

**Nursing and Midwifery Council  
Fitness to Practise Committee  
Substantive Hearing  
9 – 12 March 2020**

Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

<b>Name of registrant:</b>	Iain David Duncan Scott
<b>NMC PIN:</b>	85Y0324S
<b>Part(s) of the register:</b>	Registered Nurse – Sub part 1 RN1- Adult (March 2002)
<b>Area of Registered Address:</b>	Fife
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Nigel Hallam (Chair, lay member) Patricia Lynch (Registrant member) Suzanna Jacoby (Lay member)
<b>Legal Assessor:</b>	John Moir
<b>Panel Secretary:</b>	Tara Hoole
<b>Mr Scott:</b>	Not present and not represented in absence
<b>Nursing and Midwifery Council:</b>	Represented by Yusuf Segovia, NMC Case Presenter
<b>Facts proved:</b>	1.1, 1.2, 2, 3.1, 3.2, 4, 5, 6 and 7
<b>Facts not proved:</b>	8
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off order
<b>Interim Order:</b>	Interim suspension order (18 months)

## Details of charge [as amended]:

That you, a registered nurse

1. On one or more unknown dates between November 2018 and 11 December 2018, whilst carrying out medication rounds with Colleague A you:
  - 1.1. Stood very close to Colleague A; **Found proved**
  - 1.2. Intentionally attempted to bump into Colleague A and/or touch Colleague A. **Found proved**
2. On an unknown date between November 2018 and 11 December 2018, pinched Colleague A's cheek. **Found proved**
3. On 11 December 2018:
  - 3.1. Took a photograph on your mobile phone of Colleague A's buttocks whilst she was kneeling on the floor; **Found proved**
  - 3.2. Said to Colleague A "*you got the view from the front, now this is the view from behind*", or words to that effect. **Found proved**
4. On an unknown date between November 2018 and 19 December 2018, you:
  - 4.1. Said to Colleague B "*You look Amazonian*" and that an Amazonian person was "~~tall~~, *sexy and strong*" or words to that effect. **Found proved**
5. On an unknown date between November 2018 and 19 December 2018, you side-kicked Colleague B on the buttocks. **Found proved**
6. On an unknown date between November 2018 and 19 December 2018, you:

- 6.1. Said to Colleague C that Colleague B “*looked beautiful without make-up on*” or words to that effect. **Found proved**
7. Your actions as set out in charges 1-6 breached professional boundaries. **Found proved in relation to charges 1 – 5, found not proved in relation to charge 6**
8. Your actions as set out in charges 1-6 were sexually motivated in the pursuit of sexual gratification. **Found not proved**

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

## **Decision on Service of Notice of Hearing**

The panel was informed at the start of this hearing that Mr Scott was not in attendance and that written notice of this hearing had been sent to Mr Scott's registered address by recorded delivery and by first class post on 17 January 2020. Notice of this hearing was delivered to Mr Scott's registered address on 18 January 2020 and signed for in the printed name of 'Scott'.

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

Mr Segovia submitted the Nursing and Midwifery Council (NMC) had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Scott has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

## **Decision on proceeding in the absence of the Registrant**

The panel next considered whether it should proceed in the absence of Mr Scott.

The panel had regard to Rule 21 (2) states:

(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
- (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
- (c) may adjourn the hearing and issue directions.

Mr Segovia submitted that there had been no response from Mr Scott to the notice of this hearing. Further, the NMC has attempted to contact Mr Scott by telephone and email in relation to these proceedings with no response. Mr Segovia submitted that, as a consequence, there was no reason to believe that an adjournment would secure Mr Scott's attendance on some future occasion.

Mr Segovia informed the panel that there were witnesses due to give evidence at this hearing today and tomorrow and asked that the panel be mindful of this when considering whether to proceed in Mr Scott's absence.

Mr Segovia submitted that the charges were serious and it was in the public interest and potentially in Mr Scott's interest that these matters were dealt with expeditiously. He therefore invited the panel to proceed in Mr Scott's absence.

The panel accepted the advice of the legal assessor.

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

The panel has decided to proceed in the absence of Mr Scott. In reaching this decision, the panel has considered the submissions of the case presenter, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- no application for an adjournment has been made by Mr Scott;
- Mr Scott has not engaged with the NMC and has not responded to any of the letters sent to him about this hearing;
- there is no reason to suppose that adjourning would secure his attendance at some future date;
- two witnesses have attended today to give live evidence and others are due to attend;
- not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- the charges relate to events that occurred in 2018;
- further delay may have an adverse effect on the ability of witnesses accurately to recall events;
- there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Scott in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, he has made no response to the allegations. He will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his own behalf. However, in the panel's judgment, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Scott's decisions to absent himself from the hearing, waive his rights to attend and/or be represented and to not provide evidence or make submissions on his own behalf.

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

### **Decision and reasons on application to hear evidence from Colleague B via video link pursuant to Rule 31**

The panel heard an application made by Mr Segovia under Rule 31 of the Rules to allow Colleague B to give her evidence via video link. Mr Segovia submitted that Colleague B had provided personal reasons, the details of which were available to the panel, to the effect that she was unable to attend the hearing in person, but that Colleague B was able and willing to give evidence via video link.

Mr Segovia informed the panel that Mr Scott had not been informed that the NMC would be making this application. However, Mr Segovia submitted that there was no prejudice to Mr Scott in allowing this application as the panel would be able to see and hear Colleague B and make an assessment of her. He submitted that there were good reasons for Colleague B not being able to attend this hearing in person.

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

The panel decided to allow the application to hear Colleague B's evidence via video link. It was satisfied that her evidence is relevant and that no unfairness would be caused by allowing the application. It noted the reasons provided for her non-attendance in person and considered that to hear her evidence via video link was practical in the circumstances. The panel considered it will be able to see and hear

Colleague B's evidence in a similar manner to the witnesses being physically present in the room, and that her evidence could still be tested.

There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings. In these circumstances, the panel was satisfied that it would be fair to allow Colleague B to give evidence by video link and therefore allowed the application.

### **Decision on the findings on facts and reasons**

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case.

The panel accepted the advice of the legal assessor.

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 the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

The charges arose between November 2018 and 17 December 2018, whilst Mr Scott was employed as a registered nurse at Abbotsford Care Kinglassie nursing home (the Home). Mr Scott is alleged to have behaved inappropriately towards Colleague A, Colleague B and Colleague C whilst at the Home.

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

The panel heard oral evidence from four witnesses tendered on behalf of the NMC.



The panel first considered the overall credibility and reliability of all of the witnesses it had heard from.

Colleague A – Acting Care Practitioner at the Home at the time of the allegations. The panel considered Colleague A to be a credible and reliable witness. The panel considered her to be articulate and clear in her recollection of events and balanced in providing her evidence.

Colleague B – Care Assistant at the Home at the time of the allegations. The panel considered Colleague B to be a credible and reliable witness. Her evidence was consistent and she gave her evidence in a clear, factual and straightforward manner.

Colleague C – Care Assistant at the Home at the time of the allegations. The panel considered Colleague C to be a credible and reliable witness. She gave a clear personal perspective of professional standards. She was factual, articulate and was clear in her recollection of events.

Ms 1 – Deputy Home Manager of the Home at the time of the allegations. The panel considered Ms 1 to be a credible and reliable witness. She was factual in her evidence and was able to provide a clear picture of normal procedures and policies at the Home. She did her best to assist the panel and said when she did not know something. The panel considered her evidence to be balanced and fair, and noted that she would not speculate.

The panel considered each charge and made the following findings:

**Charge 1.1:**

1. On one or more unknown dates between November 2018 and 11 December 2018, whilst carrying out medication rounds with Colleague A you:

1.1. Stood very close to Colleague A;

**This charge is found proved.**

The panel took into account the witness statement and oral evidence of Colleague A.

Colleague A told the panel that she was often assigned to assist Mr Scott with the medication rounds as he was new to the Home and she helped him to get to know the residents.

Colleague A told the panel that, whilst conducting medication rounds, Mr Scott would stand so close to her that she felt that her personal space had been invaded. She told the panel that Mr Scott would get so close that she would have to back away, and that following this he would move in and stand close to her again. Colleague A was clear that there were no limitations on the space available which may have forced Mr Scott to stand close to her. When questioned by the panel, Colleague A confirmed that these incidents took place in a wide corridor, there were no restrictions on the space, and that there was no reason for Mr Scott to stand so close. Colleague A told the panel that this would often happen three times a day, at each drug round, and on multiple occasions on each drug round. She told the panel that it made her feel very uncomfortable.

The panel noted that Colleague A's oral evidence was consistent with her written statement and the Home's investigation meeting report dated 19 December 2018.

Ms 1 confirmed that Mr Scott said he could not recall invading Colleague A's personal space or bumping into her when he was asked about it in the Home's investigatory meeting. This is confirmed in the investigation meeting report dated 8 January 2019 where Mr Scott is recorded as stating he did not recall and would not have done this intentionally.

The panel accepted Colleague A's evidence. It was satisfied that it was more likely than not that, on one or more unknown dates between November 2018 and 11 December 2018, whilst carrying out medication rounds with Colleague A, Mr Scott stood very close to Colleague A. The panel therefore found this charge proved.

**Charge 1.2:**

1. On one or more unknown dates between November 2018 and 11 December 2018, whilst carrying out medication rounds with Colleague A you:

1.2. Intentionally attempted to bump into Colleague A and/or touch Colleague A.

**This charge is found proved.**

The panel took into account the witness statement and oral evidence of Colleague A as detailed in charge 1.1.

Colleague A told the panel that, as well as standing very close to her, Mr Scott would touch and bump into her during the medication rounds. She told the panel that she felt like he took the opportunity to bump into her or touch her whilst they were preparing and giving the residents medications. Colleague A told the panel that she felt that Mr Scott was doing it on purpose as it happened too many times for it to be an accident.

The panel noted that Colleague A described a persistent and consistent course of conduct from Mr Scott, noting that she said it happened repeatedly on almost every drug round and multiple times a day. The panel noted Colleague A's evidence that she would move away from him only for him to follow. The panel was of the view that it could not be considered accidental bumping into a colleague when it happened so frequently.

The panel accepted Colleague A's evidence. It was satisfied that it was more likely than not that, on one or more unknown dates between November 2018 and 11 December 2018, whilst carrying out medication rounds with Colleague A, Mr Scott intentionally attempted to bump into and touch Colleague A. The panel therefore found this charge proved.

### **Charge 2:**

2. On an unknown date between November 2018 and 11 December 2018, pinched Colleague A's cheek.

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

Colleague A provided clear evidence of an occasion when Mr Scott pinched her cheek. She told the panel that she was in the nurses' office with Mr Scott discussing a care plan and that he pinched her cheek '*like what you would do to a small child*'. She told the panel that she was shocked that he had touched her without permission and that it had caused her step back away from him. She told the panel that it made her feel very uncomfortable and she was '*worried that [Mr Scott] felt the need to be over familiar*'.

Ms 1 confirmed that Mr Scott said he could not recall this incident when he was asked about it in the Home's investigatory meeting. This is confirmed in the investigation meeting report dated 8 January 2019.

The panel accepted Colleague A's evidence. It was satisfied that it was more likely than not that, on an unknown date between November 2018 and 11 December 2018, Mr Scott pinched Colleague A's cheek. The panel therefore found this charge proved.

### **Charge 3.1:**

3. On 11 December 2018:

3.1. Took a photograph on your mobile phone of Colleague A's buttocks whilst she was kneeling on the floor;

**This charge is found proved.**

The panel took into account the witness statements and oral evidence of Colleague A, Colleague B and Ms 1.

The panel heard evidence that, on 11 December 2018, the Home had therapy ponies attend for the residents. As part of this, Colleague A had her photograph taken whilst kneeling with the therapy ponies.

Colleague B told the panel that she had witnessed Mr Scott taking a photograph of Colleague A from behind when Colleague A was kneeling for the photograph with the ponies. Colleague B told the panel that Mr Scott had shown her this photograph and that the photograph had really upset Colleague A.

Colleague A told the panel that Mr Scott approached her as she was returning to her feet and showed her a picture of her bottom on his phone. In her oral evidence Colleague A told the panel that the whole incident made her very uncomfortable. She said she felt embarrassed, degraded and physically sick that he had a photograph of the rear of her body on his phone without her permission. She told the panel that she still felt like that today.

Ms 1 in her evidence confirmed that Colleague A was upset when she reported this incident on the day; she remembered telling Colleague A to take a break because she was so upset. Ms 1 told the panel that there was a policy of no mobile phones at all for the staff at the Home whilst on duty. She said it was not professional and it would not be

common practice for staff to take photographs around the Home. She confirmed that Mr Scott had not sought permission from her to take photographs and explained the issues surrounding residents' confidentiality and consent.

The panel noted that in the investigatory meeting report Mr Scott accepts that he took a photograph and records him as being horrified at the upset he had caused Colleague A. At the invitation of Ms 1, Mr Scott wrote a letter of apology to Colleague A.

The panel was satisfied that it was more likely than not that, on 11 December 2018, Mr Scott took a photograph on his mobile phone of Colleague A's buttocks whilst she was kneeling on the floor. The panel therefore found this charge proved.

### **Charge 3.2:**

3. On 11 December 2018:

3.2. Said to Colleague A *"you got the view from the front, now this is the view from behind"*, or words to that effect.

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

The panel took into account the witness statements and oral evidence of Colleague A and Ms 1 as detailed in charge 3.1.

The panel noted that Colleague A, in her evidence, stated *'As I returned to my feet [Mr Scott] approached me and showed me a picture of my bottom on his phone he said something like "you got the view from the front now this is the view from the back". [Mr Scott] said this in a sarcastic tone.'*

The panel had regard to Colleague A's statement, dated 11 December 2018, in which she states '*I had to get on the floor to have my picture taken with the two ponies, as I returned to my feet [Mr Scott] approached me and showed me a picture of my bottom on his phone and said to me that here was the view from the back*'.

The panel noted that Colleague A's oral evidence was consistent with her NMC witness statement, the written statement dated 11 December 2018 and the Home's investigation meeting report dated 19 December 2018. The panel noted that this incident had caused Colleague A considerable distress at the time and that she continues to feel embarrassed and degraded by Mr Scott's actions.

The panel noted that the specific words used by Mr Scott had clearly been remembered by Colleague A because they had caused her such distress.

The panel was satisfied that it was more likely than not that, on 11 December 2018, Mr Scott said to Colleague A "*you got the view from the front, now this is the view from behind*", or words to that effect. The panel therefore found this charge proved.

#### **Charge 4:**

4. On an unknown date between November 2018 and 19 December 2018, you:

4.1. Said to Colleague B "*You look Amazonian*" and that an Amazonian person was "~~tal~~*l, sexy and strong*" or words to that effect.

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

Colleague B told the panel of an incident in which a resident had said she looked like Wonder Woman. She told the panel that Mr Scott was also in the room and had said '*yes you do, you look Amazonian*'.

Colleague B told the panel that she recalled the incident clearly as she had been embarrassed that she did not know what an Amazonian was. She said that Mr Scott had explained and described an Amazonian as '*strong and sexy*'.

Colleague B told the panel that she had shrugged the comment off and continued with her work. Colleague B explained that it was only after Colleague A reported the incidents at charges 1 – 3 that she reported it. She told the panel that she is not easily offended but that after the incident with Colleague A she had realised that it was an inappropriate thing for Mr Scott to have said so she reported it to her manager, Ms 1.

Ms 1 confirmed that Mr Scott said that he had '*definitely not said this*' when he was asked about this incident in the Home's investigatory meeting. This is confirmed in the investigation meeting report dated 8 January 2019.

The panel considered the evidence before it and decided to delete the word tall from the charge. The panel heard no evidence that Mr Scott had used the word tall when describing an Amazonian. The panel was satisfied that this amendment would cause no unfairness or injustice to Mr Scott but would more clearly and accurately reflect the evidence before it.

On the basis of the evidence before it the panel was satisfied that it was more likely than not that, on 11 December 2018, Mr Scott Said to Colleague B "*You look Amazonian*" and that an Amazonian person was "*sexy and strong*" or words to that effect. The panel therefore found this charge proved.

#### **Charge 5:**

5. On an unknown date between November 2018 and 19 December 2018, you side-kicked Colleague B on the buttocks.



**This charge is found proved.**

The panel took into account the witness statement and oral evidence of Colleague B and Colleague C.

Colleague B told the panel of an incident at handover where Mr Scott was standing beside her and “*side kicked*” her on her bum as she left to do a job. She told the panel that Colleague C told her afterwards that Mr Scott should not have done that but that she had not thought much of it at the time.

Colleague C told the panel of the same incident. She told the panel that her impression was that Colleague B got a bit of a fright from the kick and that she had looked at her ‘*as if to say “what was that all about”*’. Colleague C told the panel that she was shocked by Mr Scott’s behaviour as it was “*totally unprofessional*”.

Ms 1 confirmed that Mr Scott said he could not recall this incident when he was asked about it in the Home’s investigatory meeting. This is confirmed in the investigation meeting report dated 8 January 2019.

The panel was satisfied that it was more likely than not that, on an unknown date between November 2018 and 19 December 2018, Mr Scott side-kicked Colleague B on the buttocks. The panel therefore found this charge proved.

**Charge 6:**

6. On an unknown date between November 2018 and 19 December 2018, you:

- 6.1. Said to Colleague C that Colleague B “*looked beautiful without make-up on*” or words to that effect.

**This charge is found proved.**

The panel took into account the witness statement and oral evidence of Colleague C.

Colleague C confirmed that there had been an occasion where Mr Scott had been talking about Colleague B to her and had commented that Colleague B looked beautiful without make up on.

The panel considered Colleague C to be a credible and reliable witness. The panel was therefore satisfied that it was more likely than not that, on an unknown date between November 2018 and 19 December 2018, Mr Scott Said to Colleague C that Colleague B “*looked beautiful without make-up on*” or words to that effect. The panel therefore found this charge proved.

**Charge 7:**

7. Your actions as set out in charges 1-6 breached professional boundaries.

**This charge is found proved in relation to charges 1-5. It is found not proved in relation to charge 6.**

The panel considered each of the charges found proved.

In relation to charges 1.1 and 1.2, the panel considered Mr Scott’s behaviour detailed in these charges to be a breach of professional boundaries. The panel considered that repeatedly attempting to touch or bump into colleagues and intentionally standing very close to them was not professional, particularly as it had made Colleague A feel uncomfortable.

In relation to charge 2. The panel considered that any physical contact of this nature between colleagues who do not know each other well and who do not want this sort of contact to be unprofessional. The panel therefore considered that this was a breach of professional boundaries.

In relation to charges 3.1 and 3.2. The panel considered this was clearly an intentional and pre-meditated act as well as an infringement of Colleague A's privacy. The panel considered Mr Scott's actions to be completely unprofessional, particularly given the distress it has caused Colleague A and in light of the fact that they didn't know each other well. The panel noted Ms 1 was clear that it should not have happened and that staff did not have permission to take photographs on their phones whilst at work. Ms 1 was certain that Mr Scott had not sought her permission to take any photographs and that it was against the policy regarding phone use by staff at the Home. The panel therefore considered that this was a clear breach of professional boundaries.

In relation to charge 4. The panel noted that Mr Scott explained what he meant by Amazonian so it is clear what he meant by this comment. The panel considered describing a colleague in this way to be unprofessional. The panel therefore considered that this was a breach of professional boundaries.

In relation to charge 5. The panel noted that this was unwanted physical contact from Mr Scott in a work environment which it considered to be unprofessional. The panel therefore considered that this was a breach of professional boundaries.

In relation to charge 6, the panel did not consider it to be a breach of professional boundaries to comment that a colleague looked beautiful without make-up on.

For the above reasons the panel determined that Mr Scott's actions as set out in charges 1-5 breached professional boundaries. The panel therefore found this charge proved in relation to charges 1-5, it is found not proved in relation to charge 6.

### **Charge 8:**

8. Your actions as set out in charges 1-6 were sexually motivated in the pursuit of sexual gratification.

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

The panel considered all of the evidence before it. The panel noted that none of the witnesses described any of the incidents as being sexual in nature. In her oral evidence, Colleague B told the panel that she did not feel there was anything sexual in the way Mr Scott was towards her. Ms 1 told the panel that she did not think the incident detailed at charge 3, photographing Colleague A, was sexually motivated.

The panel noted that all of the witnesses gave evidence to the effect that Mr Scott came across as wanting to be liked, that he was trying to fit in, trying to '*have a laugh*' and that he was over-familiar.

Ms 1 told the panel that she got the impression that Mr Scott was not taking matters seriously at the initial investigatory interview on 19 December 2018. It is recorded in the investigation meeting report that in relation to the incident at charge 3, Mr Scott '*stated that he thought it would be a fun and jovial thing to do*'. Ms 1 told the panel that in her view he had not expressed genuine remorse and that she invited him to apologise in writing to Colleague A.

The panel considered that, whilst Mr Scott's behaviour could be described as odd and, as found at charge 7, unprofessional, there is not sufficient evidence to allow it to make a reasonable inference that his actions as set out in charges 1-6 were '*sexually motivated in the pursuit of sexual gratification*'. The panel therefore found this charge not proved.

## **Submission on misconduct and impairment:**

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

In his submissions Mr Segovia invited the panel to take the view that Mr Scott's actions amount to a breach of *The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates* (2015) [updated in 2018] (the Code).

Mr Segovia reminded the panel that it had found that Mr Scott acted unprofessionally and had breached professional boundaries. Further, Colleague A had been made to feel uncomfortable and was caused considerable distress by Mr Scott's actions. He then directed the panel to specific paragraphs of the Code and identified where, in the NMC's view, Mr Scott's actions amounted to misconduct.

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

He then 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. Mr Segovia referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Mr Segovia informed the panel that Mr Scott had previous regulatory proceedings against him for behaviour of a similar nature. He took the panel through the previous proceedings and the determinations of the panels involved in these. Mr Segovia submitted that it was of particular note that the hearing for the previous charges took place in October 2018 and that the incidents leading to the charges found proved in this case took place a short time later, in November/December 2018.

Mr Segovia told the panel that Mr Scott appears to have disengaged from the NMC proceedings and, as such, there is no evidence that Mr Scott has any insight into the incidents nor is there evidence of his remediation of the concerns. Mr Segovia told the panel that there is a history of Mr Scott behaving in this manner going back as far as 2014 and that, consequently, there was a real risk of repetition of this behaviour.

Mr Segovia therefore invited the panel to find Mr Scott's fitness to practise currently impaired.

The panel accepted the advice of the legal assessor.

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

### **Decision on misconduct**

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of *The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates* (2015) [updated in 2018] (the Code).

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

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

### **Promote professionalism and trust**

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

## **20 Uphold the reputation of your profession at all times**

To achieve this, you must:

- 20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment.
- 20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people.
- 20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress.
- 20.6 stay objective and have clear professional boundaries at all times...

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mr Scott's behaviour was unprofessional and breached professional boundaries. The panel considered each of the charges found proved in turn and whether they amounted to misconduct individually.

Charge 1.1. Whilst the panel considered that this behaviour was unprofessional, as detailed in the determination on facts, it did not consider it to be a serious falling short of the standards expected. It therefore determined it did not amount to misconduct.

Charge 1.2. The panel noted that this charge involved intentional and unwanted physical contact which made the recipient feel uncomfortable and was repeated despite body language from Colleague A indicating her discomfort. The panel considered that nurses have a responsibility to ensure that they act appropriately with colleagues and create a professional and safe working environment. The panel considered that this did amount to misconduct.

Charge 2. The panel noted that Mr Scott did not know Colleague A well and that this charge again related to unwanted physical contact. The panel considered that this did amount to misconduct.

Charge 3.1. The panel noted that the photograph was taken without Colleague A's consent and had caused her considerable distress at the time of the incident and still affected her today. The panel considered that it was socially unacceptable as well as unprofessional to take a photo of this nature of a colleague. The panel considered it was an invasion of Colleague A's privacy and that it amounted to misconduct.



Charge 3.2. The panel considered that saying something of this nature to a colleague to have been completely unprofessional and that it was not behaviour expected of a registered nurse. The panel noted the imbalance of power; Mr Scott was a registered nurse who was senior to Colleague A. The panel considered this to be a serious matter which amounted to misconduct.

Charge 4. The panel considered that making a remark of this nature to a colleague, who he did not know well, in the workplace to have crossed the line into being unprofessional. The panel considered this was serious enough to amount to misconduct.

Charge 5. The panel again noted that this charge related to unwanted physical contact, which took Colleague B by surprise. The panel considered Mr Scott's inappropriate behaviour serious enough to amount to misconduct.

Charge 6. The panel did not consider that this amounted to misconduct.

Charge 7. The panel considered that the breaching of professional boundaries in relation to charges 1.2 – 5 to amount to misconduct.

The panel considered that these were not isolated incidents rather that Mr Scott has demonstrated a course of conduct including unwanted physical contact and comments which amounted to unprofessional behaviour towards several different colleagues. The panel noted that the colleagues involved were all female members of staff and were all in roles junior to Mr Scott. The panel considered that this imbalance of power would have made it more difficult for Mr Scott's colleagues to raise any concerns regarding his behaviour.

Accordingly, the panel was satisfied that, individually and collectively, Mr Scott's actions at charges 1.2, 2, 3.1, 3.2, 4, 5, and therefore 7, did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

## Decision on impairment

The panel next went on to decide whether, as a result of this misconduct, Mr Scott's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. 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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment:

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 he/she:

- 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. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

The panel noted that this case does not concern Mr Scott's clinical abilities nor does it relate to alleged dishonesty. However, reflecting on its findings of misconduct, the panel was satisfied that limbs b and c are engaged in this case. The panel considered that Mr Scott's unprofessional behaviour had breached a fundamental tenet of the profession and that his conduct had brought the profession into disrepute.

The panel carefully considered the additional information presented to it. The panel noted that Mr Scott has previous regulatory findings for similar behaviour including inappropriate and unwanted physical contact, unprofessional comments and being over-familiar with colleagues. In October 2018, a panel of the fitness to practise committee found charges of a similar nature proved and subsequently found Mr Scott's fitness to practise impaired.

Mr Scott attended the hearing in October 2018. He offered apologies and reassurances to the panel that he had learnt '*a very hard lesson*' and that he would not repeat this kind of behaviour. He expressed that he had not understood the impact of his actions on his colleagues and that he was '*mortified*'. The panel in October 2018 considered that, although there were gaps in his insight, Mr Scott had developed some insight during the course of the proceedings. As a result, Mr Scott received a conditions of practice order for 12 months. When this order was reviewed in October 2019 Mr Scott had not engaged with the order or proceedings and as such was given a 12 month suspension order.

This panel noted that there is a pattern of behaviour going back as far as 2014 in which Mr Scott has acted inappropriately and unprofessionally towards colleagues. At the previous hearing, in October 2018, it was found that Mr Scott's bullying and harassing behaviour dated back as far as 2014. This panel noted that Mr Scott's behaviour was consistently directed towards female colleagues in positions junior to him. It noted the imbalance of power in these situations and considered that Mr Scott appeared to be exploiting his position of authority.

The panel considered there is a history of Mr Scott receiving warnings for behaviour of a similar nature including a police investigation and trial (at which he was acquitted), suspensions and warnings from previous employers as well as the matters considered at previous NMC proceedings. Mr Scott's representative at the hearing in October 2018 reassured that panel that Mr Scott was *'well aware that should there be any further issues there would be no second chances'*.

The panel considered that Mr Scott does not appear to have learnt from the many opportunities he has been afforded.

The panel noted that the incidents leading to the charges in this case occurred in November and December 2018, a matter of weeks following his reassurances to the previous panel. The panel considered that Mr Scott should have been particularly aware of his behaviour and conduct at this time. In light of this the panel concluded that Mr Scott has no genuine insight into the impact and seriousness of his behaviour.

The panel took into account that Mr Scott appears to have disengaged from the NMC proceedings entirely. He has not attended this hearing or sent any representations nor did he attend the review hearing for the previous case against him. The panel therefore has nothing before it to determine whether Mr Scott has remediated the concerns identified.

Taking all of the above into account the panel is of the view that there is a significant risk that Mr Scott will repeat this behaviour in the future. The panel took account of the impact Mr Scott's actions have had on his colleagues since 2014. The panel noted from the evidence provided at this hearing and at the previous hearings, it appears that Mr Scott's colleagues tolerated his behaviour, which made them feel uncomfortable, until a more serious incident occurred when they felt compelled to report it. The panel took into account the potential impact of Mr Scott's behaviour on team work and the potential

impact on any patients or public who witnessed this behaviour. The panel therefore decided that a finding of impairment is necessary on the ground of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 reflected on the seriousness of this case, in particular the repeated nature of Mr Scott's conduct and his apparent failure to learn from past events. The panel determined that, in this case, a finding of impairment on public interest grounds was required in order to uphold and declare proper professional standards and maintain confidence in the nursing profession.

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

#### **Determination on sanction:**

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

In his submissions on sanction Mr Segovia advised the panel that the NMC sanction bid is that of a striking-off order, which was sent to Mr Scott in the notice of hearing dated 17 January 2020.

Mr Segovia reminded the panel that it had identified, at the impairment stage of this hearing, issues with Mr Scott's insight and remediation as well as a high risk of

repetition. He noted that the panel determined that Mr Scott appeared not to have learned anything from the many opportunities afforded him. In addition, the panel had determined that Mr Scott had demonstrated a course of conduct including unwanted physical contact and comments which amounted to unprofessional behaviour towards several different colleagues. He submitted that the panel had clearly determined that there was an imbalance of power and had noted that the colleagues involved were all female members of staff and were all in roles junior to Mr Scott.

Further, he reminded the panel that it had found impairment on the grounds of public protection as well as public interest, indicating a potential impact on patients. Mr Segovia took the panel through the aggravating factors he had identified in this case. He told the panel that he had been unable to identify any mitigating factors. Mr Segovia submitted that, as this case did not involve patients, the fact that there was no patient harm was not, in his opinion, a mitigating factor of this case.

Mr Segovia invited the panel to come to the view that Mr Scott's behaviour was fundamentally incompatible with his remaining on the NMC Register and invited the panel to impose a striking-off order as it was the only reasonable outcome which would address the public protection and public interest issues in this case.

In reaching its decision, the panel has had regard to all the evidence that has been presented in this case, as well as the submissions by Mr Segovia along with its prior determinations.

The panel accepted the advice of the legal assessor.

The panel acknowledged the NMC sanction bid of striking-off order, but was not bound by such a bid, and has exercised its independent judgement. 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 Sanctions Guidance (SG) published by the NMC. It recognised that

the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel has also taken account of the aggravating and mitigating factors in this case.

The aggravating factors which the panel took into account, in particular, were: the abuse of a position of trust and Mr Scott's apparent direction of his behaviour towards junior colleagues; the lack of evidence of insight, remorse or remediation; the actual, and in some instances, long-standing harm caused to female colleagues, in particular to Colleague A who described feeling embarrassed, degraded and physically sick both at the time of the incidents and at this hearing; the previous regulatory proceedings regarding matters of a similar nature; and that Mr Scott has exhibited a longstanding pattern of behaviour, which has been repeated despite warnings and within weeks, potentially days, of the previous NMC hearing.

When considering the mitigating factors in this case, the panel noted that Mr Scott wrote a letter of apology to Colleague A. However, having heard that Mr Scott was invited to do this by Ms 1 and that it was written on a '*scrap*' of paper, the panel was not satisfied that it reflected genuine remorse. The panel therefore concluded that there were no mitigating factors it could identify in this case.

The panel is aware that it can impose any of the following sanctions; take no further action, make a caution order for a period of one to five years, make a conditions of practice order for no more than three years, make a suspension order for a maximum of one year, or make a striking-off order.

The panel considered the potential sanctions in ascending order of restrictiveness.

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 has already found that Mr Scott's fitness to practise is impaired on the grounds of public interest as well as on

public protection grounds. As such, the panel concluded that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Scott's actions were not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case and the significant risk of repetition. In addition, having found Mr Scott's fitness to practise is impaired on public protection grounds, a caution order would provide no restriction on his practice. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Scott's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel took into account the SG, in particular:

Conditions may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

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



The panel noted that Mr Scott has repeatedly failed to demonstrate learning from his previous behaviour and the previous fitness to practise proceedings. Despite having been afforded several opportunities Mr Scott has repeated his inappropriate and unprofessional behaviour and has breached professional boundaries on a number of occasions. The panel noted that the charges in this case related to a period of time shortly after Mr Scott's previous hearing had concluded and whilst he was under a conditions of practice order. The panel was therefore of the view that the concerns identified in this case are unlikely to be addressed by further retraining or conditions, particularly given Mr Scott's lack of engagement with these proceedings. The panel considered that there are attitudinal and behavioural issues in this case which could not be addressed by placing restrictions on Mr Scott's practice. The panel was therefore of the view that there are no practical or workable conditions that could be formulated which would protect colleagues, given the nature of this case. Furthermore the panel concluded that the placing of conditions on Mr Scott's registration would not adequately address the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a suspension order would be appropriate where (but not limited to):

- 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 Mr Scott's actions were not an isolated incident but rather demonstrated a pattern of behaviour over an extended period of time which caused colleagues discomfort and in some cases resulted in significant distress. The panel considered that there is no evidence of genuine remorse and little to no evidence of insight into the distress Mr Scott caused, in particular to Colleague A. The panel considered that Mr Scott's repeated behaviour, despite the numerous warnings and

opportunities afforded him, demonstrated attitudinal issues as highlighted by his unprofessional behaviour towards a number of colleagues over a significant period of time and in two different workplaces – an acute NHS setting and a care home setting. Further, the panel has identified that there is a significant risk of repetition of this behaviour based on Mr Scott's lack of insight and remediation and the fact that he has already demonstrated a repeat of this behaviour within weeks of a previous panel imposing a restriction on his practice and despite reassurances that he had '*learnt a lesson*'.

Finally, in looking at a striking-off order, the panel took note of the following from 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?

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

The panel was of the view that the findings in this particular case, especially in light of the previous regulatory proceedings, demonstrate that Mr Scott's behaviour and unprofessional conduct was extremely serious and had the potential to cause significant harm to colleagues. The panel was concerned that Mr Scott appeared to have a tendency to target junior members of staff who were female. The panel considered that Mr Scott's conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse.

The panel concluded that the serious breach of the fundamental tenets of the profession evidenced by Mr Scott repeated behaviour is fundamentally incompatible with him

remaining on the register. The panel considered that to allow him to continue practising would undermine public confidence in the profession and in the regulatory process. Further the panel has nothing before it to suggest that if Mr Scott were to remain on the register that his unprofessional behaviour would not continue. The panel was mindful of the fact that Mr Scott had previously been given several opportunities but that this case has demonstrated that he has not learnt from his past experiences.

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

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

Accordingly the panel is satisfied that a striking-off order is necessary on the grounds of both public protection and public interest.

The panel was mindful of the potential impact that such an order may have on Mr Scott but taking full account of the important principle of proportionality, the panel was of the view that the interests of the public outweighed Mr Scott's interests.

The panel, therefore, directs the Registrar to strike Mr Scott's name from the Register. He may not apply for restoration until five years after the date that this decision takes effect.

## **Determination on Interim Order**

The panel considered the submissions made by Mr Segovia that an interim suspension order should be made to cover the 28 day appeal period. He submitted it was necessary, given the panel's earlier findings and the risk of repetition identified, in order to protect the public and is otherwise in the public interest. He submitted that this was appropriate given the panel's findings on impairment. He submitted that an 18 months interim suspension order would be appropriate as it is not possible to know how long an appeal would take to resolve.

The panel accepted the advice of the legal assessor and took account of the guidance issued to panels by the NMC when considering interim orders and the appropriate test as set out at Article 31 of The Nursing and Midwifery Order 2001. It may only make an interim order if it is satisfied that it is necessary for the protection of members of the public, is otherwise in the public interest or is in Mr Scott's own interests.

The panel was satisfied that an interim order is required 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. It concluded that to not make such an order would be incompatible with the panel's earlier findings and with the substantive sanction that it has imposed.

The panel decided to impose an interim suspension order for the same reasons as it imposed the substantive order and to do so for a period of 18 months in light of the likely length of time that an appeal would take to be determined if one was lodged.

The panel recognises the impact that an interim suspension order may have on Mr Scott. However, it concluded the public interest outweighed his in this regard.

The effect of this order is that, if no appeal is lodged, the substantive striking off order will come into effect 28 days after notice of the decision has been served on Mr Scott

and the interim order will lapse. If an appeal is lodged then the interim suspension order will continue until the appeal is determined.

The panel's decisions will be sent to Mr Scott in writing.

That concludes this determination.