly, the panel, on balance, decided not to adjourn your case to direct further investigation.

Details of charge as amended:

That you, a registered nurse,

1. on 8 July 2019, whilst conducting a pre-assessment with Patient A:

    a. touched Patient A's stomach when there was no clinical reason to do so.
    b. …

2. Your action~~s~~ as set out at charge 1**a** ~~were~~ **was** sexually motivated in that in touching Patient A's stomach ~~and/or asking questions relating to her sex life~~ you were:

    a. seeking to obtain sexual gratification from the touching**;** and/or ~~questioning~~.
    b. attempting to groom Patient A for a future sexual relationship ~~though~~ **through** the normalising of intimate touching and/or conversations.

3. On**:** ~~7 July 2020~~,

    ~~i~~ **a. 7 July 2020** whilst taking Patient B's blood pressure, put your knee in between her legs when there was no need be so close to Patient B to take her blood pressure.

    ~~ii~~ **b. 7 July 2020** slapped Colleague A on the bottom.

    ~~iii~~ **c. 8 July 2020** shouted "would you fucking look at me when I am trying to talk to you", at colleague A

4. Your actions at charge 3a were sexually motivated in **that** you were seeking to obtain sexual gratification from your invasion of Patient B's personal space.

5. Your actions at charge 3b were:

    a. sexually motivated in that you were seeking to obtain sexual gratification from touching Colleague A's bottom~~.~~**; and/or**
    b. intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

6. Your actions **at** charge 3c were intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

7. in ~~February 2020~~ **or around**:

    a. **February 2020,** breached patient confidentiality by accessing Colleague A's personal medical records without her consent and/or clinical reason to do so

    b. **February 2020,** said "me and my wife would try this", to Colleague A before giving a detailed description of you having sex with your wife.

    c. **February 2020,** touched Colleague A above the pubic area

    d. **The end of 2018,** stroked Colleague B's back whilst saying you were feeling "horny", wanted to go home to "shag" your wife and "you know what I am like".

8. Your actions at charge 7a were:

    i. intended to violate Colleague B's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

9. Your actions at charge 7b were:

    a. sexually motivated in that you were seeking to obtain sexual gratification from discussing your sex life with Colleague A~~.~~**; and/or**
    b. intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

10. Your actions at charge 7c were:

    a. sexually motivated in that you were seeking to obtain sexual gratification from touching Colleague A~~.~~**; and/or**

b. intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

11. Your conduct at charge 7d was:

c. sexually motivated in that you were seeking to obtain sexual gratification from touching Colleague B and/or making inappropriate comments to her~~.~~**; and/or**
d. intended to violate Colleague B's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C

i. asked Patient C what her eye and hair colour was
ii. asked Patient C whether she had tattoos
iii. asked Patient C whether she had a boyfriend
iv. stated Patient C was just your type
v. …
vi. **having asked Patient C whether she was pregnant or breastfeeding,** asked how long Patient C had breastfed for
vii. **having asked Patient C whether she was pregnant or breastfeeding,** asked Patient C whether she enjoyed breastfeeding
viii. commented that you had your own family but Patient C "had to be careful"
ix. commented that due to Patient C's previous relationship you will take care of her
x. commented that "boys can be a little bit naughty"
xi. shouted "fuck off I'm on the phone" to someone present at the hospital with you
xii. said to Patient C "to save you from getting into more mischief I will bring the paperwork round"
xiii. said to Patient C "oh so you have not had sex for a year"
xiv. commented to Patient C "oh I bet you miss it loads" referring to her not having had sex for a year

xv. told Patient C you would give her a “good seeing to”

13. Your comments to Patient C in the course of the 15 April 2021 telephone [PRIVATE] pre-assessment were sexually motivated in that they were intended to groom Patient C for a future sexual interaction/relationship with you.

14. on 15 April 2021 breached Patient C’s confidentiality by accessing her medical records without her consent or clinical reason in order to obtain her personal telephone number and home address

15. On 15 April 2021,

i. attended Patient C’s home address
ii. pushed your way past patient C through her front door
iii. walked into Patient C’s kitchen to make a cup of coffee
iv. asked Patient C whether she had any sex toys
v. said to Patient C “you must be feeling lonely being by yourself having no sex”
vi. whilst making reference to your wife, said to Patient C “no she is at work because we work opposite shifts. All men do it, we are all naughty and cannot stick to one woman. As long as they don’t find out it does not hurt them”
vii. asked Patient C’s 3 year old child “where is your daddy? do you miss him?”
viii. said to Patient C’s 3 year old child “I bet you have never seen a brown man before”
ix. told Patient C’s 3 year old child you would take her to the beach the following day

16. Your actions in attending Patient C’s home on 15 April 2021 were sexually motivated in that you were seeking to have a sexual interaction/relationship with her.

17. Informed Colleague C of [PRIVATE] Recruitment that you had been dismissed from Queen ~~Elizabeth~~ **Alexandra** Hospital due to a complaint about your English.

18. Your actions as set out in charge 17 were dishonest in that you deliberately sought to mislead [PRIVATE] Recruitment by providing inaccurate information about your dismissal.

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

Submissions on application of no case to answer

The panel considered an application from Mr Phillips that there is no case to answer in respect of charges 1a, 2a, 2b, 3a, 4, 8a and 14. This application was made under Rule 24(7) of the Rules. Mr Phillips provided written and oral submissions in relation to this application; Mr Akram responded by way of oral submissions.

Charge 1a

In relation to charge 1a, Mr Phillip submitted that the charge alleges that there was no clinical reason for you to touch Patient A's stomach. Mr Phillips reminded the panel that it has not heard any evidence from Patient A in this case. He submitted that the only evidence before the panel in respect of you touching Patient A's stomach is derived from an account you gave in a local investigation interview on 12 July 2019.

Mr Phillips submitted that Colleague B explained in her evidence that [PRIVATE] is a contraindication for the administration of a laxative. She confirmed that one of the risks is that it could cause the [PRIVATE] and that it is possible to conduct a physical examination to check for [PRIVATE].

Mr Phillips submitted that the evidence demonstrates that the patient complained of [PRIVATE] and there was therefore a clinical indication that was capable of being checked through a physical examination. From the account that you gave in the local investigation interview, you stated that you touched her stomach as part of your examination, after consulting with Patient A and obtaining her consent.

Mr Phillips submitted, that the evidence therefore supports the conclusion that you did have a clinical reason for touching Patient A's stomach, namely that you were examining her to check whether or not she was in fact suffering from the [PRIVATE] that she had complained of.

For those reasons, Mr Phillips submitted that there is no case to answer in respect of charge 1a.

Charges 2a and 2b

Mr Phillips submitted in respect of charges 2a and 2b, that these charges are entirely dependent on charge 1a, as it follows that if the panel finds that there is no case to answer in respect of charge 1a, the panel must also find that there is no case to answer in respect of charges 2a and 2b.

In any event, Mr Phillips submitted that there is no evidence supporting charges 2a and 2b, even if the panel were to find a case to answer in respect of charge 1a.

Mr Phillips submitted that the evidence in relation to you touching Patient A's stomach is such that no properly directed panel could reach the conclusion that you were seeking to obtain sexual gratification from the touching or that you were attempting to groom Patient A for a future sexual relationship. He submitted that the touching did not relate to an intimate part of Patient A's the body, there is no evidence that the touching was accompanied by sexual comments or behaviour on your part, there is no evidence that the touching itself was sexual for example a stroke or caressing of the stomach and there is no evidence that you had any sexual interest in Patient A.

Mr Phillips submitted that the evidence is in fact that you touched Patient A's stomach as part of an examination which you performed as a result of her complaint that [PRIVATE].

Mr Phillips submitted that in the circumstances, there is no evidence in support of either charge 2a or charge 2b and there is therefore no case to answer in respect of those charges.

Charge 3a

Mr Phillips submitted that there is no evidence from Patient B before the panel and nor was any complaint ever received from Patient B in respect of this incident. In fact, Mr

Phillips submitted, the evidence suggests that no one from the hospital ever asked Patient B about the incident at all.

Mr Phillips told the panel that Colleague D has not given evidence to the panel, but it is clear from the contemporaneous records, and the evidence of Witness H, that Colleague D could recall the assessment in question and that she described you as trying to reassure a frightened patient – she did not recall any concerns with the manner in which you assessed Patient B nor did she recall anything improper about the way you were positioned.

Mr Phillips submitted that Witness H's evidence is not reliable and should be treated with caution for the following reasons. Witness H's evidence stems from a partial observation of an assessment; she cannot recall what assessment was in fact taking place; she never spoke with Patient B; the conclusion drawn as to Patient B's state of mind is based solely on her facial expression/body language without any further enquiry; and she did not speak with Colleague D about this incident.

Mr Phillips told the panel that you gave an account in an interview on 30 July 2020, outlining the circumstances of the incident. In the interview you stated that there was very little space in the room, the patient was very anxious as she had a failed procedure the previous day; you were trying to reassure Patient B which is why you were so close to her; but you were not too close or invading her personal space.

Mr Phillips submitted that Witness H's NMC witness statement states that she would have expected a registrant to get closer to a patient who was anxious in order to reassure them.

Mr Phillips submitted that Witness E's evidence is the only evidence in the case capable of supporting charge 3a, however, that evidence is unreliable for the reasons set out above and is inconsistent with the other evidence in the case, in particular the evidence derived from Colleague D and your interview. Mr Phillips therefore submitted, that no properly directed panel could find the charge proved and there is as a result no case to answer in respect of charge 3a.

Charge 4

Mr Phillips submitted that charge 4 is entirely dependent on charge 3a, it therefore follows that if the panel finds that there is no case to answer in respect of charge 3a that the panel must also find that there is no case to answer in respect of charge 4.

In any event, Mr Phillips submitted that there is no evidence supporting charge 4, even if the panel were to find a case to answer in respect of charge 3a.

Even if the panel were to find that you had your knee between Patient B's legs, and that you were too close to Patient B, no panel properly directed, could reach the conclusion that you were seeking to obtain sexual gratification from that closeness. He told the panel that Colleague D was present throughout the assessment and on any account, the assessment would have required some proximity to the patient. Witness E's evidence was that there was about one metre between the wall (on which the patient was sitting) and the curtain and it follows that the space was a small one for two chairs. He further outlined that there is no evidence that the closeness was accompanied by sexual comments or behaviour on your part and there is no evidence that you demonstrated any sexual interest in Patient B.

In the circumstances, Mr Phillips submitted the evidence indicates that this was a situation in which two professionals were conducting an assessment on a patient, within the hospital setting. For those reasons, he submitted, that there is no case to answer in respect of charge 4.

Charge 8a

Mr Phillips submitted that there is no evidence from which the panel could properly infer that you accessed Colleague A's medical records because you intended to violate her dignity and/or create an intimidating hostile, degrading and/or offensive environment for her. In fact, Mr Phillips stated, the evidence from Colleague A suggests that your intention was wholly to the contrary; that it was an intent to help her.

Mr Phillips submitted that Colleague A's evidence was that there had been substantial delays in her being provided with the results of [PRIVATE] in December 2019 and that she was very nervous about those results. Colleague A confirmed that she considered that you were helping her by accessing her medical records and that she was grateful to you for doing so.

In the circumstances, Mr Phillips submitted, the proper inference to draw from the evidence is that you were trying to assist Colleague A and there is no evidence from which any contrary intention can be drawn. He further submitted that there is therefore no case to answer in respect of charge 8a.

Charge 14

Mr Phillips submitted that the charge alleges you accessed Patient C's medical records in order to obtain her telephone number and home address. Mr Phillips submitted that there is no evidence to show you accessed Patient C's medical records, other than when you did so for the purposes of conducting the pre-assessment.

Witness A gave evidence in relation to this issue. She told the panel that the patient's phone number would have to been obtained for the purposes of making the initial pre-assessment over the telephone and that the patient's address would have to been obtained for the purposes of effecting delivery of the [PRIVATE] using the post, courier or some other delivery service. Witness A told the panel that Patient C's phone number and address would therefore have been available to you prior to and during the pre-assessment. She also told the panel that there was no evidence that you had accessed Patient C's records subsequent to the pre-assessment, this included the fact that there were no computer records showing that Patient C's records had been accessed a second time, nor were there any computer records showing subsequent access to Patient C's medical records by any IT account you were associated with.

Mr Phillips therefore submitted that there no evidence that you accessed Patient C's medical records other than for the purpose of conducting the pre-assessment, which

was both necessary and entirely proper. Any suggestion that you subsequently accessed Patient C's medical records in order to obtain her telephone number and home address is therefore entirely unfounded in evidence. He therefore submitted that there is no case to answer in respect of charge 14.

In conclusion, Mr Phillips submitted that there is no case to answer under Rule 24(7) of the Rules in respect of each of the charges addressed in his submissions.

Mr Akram referred the panel to Rules 30 and 24(7) of the Rules and to the relevant case law, such as *R v Galbraith* (1981) 73 Cr App R 124, *R v Shippey* [1988] Crim LR 767, *Basson v GMC* 2018 EWHC 505 (Admin), *Haris v General Medical Council* (Rev 1) | [2021] EWCA Civ 763 and *Edgington v Fitzmaurice* (1885) 29 Ch D 459.

Mr Akram submitted that the burden of proof rests on the NMC and that it is essential for the panel to test all the evidence in this case.

Mr Akram submitted that there is no direct evidence from Patient A by way of a statement obtained by the NMC but that there is indirect evidence from Witness D's local statement. Mr Akram told the panel that you responded to the allegation and confirmed that you had touched Patient A's stomach to check if it was hard and that you felt Patient A has misunderstood you when you were talking about her bottom. He told the panel that you denied saying it was "*red raw*", that you asked Patient A about boyfriends in any other context than in relation to next of kin details.

Mr Akram submitted that the panel would recall Colleague B's evidence when she told the panel about consent and that it should always be obtained from a patient. Colleague B also stated that she could not be certain whether you had asked Patient A whether she would have liked to have a chaperone.

Mr Akram told the panel that you stated that you did have Patient A's consent and that she confirmed with a nod before you touched her stomach. He referred the panel to the record of Witness D's meeting with you dated 9 July 2019 and Witness E's investigation meeting minutes, dated 18 August 2020. He told the panel that, that is the NMC's

evidence at its highest and that there is no direct evidence. He submitted that the NMC's case is that you deliberately touched Patient A, with no clinical reason to do so.

Mr Akram submitted that in Colleague B's oral evidence, she told the panel that the medical examination including the touching of Patient A's stomach can only be carried out by trained staff and that there were only a few, such as the Doctors that could carry out the assessment. She told the panel that you stated you had carried out such procedures [PRIVATE], but you were not trained to carry out the procedure and that it was the responsibility of the Clinical Lead to authorise you to carry out the assessment.

Mr Akram submitted that Colleague B was not aware if you had the necessary training and skills to carry out the assessment and this brought into question whether it was a clinical task that you were authorised to carry out.

Mr Akram submitted that it is for the panel to determine whether the touching of Patient A's stomach was intimate along with your comments about Patient A's boyfriends and *"doing a PR on you."*

Mr Akram submitted that it is the NMC's case that this was touching of an intimate nature and although there was no touching of Patient A's sexual organ, it was of no consequence. Mr Akram referred the panel to the case of *Edgington v Fitzmaurice* (1885) 29 Ch D 459. He invited the panel to consider your state of mind at the time. He also referred the panel to the cases of *Basson* and *Haris.* He submitted that in those cases there was intimate touching involving the vagina, bottom and breast. He submitted that there is a question as to whether there was a clinical justification for you touching the patient given what Colleague B told the panel about the necessary training. Mr Akram submitted that there was no plausible reason for you to touch Patient A.

Mr Akram turned to the question as to whether there was clinical justification for the touching. He submitted that the NMC's case, at its highest, appears to come from the account given by Colleague B who said that the touching was inappropriate as you had not had the appropriate training to conduct a clinical examination in the circumstances which Patient A was presenting. Mr Akram submitted that based on Colleague B's

evidence the appropriate course of action was to seek assistance from an appropriately qualified clinician. However, Mr Akram further submitted that there was a further appropriate way to proceed by way of touching Patient A's stomach to check for constipation and then to seek clinical assistance. Mr Akram submitted that these were all factors which could be considered when deciding whether there was a plausible reason or not for the touching.

Mr Akram submitted that charge 2 addresses your motivation and whether you had a sexual motive. He invited the panel to consider this point in its deliberations.

Charge 3a, Mr Akram submitted, specifies a particular assessment you carried out on Patient B. He referred the panel to Witness E's evidence and conceded that there was no direct evidence from Patient B in relation to this charge.

Mr Akram reminded the panel that Witness E was asked about the type of assessment you carried out, but she could not remember and thought it may have been an admissions assessment.

Mr Akram submitted that Colleague B in her witness statement, outlined that she had a conversation with Witness E who told her you were conducting a blood pressure assessment on the patient. He further submitted that Witness E recalls walking in on the assessment, but not speaking to anyone. Witness E gave evidence before the panel on how you were positioned and she told the panel about the touching of your knees, but there was no greater context about what was being said by you or the patient. He told the panel that Witness E appeared to accept that her walking into a bay area, without introducing herself would have left the patient shocked. Witness E's evidence was that the patient looked uncomfortable.

Mr Akram told the panel that Witness E gave further evidence on the issues. Her evidence was that you were too close to the patient and that you should not have been invading the patient's personal space.

Mr Akram submitted that you knew that there was no requirement for you to be that close to the patient and if the panel are with him, it should allow the charge to continue at this stage.

Mr Akram moved on to charge 4. He submitted that your particular actions were sexually motivated and he invited the panel to look at how you were touching the patient. He told the panel that there was no clinical justification for you touching the patient in this manner, or any other plausible reason. He invited the panel to consider that if it cannot find a plausible reason then the panel must allow the charge to continue at this stage.

Application to amend charge 8a

Before addressing charge 8a, Mr Akram addressed an error in the charge. He told the panel that there is a typographical error and that the charge refers to the incorrect colleague. He explained that the charge should read as Colleague A and not Colleague B.

Mr Akram made the application under Rule 28. He submitted that an application to amend the charges can be made at any stage before the panel make their findings.

Mr Akram submitted that the amendment can be made without an injustice to either party.

Mr Phillips submitted that it was clear from the outset that the charge should have read Colleague A and not Colleague B. He told the panel that he does not have any objections to the amendment.

The panel were content for Mr Akram to complete his submissions before it deliberated on the application.

Mr Akram continued his submission on the no case to answer application. He submitted in relation to charge 8a that Colleague A gave evidence in relation to this charge and

she told the panel that she was upset as she could not get hold of a consultant to explore her test results. She told the panel that you thought you were being helpful in giving her the answers she needed. She explained that when she was going for lunch, you called her into one of the side rooms, when she entered you had her records already on the screen. She told the panel that you explained the consultant's results. She knew you should not have been telling her that information, but she explained that she was desperate for an answer.

Mr Akram invited the panel to consider the evidence in determining whether you were trying to create an offensive environment for her.

Mr Akram then addressed the panel on charge 14. He submitted that he accepts there is no direct evidence to support you breached Patient C's confidentiality by accessing her medical records without her consent. He told the panel that the NMC relies on Patient C's witness statement, specifically paragraph 9 in which she outlines the incident detailed in the charge. Mr Akram referred the panel to the evidence of Witness A, who told the panel that you must have accessed Patient C's medical records in order to obtain he contact number and address.

Decision and reasons on application to amend charge 8a

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

The panel was of the view that such an amendment, 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 amendment being allowed. It was therefore appropriate to allow the amendment, to correct the reference to the particular colleague, to ensure clarity and accuracy.

The amended charge now reads as follows:

8. Your actions at charge 7a were:

a. intended to violate Colleague ~~B~~**A**'s dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

Decision and reasons on application of no case to answer

The panel accepted the advice of the legal assessor.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel carefully considered the two limbed test in Galbraith which can be properly adapted for regulatory proceedings by the panel asking itself the question "*is there any evidence upon which a properly directed panel could find the alleged facts proved?".*

Charge 1a

The panel considered the evidence in relation to this charge.

The panel noted that the remit in this charge alleges that there was no clinical reason for you to touch Patient A's stomach. The panel noted that there is no evidence from Patient A in this case. The only evidence comes from an account given by you at a local investigation interview.

During the local investigation interview you stated that Patient A lifted up her shirt and said "*look I am full of shit".* You said in your interview account that you asked whether you could check Patient A's stomach and she nodded. You then proceeded to touch Patient A's stomach to assess [PRIVATE].

The evidence from your account demonstrates that Patient A complained of [PRIVATE] and that there was a clinical indication. That indication is capable of being checked by the touching of the stomach albeit by a suitably qualified member of staff.

In the above circumstances, the panel decided under the first limb of *Galbraith* that there is no evidence to support this charge. The only evidence, which originates from

you, is that there was a clinical justification. The panel therefore decided that there is no case to answer in respect of charge 1a.

In coming to this conclusion, the panel noted the evidence of Colleague B and her evidence that you were acting beyond your clinical role in touching Patient A's stomach. The panel noted the narrow remit of charge 1a in terms of clinical justification and the wider remit of motivation as set out in terms of sexual gratification in charge 2a and 2b. The panel discounted the evidence of Colleague B solely on the topic as to your clinical role or otherwise as charge 1a is clearly drafted in terms of clinical justification alone.

The panel therefore decided that there is no case to answer in respect of charge 1a.

Charge 2a and 2b

The panel carefully considered the evidence in relation to these two sub charges and the definition of sexual motive from *Basson*. The definition is that sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.

The panel acknowledged that it had not heard any evidence from Patient A and therefore any conversation that may have taken place. In particular, there is no evidence before the panel of a conversation between you and Patient A which was sexual in nature. The panel considered that the touching of Patient A did not relate to an intimate part of her body nor was it sexual in nature such as a stroke or caressing movement. Further the panel noted that there is no evidence that the touching was accompanied by sexual comments or behaviour or that you had any sexual interest in Patient A.

The panel considered that there was no evidence that your conduct would give you any sexual gratification or that you were trying to groom Patient A.

The panel was of the view that, taking account of all the evidence before it, there was not a realistic prospect that it would find the facts of charge 2a and 2b proved. It therefore determined that there is no case to answer under the first limb of *Galbraith*.

Charge 3a

The panel first acknowledged that there is no evidence from Patient B in relation to this charge and that Patient B did not raise a complaint after her appointment.

The panel considered that there were inconsistencies between the local evidence of Colleague D and Witness E's evidence to the panel. The panel noted that Colleague D was present throughout the whole procedure and did not have any issues with your conduct. In her contemporaneous note, she stated that you were trying to reassure an anxious patient and that there were no concerns with your approach or the assessment.

The panel also considered Witness E's evidence and that it was from a partial view, she entered the room without introducing herself and never spoke to the patient. The panel considered that Witness E's conclusions on Patient B's feelings were purely from her observation of a partial facial expression, as the patient was wearing a mask.

The panel considered that the patient may have looked surprised when Witness E walked into the room without introducing herself.

The panel also acknowledged the witness statement of Witness H who stated:

> *"I would have expected the Registrant to react this way. If a patient is anxious you can hold their hand and get closer to them to try to reassure them."*

In the above circumstances, Witness E's evidence is the only evidence capable of supporting charge 3a. The panel decided that for the reasons above her evidence was tenuous and weak and inconsistent with the evidence derived from Colleague D and your local investigation interview. Accordingly, the panel decided that as the evidence is

tenuous there is no case to answer in respect of charge 3a under the second limb of *Galbraith*.

Charge 4

The panel noted that charge 4 is entirely dependent on charge 3a. In light of its decision on charge 3a the panel determined that there is no case to answer in respect of charge 4.

Charge 8a

The panel was of the view based on the evidence before it that the evidence is insufficient to prove, at this stage, that you did access the medical records of Colleague A, in order to violate Colleague A's dignity and create an intimidating hostile, degrading and offensive environment for her.

Colleague A told the panel that from her perspective, she thought your intentions were to help her and she did not express that she felt violated in any way. The panel noted that you accessed Colleague A's medical records as she was frustrated about not receiving her [PRIVATE] results and you were trying to help her.

The panel decided that there is no evidence from which it can properly infer that you accessed Colleague A's medical records because you intended to violate her dignity and/or create an intimidating, hostile, degrading and/or offensive environment for her. In reviewing the evidence, the panel was of the view that it was to the contrary in that it evidenced an intent to assist Colleague A. In these circumstances, the panel decided that there is no case to answer under the first limb of *Galbraith*.

Charge 14

The panel considered all the evidence before it and was of the view that there is no evidence that you accessed Patient C's medical records other than when you were conducting the pre-assessment with her. The panel acknowledged that when you were carrying out the pre-assessment, Patient C's contact telephone number and address

would have been legitimately available to you. The panel considered that there is no evidence to demonstrate you accessed Patient C's medical records specifically to obtain her address and telephone number.

The panel was of the view that as the evidence suggests that you only accessed Patient C's medical records for the purpose of conducting the preassessment. Accordingly, the panel decided that there is no case to answer in respect of charge 14 under the first limb of Galbraith.

Details of charge as amended, reamended, further amended and in light of the no case to answer decision:

That you, a registered nurse,

1. on 8 July 2019, whilst conducting a pre-assessment with Patient A:

    a. touched Patient A's stomach when there was no clinical reason to do so. **– No case to answer**
    b. …

2. Your action~~s~~ as set out at charge 1**a** ~~were~~ **was** sexually motivated in that in touching Patient A's stomach ~~and/or asking questions relating to her sex life~~ you were:

    a. seeking to obtain sexual gratification from the touching**;** and/or ~~questioning~~. **– No case to answer**
    b. attempting to groom Patient A for a future sexual relationship ~~though~~ **through** the normalising of intimate touching and/or conversations. **– No case to answer**

3. On**:** ~~7 July 2020~~,

~~i~~ **a. 7 July 2020** whilst taking Patient B's blood pressure, put your knee in between her legs when there was no need be so close to Patient B to take her blood pressure. **– No case to answer**

~~ii~~ **b. 7 July 2020** slapped Colleague A on the bottom. **– Proved by Admission**

~~iii~~ **c. 8 July 2020** shouted "would you fucking look at me when I am trying to talk to you", at colleague A

4. Your actions at charge 3a were sexually motivated in **that** you were seeking to obtain sexual gratification from your invasion of Patient B's personal space. **– No case to answer**

5. Your actions at charge 3b were:

    a. sexually motivated in that you were seeking to obtain sexual gratification from touching Colleague A's bottom~~.~~**; and/or**
    b. intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

6. Your actions **at** charge 3c were intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

7. in ~~February 2020~~ **or around**:

    a. **February 2020,** breached patient confidentiality by accessing Colleague A's personal medical records without her consent and/or clinical reason to do so

    b. **February 2020,** said "me and my wife would try this", to Colleague A before giving a detailed description of you having sex with your wife.

c. **February 2020,** touched Colleague A above the pubic area

d. **The end of 2018,** stroked Colleague B's back whilst saying you were feeling "horny", wanted to go home to "shag" your wife and "you know what I am like".

8. Your actions at charge 7a were:

a. intended to violate Colleague ~~B~~**A**'s dignity and/or create an intimidating hostile, degrading and/or offensive environment for her. **– No case to answer**

9. Your actions at charge 7b were:

a. sexually motivated in that you were seeking to obtain sexual gratification from discussing your sex life with Colleague A~~.~~**; and/or**
b. intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

10. Your actions at charge 7c were:

a. sexually motivated in that you were seeking to obtain sexual gratification from touching Colleague A~~.~~**; and/or**
b. intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

11. Your conduct at charge 7d was:

a. sexually motivated in that you were seeking to obtain sexual gratification from touching Colleague B and/or making inappropriate comments to her~~.~~**; and/or**
b. intended to violate Colleague B's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C

    i. asked Patient C what her eye and hair colour was
    ii. asked Patient C whether she had tattoos
    iii. asked Patient C whether she had a boyfriend
    iv. stated Patient C was just your type
    v. …
    vi. **having asked Patient C whether she was pregnant or breastfeeding,** asked how long Patient C had breastfed for
    vii. **having asked Patient C whether she was pregnant or breastfeeding,** asked Patient C whether she enjoyed breastfeeding
    viii. commented that you had your own family but Patient C "had to be careful"
    ix. commented that due to Patient C's previous relationship you will take care of her
    x. commented that "boys can be a little bit naughty"
    xi. shouted "fuck off I'm on the phone" to someone present at the hospital with you
    xii. said to Patient C "to save you from getting into more mischief I will bring the paperwork round"
    xiii. said to Patient C "oh so you have not had sex for a year"
    xiv. commented to Patient C "oh I bet you miss it loads" referring to her not having had sex for a year
    xv. told Patient C you would give her a "good seeing to"

13. Your comments to Patient C in the course of the 15 April 2021 telephone [PRIVATE] pre-assessment were sexually motivated in that they were intended to groom Patient C for a future sexual interaction/relationship with you.

14. on 15 April 2021 breached Patient C's confidentiality by accessing her medical records without her consent or clinical reason in order to obtain her personal telephone number and home address **– No case to answer**

15. on 15 April 2021,

    i. attended Patient C's home address **- Proved by admission**
    ii. pushed your way past patient C through her front door
    iii. walked into Patient C's kitchen to make a cup of coffee
    iv. asked Patient C whether she had any sex toys
    v. said to Patient C "you must be feeling lonely being by yourself having no sex"
    vi. whilst making reference to your wife, said to Patient C "no she is at work because we work opposite shifts. All men do it, we are all naughty and cannot stick to one woman. As long as they don't find out it does not hurt them"
    vii. asked Patient C's 3 year old child "where is your daddy? do you miss him?"
    viii. said to Patient C's 3 year old child "I bet you have never seen a brown man before"
    ix. told Patient C's 3 year old child you would take her to the beach the following day

16. Your actions in attending Patient C's home on 15 April 2021 were sexually motivated in that you were seeking to have a sexual interaction/relationship with her.

17. Informed Colleague C of [PRIVATE] Recruitment that you had been dismissed from Queen ~~Elizabeth~~ **Alexandra** Hospital due to a complaint about your English.

18. Your actions as set out in charge 17 were dishonest in that you deliberately sought to mislead [PRIVATE] Recruitment by providing inaccurate information about your dismissal.

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

Background

The charges arose whilst you were employed as a Band 5 Pre-assessment Nurse at the Queen Alexandra Hospital which is operated by Portsmouth Hospitals NHS Trust ('the Trust').

You were referred to the NMC on 22 April 2021 by Senior Lead Nurse at the Hospital.

In the referral it was alleged, towards the end of 2018, you stroked Colleague B's back while making inappropriate comments. Colleague B recalls asking you to stop stroking her back. You allegedly said you wanted to go home early because you said you were "*horny*" and wanted to go home to "*shag*" your wife.

In or around February 2020, it is alleged that you accessed Colleague A's medical records, without clinical justification or her consent, in order to give her the results from an operation she had undergone. Colleague A reported a further alleged incident that took place on 7 July 2020. She states that after having a conversation with you, you walked behind her and slapped her bottom without saying anything.

In April 2021, concerns were raised by Patient C about the comments you had allegedly made to them during a telephone [PRIVATE] pre-assessment. You attended her home outside of normal clinical hours and further allegations were made about your conduct during that visit.

In September 2021, you applied to join the Agency as an HCA and concerns were raised about the truthfulness of information in your application.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Phillips, who informed the panel that you made admissions to charges 3b and 15i.

The panel therefore finds charges 3b and 15i. proved, by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence provided by the NMC and you together with the submissions made by Ms Mohamed on behalf of the NMC and Mr Phillips on your behalf.

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:

- Colleague A: Health Care Assistant, Queen Alexandra Hospital
- Colleague B: Senior Sister, Queen Alexandra Hospital
- Colleague C: Business Development Manager, [PRIVATE] Recruitment
- Patient C: Patient C
- Witness A: Deputy Divisional Nurse Director and Senior Matron [PRIVATE], Queen Alexandra Hospital
- Witness B: Interim Matron for Emergency, Queen Alexandra Hospital
- Witness C: Patient C's Mum
- Witness D: Clinical Project Manager,

Southern Health NHS Foundation Trust

- Witness E: Practice Educator, Queen Alexandra Hospital
- Witness F: Associate Nurse Specialist, [PRIVATE] Queen Alexandra Hospital
- Witness G: Senior Sister, Queen Alexandra Hospital
- Witness H: Clinical Lead, Inpatient Services St Wilfrid's Hospice
- Witness I: Peripheral Outpatient Supervisor, Fareham Community Hospital

The panel heard evidence from you under affirmation.

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

Charge 3c

3. On:
   c. 8 July 2020 shouted "would you fucking look at me when I am trying to talk to you", at colleague A

This charge is found proved.

In reaching this decision, the panel took into account local and NMC statements of Colleague A and Colleague B. It took into account the evidence of Witness I and your evidence.

The panel noted the local meeting note of 14 July 2020, between Colleague B and Colleague A, which records:

> *"The next day 08/07/2020 Colleague A "plucked up" the courage to tell her line manager* [Witness I] *as advised by her family. DN in the afternoon came into the prepping room to apologise to Colleague A who felt uncomfortable, unsafe and felt her self shake. Colleague A said she was trying not to make eye contact with DN who was then not happy that he could not get her to make eye contact so said "would you fucking look at me" Colleague A then looked at DN who said sorry and then said it is too late, do not do it again."*

The panel noted Colleague A's NMC statement in which she stated:

> *"Later that day the Registrant approached me to 'apologise', he started by saying that I should not have spoken to my line manager and that if I had felt uncomfortable I should have spoken to him first so he knew how to tread carefully around me and where the boundaries were. The Registrant saying this made me nervous, so much so that I did not want to look at him. The Registrant must have noticed this because he kicked a box of documents and shouted would you fucking look at me when I am trying to talk to you. After the registrant said this I asked him to leave."*

In examination in chief, Colleague A told the panel:

> *"I was left quite angry. Also quite embarrassed at the same time because all I wanted was an apology and I was met with that kind of anger. So I was still in*

shock from the day before when – but I was also embarrassed at the fact that I had even thought that an apology would happen."

The panel took into account that Colleague A reported this incident to Witness I. Witness I said in her NMC witness statement that subsequent to the reporting of the incident to her by Colleague A that:

"On 9th of July 2020, I asked Colleague A whether the registrant had apologised, and she confirmed that he had, Colleague A did not say anything else about the apology."

The panel noted Colleague B's evidence during which she explained that you regularly used to swear in your day-to-day practice:

"…Mr Nacino used the word 'fuck' quite a lot."

In her NMC witness statement Colleague B stated:

"We explained that his actions were not appropriate and that he needed to apologise to Colleague A The Registrant then went to apologise to Colleague A but before doing so I saw that he made a gesture with his hand to signify that Colleague A was crazy."

The panel next considered your evidence.

The panel noted that you described your relationship with Colleague A as "*unique*" and that you viewed her like a daughter and not as a colleague.

During your evidence you stated:

"I never been angry when I'm apologising. I'm almost tearful when I'm apologising to her because we had this friendship that we developed, and I don't want to ruin that." [sic]

In cross examination from Ms Mohammed, you explained that you were feeling very emotional.

You told the panel that you went into the records room in order to apologise to Colleague A and that you had been polite to Colleague A and shook her hand. She would not look at you whilst you were trying to apologise.

The panel noted the NMC evidence that Colleague A told Witness I that you had apologised and did not say anything about the apology. Mr Phillips in his closing submissions submitted that this evidence tends to undermine Colleague A's evidence as to what occurred at the meeting and supports your account.

The panel carefully considered this submission in the context of Colleague A's evidence as to what occurred during the meeting. The panel noted that Colleague A in her NMC statement uses the word apologise which is in inverted commas. This, in her statement, is followed by what was occurring at the time, namely that you were kicking a box, shouting and saying "*fucking look at me when I'm trying to talk to you*". In her oral evidence, Colleague A was consistent as to this account. The panel took into account the following passage of cross examination where Mr Phillips asked "*he did apologise to you didn't you*". In response Colleague A said:

"*yes, but as I said it was a kind of a backhanded apology*". "*Its an implied one.*"

The panel considered that this response was entirely consistent with Colleague A's NMC statement and the placing of the word apologise in inverted commas. In these circumstances, Witness I asked Colleague A on 8 July 2020 whether you had apologised. The panel determined that it is credible that Colleague A responded to Witness I's question in a simple manner and confirmed that there was an apology but did not comment upon the quality or circumstances of the apology.

Although you denied that you shouted at Colleague A, the panel noted that this was a charged situation during which emotions appeared to have been running high. The panel considered that you were feeling very emotional at the time and that you were

very unhappy that Colleague A had gone straight to management. In light of the above the panel felt it more likely than not that you swore at her when she would not look at you when you were trying to apologise.

It therefore determined that, based on all the evidence before it, on the balance of probabilities, it is more likely than not that you did shout "*would you fucking look at me when I am trying to talk to you*" at Colleague A. It therefore finds this charge proved.

Charge 5

5. Your actions at charge 3b were:
    a. sexually motivated in that you were seeking to obtain sexual gratification from touching Colleague A's bottom**;** and/or
    b. intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

These charges are found NOT proved.

Charge 5a

In reaching its decision, the panel took into account Colleague A's statement and oral evidence and your evidence.

In her NMC statement Colleague A stated:

> *"I would not say we were close but we did have more of a friendship rather than a professional relationship, we used to have a laugh and joke throughout the working day…"*
>
> *"On 7 July 2020…. We both sat down to talk about the Registrant's problems. After 10 to 15 minutes of talking I got up to get the notes for the Registrant and passed them to him. The Registrant then said right I need to go, walked behind*

me and slapped my bottom. After doing this he walked out of the room without saying anything"

The panel noted that during cross examination Colleague A said:

"No, I'd say it was just as you walk past it was just – it didn't linger or anything, it was just as he walked past, he slapped my bottom and then just walked out."

You told the panel that you considered your relationship with Colleague A to be more than a work colleague and that you considered her to be more like a daughter with whom you discussed topics not related to work such as mortgages, boyfriends and her sex life.

You also told the panel:

"*Yes Maam, I slapped her bottom jokingly in the prep room"*

The panel noted that you have given evidence and informed the panel that your motivations for slapping Colleague A on the bottom were not sexually motivated.

The panel heard from Colleague B that there was a culture of staff making sexual innuendoes across the ward. Colleague B gave evidence that she was concerned about the culture of sexual innuendo and was in the early stages of addressing this culture.

In these circumstances, the panel decided that the existence of such a culture made it less likely that the motivations for the slap were sexual and more likely that it was reflective of the general culture in the ward. Further, there was no evidence that the slap was accompanied by any sexual comment or behaviour. The panel therefore decided that on the balance of probabilities, this charge is not proved.

Charge 5b

The panel noted the wording of charge 5b which specifically alleges that there was an intention to violate Colleague A's dignity and/or create an intimidating, hostile, degrading environment for her. The charge alleges an intention which is something which requires the NMC to prove on the balance of probabilities that you deliberately sought a specific outcome in terms of violating Colleague A.

The panel noted that during her evidence Colleague A stated:

> *"No, I'd say it was just as you walk past it was just – it didn't linger or anything, it was just as he walked past, he slapped my bottom and then just walked out."*

The panel noted that Colleague A was shocked by your actions in 3b. It found that although your actions did have a negative impact on her, there was not sufficient evidence to meet the high threshold that it was your specific intention to violate Colleague A in any of the manners set out within charge 5b. The panel found that the NMC has not discharged the burden of proof and therefore on the balance of probabilities the charge is found not proved.

Charge 6

6. Your actions at charge 3c were intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

This charge is found NOT proved.

The panel considered whether it has had sufficient evidence to determine that your actions at charge 3c were intended violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

The panel noted the wording of charge 6 which specifically alleges that there was an intention to violate Colleague A's dignity and/or create an intimidating, hostile, degrading environment for her. The charge alleges an intention which is something

which requires the NMC to prove on the balance of probabilities that you deliberately sought a specific outcome in terms of violating Colleague A.

It noted that in her NMC witness statement, Colleague A stated:

> *"Later that day the Registrant approached me to 'apologise', he started by saying that I should not have spoken to my line manager and that if I had felt uncomfortable I should have spoken to him first so he knew how to tread carefully around me and where the boundaries were. The Registrant saying this made me nervous, so much so that I did not want to look at him. The Registrant must have noticed this because he kicked a box of documents and shouted "would you fucking look at me when I am trying to talk to you". After the registrant said this I asked him to leave. The Registrant then left the room without apologising. At the time I was very angry and upset about this"*

The panel noted that Colleague A was angry and upset by your actions in 3c. It found that although your actions did have a negative impact on her, there was not sufficient evidence to meet the high threshold that it was your specific intention to violate Colleague A in any of the manners set out within charge 6. The panel found that the NMC has not discharged the burden of proof and therefore on the balance of probabilities the charge is found not proved.

Charge 7a

7. in or around:
    a. February 2020, breached patient confidentiality by accessing Colleague A's personal medical records without her consent and/or clinical reason to do so

This charge is found proved.

The panel noted that you accept that you accessed Colleague A's medical records. The issues in charge 7a are whether you accessed Colleague A's personal medical records without her consent and/or clinical reason to do so.

The panel had regard to Colleague A's witness statement in which she stated:

> *"When I went into the side room the Registrant had all my* [PRIVATE] *notes up on the screen. The Registrant had access to these through the Hospital's minestrone programme which all registered nurses have access to and allows them to access anyone's medical records. I know the Registrant would have access to my notes and results but I never assumed he would access them. I had not asked the Registrant to look for my results and I had not given him consent to access my medical records. I asked him whether he should be doing this and he replied "but you need to know" because he knew I was "really worrying about it and could not speak to a consultant". He then said "don't tell anyone as I will get into trouble for it". The Registrant then looked through all my notes,* [PRIVATE] *and explained them to me."*

The panel heard from Colleague A during the hearing that she did not give her consent and would never have given you consent to access her medical records. During her evidence when asked if she would have at any point requested for her records to be accessed by you, Colleague A stated:

> *"No, I would never had asked anyone at work at that time to look it for me because it's one thing that we're all told that you don't look up people's medical records for any reason other than the patient that you need to be looking at. So I would never have dreamed of asking anyone to look for me."*

During her evidence, Colleague A also stated:

> "*He didn't ask me. He just called me in to one of the side rooms, had them open. He never – not once beforehand did he ask me for my permission to have a look"*

The panel also had regard to the email from Colleague A to Colleague B dated 16 July 2020 which stated:

> "*… I was leaving the office for lunch one day and he was aware that I was having issues with my consultant* [PRIVATE] *to get my results. As I passed the office he called me in. He had all my notes up on the computer and* [PRIVATE] *results which he showed me all reports and photos that had been taken during the procedure. He told me not to tell anyone that this had happened…"*

This account was reflected in Colleague A's NMC statement and in her oral evidence.

The panel decided on the balance of probabilities that there was clear evidence that Colleague A had discussed with you that she [PRIVATE] and was awaiting the medical results. However, the panel decided that whilst you knew of her situation there was no evidence to show, on the balance of probabilities, that Colleague A consented to you accessing her records. The panel considered that there is a significant difference between discussing a personal matter and consenting to medical records being accessed.

The panel noted that in your evidence you stated that Colleague A would have to provide her personal details before you could access Colleague A's records. You stated that you did not have these personal details and therefore could not identify the correct medical records. The panel gave careful regard to how medical records were accessed. The panel noted that in response to a panel question you accepted that someone's medical records could be accessed without necessarily knowing what the address and date of birth is. It therefore appears from your answer that the only personal details required would be the surname of a patient. You told the panel that you had a special relationship with Colleague A in that you saw her as a daughter and therefore it is very likely you knew Colleague A's surname. The panel noted that the surname was an unusual surname. In these circumstances, the panel determined that it was relatively easy for you to access Colleague A's medical records.

In the above circumstances, the panel decided that on the balance of probabilities you did breach patient confidentiality by accessing Colleague A's personal medical records without her consent.

The panel heard from you and noted that you accepted that you did not have a clinical reason to access Colleague A's records: "*I accept no clinical reason. Reason was to give her peace of mind. She is not our patient.*" [sic]

Based on the evidence from you, the panel decided that you breached patient confidentiality by accessing Colleague A's personal medical records without any clinical reason to do so. The panel therefore finds this limb of charge 7a proved.

In light of the above, both limbs of charge 7a are proved.

Charge 7b

7. in or around:
    b. February 2020, said "me and my wife would try this", to Colleague A before giving a detailed description of you having sex with your wife.

This charge is found NOT proved.

In reaching this decision, the panel took into account the live evidence it has heard.

The panel had regard to Colleague A's written statement which stated:

> *"On a couple of occasions […] the Registrant would offer his own insight. By this I mean he would say things like "me and my wife would try this" and then go into a detailed description of him having sex with his wife."*

The panel noted that in your oral evidence you denied saying the words alleged and discussing any matters which related to having sex with your wife.

The panel noted that Colleague A did not make any complaint either to the words used or discussing sex that you had with your wife during Colleague A's local interview on 14 August 2020. The panel also noted that Colleague A was specifically asked during the course of this interview whether there were any further incidents involving you. To this enquiry Colleague A did not add any further complaint. The panel was of the view that such a discussion relating to highly intimate matters would have been readily recollected.

The panel noted that Colleague A was unable to give any date or indeed any timeframe as to when this alleged incident took place. Charge 7b was amended during the course of this hearing to read "*in or around February 2020*" as a timeframe for this alleged incident. There is no evidence before the panel to establish a specific date or indeed a date which falls within this wide timeframe.

In the above circumstances, the panel decided that the NMC has not discharged the burden of proof and this charge is found, on the balance of probabilities, not proved.

Charge 7c

7. in or around:
c. February 2020, touched Colleague A above the pubic area

This charge is found NOT proved.

In reaching this decision, the panel took into account the live evidence it has heard.

The panel had regard to Colleague A's written statement which stated:

> *"On a separate occasion, I do not recall when, I was in the records room on my own with the Registrant. I was describing to him some pain just above my public area, at which point he proceeded to touch just above my pubic area. I then said to him that I would appreciate it if he did not do that again as it was too far". At which point the Registrant held his hands in the air and said "sorry I wont do it again"."*

The panel noted that in your evidence you denied that there was any touching of Colleague A above the pubic area or any other private area.

The panel heard oral evidence from Colleague A as to where she said that she was exactly touched. It noted that Colleague A gave unclear and conflicting evidence in relation to this question. Initially, Colleague A stated that it was "*just below [her] belly button*", "*where the pant line is*", but later described the touch as being onto her t-shirt which was tucked into her skirt. The panel noted that the wording of the charge is quite specific as being above the pubic area. The panel decided that Colleague A's evidence as to where she was exactly touched was inconsistent and not supportive of being touched specifically above the pubic area.

The panel noted that Colleague A did not make any complaint at the time of this alleged incident. Further, the panel noted that Colleague A did not make any complaint to this effect during her local interview on 14 August 2020. The panel did note that Colleague A was specifically asked if there were any further incidents involving you. Colleague A did not relate any further incidents during the local interview. The panel was of the view that a touching above the pubic area would be an event which would be readily recollected.

The panel noted that Colleague A was unable to give any date or indeed any timeframe as to when this alleged incident took place. Charge 7c was amended during the course of this hearing to read "*in or around February 2020*" as a timeframe for this alleged incident. There is no evidence before the panel to establish a specific date or indeed a date which falls within this wide timeframe.

In the above circumstances, the panel decided that the NMC has not discharged the burden of proof and this charge is found, on the balance of probabilities, not proved.

Charge 7d

7. In or around:

d. The end of 2018, stroked Colleague B's back whilst saying you were feeling "horny", wanted to go home to "shag" your wife and "you know what I am like".

This charge is found NOT proved.

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

The panel had regard to Colleague B's written statement which stated:

"Towards the end of 2018 […] The Registrant said that not a lot was happening on the Ward and asked whether he could use his time owing to go home. The Registrant then started stroking my back. I said to the Registrant "please don't stroke my back" and then asked why he wanted to go home. The registrant explained that he was "horny" and wanted to go home to "shag" his wife. I then said to the Registrant how dare he stroke my back then suggest that this is what he was going to do when he got home. I then denied his request to go home. In response to this the Registrant laughed and said "you know what I am like". I then told him no, his words and actions were inappropriate

[…]

I did not formally report this incident to anyone. I did speak to Senior Sister [..] and the other [PRIVATE] *Sisters about it, but that was more a passing comment. Nothing happened after I spoke to Senior Sister […] because it was just an informal conversation."*

Colleague B told the panel that there was definitely a stroke on the back as opposed to a touch on the shoulder:

"He ran his fingers up and down my back. He did not put his hand on my shoulder."

You told the panel that you did not place your hands on Colleague B's back but that you did touch her shoulder for a period of around five seconds when asking her for a favour. You explained that you wanted to go home early and see your wife who you had not seen for a number of days.

Colleague B further told the panel that you did say that you were "*horny*" and "*you know what I am like*".

The panel found some inconsistencies between Colleague B's NMC statement and her local statement and oral evidence. Colleague B's NMC statement uses the word "*shag*". The panel noted that in her local statement Colleague B refers to an alternative word having been used by you during the incident, namely "*fuck*". In her oral evidence, she told the panel that the word "*fuck*" was used:

> *"It was, [he] wanted to go and fuck his wife'. That's – Mr Nacino used the word 'fuck' quite a lot."*

Colleague B went onto clarify that specifically on this occasion, you had used the word *"fuck"*.

You gave evidence that you did not use the words as set out in the charge. You told the panel that this conversation did occur, however, it was Colleague B that used the words set out in the charge. During your evidence you stated that Colleague B made these comments in front of the ward manager and the matron and that the two present had laughed in response to Colleague B's comments.

> *"And then the next day, when she mentioned that to our colleagues, our manager and matron in the office, when I enter there, and she said that, "oh, I didn't send Dennis home yesterday because he was saying that he feels horny and wants to shag my wife" and I correct her in front of my manager and the matron and said, "no, I didn't say that. I said I want to go home because I haven't seen my wife for a few days*" [sic]

The panel finds that on the balance of probabilities you did stroke Colleague B's back. However, there was inconsistency in Colleague B's evidence about the accompanying words you had allegedly used.

The panel noted the wording of charge 7d. The charged alleges that you stroked Colleague B's back whilst saying three specific sets of words. In particular, the panel noted that the stroking of Colleague B's back was "whilst saying" these words.

The panel was satisfied on the evidence that you stroked Colleague B's back, but was not satisfied that the three sets of words were used during this action. In these circumstances, whilst the first element of the charge appears to be made out, the words alleged are not found proved on the balance of probabilities. As the charge needs to be proved in its entirety, charge 7d is not found proved on the balance of probabilities.

Charges 9, 10 and 11

9. Your actions at charge 7b were:
    a. sexually motivated in that you were seeking to obtain sexual gratification from discussing your sex life with Colleague A.; and/or
    b. intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

10. Your actions at charge 7c were:
    a. sexually motivated in that you were seeking to obtain sexual gratification from touching Colleague A.; and/or
    b. intended to violate Colleague A's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her.

11. Your conduct at charge 7d was:
    a. sexually motivated in that you were seeking to obtain sexual gratification from touching Colleague B and/or making inappropriate comments to her~~.~~**; and/or**

b. intended to violate Colleague B's dignity and/or create an intimidating hostile, degrading and/or offensive environment for her

These charges are found NOT proved.

In light of the panel finding that charges 7b, 7c and 7d are not proved, the panel determined that the dependent charges 9a and 9b, 10a and 10b and 11a and 11b are likewise found not proved.

Charge 12

This charge relates to a number of questions and comments allegedly made by you during the course of a telephone pre-assessment with Patient C. You deny charge 12 in its entirety and the panel had careful regard to your oral evidence.

Patient C in her NMC witness statement and in her oral evidence has given evidence in support of charge 12. There is no independent witness evidence outside of the evidence from Patient C and you save for Patient C's mother who only heard the very end of the conversation but was present with Patient C after the pre-assessment. There is some documentary evidence in the form of notes of a local interview of you and the pre-assessment form used by you during the course of the telephone pre-assessment.

The panel carefully considered the evidence in respect of each of the sub charges separately. In undertaking this consideration, the panel carefully assessed the consistency, reliability and credibility of the evidence given by Patient C, you and in relation to what occurred after the pre-assessment, Patient C's mother and Witness G.

Charge 12i

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C
    i. asked Patient C what her eye and hair colour was

This charge is found proved.

The panel noted that Patient C makes reference to you asking her about her eye and hair colour in her witness statement, in examination in chief and under cross examination.

The panel had regard to Patient C's written statement which stated:

> *"During the call the Registrant asked a lot of questions about my Crohn's Disease. Then he started asking more personal questions such as what was my hair and eye colour... I found these questions really strange but just brushed them off and moved on."*

In her evidence in chief, the panel noted that Patient C expanded her evidence on this topic in some considerable detail as follows:

> *"I said that I had dark hair and that that was what sort of ran in the family, because we were talking about family at that point. I said that it was a hereditary thing because Dennis had asked if – he said I sounded like I was blonde."*

In response to questions about what was said about her eye colour Patient C responded:

> *"I just said that they were brown."*

When challenged in cross examination as to whether there was any mention of hair and eye colour at all, Patient C confirmed that both elements were put to her and that she answered them.

The panel noted that you accept having contacted with Patient C to conduct a telephone pre-assessment but deny making the comment as set out in the charge.

The panel noted the pre-assessment form which you used to conduct the telephone pre-assessment did not require you to ask any question of a patient as to their eye colour or hair colour.

The panel noted that Patient C was at times able to provide specific detail of the conversation between you and her as to the topics of hair colour and eye colour. In relating this detail, the panel noted that Patient C was consistent in giving that detail in examination in chief and cross examination.

The panel found, on the balance of probabilities, that you did ask Patient C what her eye and hair colour was and therefore this charge is found proved.

Charge 12ii

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C
    ii. asked Patient C whether she had tattoos

This charge is found proved.

The panel noted that Patient C makes reference to you asking her whether she had tattoos in her witness statement, in examination in chief and under cross examination.

The panel had regard to Patient C's written statement which stated:

> *"During the call the Registrant asked a lot of questions about my* [PRIVATE]*… whether I had any tattoos… I found these questions really strange but just brushed them off and moved on."*

In her evidence in chief, the panel noted that Patient C expanded her evidence on this topic with further detail which included mention of her family as follows:

"He then asked what tattoos I had, and I explained that I had my children's names tattooed on me, that I'd got one behind my ear and that I had one on my leg.

When challenged in cross examination as to whether there was any mention of tattoos at all, Patient C confirmed that she was asked this question.

The panel carefully considered your evidence in relation to this topic. It noted that you denied asking Patient C about her having tattoos. You did mention the question of tattoos during the course of your evidence but in the context of a [PRIVATE] being found during an [PRIVATE]procedure:

"I basically said about the tattoo on the procedure or in the consent form, that while you're in the procedure, while explaining about the pre-assessment. I said to her that, [PRIVATE] *[inaudible] to remove we put a tattoo on it, just to mark the place, so you need to come back and we have to do it again.' Because we only allocated for at least an hour for a full* [PRIVATE] *and another 15 to 20 minutes for OGD. So,* [PRIVATE] *there that we cannot deal right away, that's going to prolong the procedure that we're going to have a knockdown effect on the other patient waiting. So that's why I mention about tattoos for* [PRIVATE]*."*

The panel noted that you accept having contacted with Patient C to conduct a telephone pre-assessment but deny making the comment as set out in the charge.

The panel noted the pre-assessment form which you used to conduct the telephone pre-assessment did not require you to ask any question of a patient relating to tattoos. The panel had careful regard to the pre-assessment form which required you to ask a number of specific questions in preparation for the procedure which included a question in relation to a patient's body piercing but there is no mention whatsoever as to tattoos.

The panel noted that Patient C gave answers during the course of her evidence which involved detail which it considered to be intimate. Patient C stated that the tattoos

related to her children and gave detail as to where these tattoos were on her body. In this respect, the panel found her evidence to be credible.

The panel found, on the balance of probabilities, that you did ask Patient C whether she had tattoos and therefore this charge is found proved.

Charges 12iii

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C
    iii. asked Patient C whether she had a boyfriend

This charge is found proved.

The panel noted that Patient C makes reference to you asking her whether she had a boyfriend in her witness statement, in examination in chief and under cross examination.

The panel had regard to Patient C's written statement which stated:

> *"During the call the Registrant asked a lot of questions about* [PRIVATE]*... whether I had a boyfriend... I found these questions really strange but just brushed them off and moved on."*

In her evidence in chief, the panel noted that Patient C said:

> *"*[…] *I said, no, that I didn't have a boyfriend."*

Patient C further explained in examination in chief why she found the question as to whether she had a boyfriend (and to the questions in sub charges i, ii, iv) "*a little weird*" for the pre-assessment:

"… I know that they had to ask lots of questions to make sure that everything would be safe – but having been asked what I looked like and stuff about having a boyfriend and things that weren't relevant to what the pre-assessment was".

When challenged in cross examination she maintained her response that she had been asked whether she had a boyfriend.

The panel noted that you denied both in examination in chief and cross examination that you asked this question.

The panel noted the pre-assessment form which you used to conduct the telephone pre-assessment did not require you to ask any question of a patient relating to whether she had a boyfriend. The panel had careful regard to the pre-assessment form which required you to ask about next of kin which you recorded as the mother. The pre-assessment form has no question to be asked in respect of any relationship such as a partner or a spouse.

The panel found, on the balance of probabilities, that you did ask Patient C whether she had a boyfriend and therefore this charge is found proved.

In relation to charges 12i, 12ii, 12iii, the panel noted that Patient C had been under the care of the endoscopy unit since childhood. She transferred to adult care when she was 17 years old and her transition was completed by the time she was 18 years old. Over the years Patient C had completed a significant number of pre-assessments in relation to endoscopy procedures. As a consequence, the panel was of the view that Patient C would have been familiar with the nature and extent of the usual questions which are asked at such a pre-assessment. The panel noted that Patient C gave evidence that the questions in charges 12i, 12ii, 12iii were in her words "*really strange*" and "*a little weird*" and therefore outside of the usual range of pre-assessment questions. In these circumstances, the panel decided that Patient C's evidence was credible and reliable on these sub charges given her considerable experience of previous pre-assessments.

Charges 12iv

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C
    iv. stated Patient C was just your type

This charge is found proved.

The panel noted that Patient C makes reference to you saying she was just your type in her witness statement, in examination in chief and under cross examination.

The panel had regard to Patient C's written statement which stated:

> *"During the call… The Registrant then said I was "just his type" and laughed, I brushed this comment off because the Registrant had already said he had a wife and children so I assumed he would be loyal to them. […]. I found these questions really strange but just brushed them off and moved on."*

In her evidence in chief, the panel noted that Patient C's description of her reaction to this comment:

> *"I just stayed silent on the phone and waited for him to comeback with whatever he needed to say."*

When challenged in cross examination she maintained her response about being told she was just your type.

The panel noted that you denied both in examination in chief and cross examination that you made this comment.

In deciding that this sub charge is found proved, the panel noted Patient C's clear reaction to your comment that she was just your type. The reaction was also in relation to information you had imparted that you had a wife and family. Further, the panel noted that this comment was consistent with the type of comments found proved in sub

charges 12i, 12ii, 12iii and the panel found Patient C to be consistent in her evidence and therefore credible. The panel accepted her evidence.

The panel found, on the balance of probabilities, that you did state that Patient C was just your type and therefore this charge is found proved.

Charge 12vi and 12vii

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C
    vi. having asked Patient C whether she was pregnant or breastfeeding, asked how long Patient C had breastfed for
    vii. having asked Patient C whether she was pregnant or breastfeeding, asked Patient C whether she enjoyed breastfeeding

These charges are found proved.

The panel noted that Patient C makes reference to you asking questions relating to breast-feeding in her NMC witness statement, in examination in chief and under cross examination. The panel also took into account the pre-assessment form and your evidence.

The panel had regard to Patient C's NMC statement which stated:

> *"During the call […] He also asked whether I was pregnant or breastfeeding, but I did expect these questions as you cannot have a* [PRIVATE] *if you are pregnant. I replied no to both, the Registrant then asked me how long I breastfed for and whether or not I enjoyed it. I found these questions really strange but just brushed them off and moved on."*

In her evidence in chief, the panel noted that Patient C expanded on these questions as follows:

"I thought it was general chit chat because a lot of people when they ask about children, so he had to ask about breast-feeding due to the [PRIVATE]*. And quite often when you speak, in my experience, they generally tend to ask how you got along with breast-feeding and how long you managed to breast feed for, and I said to him that it wasn't for very long and I was quite upset because I wanted that bond with both my children. But he seemed very intent on asking how much I enjoyed breast-feeding.*

[…]

It was the way he asked. He was very – I don't even know the word I'm looking for – but it was more of a, 'Oh, I bet you really loved breast-feeding"

In cross examination Patient C accepted that it was normal to be asked during a pre-assessment as to whether she was pregnant and breast-feeding. However, she maintained during cross examination that she was asked further questions in relation to how long she had breast-fed for and whether she enjoyed breast-feeding.

The panel noted that you agreed that you asked Patient C whether she was pregnant or breast-feeding as it was in pre-assessment form. You denied in examination in chief and cross examination that you asked her about how long she had breast-fed for and whether she enjoyed it.

In evidence in chief you said that Patient C told you:

"she was done with breast-feeding on her younger child a few months ago"

In cross examination you accepted that you asked Patient C whether she was pregnant or breast-feeding:

"its in part of my health questionnaire madam

Yes I did asked her about that if whether she's pregnant which is on the checklist and she said she's not pregnant because she had no sex for the year and [inaudible] that's what she said. And she's laughing."

The panel noted the contents of the pre-assessment form dated15 April 2021, which required you to ask the simple questions whether Patient C was pregnant and breast-feeding at the time.

The panel noted that Patient C frankly acknowledged that the simple questions as to whether she was pregnant or breast-feeding were to be expected and in line with her previous experience of pre-assessments. However, the panel noted that Patient C made a very clear distinction between those expected questions and the questions as to how long Patient C had breast-fed for and whether she enjoyed breast-feeding. The panel also noted that the question as to how long Patient C had breast-fed for was a particularly sensitive issue for Patient C in relation to her past history concerning breast-feeding. The panel further noted that Patient C was clear about the topic of whether she enjoyed breast-feeding because she said that you "*seemed very intent*" on asking how much she enjoyed breast-feeding.

The panel found, on the balance of probabilities, that you did ask how long Patient C had breast-fed for and you did ask Patient C whether she enjoyed breast-feeding and therefore charges 12vi and 12vii are found proved.

Charges 12viii, 12ix, 12x

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C

    viii. commented that you had your own family but Patient C "had to be careful"
    ix. commented that due to Patient C's previous relationship you will take care of her
    x. commented that "boys can be a little bit naughty"

These charges are found NOT proved.

The panel noted that Patient C's evidence in her NMC witness statement, in examination in chief and under cross examination. The panel took into account your evidence.

The panel had regard to Patient C's NMC statement which stated:

> *"During the call I mentioned to the Registrant that I had* [PRIVATE]*. The Registrant then asked me for more details about my* [PRIVATE]*, which I gave to him. After telling the Registrant about my* [PRIVATE] *he made a few very odd comments, one of which was that he had his own family but I "had to be careful and due to my previous relationship he will "take care of me" because he knows that "boys can be a little bit naughty". At the time I thought these comments were odd but I just laughed them off because they were not relevant to the telephone pre-assessment"*

The panel noted that in her NMC statement Patient C does not put the various words alleged in charges 12viii, 12ix, 12x into any clear context save that the alleged comment "*had to be careful*" appears to follow some discussion about Patient C's [PRIVATE], a previous relationship that she had, and your family. The panel carefully considered the examination in chief and cross examination of Patient C. Having examined this evidence, the panel were unable to place any meaningful context in relation to these alleged comments. In these circumstances, as the panel could find no context for these comments and the panel decided that the NMC has not discharged its burden of proof in relation to these three sub charges.

Charge 12xi

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C
xi. shouted "fuck off I'm on the phone" to someone present at the hospital with you

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Patient C, Colleague B, Witness G and your evidence.

Patient C's NMC statement stated:

> *"During the call […] During the pre-assessment I also heard another person who worked at the Hospital enter the room and try to ask the Registrant a question. I then heard the Registrant say "fuck off I'm on the phone". The registrant then laughed, I cannot comment on how the other person reacted."*

The panel noted that under cross examination, Patient C maintained her position.

In her evidence in chief Witness G described what she heard Patient C saying during the telephone call made by Patient C's mother to the hospital on the evening of 15 April 2021. She stated:

> *"That was Patient C. but again she was in the background and she was saying how friendly Dennis appeared at first… He swore a couple of times. I can't remember the first one but the second was "fuck off and stop stealing my papers." She didn't say who he said this to…"*

The panel found that Witness G's oral evidence was consistent with the contemporaneous record that she made of the content of the telephone call made to her by Patient C's mother and Patient C on 15 April 2021.

The panel noted the slight difference in terminology recorded by Witness G. However, it was sufficiently satisfied by the evidence of Patient C that the words "*fuck off I'm on the phone*" were used.

The panel had regard to the notes of the local investigation meeting dated 5 May 2021 in which you stated:

"No I didn't err swore or swear, I only told to my colleagues that he needs to go out because I cannot hear her properly because he's making a noise on that room"

During your evidence, you stated:

"I didn't shout to my colleague. I just asked him politely to get what he needs and then get out because I'm in the middle of the pre-assessment. We don't swear in front of the patient or while we're on the phone."

The panel noted that both your evidence and Patient C's evidence accepts that another colleague was present with you during the pre-assessment call and that they were asked to leave. The panel noted that your evidence and Patient C's evidence is conflicting in relation to the language that was used to ask this person to leave.

The panel also heard from Colleague B that you had a propensity to use the word "*fuck*" and that it was not uncommon for you.

Based on the evidence before it, the panel determined that, it is more likely than not that you did shout "*fuck off I'm on the phone*" to someone present at the hospital with you. It therefore finds this charge proved.

Charge 12xii

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C
    xii. said to Patient C "to save you from getting into more mischief I will bring the paperwork round"

This charge is found proved.

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

Patient C's NMC statement stated:

> *"During the call […] The Registrant asked me questions about my children. After doing so he made a comment about them being close in age […] and said to "save you from getting into any more mischief I will bring the paperwork round". I laughed at this and made a joke about putting the kettle on […] The Registrant explicitly offered to bring the* [PRIVATE] *round to my house – I did not ask him to do this. […] I then said I would be fine collecting the* [PRIVATE] *and paperwork from the Hospital the next day, 16 April 2021, between 10:00am and 11:00am. He told me it would be behind the reception desk."*

During her evidence, Patient C was asked about why she made a comment about putting on the kettle in response to you suggesting you will bring the paperwork to her home. She stated:

> *"Because even though he'd asked me weird questions that I was sort of querying, he was a very bubbly, happy person, and I thought, I felt that it was okay to joke with him like that; I thought that's how he was."*

During cross examination, Patient C stated:

> *"What he actually said was, 'To save you from getting into any more mischief, I will bring the paperwork round', and I giggled and just said, 'Okay, I'll put the kettle on'."*

During further cross examination Patient C confirmed that she had a discussion with her mother about the wording used by you during the telephone assessment:

> *"… I spoke to her and said he was very odd. Obviously, after a hospital telephone call, she always asked how it went, and I said to her that he seemed very odd, asked a few odd questions, and I said to her that, perhaps about the hair colour and the eye colour, he was just making conversation. But I did say about him, 'to stop me getting into mischief', that was a very odd question, and*

Mum said, 'Yeah, I absolutely agree, that's really odd', and we sort of left the conversation at that."

Patient C went onto clarify that she was fine to collect the [PRIVATE] from the hospital and she was expecting to collect this between 10am and 11am the next day as this is what you had advised her. During cross-examination, she clarified that she did not accept the offer for the [PRIVATE] and paperwork to her home by you.

Witness C in her NMC statement stated:

"After the telephone consultation Patient C said the registrant was a little over friendly. Patient C then told me he had arranged for us to collect her [PRIVATE] *from the hospital on the following day."*

Witness C maintained this position during her evidence in chief.

The panel noted the investigation meeting notes dated 5 May 2021 in which it states you said:

"I said to her when I finish err pre-assessing her we usually ask them to come to collect the [PRIVATE] *and err she told me that she's going to have a prob the next day and she said she's going to have a problem because she's got two kids and I told her don't bring your children in the hospital you can ask anyone to err come to collect the* [PRIVATE] *and err because she need to read the information the effects because obviously there is a lot of information I told you today and err you need to prepare err a special diet, you need to buy or eat, and then I said if you have a problem with that, coming and collecting it, if you like I said I can deliver this* [PRIVATE] *to your house after my shift."*

During your evidence you denied making the comments "*to save you from getting into more mischief I will bring the paperwork round*". You stated:

"Well when we finished – when I finished the pre-assessment when I asked her to come and collect the [PRIVATE]*, I told her to come and collect it. I said, 'Don't bring your children because of the Covid' and say 'That's a problem because I live on my own. And nobody can help me to collect it.' So I'm just being helpful because we done delivery in the past, I said, 'After my shift at 9.00 I'll come and deliver the* [PRIVATE] *for you.' That's what I said, madam. Nothing else."*

During your evidence, you also stated:

"the thing I want to do is just help her out because she said she doesn't have anybody to collect it which she lied because she had the mother to do that to me – to collect the [PRIVATE] *in the hospital. So she lied to me that she's got nobody to come to collect it. And I'm just helping her out."*

The panel hold the view that Patient C was an experienced [PRIVATE] patient, who had previous experience of [PRIVATE] being lost in the post. In light of that, her preference was to collect her [PRIVATE] in hospital:

"So it was a preference that I went to go and get it and I said that I'd go and collect it… that's when he said it would be ready to collect between 10 and 11 the next day from the [PRIVATE] *desk."*

The panel determined that based on the evidence before it, there was an offer made by you to take the paperwork and [PRIVATE] to Patient C's house. The panel noted that what is disputed by you is the comment you made in relation to this. The panel has found Patient C's evidence in relation to the words used by you to be consistent. She was able to provide context and justification and qualified her answers in relation to the words you used with her.

Based on all the evidence before it, the panel determined that, on the balance of probabilities, it is more likely than not that you did say "*to save you from getting into more mischief I will bring the paperwork round*" to Patient C. It therefore finds this charge proved.

Charges 12xiii and xiv

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C
    xiii. said to Patient C "oh so you have not had sex for a year"
    xiv. commented to Patient C "oh I bet you miss it loads" referring to her not having had sex for a year

These charges are found proved.

Although these are two separate arms of charge 12, they flow from one another as they both relate to a singular moment within the larger preassessment conversation and allegations made about Patient C not having sex. The panel therefore considered both these elements together.

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

Patient C's NMC statement stated:

> *"I did not tell the Registrant that I had not had sex for 1 year and that I missed it. I recall the Registrant assuming that this was the situation […] The Registrant then said "oh so you have not had sex for a year" and I told him it was none of his business, he then said "oh I bet you miss it loads". I then said that I was not comfortable talking about it."*

During her evidence in chief, Patient C told the panel that after discussing her [PRIVATE] and her previous relationship with you, and that she had ended her relationship with her former partner over a year ago, you made the comment "*so you have not had sex for a year*". She told the panel that in response to this, she told you that it was none of your business. During cross-examination, Patient C maintained that you said to her, "*oh, so you have not had sex for a year"* and "*oh I bet you miss it loads*".

The panel noted the investigation meeting notes dated 5 May 2021 in which it states you said:

> *"I didn't ask her that one maam. She told me when I'm pre-assessing her on the phone but in the questionnaire there in the health questionnaire that err are you pregnant or breastfeeding and she said she's not pregnant because she hasn't had sex for a year, and she missed that. That's what she told me over the phone."*

During your evidence, you stated that in response to you asking Patient C during the pre-assessment if she was pregnant, she responded:

> *"She say she's not pregnant because she hasn't had sex for a year and she misses it, and she laugh […]*
> *I didn't say anything. I just proceed to the question breastfeeding"*

The panel noted that Patient C has been consistent in her account of what had been said and what was discussed at this part of this element of the telephone conversation on 15 April 2021. She maintained this position under cross examination and the panel accepted her evidence.

The panel considered the evidence before it, and it found that, on the balance of probabilities, it is more likely than not, you made the comments as set out in charge 12xiii and 12xiv. It therefore finds these charges proved.

Charge 12xv

12. on 15 April 2021 during a telephone [PRIVATE] pre-assessment with Patient C
    xv. told Patient C you would give her a "good seeing to"

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Patience C and your evidence.

Patient C's NMC statement stated:

> *"After this the Registrant kept saying that I needed someone to take care of me and give me a "good seeing to"."*

During cross examination, when asked whether you stated you would "*give her a good seeing to*" she stated that you did say this.

During your evidence you denied having said you would give Patient C "*a good seeing to"*. You stated:

> *"Definitely not. I don't even know the meaning of 'good seeing to.' I haven't got a clue as what that meant."*

The panel noted that the charge sets out that you said you would give Patient C a good seeing to. The panel considered that Patient C's written statement suggests that you made a comment that 'someone' should give you a good seeing to. During her evidence she stated that you said you would give her a good seeing to. The panel noted that the evidence from Patient C in relation to this charge was conflicting.

Based on all the evidence before it, the panel was not satisfied that this charge can be found proved given the inconsistencies. It therefore found this charge not proved.

Charge 13

13. Your comments to Patient C in the course of the 15 April 2021 telephone [PRIVATE] pre-assessment were sexually motivated in that they were intended to groom Patient C for a future sexual interaction/relationship with you.

This charge is found proved.

In reaching this decision, the panel took into account the documentary and oral evidence of Patient C, Witness C, Witness G, the pre-assessment form as well as your evidence.

In respect of the facts of the elements of charge 12 that are found proved, the panel considered that the nature of the conversation between you and Patient C went beyond making comments or asking questions which were clinically justified.

The panel noted that the comments relating to whether Patient C was pregnant or whether she was breastfeeding could be deemed to be clinically justified and therefore in relation to these comments, the panel was not satisfied that it could conclude these were sexually motivated in that they were intended to groom Patient C for a future sexual interaction/relationship with you.

However, the other comments made by you involved making reference to her physicality, her present relationship situation and making reference to her sex life. The panel found that during this conversation, your comments were intended to establish details about Patient C to determine whether a future sexual interaction could occur between you and her. The panel could not be satisfied that your comments about her physicality, her current relationship situation or her sex life were made for a clinical reason or for any other reason other than for the pursuit of an interaction of a sexual nature.

The panel therefore concluded that your comments to Patient C in the course of the 15 April 2021 telephone colonoscopy pre-assessment were sexually motivated in that they were intended to groom Patient C for a future sexual interaction/relationship with you. The panel therefore finds this charge proved.

Charge 15ii

15. on 15 April 2021
    ii. pushed your way past Patient C through her front door

This charge is found NOT proved.

In reaching this decision, the panel took into account of local interview records, NMC witness statements, documentary and live evidence from Patient C, Witness C, Witness A and Witness G, and your evidence.

The panel had regard to Patient C's NMC statement which stated:

> *"When I opened the door the Registrant said "hello I'm Dennis", I replied "oh hello" and stood there for a few seconds as I assumed the Registrant would then pass the paperwork and* [PRIVATE] *to me. this did not happen, instead the Registrant pushed his way through the front door past me, walked to the kitchen and started making a cup of coffee using a sachet he had brought with him."*

During her evidence in chief Patient C stated:

> *"So I opened the front door and he put his hand on the door as though to push it open even more, which is when I sort of stepped back as he was walking towards me. […]*
> *It was more of a – not a physical way – but being pushy to get into the flat. Does that make sense? Without actually showing it makes it quite difficult for me to explain but I felt quite intimidated, I felt like he was sort of pushing me back so that he could come in"*

Patient C confirmed during her evidence that you did not "*physically*" push past Patient C in that there was not any physical contact between you and Patient C. The panel understood from Patient C that the "*push past*" was that you made your way through the door in an intimidating manner.

The panel noted Witness G's statement regarding the night of 15 April 2021:

> *"(20:00) On her arrival home, Patient C thanked him and opened her front door to go inside. Dennis followed…"*

The panel noted the local investigation meeting records, dated 5 May 2021, in which you stated:

> *"… so she opened the door and I introduced myself. I say I'm Dennis, I'm the one that you spoken over the phone earlier.*
> *[…]*
> *So I'm dropping your* [PRIVATE] *and I ask her what's her name, date of birth and her post code just to make sure I'm on the right place. And then she invited me in, inside the room.*
> *[…]"*

The panel noted that there were inconsistencies between Patient C's NMC witness statement and her oral evidence. She was clear that there was no physical contact by you when you entered her flat. Witness G's local record of the 15 April 2021 also supports that you followed Patient C into her flat rather than "*pushed your way past*".

The panel determined, based on the evidence before it, on the balance of probabilities that you did not push your way past Patient C through her front door. It therefore finds this charge not proved.

Charge 15iii

15. on 15 April 2021
    iii. walked into Patient C's kitchen to make a cup of coffee

This charge is found NOT proved.

In reaching this decision, the panel took into account documentary and live evidence from Patient C, Witness G's local statement about the night of 15 April 2021 and the local investigation meeting on 5 May 2021.

The panel had regard to Patient C's NMC statement which stated:

"When I opened the door the […] the Registrant pushed his way through the front door past me, walked to the kitchen and started making a cup of coffee using a sachet he had brought with him […]

…As he walked to the kitchen the Registrant said the [PRIVATE] *was in his rucksack and he was going to put the kettle on, I did not invite the Registrant in or offer him a coffee but as he was double my size I did not try to stop him entering, instead I naturally moved out the way when he stepped towards me, this made me feel petrified because my children were not settled into bed and were wondering who the stranger in their house was.*

After making himself a coffee the Registrant walked to the lounge and sat down on the sofa. I was stood in the doorway to the lounge."

During her evidence, Patient C stated that she did not know where you had produced the sachet from.

The panel noted the record of the local investigation meeting dated 5 May 2021 in which you responded:

"…
Well, she she she she said err her name, her date of birth and say her postcode and say come in. Just come in inside and I'm going to make you some coffee. She offered me a coffee.

[…]

Well she say, she said do you want a tea, coffee and I said like coffee please, so she went to err she went to her kitchen and basically, she said to me that she hasn't got any coffee. So, I say ok I got some sachet and some sweetener in my bag, I got some in here, just make this one. That's what I said to her, and then she told me oh I'm so sorry I've got my own coffee here."[sic]

During your evidence you stated that after you handed Patient C the [PRIVATE], she invited you into her flat and offered you a coffee. You said:

> *"She just said, 'Come in. I'll make a coffee'. And when I'm inside her house she apologised about the mess in her flat."*

You said that Patient C told you she had run out of coffee, and you stated:

> *"I said, 'Don't worry about it', but I realised I had – because I love coffee I've always got a sachet of coffee and sweetener in my bag. I said, 'I've got coffee here and because […] as well I am using a sweetener', so I just gave it to her. And then when she take that and went back to the kitchen and said, 'Sorry, I didn't see my coffee. It is there'. That is what she said that she missed her coffee."*

You stated that you did not walk into Patient C's kitchen and did not make a cup of coffee. During cross examination you stated:

> *"I don't do that. I don't – you don't just barge through a patient's home and get through their things. I stayed in the hallway and obviously she apologised again for the mess of her children's toys and everywhere and she asked me to sit on the sofa which I did. I didn't go straight to the kitchen and make myself my own coffee. That's rude."*

The panel noted that based on the evidence before it, that both you and Patient C accept that you brought your own sachet of coffee with you and that you had a cup of coffee whilst you were at Patient C's home. The panel noted that the disputed matter is whether you made it yourself or whether Patient C offered it to you and made it for you.

Based on the evidence before it, the panel found that you provided a detailed explanation as to what occurred in relation to this charge and that your evidence, both documentary and live was consistent. The panel accepted your evidence and concluded that on the balance of probabilities it could not find this charge proved.

It therefore found this charge not proved.

Charge 15iv - vi

iv. asked Patient C whether she had any sex toys
v. said to Patient C “you must be feeling lonely being by yourself having no sex”
vi. whilst making reference to your wife, said to Patient C “no she is at work because we work opposite shifts. All men do it, we are all naughty and cannot stick to one woman. As long as they don’t find out it does not hurt them”

These charges are found proved.

In reaching this decision, the panel took into account the evidence of Patient C, Witness C who is Patient C’s mother, Witness G’s NMC statement, local statement and oral evidence, and your local interviews and evidence in chief.

Patient C’s NMC statement stated:

> *“The Registrant then said “come and sit down, I don’t bite”. I then went to sit on the opposite end of the sofa to him. He then handed me the paperwork and started talking about the procedure and possible complications. At this point my eldest child came into the lounge and asked me to tuck her into bed. Whilst I was gone the Registrant left the lounge, went into my bedroom and started looking around. He then asked me questions about my Home, such as what was in my cupboards.*
>
> *After tucking my daughter in I went back to the lounge and sat on the sofa, where I was joined by the Registrant. then out of nowhere the Registrant asked me whether I had “any sex toys”. He then said “you must be feeling lonely being by yourself having no sex”. I replied that it was none of his business and started being hostile towards him. The Registrant then moved closer towards me, at the*

time I was sat on the very edge of the sofa terrified. The Registrant then got more paperwork and the [PRIVATE] *out of his rucksack. Whilst he was doing this, I texted my mum asking her to come to my home. The text said something like "mum I need you to come here now", I did not include any kisses so she would know it was urgent. He […] veered off and started talking about how I must be lonely. I told the Registrant that I was not lonely and he replied "no I meant without sex". […] To try to hint at the Registrant to leave I said to him "where is your wife, will she not be asking you why you are not home yet" The Registrant then replied "no she is at work because we work opposite shifts. All men do it, we are all naughty and cannot stick to one woman. As long as they don't find out it does not hurt them". I found this comment mortifying because I suddenly realised what his intentions in coming to my Home were, he realised I was vulnerable and lived alone and thought he could take advantage of me."*

During her evidence in chief, Patient C stated:

"I don't remember exactly word-for-word but it was along the lines of, 'I bet you've got quite the range', and then said, 'Have you got any sex toys?'
[…]
I was really shocked and I was just – sorry – I was silent for a minute because I didn't really know what to say back. I'm sorry."

Patient C maintained that you said to her "*you must be feeling lonely being by yourself having no sex*". She told the panel that in response to this comment she said to you that it was none of your business and that she started being hostile towards you. She stated:

"So I was very calm and relatively polite, because there was a stranger in my house, so I didn't know what he was capable of. And [PRIVATE]*, it really – I was trying to not lash out – I didn't* [sic] *to make him angry, I didn't want to make him aware that I was scared. But after that point, I knew I had to do something, and I wasn't sure what yet, but I needed to show that I wasn't going to stand for that sort of thing, them sort of questions."*

Patient C told the panel that your comment of *"she's at work, all men do it, they're all naughty and as long as they don't find out it does not hurt them"* made her realise that you were intending on a sexual interaction with her.

Witness C's NMC statement says:

> "*The minute the Registrant left Patient C's house she collapsed into my arms sobbing and saying that she had been really scared. Patient C then told me that the Registrant had made several sexual innuendos and asked her inappropriate questions about her personal and sex life, such as how she was coping being single and whether she pleasured herself in any way. She also mentioned he had made comments such as that he was married but a man can dip it anywhere that they want and they should not be tied down to one person."*

During her evidence in chief, Witness C commented on why she recalled what Patient C told her on 15 April 2021:

> *"Some of them were about her being on her own for so long, did she have any sex toys, how did she pleasure herself, it was ok for a man to have more than one woman, regardless of whether he was married, and there were quite a few other things. But they are the ones that spring to mind straight away […] And those ones, the ones I have given you, that I do remember are the ones that stick in my mind more than – because of how disgusting they were. They stick out more than anything."*

The panel had regard to Witness G's local statement of 16 April 2021 which related to Witness C's reports to her regarding the incidents of the night of 15 April 2021. Witness G recorded that:

> *"During the next 40-50 minutes, Dennis made several inappropriate comments including:*
> *"How long is it since you had sex? It must be a year"*
> *"Yes, I have a wife,*

"My wife works opposite shifts, so I never get to have sex"
"Do you have any vibrators"

Witness G's NMC statement stated:

"On 15 April 2021 I was working as the night Duty Matron for the Hospital. At 21:30 I received a telephone call from (Patient C's) Mum (who) was very angry and explained that a member of the Hospital staff had gone to her daughters, Patient C's home. Mum explained that the members of staff was "Dennis from endoscopy", from this information I worked out it was the Registrant. Mum said that whilst he was there he had been sexually inappropriate towards Patient C. it took a while for me to calm Mum down as she was distraught about the situation. Mum said she was disgusted by the Registrant's behaviour. She said that at around 20:50 she had received a text message from Patient C asking her to come over. Mum said she knew she had to get to Patient C's house quickly because she had not put any kisses on the message."

The panel also noted the minutes of the local meetings held on 16 April 2021 which stated:

"Dennis was asked what sort of conversation was made. He replied that he spoke with Patient C about her last relationship, how nice it was on [PRIVATE] *and that he hadn't been there for a few months. He denied and [sic] inappropriate conversation."*

The panel noted the records of the Investigation meeting held on 5 May 2021 during which you denied having asked Patient C if she had any vibrators. During this meeting you stated:

"so what she said that was that she had a failed relationship in the past and all of them cheated on her. I only said that sometimes some young men cheat. And I said that you probably haven't met the proper man in your life yet. But I didn't say that what she is saying."

During your evidence you denied having made the comments as set out in charges 15iv, 15v and 15vi.

The panel considered each of these charges separately and came to the following conclusions:

- Charge 15 iv – the panel decided, based on the evidence that it was presented with from Patient C, Witness C and Witness G, that it was more likely than not that you did ask whether Patient C had any sex toys, and therefore this charge is found proved.

- Charge 15v – the panel decided, based on the evidence that it was presented with from Patient C, Witness C and Witness G, that it was more likely than not that you did say to Patient C that *you must be feeling lonely being by yourself having no sex",* and therefore this charge is found proved.

- Charge 15vi – the panel decided, based on the evidence that it was presented with from Patient C, Witness C and Witness G, that it was more likely than not that you did say to Patient C, whilst making reference to your wife, *"no she is at work because we work opposite shifts. All men do it, we are all naughty and cannot stick to one woman. As long as they don't find out it does not hurt them"*, and therefore these charges are found proved.

Charge 15vii – ix

vii. asked Patient C's 3 year old child "where is your daddy? do you miss him?"
viii. said to Patient C's 3 year old child "I bet you have never seen a brown man before"
ix. told Patient C's 3 year old child you would take her to the beach the following day

These charges are found proved.

In reaching this decision, the panel took into account the documentary and oral evidence before it as well as Patient C's evidence, Witness C and Witness G's evidence, and your evidence.

Patient C's NMC statement stated:

> *"My eldest child then entered the lounge again. I think she did this because she knew something was going on as there was someone with me that she did not recognise. She started asking him who he was and then started playing with her toys. This created a distraction so I could text message my mum again asking her to come over. […] as she had not replied I sent a text message to my sister saying she needed to get mum to look at her phone. After sending the text message my mum tried to call me, but I did not answer because I did not want to alert the Registrant […] I then sent my mum another text message saying I could not answer I just needed her to come over. I also told my mum that I was not in danger because I did not want her to panic. […] At this time the Registrant was talking to my daughter, he was asking her things like "where is your daddy?" and "do you miss him?" I found this inappropriate because the Registrant knew this was a sore subject..."*

During the hearing, Patient C maintained that you asked her child *"where is your daddy? Do you miss him?"* she stated*: "He did; he asked her lots of questions about her dad.".*

Patient C also maintained during her evidence that you said to her child *"I bet you've never seen a brown person before"*. She stated: *"he did say that to her, because she'd questioned and said, 'What is a brown man?'".*

Patient C stated that you did tell her child that you would take her to the beach the next day. She stated: "*he did, because she went on for days about it afterwards, saying, 'Oh, Mummy, that man wants to take me to the beach'."*

In her NMC statement, Witness C stated:

"I then spoke to the Registrant about who he was and why he was in Patient C's house. The Registrant explained that he had come to bring Patient C her [PRIVATE] *and to explain the paperwork. I told him that Patient C had had* [PRIVATE] *before and so she knows what she is doing and how the* [PRIVATE] *works. The Registrant then started talking to my granddaughter, who was … at the time. The Registrant told her that he would take her to the beach the next day. This made her very excited because she is young and does not understand that strangers can be dangerous. I then asked the Registrant whether he knew* [PRIVATE] *well. He said yes, and he had not seen it in a long time. I then pointed out that it was dark and he would not see anything. He then responded "well it is just nice to see the area again". The Registrant also said to my granddaughter "I bet you have never seen a brown person before". I told him yes, she had seen people of all different skin colours at her nursery. I found this comment very inappropriate, my granddaughter is taught to treat everyone equally so I do not see why the Registrant was trying to make it racial by mentioning his skin colour."*

Witness G's NMC statement stated:

"[…] When (Patient C's) Mum arrived she saw the Registrant sat on the sofa. The Registrant then asked Mum whether she was embarrassed at how young Patient C was to have two children. Mum also said that the Registrant had played with Patient C's daughter and said inappropriate comments to her, such as "I bet you have never seen a dark skinned man before, some people find it attractive" and "do you want to come for a walk along the beach tomorrow?". Whilst speaking to Mum on the telephone I made notes of what was said."

Witness G maintained this position during her oral evidence.

The panel took into account that during your evidence you denied having made the comments as set out in charges 15vii, 15viii and 15ix. You stated:

"The child tried to speak to me, madam, but I couldn't understand what she's saying. That's why I asked Patient C what – because she's doing her baby talk,

so I asked Patient C and asked her what she's trying to say. So I didn't much engage to the children talking to her. I'm just – she's just playing around in the room in the lounge."

In relation to the comments set out in 15vii and 15viii, you stated:

"I didn't say that word, madam. Definitely not.
[…]
I didn't say that to the three-year-old, madam. She won't probably understand that. But as I said, I didn't say that.
Definitely no, ma'am. I didn't say that words because that's a racist word that you need to say that you haven't seen a brown man."

Under cross examination you stated in relation to charge 15ix:

"Yes, ma'am. I only mentioned that one because her mother was – basically asked her many times to go to the room and sleep. But she's been ignoring her. So I just say like, I know – because I've got kids before and if you say something nice to them and they'll do that. That's why I say, 'If you want to go to' – I said, 'Go to your bed. Go to sleep and tomorrow you and your mum will go to the beach and play.' That's what I said. And she did go to the room.

[…]

The only thing I said is the one that – if she goes to the room the next day she and her mother go to the beach to play. That's the only thing I said to the three-year-old.

[…]

No, ma'am. I didn't say that. I said to her when her mother asking her to go to bed, 'You and your mum will go to the beach tomorrow to play.' That's the only time I said the beach and I didn't say that word. The one that you're saying now."

You told the panel that you didn't understand Patient C's child's speech as it was "*baby talk*". The panel noted that despite this, you accept having said to her that if she goes to sleep, she would be taken to the beach the next day.

The panel noted the difference in terminology provided in the evidence of Patient C, Witness C and Witness G. It noted the terms "*brown man*", "*brown person*", and "*dark skinned man*" had been used. The panel decided that, although there was slight variations in the descriptions, they were largely consistent and reflected the events of the evening and how they were then described during the phone calls between Witness G, Patient C and Witness C.

The panel considered each of the charges separately and came to the following conclusions:

- Charge 15vii – the panel found Patient C's evidence compelling in relation to this charge. The panel decided, based on the evidence that it was presented with from Patient C that it was more likely than not that you did ask Patient C's 3-year-old child *"where is your daddy? Do you miss him?"*, and therefore this charge is found proved.

- Charge 15viii – the panel decided, based on the evidence that it was presented with from Patient C, Witness C and Witness G, that it was more likely than not that you did say to Patient C's 3-year-old child *"I bet you have never seen a brown man before",* and therefore this charge is found proved.

- Charge 15ix – the panel decided, based on the evidence that it was presented with from Patient C, Witness C and Witness G, that it was more likely than not that you told Patient C's three-year-old child that you would take her to the beach the following day, and therefore this charge is found proved.

Charge 16

16. Your actions in attending Patient C's home on 15 April 2021 were sexually motivated in that you were seeking to have a sexual interaction/relationship with her.

This charge is found proved.

In reaching this decision, the panel took into account the oral and documentary evidence before it.

The panel noted that Patient C clearly set out that her expectation was to collect her [PRIVATE] as she had discussed timings with you in relation to when she would be able to come and collect these from the hospital. She explained that she did not deem this to be an inconvenience and explained that she frequently had to visit the hospital and therefore it was not unusual for her.

Witness C was present and heard the end of the pre-assessment phone call. She confirmed to the panel that arrangements had been made for Patient C to collect her [PRIVATE] from the [PRIVATE] unit.

Patient C was an experienced endoscopy patient and as noted on the pre-assessment form, the procedure had been planned for 10 days after the phone assessment. The panel heard evidence that there was no need for an urgent delivery to Patient C's house.

The panel noted that you had requested to finish your shift early on the evening of 15 April 2021 as you had an eye infection. You did not go home but instead went some distance in the opposite direction to reach Patient C's home. You did not tell any of your colleagues that you were going to visit Patient C's home, nor did you make a record of this.

The panel heard evidence about the vulnerabilities of Patient C and [PRIVATE]. The panel saw evidence that during the investigation interview of 5 May 2021, you agreed

that you were aware that Patient C [PRIVATE]. The panel noted that during cross examination you denied this and you said that the record of the interview was incorrect.

You were also aware [PRIVATE] that you attended Patient C's home without taking appropriate infection control measures such as wearing a face mask.

The panel noted that in your local interview dated 5 May 2021 you denied having been made aware of the changes to the protocol regarding the delivery/collection of [PRIVATE].

The panel heard evidence from Colleague B and Witness A that, as a result of the government and hospital Covid restrictions in place at the time, no one should have been visiting a patient's home in relation to preparation for an [PRIVATE] procedure.

> *"He (the Registrant) was then shielding from Covid-19 and did not return to the ward until December 2020. When he returned to the ward I informed him verbally of all the changes we had made due to Covid-19, he also was given 'shadow shifts' to catch up on changes made for pre-assessments where he would have seen the standard operating procedure which included the new procedure for delivering* [PRIVATE]*."*

During your evidence, you explained that you went to Patient C's house with the intention of being helpful. You stated:

> *"I read some e-learning regarding professional boundaries, communications, that's why it's broadened my mind by that time that I'm not supposed to be doing that, like giving – what's the word for that? When you do something for the patient that it's not at the hospital. Like a favour. It's like a favour that – because I went to her house to deliver that* [PRIVATE]*, it's not the time of my work any more. That's outside my work time, so I did that on my own time, which is considered like a favour – a favouring to a patient which is – you're not supposed to be doing that, when I read that on my reading and my reflection. That's why I told you that it broadened my mind that I'm not supposed to be doing that.*

So when the hospital had this investigation to me, I told them that I read those e-learning, and now I know that I'm not supposed to be doing that. So in the first place, if I haven't seen in the department that we delivering [PRIVATE] *to a patient's home, I'm not supposed to be copying that if I'm aware about those things like boundaries. To enlighten me, it's like 'You're not supposed to be doing that,' so I can challenge my colleague why they doing that. Because nobody challenged and it's normal for us to do it, it looks – because we are nurses. When you are nurses, you want to be caring. You want to be helpful all the time."*

The panel carefully considered your account and your reasoning for visiting Patient C's home.

The panel noted that it has found charges 15iv, 15v, and 15vi proved. The panel considered any reasons you would have to ask Patient C if she had any sex toys, say to Patient C that she "*must be feeling lonely being by yourself having no sex*" and whilst making reference to your wife, say to Patient C "*no she is at work because we work opposite shifts, all men do it, we are all naughty and cannot stick to one woman, as long as they don't find out it does not hurt them*" whilst you were at her home.

The panel noted Patient C's NMC statement where she reflects:

"I found this comment mortifying because I suddenly realised what his intentions in coming to my Home were, he realised I was vulnerable and lived alone and thought he could take advantage of me."

The panel could not be satisfied that there would be any reason to make such comments, other than that they were sexually motivated in that you were seeking to have a sexual interaction/relationship with her. Whilst the panel noted that you stated you were trying to be helpful by taking the [PRIVATE] and paperwork to Patient C's home, your actions whilst you were there demonstrated that you were in pursuit of sexual interaction.

The panel therefore finds this charge proved.

Charge 17.

17. Informed Colleague C of [PRIVATE] Recruitment that you had been dismissed from Queen Alexandra Hospital due to a complaint about your English.

This charge is found NOT proved.

In reaching this decision, the panel took into account the documentary evidence which included Colleague C's written statement and the live evidence from you and Colleague C.

Colleague C's NMC statement stated:

> *"On 03 September 2021 I had an initial telephone call with the Registrant. During this call I asked the Registrant why he had left Queen Alexandra Hospital ("the Hospital"). In response the Registrant told me that he used to be a pre-assessment nurse at the Hospital. However, following a pre-assessment a female patient made a complaint about the Registrant's English, claiming she could not understand him. The Registrant said following this complaint he was dismissed and referred to the NMC. I have a hearing impairment which can be difficult to understand people with accents. Despite this I had no issues understanding the Registrant so I was very shocked that such a complaint had been made because I thought he had very good English. I also thought that the Registrant seemed very open and honest."*

During her evidence, Colleague C told the panel that:

> *"So he would have told me in that – he told me in that conversation that he'd lost his PIN and how he lost it, and it was a complaint about his – some old people couldn't understand him, which I was a bit shocked because his English is very good, very clear, I speak to some people who have – you know, English isn't the first language for them, it's not good. But Dennis', to have people complain – but*

we also know that old people can be a bit cantankerous and it's probably likely, and I don't know how the NHS works and if you have a couple of complaints there, maybe the NMC have to do something about."

The panel had regard to the application form you submitted to [PRIVATE] Recruitment, your accompanying Curriculum Vitae (CV), and reference form.

The panel noted that on your CV you stated:

"I'm an ex nurse and i am looking for a job as a healthcare support worker, I worked as a staff nurse at Queen Alexandra Hospital for 20 years, I was working [PRIVATE]*, and I love looking after poorly patient and this kind of job give me joy and satisfaction that in the end of my shift you know that you done something difference on people's lives, my PIN was suspended for 18 months since June 2 2021 but I can still able to work as a healthcare assistant or support worker while I'm waiting for final decision of NMC, I'm a hard working person and easy to work with."*

During your evidence you denied having told Colleague C you were dismissed due to a complaint about your English. You stated:

"No. I told her everything. That's why when the [PRIVATE] *asked my employment and who's employing me at the moment, I told them that I'm working at White Knight. And when they contact [Colleague C], [Colleague C] phoned me and asking me who are this person? And I told her that the NMC. They're probably asking what I'm doing, what kind of job I'm doing. And again, I was confident that she can speak to* [PRIVATE] *and tell them what I'd said to her at the interview. That's why I'm surprised that after – on that day she sent me a termination letter. That's why"*

You told the panel that during your telephone interview with Colleague C you disclosed the reason for your dismissal and that you did not say it was due to a complaint about your English.

The panel noted there were indications that suggest that the proper process was not followed during the recruitment process. There was ambiguity about Colleague C's processes and whether the necessary checks had been carried out particularly in relation to video interviews and references.

The panel noted that your CV clearly sets out that your PIN was currently suspended by the NMC and that you knew it would be open to any employers to contact the NMC and conduct any checks and therefore determined that this supports your account of events.

Based on the evidence before it, the panel was not satisfied that the NMC has provided sufficient evidence to prove this charge. The panel accepted your evidence in relation to this charge and therefore finds this charge not proved.

Charge 18

18. Your actions as set out in charge 17 were dishonest in that you deliberately sought to mislead [PRIVATE] Recruitment by providing inaccurate information about your dismissal.

This charge is found NOT proved.

As the panel has found charge 17 not proved, this charge falls away and therefore is not proved.

Fitness to practise

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

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

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

Submissions on misconduct

Ms Mohamed referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311, which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

Ms Mohamed invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision. She also referred to the NMC guidance on misconduct (reference: FTP-2a), in particular, the section relating to "*how to determine seriousness*" (reference: FTP-3). She submitted that this case falls squarely within the guidance on sexual boundaries, which is highlighted as serious concerns more difficult to put right.

Ms Mohamed submitted that it should be noted that you admitted charge 3b (slapping Colleague A's bottom) at the outset, but charge 3c was found proved by the panel (in which you shouted *"would you fucking look at me when I am trying to talk to you*" when apologising for slapping Colleague A's bottom). She stated that Colleague A's evidence in relation to the incident indicated that the apology received from you was a "*backhanded"* apology. She submitted that your actions proven in charge 3 are in breach of sections 1.1 and 20.3 of the Code.

Ms Mohamed submitted that in charge 7a you breached patient confidentiality in relation to Colleague A. She submitted that in respect of this charge, you acted in breach of sections 4.2 and 5.1 of the Code. She highlighted that charge 3b – 3c and charge 7a relate to the same person, Colleague A. She submitted that, taken together, your actions in these charges are sufficiently serious to amount to misconduct.

Ms Mohamed then referred to your actions proven in charges 12 and 13, in which it is found proven that you made comments to Patient C that were sexually motivated with the intention to groom Patient C for future sexual interaction/relationship with you. She submitted that in respect of these charges, you breached sections 20, 20.1, 20.3, 20.5, 20.6 of the Code. She reminded the panel that charges 15 (15i,15iv, 15v, 15vi, 15vii, 15viii, 15ix) and 16 relate to the same patient, Patient C. She submitted that the same breaches to the Code also applied for these charges. She submitted that your actions proven in charge 12, 13, 15 and 16 demonstrate serious breaches of professional boundaries which amount to misconduct.

Mr Phillips referred the panel to the case of *Roylance v General Medical Council.* He submitted that a failing must be sufficiently serious before it can be properly classed as *"misconduct*", and a breach of the Code should not automatically amount to misconduct.

In relation to charge 3b, Mr Phillips invited the panel to consider the following factors when determining whether the conduct in this charge is sufficiently serious to amount to misconduct:

a. *"The panel have not found proved that the conduct in question was sexually motivated (charge 5a not proved);*
b. *The panel have not found that it was* [your] *specific intention to violate Colleague A in any of the manners set out within charge 5b;*
c. *The panel's reasons in respect of charge 5a indicate that the panel did find that there was a culture of making sexual innuendoes on the ward and that it was likely that* [your] *actions were reflective of the general culture on the ward."*

In relation to charge 3c, Mr Phillips invited the panel to consider the following factors when determining whether the conduct in this charge is sufficiently serious to amount to misconduct:

a. "*On any account this was an incident which was very short in duration;*
b. *The panel have found that emotions were running high at the time of the incident;*
c. *The panel have not found proved that it was* [your] *specific intention to violate Colleague A in any of the manners set out within charge 6."*

In relation to charge 7a, Mr Phillips invited the panel to consider the following factors when determining whether the conduct in this charge is sufficiently serious to amount to misconduct:

a. *"In dismissing charge 8a at the half-time stage, the panel found that:*

   'Colleague A told the panel from her perspective, she thought your intentions were to help her and she did not express that she felt violated in any way. The panel noted that you accessed Colleague A's medical records as she was frustrated about not receiving her surgery results and you were trying to help her.

   […]

   In reviewing the evidence, the panel was of the view that it was to the contrary in that it evidenced an intent to assist Colleague A'.
b. *The conduct in question took place in early 2020, at a time when the COVID pandemic was beginning to place strain on the health service and those working within it."*

Mr Phillips submitted that it is accepted that your conduct in charges 12, 13, 15 and 16 amounts to misconduct.

Submissions on impairment

Ms Mohamed 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. It also 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 Mohamed also referred to the NMC guidance on impairment (reference: DMA-1). She explained that, in relation to sexual boundaries, the guidance specifically states that such conduct can cause significant harm to patients.

Ms Mohamed submitted that the first three limbs of the test set out by Dame Janet Smith in the fifth Shipman report and adopted in *Grant* were engaged in this case:

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 profession into disrepute;*
c) *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession;*
d) *…*

Ms Mohamed submitted that in the past your actions have caused emotional harm, have damaged the trust patients put in the healthcare profession and breached fundamental tenets of the profession.

Ms Mohamed invited the panel to refer to your reflective piece when considering the risk of repetition in the future. She submitted that whilst your reflective piece addresses some parts of the Code, it does not sufficiently address the impact of your actions on patients and therefore there is limited insight. She concluded that a finding of impairment is necessary on public protection and public interest grounds.

Mr Phillips referred to the cases of *Grant* and *Cohen v GMC* [2008] EWHC 581 (Admin) in relation to the issue of current impairment.

Mr Phillps highlighted that the charges proved relate to your conduct in February 2020 (charge 7a), July 2020 (charges 3b & 3c) and April 2021 (charges 12, 13, 15 & 16). He stated that the earliest conduct took place almost four years ago with the latest conduct having taken place over two and a half years ago. He referred the panel to an updated reference from your current employer at Elite Care Service (ECS), where you have worked since January 2022. He explained that the reference states that you are a "*honest*" "*hardworking*" employee and there have been no complaints raised about you during your time employed at ECS.

In relation to charge 3b, Mr Phillips invited the panel to consider the following factors when assessing whether your practice is currently impaired:

a. *"*[You] *accepted* [your] *conduct both at the time and by* [your] *admission at the outset of these proceedings;*
b. *The points made at* [paragraphs] *6a- 6c are repeated* [paragraphs contained within Mr Phillips' written submissions dated 14 December 2023*];*
c. *It is submitted that* [your] *reflection piece and* [your] *reflections on CPD reading demonstrate that* [you have] *thought considerably about the issue of professional boundaries at work;*
d. *It is submitted that the conduct in question is remediable and has in fact been remedied – it is highly unlikely that* [you] *would ever repeat conduct of this type."*

In relation to charge 3c, Mr Phillips invited the panel to consider the following factors when assessing whether your practice is currently impaired:

a. "*The points made at* [paragraphs] *7a to 7c above are repeated* [paragraphs contained within Mr Phillips' written submissions dated 14 December 2023*];*

b. *It is submitted that the conduct found proved took place in the context of a global pandemic which was extremely stressful period, not least for healthcare professionals, and that an emotional outburst – directed at a colleague, in that context does not entail current impairment*."

In relation to charge 7a, Mr Phillips invited the panel to consider the following factors when assessing whether your practice is currently impaired:

a. *"Whilst this charge was not formally admitted by* [you]*,* [you] *did accept that* [you] *should not have accessed* [Colleague A]*'s medical records (albeit* [you] *maintain that* [you] *did so with* [Colleague A]*'s consent);*
b. *The points made at* [paragraphs] *8a and 8b above are repeated* [paragraphs contained within Mr Phillips' written submissions dated 14 December 2023]*;*
c. *It is submitted that* [your] *extensive reflection on the issue of patient confidentiality is such that* [your] *conduct can be said to have been remedied and the risk of repetition is extremely low.* [Your] *reflection piece states: 'I only offered to do that because I saw other colleagues doing it as well and trying to help her out. Since the incident happened I have done lots of reading and e-learning and realised that I should not done it. Now I fully understand that if its not your patient under your care I should not do it, and I learned my lesson regarding this incident and it won't happened again. I fully take responsibility of my action. I need to continue reading about patient confidentiality to widen my knowledge and skills regarding this issue."*

In relation to charges 12, 13, 15 and 16, Mr Phillips invited the panel to consider the following factors when assessing whether your practice is currently impaired:

a. *"*[You] *made an admission in respect of charge 15(i) (attending Patient C's home) during these proceedings;*

b. *Whilst the conduct in question is not admitted by* [you], [you have] *undertaken reading and reflected on, the issue of boundaries between healthcare professionals and their patients …;*
c. *In addition,* [you have] *reflected upon the issue of communication with patients..."*

Mr Phillips stated that you have practised as a nurse for 29 years. He referred the panel to your reflection, in which he submitted, indicates that you are passionate about the profession. He submitted that your passion for the profession provides, in and of itself, reason to conclude that you are highly unlikely to repeat the conduct found proved.

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

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***
> *1.1 treat people with kindness, respect and compassion*
>
> ***4 Act in the best interests of people at all times***
> *4.2 make sure that you get properly informed consent and document it before carrying out any action*
>
> ***5 Respect people's right to privacy and confidentiality***
> *5.1 respect a person's right to privacy in all aspects of their care*

20 Uphold the reputation of your profession at all times

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the charges amounted to misconduct, the panel considered the charges individually and collectively as well as the circumstances of the case as a whole.

The panel took account of all the evidence before it and the NMC guidance on misconduct (reference: FTP-3). In particular, it had regard to the following guidance in relation to sexual boundaries:

"What constitutes a breach of sexual boundaries?

A breach of sexual boundaries occurs when a healthcare professional displays sexualised behaviour towards a patient or carer. Sexualised behaviour is defined as acts, words or behaviour designed or intended to arouse or gratify sexual impulses or desires.

The consequences for patients when sexual boundaries are breached

Breaches of sexual boundaries by healthcare professionals are unacceptable because:

- *they can cause significant and enduring harm to patients*
- *they damage trust – the patient's trust in the healthcare professional and the public trust in healthcare professionals in general*

Examples of sexualised behaviour by healthcare professionals towards patients or their carers

- *[…]*
- *inappropriate sexual or demeaning comments, or asking clinically irrelevant questions, for example about their body or underwear, sexual performance or sexual orientation*
- *unplanned home visits with sexual intent*
- *[…]"*

The panel noted that in charge 3b you slapped Colleague A's bottom whilst on shift at the Hospital. However, the panel had regard to contextual evidence from Colleague A and Colleague B regarding the circumstances at the time the incident took place. It noted that in her evidence, Colleague B explained that there were systemic/cultural issues on the ward, which included the use of sexual innuendo. It also noted Colleague A's reaction to the incident, which she described as "not painful" and a "fleeting touch". Taking into account the contextual evidence, the panel found that whilst your actions can be regarded as unprofessional and ill-judged conduct, the evidence did not suggest that you intended to violate or intimidate Colleague A sexually, and it was likely that your actions were reflective of the general culture on the ward. The panel therefore determined that, taken in isolation, charge 3b did not meet the threshold to constitute misconduct.

The panel noted that in charge 3c, you shouted "*would you fucking look at me when I am trying to talk to you*" to Colleague A. It considered that your choice of words and manner in which you communicated this to Colleague A demonstrated threatening behaviour. It also took into account that Colleague A was a junior member of staff, and therefore such behaviour was an abuse of your position of authority. The panel determined that in these circumstances you acted in breach of sections 1.1 and 20.3 of the Code. The panel was of the view that as an experienced nurse, you demonstrated an unacceptably low standard of professional practice in charge 3c which amounts to misconduct.

The panel found that in charge 7a you breached patient confidentiality by accessing Colleague A's medical records without her consent and did not have a clinical reason to do so. Whilst the panel noted Colleague A's evidence indicated that your intention may have been to help her, it was of the view that breaching patient confidentiality and accessing sensitive information without clinical justification should not be regarded as inconsequential or excusable in any circumstance. It determined that in these circumstances you acted in breach of sections 4.2 and 5.1 of the Code and demonstrated failings in fundamental aspects of nursing. The panel was satisfied this amounted to misconduct.

The panel considered the proven elements in charge 12, which relates to a range of inappropriate comments you made to Patient C, in conjunction with charge 13 where it is found that you done so with sexually motivated intentions to groom her. It found that in accordance with the NMC guidance on misconduct, your actions constitute a breach of sexual boundaries and sections 1.1, 20.1, 20.3, 20.55, 20.6 of the Code. The panel was in no doubt that your actions found proved in charge 12 and 13 collectively amounted to serious misconduct, given the variety and combination of intimate sexualised questions you asked Patient C which went beyond what was required of a colonoscopy pre-assessment.

The panel considered that in charge 15 you visited Patient C's home, made inappropriate comments to her, and in conjunction with charge 16 did so with sexual intentions. Additionally, you also made unprofessional comments to Patient C's child. It took into account that the visit to Patient C's home was unscheduled and during COVID-19 restrictions, where you also failed to follow infection control protocols in place at the time which placed Patient C at risk. It noted that Patient C is a vulnerable patient with PTSD and a complex history with trauma, who was reliant on you for safe protective care and was left reluctant to engage with healthcare services due to the emotional impact of your actions. In accordance with the NMC guidance, the panel found that you breached professional and sexual boundaries as well as sections 1.1, 20.1, 20.3, 20.55, 20.6 of the Code. It determined that your collective actions in charge 15 and 16 would be considered deplorable by fellow practitioners and damaging to the trust that the public places in the profession. The panel was satisfied this amounted to misconduct.

The panel found that collectively you have demonstrated a pattern of behaviour over a period of time that fails to acknowledge professional boundaries. It concluded that your actions found proved in charges 3c - 16 did fall seriously short of the conduct and standards expected of a registered nurse and amounted to 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 justify that trust, nurses 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) *...'*

When considering whether you have in the past put patients at risk of harm, the panel took into account evidence relating to Patient C (a vulnerable patient with PTSD and a complex history with trauma). It had regard to the following evidence from Patient C's NMC witness statement:

"I was a mess following this incident so I received support from the 'MASH' team, social services and the Hospital volunteers.
[…]

I did have colonoscopy at the beginning of May 2021, my mum came with me because I did not want to go to the Hospital as I had lost all trust with the team there. I did not care about my health at the time I just wanted to stay as far away from the Hospital as possible. I was also worried that I would see the Registrant at the Hospital."

The panel also had regard the following evidence from Witness C's NMC witness statement:

"The minute the Registrant left Patient C's House she collapsed into my arms sobbing and saying that she had been really scared.
[…]

After the Registrant left I recall thinking about all the other things that could have happened. I was scared to think of what could have happened to Patient C or my grandchildren."

The panel noted that due to the emotional effect of your actions on Patient C, she was later reluctant to engage with healthcare services. It considered that Patient C's loss of confidence in the profession could have subsequently impacted the management of her long-term medical care requirements.

The panel determined that limbs (a), (b) and (c) in the above test were engaged in this case. Taking into account all of the evidence adduced in this matter, the panel found that patients were put at unwarranted risk harm as a result of your misconduct, particularly Patient C who was caused psychological harm. The panel determined that your misconduct had breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel next went on to consider the matter of insight. It took into account your reflective statements responding to the regulatory concerns. The panel acknowledged that you have demonstrated appropriate reflection in relation to accessing patient records and patient confidentiality, which is supported by relevant training you have undertaken such as "*Understanding and Respecting Patient Confidentiality*". However, the panel was of the view that your reflection relating to professional boundaries is generic in nature and did not fully address all the specific concerns about your practice or the consequences that your actions had on Patient C and her family. The panel determined that you have demonstrated some remorse and limited insight.

The panel was satisfied that elements of your misconduct in this case are capable of being addressed, although it noted that some parts were more difficult to put right,

namely, your misconduct relating to professional and sexual boundaries. It acknowledged the steps you have taken to strengthen your practice. This included a number of training courses you have undertaken in 2021 (Promoting Professional Practice Skills for Nurses, Understanding and Respecting Patient Confidentiality, How to Build Effective Communication When Meeting Patients), relevant to your clinical practice. The panel also had regard to a range of professional reading you have completed as well as the two testimonials provided. On this basis, the panel was reassured by the evidence that you have strengthened your clinical practice in relation to patient confidentiality and it determined it was unlikely you would breach patient confidentiality in the future.

However, the panel took into account that you breached professional and sexual boundaries on more than one occasion. It noted that you attended Patient C's home and carried out this misconduct despite already being under a 24-month final written warning from the Trust. Taking into account your lack of sufficient insight into professional and sexual boundaries, the nature and repetition of this misconduct, the panel concluded that it has not received enough evidence to demonstrate that you have strengthened your practice in this area.

The panel was of the view that due to your limited insight and lack of evidence of strengthened practice, there remains a risk of you repeating such behaviour. The panel considered that your actions set out in charges 12, 13, 15 and 16 demonstrated a pattern of behaviour that fails to acknowledge professional boundaries and which is indicative of attitudinal problems. On the basis of all the information before it, the panel decided that there is a risk to the public if you were allowed to practise without restriction. The panel therefore determined that a finding of current impairment on public protection grounds is necessary.

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 noted the NMC Guidance FtP-3 ‘How we determine seriousness’:

> *“Sexual misconduct is likely to be serious enough to impair fitness to practise whether the conduct takes place in professional practice outside professional practice. Sexual misconduct poses risks both to people receiving care and colleagues and can seriously undermine public trust and confidence in our professions”.*

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore 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 striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have been struck-off the register.

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

Submissions on sanction

Ms Mohamed referred the panel to the NMC Guidance San-2 ‘Considering sanction for serious cases’ and ‘Cases involving sexual misconduct’. She outlined to the panel what the NMC considered to be the aggravating features of your case.

- Abuse of your position of trust

- Vulnerable patient
- Emotional harm to Patient C who was subsequently reluctant to engage with health care professionals
- Limited insight
- Lack of evidence of strengthened practice
- Risk of repetition
- You attended Patient C's home without a chaperone indicative of grooming behaviour

Ms Mohamed submitted that to take no further action or impose a caution order would not be the appropriate or proportionate sanction. She submitted theses sanctions would not satisfy the public interest nor protect the public. Ms Mohamed submitted that a conditions of practice order would be neither proportionate or appropriate as the concerns can be classed as attitudinal and conditions would not be workable.

Ms Mohamed submitted that a suspension order would not be appropriate or proportionate. She referred the panel to the NMC guidance FTP 3 'How we determine seriousness' and 'Serious concerns which are more difficult to put right'. She submitted that your misconduct fell squarely within this guidance and that your misconduct is fundamentally incompatible with you remaining on the register. She submitted that the panel has identified attitudinal issues and a risk of repetition, and the only appropriate and proportionate order would be a striking-off order.

Mr Phillips' provided written submissions which he supplemented with oral submissions. He outlined what he submitted are the mitigating features in this case:

- You have had a long career as a nurse and are dedicated to the profession;
- You have worked for Elite Care Services ('ECS') since 5 January 2022 and there have been no complaints in respect of your employment at ECS and your manager has described you as an asset to ECS and their customers and that she finds you to be honest and hardworking;
- The sexual misconduct in this case relates to a single complainant (Patient C) and occurred on a single day (15 April 2021);

- Whilst it is acknowledged that your conduct in respect of Patient C was serious, it should be recognised that this was not a case of sexual misconduct which involved any physical contact with Patient C.

Mr Philips therefore invited the panel to impose a lengthy suspension in this case.

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:

- The misconduct involved an abuse of your position of trust and authority;
- Your misconduct involved an extremely vulnerable patient (Patient C).
- Your conduct caused Patient C emotional harm and put her at risk of suffering future harm;
- The incident involving Patient C was a course of conduct which escalated during your shift and took place whilst you were already subject to a 24 month final written warning from your Trust;
- You have demonstrated limited insight into your misconduct;
- There is a lack of evidence that you have addressed the concerns/strengthened your practice in relation to sexual misconduct.

The panel also took into account the following mitigating feature:

- Positive testimonial from current employer.

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 not protect the public nor would it be 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 and public interest 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. 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 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 was not clinical and involved behavioural and attitudinal issues. In addition, the panel considered that in telling colleagues you needed to go home early because of an eye condition and then instead going to Patient C's home without informing colleagues, demonstrated covert behaviour that cannot be addressed through conditions on your practice. Furthermore, the panel concluded that the placing of conditions on your 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 a suspension order may be appropriate where some of the following factors are apparent:

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

- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel noted that there is no evidence before it that prior to 2018 there were any concerns of inappropriate behaviour by you.

The panel considered that although your misconduct occurred on a single day, it was not a single instance of misconduct. It was behaviour which you devised and developed during the course of a shift. The panel was of the view that this behaviour was predatory and opportunistic. Although the panel had no evidence that you had repeated the misconduct since these events you carried out this behaviour whilst being subject to your employer's final written disciplinary warning for an incident which involved misconduct relating to Colleague A (a younger female colleague). In the panel's view, your subsequent misconduct involving Patient C demonstrated an escalation in your behaviour. The panel had limited evidence regarding your insight and your understanding of the impact your misconduct has had on Patient C, the public and the nursing profession. The panel determined that there was evidence of deep-seated attitudinal problems and was of the view that there was a significant risk of you repeating your behaviour.

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

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

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

The panel determined that your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you 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. The panel has concluded that nothing short of this would be sufficient in this case.

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

This decision will be confirmed to you 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 your own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Mohamed. She submitted that an interim suspension order is necessary for the protection of the public and is in the

wider public interest on the basis of the panel's findings to cover the period for and appeal.

Mr Phillips made no submissions on your behalf.

Decision and reasons on interim order

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

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

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

That concludes this determination.