

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

**Substantive Hearing  
17- 24 January 2022**

Virtual Hearing

**Name of registrant:** Alexandra-Nicolae Calota

**NMC PIN:** 15L0593C

**Part(s) of the register:** Register Nurse-Adult Nursing - December 2015

**Area of registered address:** Guildford

**Type of case:** Misconduct

**Panel members:** Suzy Ashworth (Chair, Lay member)  
Allwin Mercer (Registrant member)  
Caroline Friendship (Lay member)

**Legal Assessor:** Michael Hosford-Tanner

**Hearings Coordinator:** Roshani Wanigasinghe

**Nursing and Midwifery Council:** Represented by Alfred Underwood, Case Presenter

**Mr Calota:** Present and not represented

**Special Counsel:** Andrew Young in the cross examination of Colleague 1.

**Facts proved by admission:** Charges 2, 5, 6a, 10a, 10b, 11a, 11b, 11c, 11d, and 11e.

**Facts proved:** Charges 1, 3, 4a, 4b, 4c, 6b, 7, 8, 9a, 9b, 11f, 11g, 11h and 12

**Fitness to practise:** Impaired

**Sanction:** Suspension order with review (6 months)

**Interim order:**

Interim suspension order (18 months)

## Details of charge

That you, a registered nurse:-

1) On an unknown date or dates in late May/early June 2020 approached Colleague 1 from behind and touched her waist, bottom or stomach on one or more occasions.

**[Charge found proved]**

2) On an unknown date or dates in late May/early June 2020 made comments with respect to Colleague 1's appearance such as "you look nice today" and/or "you are so pretty" or words to that effect on one or more occasions. **[Proved by admission]**

3) On an unknown date in June 2020 approached Colleague 1 from behind and pressed your body against hers. **[Charge found proved]**

4) On an unknown date in or around mid-June 2020:-

a) approached Colleague 1 from behind and pressed your body against hers;

**[Charge found proved]**

b) said to Colleague 1 "I know this makes you feel uncomfortable because you are very shy" or words to that effect; **[Charge found proved]**

c) said to Colleague 1 "it's okay, I was shy until I got my first girlfriend, then I got experienced, you just need experience" or words to that effect. **[Charge found proved]**

5) On an unknown date in June 2020 said to Colleague 1 "We should go on holiday together, it would be Las Vegas, America and no one would have to know what we get up to" or words to that effect. **[Proved by admission]**

6) On an unknown date in or around June 2020 said to Colleague 1:-

a) that you were happy that Colleague 1 had broken up with her boyfriend as you could now give her lots of kisses or words to that effect;

**[Proved by admission]**

b) that she should let you know if she ever wanted to have some fun with you or words to that effect. **[Charge found proved]**

7) On an unknown date in June 2020 whilst Colleague 1 was cleaning chairs and tables you said to her “you look very good from behind” or words to that effect.

**[Charge found proved]**

8) On an unknown date or dates in July 2020 touched or pinched Colleague 1 on her waist or back on one or more occasions. **[Charge found proved]**

9) On an unknown date in or around July 2020 when Colleague 1 was walking Residents A and B to lunch:-

a) said “it’s my three ladies but one is my favourite” or words to that effect;

**[Charge found proved]**

b) grabbed Colleague 1’s hips, pushed her against a wall and pressed your body against hers. **[Charge found proved]**

10) On or around 21 July 2020:-

a) grabbed Colleague 1’s rucksack/bag and pulled her close to you;

**[Proved by admission]**

b) said to Colleague 1 that you did not want her to leave or words to that effect.

**[Proved by admission]**

11) On 24 July 2020 whilst Colleague 1 was lying on a sofa during a break:-

a) told her to move so you could lay close to her or said words to that effect;

**[Proved by admission]**

b) asked Colleague 1 if she wanted to go for a drink with you or words to that effect;

**[Proved by admission]**

c) said you would shave your beard so you could look younger for her or words to that effect; **[Proved by admission]**

d) asked Colleague 1 if you could exchange telephone number or words to that effect; **[Proved by admission]**

e) snatched Colleague 1's phone from her hand; **[Proved by admission]**

f) held Colleague 1's phone in a position which meant that she would have to lean over you to attempt to retrieve it; **[Charge found proved]**

g) said to Colleague 1 that you did not want a relationship but only wanted to have some fun with her or words to that effect; **[Charge found proved]**

h) said to Colleague 1 "I can teach you a lot" or words to that effect.

**[Charge found proved]**

12) Your conduct at charges to 1 to 11h) above was sexually motivated in that it was done for sexual gratification and/or in pursuit of a future sexual relationship with Colleague 1.

**[Charge found proved]**

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

### **Special Measures**

It was noted by this panel that the NMC had sought special measures in this case. The following were measures were granted by the Committee Chair:

- ***"That special counsel be instructed to question witness Colleague 1 on your behalf (so that you cannot ask her questions directly).***
- ***That witness Colleague 1 is permitted to give her evidence via videolink.***
- ***That witness Colleague 1 is permitted to give her evidence in private (so that members of the public cannot observe that part of the hearing).***

***The chair noted that the allegations are of a sexual nature; the witness, Colleague 1, is the alleged victim and you will not be represented at the substantive hearing and therefore shall not be allowed to cross examine the witness directly in person. By reasons of Rule 23 (4) (e) the chair determined to allow the NMC's application that special counsel be instructed to question witness Colleague 1 on your behalf. The chair further determined to allow the NMC's application to permit Colleague 1 to give evidence via videolink and that her evidence be held in private. He determined that acceding to these requests would not cause prejudice to you and would be fair and proportionate in the circumstances of the case."***

## **Background**

The NMC received a referral regarding concerns about your conduct between 12 May 2020 and 28 July 2020 from the General Manager at Sunrise Senior Living, Surrey ("the Home").

You were employed as a Wellness nurse by the Home from February 2016 until your dismissal in December 2020. Your role involved being the person responsible for the overall well-being of residents. Your responsibilities included administrations of medication, ordering medication, overseeing all care to residents and liaising with external doctors and nurses.

It is alleged that you carried out a series of sexual advances from May to July 2020 targeted at an activity assistant, Colleague 1, with whom you worked at the Home. The alleged behaviour included touching her waist and bottom without her consent or invitation, and making unsolicited comments of a sexual nature that included telling her she looked good from behind and stating you could "*teach her a lot*". It is alleged that the inappropriate touching of and comments to Colleague 1 began almost at once when she started her role at the Home and continued consistently throughout your time working together.

It is alleged that Colleague 1 was approached by Colleague 2, another Activity Assistant, in July 2020, when she had noticed your behaviour. It is alleged that Colleague 1 made a formal complaint about your behaviour a few days later after other incidents had occurred.

You were suspended from work on 30 July 2020. On the 21 December 2020, you were summarily dismissed for gross misconduct by your employer. This panel must make its own determination as to whether the allegations have been proved by the NMC.

It is alleged that during the initial employers investigation, you had admitted acting in an inappropriate and unethical way and had taken responsibility for some of your behaviour, although you had not made any specific admissions to any particular incident.

### **Decision and reasons on facts**

At the outset of the hearing, you informed the panel that you made admissions to charges 2, 5, 6a, 10a, 10b, 11a, 11b, 11c, 11d and 11e, confirming admissions you had made in your NMC case management form.

The panel therefore finds charges 2, 5, 6a, 10a, 10b, 11a, 11b, 11c, 11d and 11e 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 in this case together with the submissions made by Mr Underwood on behalf of the NMC and by you.

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 1: Activity Assistant who started to work at the Home in May 2020;
- Colleague 2: Activity Assistant who started to work at the Home in July 2020;
- Colleague 3: Deputy Manager at the Home.

The panel also heard evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

In approaching its consideration of the facts of this case, the panel has concluded that:

Colleague 1 had started to work full time in the Home on 12 May 2020, in the dining team. She progressed to the role of Activities Assistant a short time later for three days every week, continuing her job in the dining team on the other two days each week.

At the time of the events, you had been working in the care home as a registered nurse for over four years.

At the time of the events, Colleague 1 was a 19 year-old woman, without much workplace experience. At the time of the events, you were a 31 year-old man and had been a registered nurse for five years.

Colleague 2 started to work in the Home as an Activities Assistant in July 2020 and had not previously met Colleague 1 or you. Colleague 2 noticed that you were behaving in a way that seemed to make Colleague 1 uncomfortable, and asked her whether this was the

case. Colleague 2 offered to support Colleague 1 if she wished to make a complaint about your behaviour, as Colleague 2 perceived her to be young and inexperienced.

Colleague 1 made a complaint to her manager about your behaviour in late July 2020. The behaviour about which she complained included the allegations set out in the charges. From about June Colleague 1 had kept some notes of incidents on her phone and she supplied information in an email dated 29 July 2020 to Colleague 3. The information in that email is detailed, and is the basis of, and consistent with, Colleague 1's signed NMC statement dated 15 January 2021.

Colleague 3 investigated the complaint against you on behalf of the Home. She took statements from Colleague 1 and Colleague 2 also interviewed you. A referral was made to the NMC as a result.

In your interview with Colleague 3 in the internal investigation, you accepted some of the allegations that Colleague 1 had made about your behaviour, and said that others were "not real and exaggerated". You accepted that your behaviour was inappropriate and unethical, but said that you did not realise that your attentions were unwelcome to Colleague 1.

Colleague 3 told the panel that you had a good relationship with the residents at the Home and with their families, and were known as friendly and approachable. Colleague 3 told the panel that no other complaints by staff had been made against you.

You made some admissions to the charges in these proceedings. Your admissions related to certain comments that you made to Colleague 1, and also to physical actions - grabbing her rucksack handle to stop her leaving the Home and snatching her phone - that the panel was satisfied were inappropriate, went beyond professional boundaries, and that you must have known would make Colleague 1 feel uncomfortable.

You admitted in evidence that you were attracted to Colleague 1 and that the things you had admitted saying and doing to Colleague 1 were motivated by you being attracted to her. The panel also noted that in your reflective piece, prepared for these proceedings, you wrote in the “evaluation” section of the template, “I think this incident happened because I did not realise at the time I’m making unwanted sexual advances because... that member of the staff never told me to stop or that she is feeling uncomfortable”. In the “conclusions” section of the template, you wrote, “I will never make any sexual advances or to a member of a staff or patients or public!”.

The charges to which you admitted alone related to incidents of behaviour between May 2020 and July 2020, which were the first two and a half months of Colleague 1’s employment at the Home. This in itself indicates a pattern of behaviour that was persistent. The panel was satisfied that you admitted to saying a number of things that could only be construed to have a sexual motivation. The panel did not accept your evidence that the comments were friendly “banter” and accepted the evidence of Colleague 1 that she did not find the comments funny and they made her uncomfortable.

The panel noted that you denied that you had ever touched Colleague 1 in the contexts alleged. However, the panel found the charges that were not admitted all to have been proved by evidence.

The panel found that Colleague 1 gave evidence that was detailed, consistent, given without embellishment and credible. You alleged that Colleague 1 had made the allegations because she was very angry with you because you snatched her phone from her, but you have admitted a number of the matters alleged and others have been found by the panel to have been proved by evidence, and the panel considered your alleged motivation for Colleague 1 to make her complaint, to be unfounded. The panel found that you were guarded in the evidence that you gave, and that in many cases you simply flatly denied the allegations made. For reasons set out below in relation to each of the charges denied by you, the panel did not find your evidence persuasive or credible.

The panel was satisfied that you pursued a campaign targeted at pursuing a sexual relationship with Colleague 1 because, by your own admission, you were attracted to her, and some of your actions have been found, for reasons set out below in relation to each charge, to have been done for your sexual gratification. The panel was satisfied that your behaviour escalated over the course of the two and a half months between May 2020 and July 2020.

The panel noted that although certain incidents were said to have been likely to have been observed by other staff at the Home (in addition to the new member of staff, Colleague 2), neither the NMC nor you called them as witnesses in the case. It is not the panel's role to speculate on why these staff members did not provide evidence. The panel accepted the Admissions Document produced by the NMC in this respect. The panel noted that you had made admissions to a number of the incidents of behaviour that were said to have been observed by other people.

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

### **Charge 1**

**“1) On an unknown date or dates in late May/early June 2020 approached Colleague 1 from behind and touched her waist, bottom or stomach on one or more occasions.”**

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Colleague 1, Colleague 2 and your evidence.

The panel noted that Colleague 1 in her witness statement dated 15 November 2021 stated:

*“In my first week at the home (I think this was at the end of May 2020 or beginning of June 2020), the registrant would come up from behind and grab my waist and sometimes my bum or my stomach. Initially, I thought the registrant was being friendly and as such I brushed his actions off however registrant kept trying to get close me [sic]. He would also make comments such as “you look nice today”, “you are so pretty”. The registrant’s comments made me feel very awkward but I would often just walk away. I also did not initially report this to anyone as I thought that the registrant was just being friendly towards me.”*

The panel further considered the evidence of Colleague 2’s witness statement dated 19 January 2021, which was also confirmed during her oral evidence that:

*“Initially, I noticed that the registrant would touch/pinch [Colleague 1] on her waist when walking close to her. The registrant did this in the dining room and he did not appear to be hiding this as such I wondered whether the registrant and [Colleague 1] were in a relationship. I then also noticed that [Colleague 1] did not appear to encourage or flirt with the registrant and seemed quite uncomfortable with the registrant’s actions and as such after a few days, I asked [Colleague 1] whether she was comfortable with the way the registrant touched her to which she said “no” ”.*

The panel also had sight of a statement made by Colleague 2 dated 28 July 2020 for the purposes of the internal investigation, in which Colleague 2 states the following:

*“During my second week, I decided to check with [Colleague 1], that his touching her was ok, I wondered if they were in a relationship. She said his touching made her uncomfortable and that it happened every shift.”*

Although Colleague 2’s observations were in July 2020, Colleague 1 has alleged in her oral evidence that your conduct in May/early June 2020, to which Charge 1 refers, continued throughout the period when you were both working together at the Home. The

panel has accepted Colleague 1's evidence on this. What Colleague 2 observed in July 2020 is therefore, corroboration of the allegations in Charge 1.

The panel considered the email dated 29 July 2020 from Colleague 1 to Colleague 3, which states:

*"In my first few weeks Alex would come up from behind and touch my waist and sometimes my bum. I brushed it off as friendliness but he kept trying to get close to me while I was working in the kitchen."*

The panel determined that Colleague 1's evidence was clear in relation to this charge. Her witness statement was consistent with her oral evidence. It bore in mind that, when asked about the nature of the touching in oral evidence, Colleague 1 said that this was with your fingers or open palm and it was usually brief.

The panel also considered Colleague 2's evidence. It determined her evidence to be reliable. The panel bore in mind Colleague 2's evidence in which she said she wondered why no one else had said anything about your behaviour earlier as it was clear to her that it was unwelcomed by Colleague 1.

The panel bore in mind your evidence. It noted that you said the Home had an average of about 100 residents, 10 carers, 2 nurses and 3 to 4 managers. You said that the Home was very busy all the time, there was no private space and therefore had you conducted yourself in the manner alleged, you would have been seen by others and been reported immediately.

The panel noted that apart from Colleague 2, no other member of staff had been called by the NMC or by you. It did not speculate on the reasons for that beyond considering the statements of admissions before it.

Taking account of all the relevant evidence, the panel concluded that it preferred Colleague 1's evidence to your evidence.

The panel therefore concluded that in respect of this allegation, on an unknown date or dates in late May/early June 2020, you approached Colleague 1 from behind and touched her waist, bottom or stomach on one or more occasions. The panel found that there were several occasions and that the parts of the body alleged were each touched on one or more of these occasions.

The panel therefore found charge 1 proved.

### **Charge 3**

**“3) On an unknown date in June 2020 approached Colleague 1 from behind and pressed your body against hers.”**

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Colleague 1 and your evidence.

The panel noted that Colleague 1 in her witness statement dated 15 November 2021 stated:

*“The registrant’s actions then became progressively worse in that he would come behind me and press his body against mine (I think this happened around the kitchen area in June 2020).”*

The panel bore in mind that Colleague 1's oral and written evidence was broadly consistent with one another. She told the panel this occurred in the kitchen when she was loading the glass washer. She conceded that this was a tight space where there was not a

lot of room, but she told the panel that she worked with other dining staff regularly and that she had never experienced this from them.

The panel considered your evidence in which you denied the allegation and said that *“it didn’t make any sense”*. However you did not provide any further explanations or an opposing view to this charge. When questioned by the NMC, you said that you may have touched Colleague 1 unintentionally. You said that the only time you touched Colleague 1 was to examine her for injuries, with her permission following a fall. Colleague 1 was not asked in cross-examination by the Special Counsel about any event where she had a fall.

Taking account of all the relevant evidence, the panel concluded that it preferred Colleague 1’s evidence to your evidence. It determined that the physical contact was intentional.

The panel therefore concluded that in respect of this allegation, on an unknown date in June 2020, you approached Colleague 1 from behind and pressed your body against hers.

The panel therefore found charge 3 proved.

#### **Charge 4a, 4b and 4c**

**“4) On an unknown date in or around mid-June 2020:-**

- a) approached Colleague 1 from behind and pressed your body against hers;**
- b) said to Colleague 1 “I know this makes you feel uncomfortable because you are very shy” or words to that effect”**
- c) said to Colleague 1 “it’s okay, I was shy until I got my first girlfriend, then I got experienced, you just need experience” or words to that effect.”**

**Charges 4a, 4b and 4c are each found proved.**

In reaching this decision, the panel took into account the evidence of Colleague 1 and your evidence.

The panel noted that Colleague 1 in her witness statement dated 15 November 2021 stated:

*“Around the middle of June 2020, I was loading the glass washer in the kitchen when I noticed that the registrant came close to me from behind and pressed his body against mine and stared at me. I got very uncomfortable and immediately asked the registrant what he was doing in which he answered “I am getting very close to you. I know this makes you feel uncomfortable because you are very shy” I then immediately replied “I am not shy” and the registrant said “it’s okay, I was shy until I got my first girlfriend, then I got experienced, you just need experience” I felt this came across with sexual implications...”*

The panel noted that this incident was reiterated in the email dated 29 July 2020 from Colleague 1 to Colleague 3. It bore in mind that Colleague 1 has been confident, clear and consistent throughout her oral and written evidence that you were pressing yourself against her and that you made these comments.

You denied this charge and pointed out that there were no witnesses to this incident.

Taking account of all the relevant evidence in respect Charge 4a, the panel concluded that it preferred Colleague 1’s evidence to your evidence. The panel therefore concluded that in respect of Charge 4a, on an unknown date in or around mid-June 2020, you approached Colleague 1 from behind and pressed your body against hers.

In relation to Charge 4b, the panel concluded that it preferred Colleague 1’s evidence to your evidence. It concluded therefore that you did say to Colleague 1, “I know this makes you feel uncomfortable because you are very shy” or words to that effect. The panel

determined that this represented an acknowledgement that you knew you were making Colleague 1 feel uncomfortable through your actions.

In relation to Charge 4c, the panel concluded that it preferred Colleague 1's evidence to your evidence. It concluded therefore that, you did say to Colleague 1, "it's okay, I was shy until I got my first girlfriend, then I got experienced, you just need experience" or words to that effect. The panel found this represented a tacit acknowledgement that Colleague 1 was a 19 year-old young woman at the time and you were a 31 year-old man, in a more senior role than her. The panel found such behaviour as charged, inappropriate.

The panel therefore found charge 4 in its entirety proved.

### **Charge 6b**

**"6) On an unknown date in or around June 2020 said to Colleague 1:-**

**b) that she should let you know if she ever wanted to have some fun with you or words to that effect."**

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Colleague 1 and your evidence.

The panel noted that Colleague 1 in her witness statement dated 15 November 2021 stated:

*"On another occasion, I was chatting and folding napkins in the dining area with one of our supervisors ... I noticed that the registrant was at the other end of the dining area and as soon as the registrant heard me mention my boyfriend, he came over to us and started asking me personal questions about my boyfriend and I, he wanted to know why my boyfriend and I had broken up but I did not tell him, he also*

*seemed very excited that my boyfriend and I had broken up and stated that he was happy that we broke up as he could now give me lots of kisses, the registrant also said I should let him know if I ever wanted to have some fun with him to which I replied "I would never want to have fun with you" and as such the registrant seemed annoyed and walked off. I am not sure if [the supervisor] heard what the registrant said because he walked off at some point..."*

The panel also had sight of the email dated 29 July 2020 from Colleague 1 to Colleague 3, which states:

*"[The supervisor] and I were folding the napkins in the dining hall having a chat. Alex was in the other side of the white pillar in ear shot. When he heard me mention my boyfriend he came over and started asking me lots questions about why we had broken up etc. He responded that he was so happy that I has broken up with him as now he could "give me lots of kisses" He said if I ever wanted to have some fun that I should have fun with him. I replied that I would never want to have fun with him and he walked away pissed off."*

The panel bore in mind that Colleague 1's written evidence was consistent with her oral evidence. She was clear and confident in her evidence. The panel also noted that you denied this charge.

The panel bore in mind that you made an admission to Charge 6a above in which you accepted that you said to Colleague 1 *"you were happy that she had broken up with her boyfriend as you could now give her lots of kisses or words to that effect"*. You said that these comments were made to you in a private conversation with Colleague 1. Colleague 1 was not asked in cross-examination by the Special Counsel about this matter.

Taking account of all the relevant evidence in respect of Charge 6b, the panel concluded that it preferred Colleague 1's evidence to your evidence. The panel therefore determined

that you said to Colleague 1 that “she should let you know if she ever wanted to have some fun with you” or words to that effect.

The panel therefore found charge 6b proved.

### **Charge 7**

**“7) On an unknown date in June 2020 whilst Colleague 1 was cleaning chairs and tables you said to her “you look very good from behind” or words to that effect.”**

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Colleague 1 and your evidence.

The panel noted that Colleague 1 in her witness statement dated 15 November 2021 stated:

*“My role requires me to also do some cleaning of the chairs and bottom of the tables in the dining area and this naturally requires me to bend over. On one occasion, the registrant came up from behind me whilst I was cleaning the chairs and tables in the dining room and said “you look very good from behind”, I also noticed that the registrant’s facial expression was very sinister and made me feel very uncomfortable...”*

The panel noted that this incident was reiterated in the email dated 29 July 2020 from Colleague 1 to Colleague 3. It bore in mind that Colleague 1 has been confident, clear and consistent throughout her oral and written evidence that you made this comment. The panel noted that Colleague 1 added in her email dated 29 July 2020, that:

*“The shifts I do on dining I try to do extra cleaning as there is 3 of us in. I always try*

*to clean the chairs and the bottom of the tables. This naturally involves me bending over. Alex has come up from behind me while I was cleaning as said “you look very good from behind” It’s important to note that his facial expression was not light hearted and jokey but sinister. He was again saying them while invading my personal space and actively trying to make me feel uncomfortable”*

You denied this charge and gave no alternative version of events.

Taking account of all the relevant evidence in respect of Charge 7 and including its findings on Charges 2 and 3, where you approached Colleague 1 from behind, the panel concluded that it preferred Colleague 1’s evidence to your evidence. The panel therefore concluded that on an unknown date in June 2020 whilst Colleague 1 was cleaning chairs and tables you said to her “you look very good from behind” or words to that effect.

The panel therefore found charge 7 proved.

### **Charge 8**

**“8) On an unknown date or dates in July 2020 touched or pinched Colleague 1 on her waist or back on one or more occasions.”**

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Colleague 1, Colleague 2 and your evidence.

The panel considered the evidence within Colleague 2’s witness statement dated 19 January 2021, which she also confirmed during oral evidence that:

*“Initially, I noticed that the registrant would touch/pinch [Colleague 1] on her waist when walking close to her. The registrant did this in the dining room and he did not*

*appear to be hiding this as such I wondered whether the registrant and [Colleague 1] were in a relationship. I then also noticed that [Colleague 1] did not appear to encourage or flirt with the registrant and seemed quite uncomfortable with the registrant's actions and as such after a few days, I asked [Colleague 1] whether she was comfortable with the way the registrant touched her to which she said "no".*

The panel also had sight of a statement made by Colleague 2 dated 28 July 2020 for the purposes of the internal investigation, in which Colleague 2 states the following:

*"During my first week at Sunrise Guildford I noticed that the male nurse, Alex, was touching [Colleague 1], the activities assistant at various times, I saw him pinch her waist when he passed by her in the dining room and touch her back another time. She was polite to him, but didn't look as if it was welcome attention, it looked like she was trying to ignore his contact."*

The panel noted the email dated 29 July 2020 from Colleague 1 to Colleague 3, which states:

*"In my first few weeks Alex would come up from behind and touch my waist and sometimes my bum. I brushed it off as friendliness but he kept trying to get close to me while I was working in the kitchen."*

In oral evidence Colleague 1 stated that similar touching had continued throughout the period when you had both worked at the Home. The panel also took account that Colleague 2 confirmed in her internal interview on 28 July 2020 and in her statement to the NMC, that Colleague 1 had alleged to her that the touching happened on every shift that you both worked.

The panel bore in mind that, when asked to clarify the nature of the pinching, Colleague 1 indicated that it was with the thumb and all four fingers and did not cause physical pain or harm.

The panel also considered Colleague 2's evidence. It determined her evidence to be reliable. The panel was of the view that Colleague 2 was sufficiently concerned to have questioned Colleague 1 about the nature of the relationship between you.

The panel bore in mind your evidence. It noted that you provided a blanket denial. You said that no one had seen you touching Colleague 1 in the manner alleged in the charges. However, the panel accepted that Colleague 2 had witnessed this behaviour.

The panel did not speculate on the reasons behind there being no other witnesses called in relation to your behaviour, beyond accepting the statement of admissions produced by the NMC.

Taking account of all the relevant evidence, the panel concluded that it preferred Colleague 1's and Colleague 2's evidence to your evidence. It bore in mind that Colleague 2 said that although your actions were not overtly sexual, they were not welcomed by Colleague 1.

The panel therefore concluded that in respect of this allegation, on an unknown date or dates in July 2020, you touched or pinched Colleague 1 on her waist or back on one or more occasions.

The panel therefore found charge 8 proved.

### **Charge 9a**

**“9) On an unknown date in or around July 2020 when Colleague 1 was walking Residents A and B to lunch:-**

**a) said “it’s my three ladies but one is my favourite” or words to that effect”**

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Colleague 1 and your evidence.

The panel noted that Colleague 1 in her witness statement dated 15 November 2021 stated:

*“On another occasion after choir practise, I was walking 2 residents, Resident A and Resident B to lunch, the registrant saw us and said “it’s my three ladies but one is my favourite”, the registrant then grabbed my hips, pushed me against the wall and pressed his body up against my body. I am sure the residents witnesses this incident but they have memory issues so I do not think they would remember...”*

The panel further noted that this incident was reiterated in the email dated 29 July 2020 from Colleague 1 to Colleague 3.

The panel determined that Colleague 1’s evidence was clear and consistent in relation to this charge. Her witness statement was consistent with her oral evidence.

The panel bore in mind your evidence. It noted that you denied that you made this comment.

Taking account of all the relevant evidence, the panel concluded that it preferred Colleague 1’s evidence to your evidence.

The panel therefore concluded that in respect of this allegation, on an unknown date in or around July 2020 when Colleague 1 was walking Residents A and B to lunch, you said “it’s my three ladies but one is my favourite” or words to that effect.

The panel therefore found charge 9a proved.

## **Charge 9b**

**“9) On an unknown date in or around July 2020 when Colleague 1 was walking Residents A and B to lunch:-**

**b) grabbed Colleague 1’s hips, pushed her against a wall and pressed your body against hers.”**

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Colleague 1 and your evidence.

The panel noted that Colleague 1 in her witness statement dated 15 November 2021 stated:

*“On another occasion after choir practise, I was walking 2 residents, Resident A and Resident B to lunch, the registrant saw us and said “it’s my three ladies but on is my favourite”, the registrant then grabbed my hips, pushed me against the wall and pressed his body up against my body. I am sure the residents witnesses this incident but they have memory issues so I do not think they would remember...”*

The panel further noted that this incident was reiterated in the email dated 29 July 2020 from Colleague 1 to Colleague 3.

The panel determined that Colleague 1’s evidence was clear and consistent in relation to this charge. Her witness statement was consistent with her oral evidence.

The panel bore in mind your evidence. It noted that you denied this charge. You said that the events as charged in Charge 9b would not have occurred as you knew the nature of the Residents’ ailments and therefore at least one of the residents Colleague 1 was accompanying to lunch required to be accompanied individually by a member of staff.

You said that this would mean that Colleague 1 would have had to walk beside them, and not in front of the two residents as described by Colleague 1. The panel noted that this suggestion was not put to Colleague 1 during her cross-examination. It bore in mind that at that stage, you had the advantage of special counsel representing you, to put all matters to Colleague 1 in order to give her an opportunity to comment. However, as this suggestion was not put to her, she did not have the opportunity to respond to your challenge to her version of events. Further, you later conceded that the residents could use walkers as Colleague 1 suggested. The statement of admissions includes the fact that each of the residents suffered from dementia and would have no recollection of events. You did not put your version of events to Colleague 1 during cross-examination by the Special Counsel.

Taking account of all the relevant evidence, the panel concluded that it preferred Colleague 1's evidence to your evidence.

The panel therefore concluded that in respect of this allegation, on an unknown date in or around July 2020 when Colleague 1 was walking Residents A and B to lunch, you grabbed Colleague 1's hips, pushed her against a wall and pressed your body against hers.

The panel therefore found charge 9a proved.

**Charge 11f,**

**“11) On 24 July 2020 whilst Colleague 1 was lying on a sofa during a break:-**

**f) held Colleague 1's phone in a position which meant that she would have to lean over you to attempt to retrieve it”**

**This charge is found proved**

In reaching this decision, the panel took into account the evidence of Colleague 1 and your evidence.

The panel noted that Colleague 1 in her witness statement dated 15 November 2021 stated:

*“On 24 July 2020, I went upstairs for my break and laid down on one of the sofas. 2 staff members by the names [A member of staff] and [another member of staff] were on the opposite sofa. The registrant then came in and sat on the end of the sofa I was lying on. I told the registrant that he could lay on another sofa but he told me to move so he could lay close to me. I then told him to “go away” but he declined. The registrant then asked me if I had any plans for the weekend to which I answered “none”. The registrant asked if I wanted to go for a drink with him and I declined, the registrant also said he would shave his beard so he could look younger for me, he then asked if we could exchange telephone numbers and I declined. The registrant snatched my phone out of my hand. I asked for my phone but he did not give it to me. I then reached over in an attempt to grab my phone from the registrant which meant that I naturally had to lean over the registrant and the registrant smirked at me. This made me very annoyed, I told the registrant to return my property and he told me to call the police because he didn’t care, the registrant eventually returned my phone and told me he did not want a relationship but only wants to have some fun with me, the registrant also said “I can teach you a lot”, I declined and the registrant called me boring and walked to the next sofa...”*

The panel further noted that this incident was reiterated in the email dated 29 July 2020 from Colleague 1 to Colleague 3.

The panel determined that Colleague 1’s evidence was clear and consistent in relation to this charge. Her witness statement was consistent with her oral evidence.

The panel bore in mind your evidence. It noted that you admitted parts of Charge 11, namely charges 11a, 11b, 11c, 11d and 11e. The panel determined that through your

admission to Charge 11e, it is proved that you snatched Colleague 1's phone from her hand. It was your evidence that, Colleague 1 had become very angry as a result of you "snatching her phone" and this was why you felt she had filed a complaint against you. The panel considered that this evidence supported the suggestion that you refused to immediately give Colleague 1 back her phone. The panel was therefore of the view that this supported the allegation in Charge 11f.

The panel further bore in mind that whilst the incident may have been witnessed by two members of staff, they did not give evidence on behalf of either the NMC or you. The panel accepted the admissions document prepared by the NMC in this respect.

Taking account of all the relevant evidence, the panel concluded that it preferred Colleague 1's evidence to your evidence.

The panel therefore concluded that in respect of this allegation, on 24 July 2020 whilst Colleague 1 was lying on a sofa during a break, you, held Colleague 1's phone in a position which meant that she would have to lean over you to attempt to retrieve it.

The panel therefore found charge 11f, proved.

### **Charge 11g**

**"11) On 24 July 2020 whilst Colleague 1 was lying on a sofa during a break:-**

**g) said to Colleague 1 that you did not want a relationship but only wanted to have some fun with her or words to that effect"**

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

In reaching this decision, the panel took into account the evidence of Colleague 1 and your evidence and its decision at Charge 6b above where it found that similar words were used.

The panel determined that Colleague 1's witness statement dated 15 November 2021 as quoted above at Charge 11f was relevant to this charge. It further noted that Colleague 1 has reiterated that quote in her email to Colleague 3 dated 29 July 2020. The panel was satisfied that both accounts are consistent and Colleague 1 maintained this account in her oral evidence.

The panel bore in mind your evidence. It noted that you provided a blanket denial. You did not provide any alternative explanation.

The panel was of the view that, the comments allegedly made by you in the contents of this charge, are similar to the comments found proved in Charge 6b.

Taking account of all the relevant evidence in respect Charge 11g, the panel concluded that it preferred Colleague 1's evidence to your evidence. The panel therefore determined that, on 24 July 2020 whilst Colleague 1 was lying on a sofa during a break, you said to Colleague 1 that you did not want a relationship but only wanted to have some fun with her or words to that effect.

The panel therefore found charge 11g, proved.

### **Charge 11h**

**“11) On 24 July 2020 whilst Colleague 1 was lying on a sofa during a break:-  
h) said to Colleague 1 “I can teach you a lot” or words to that effect.”**

**This charge is found proved**

In reaching this decision, the panel took into account the evidence of Colleague 1, your evidence and its decision at Charge 4c above.

The panel determined that Colleague 1's witness statement dated 15 November 2021 as quoted above at Charge 11f applied to this charge. It further noted that Colleague 1 has reiterated that quote in her email to Colleague 3 dated 29 July 2020. The panel was satisfied that both accounts are consistent and Colleague 1 maintained this account in her oral evidence.

The panel bore in mind your evidence. It noted that you provided a blanket denial. You did not provide any alternative explanation.

The panel was of the view that, the contents of this charge are similar to that of Charge 4c, which the panel found proved. It bore in mind the tacit acknowledgement that Colleague 1 was a 19 year-old young woman at the time and you were a 31 year-old man, in a more senior role to her.

Taking account of all the relevant evidence in respect Charge 11h, the panel concluded that it preferred Colleague 1's evidence to your evidence. The panel therefore determined that, on 24 July 2020 whilst Colleague 1 was lying on a sofa during a break, you said to Colleague 1 "I can teach you a lot" or words to that effect.

The panel therefore found charge 11h, proved.

## **Charge 12**

**"12) Your conduct at charges to 1 to 11h) above was sexually motivated in that it was done for sexual gratification and/or in pursuit of a future sexual relationship with Colleague 1."**

**This charge is found proved.**

In reaching this decision, the panel first considered the question of sexual motivation in pursuit of a future sexual relationship with Colleague 1. It then considered the question of

sexual gratification in relation to each charge in this case. It considered whether each charge, on the balance of probabilities, was for the purpose of your sexual gratification and/or in pursuit of a future sexual relationship.

The panel determined that the nature, manner, frequency and volume of comments and actions as set out above are only consistent with a sexual motivation. The panel was satisfied from the evidence before it that charges 1-11h, all found proved, were done in pursuit of a future sexual relationship.

The panel considered separately the questions of which charges were in pursuit of a future sexual relationship and which were allegedly done for sexual gratification.

The panel was satisfied that you desired to have a sexual relationship with Colleague 1. You admitted that you were attracted to Colleague 1 and asked her to go for a drink with you and asked for her telephone number. More specifically, you suggested that she needed experience, said you should both go on a holiday to go to Las Vegas and no one would have to know, that she looked good from behind and that you wanted to have fun with her, rather than a relationship, to which you had added that you could teach her a lot. The panel concluded that these were sexual comments and that they were clearly made in pursuit of a sexual relationship, having made plain the type of relationship, which you sought. That also showed that the other comments, such as asking for a telephone number, were inquires and comments made in pursuit of a sexual relationship. The panel determined that you had hoped to get Colleague 1's attention by your actions. The panel was therefore satisfied that these actions supported a finding that your conduct was in pursuit of a future sexual relationship with Colleague 1.

The panel also noted that in your reflective piece, prepared for these proceedings, you wrote in the "evaluation" section of the template, "I think this incident happened because I did not realise at the time I'm making unwanted sexual advances because... that member of the staff never told me to stop or that she is feeling uncomfortable". In the "conclusions" section of the template, you wrote, "I will never make any sexual advances or to a member

of a staff or patients or public!". The panel were satisfied that you therefore admitted that you had made sexual advances to Colleague 1.

Although the panel was satisfied that all of the behaviour set out in the charges were sexually motivated. The panel found that some of your actions were done for sexual gratification, as when you pressed your body against Colleague 1 on three occasions, Charges 3, 4a, and 9b, as were the times you grabbed Colleague 1's rucksack and pulled her close, in Charge 10a, and when you held Colleague 1's phone in a way that meant she had to lean over you to recover it, in Charge 11f. In addition, some of the comments made by you to Colleague 1 were so explicitly sexual that the panel concluded that they were made by you for sexual gratification, namely charges 4b, 4c, 5, 6a, 6b, 7, 11a, 11g and 11h.

The panel noted that you put it to Colleague 1 during her cross-examination that your comments were light handed "banter", and stated that you had been making jokes. The panel bore in mind that Colleague 1 stated clearly that in her view it was not "banter" and that she did not find it funny. Although Colleague 1 admitted that she did not tell you to stop directly, the panel was satisfied that she had made it clear from her reactions and from her words that she was not sexually interested in you and that she did not find such conduct funny. This is corroborated by the observations by Colleague 2.

The panel determined that your actions at charges 1-11h cannot be dismissed as simply workplace "banter" or overfriendliness. This is because of the repetitive nature of the allegations and that on multiple occasions, Colleague 1 had made it clear by her words and actions that she was not interested.

Taking account of all the relevant evidence in respect of Charge 12, the panel was satisfied that your conduct at charges 1 to 11h) above was sexually motivated in that it was done for sexual gratification and/or in pursuit of a future sexual relationship with Colleague 1.

The panel therefore found charge 12, 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**

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

Mr Underwood invited the panel to take the view that the facts found proved amount to misconduct. He first referred to the case of *R (Remedy UK Ltd) v GMC* [2010] at paragraph 37, where his Lordship said:

*“(1) Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.*

...

*(6) Conduct falls into the second limb if it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact may be sufficient to bring the profession of medicine into disrepute. It matters not whether such conduct is directly related to the exercise of professional skills.”*

Mr Underwood submitted that the second limb of the case above relates to your case. He further referred to the terms of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (“the Code”) in making its decision. Mr Underwood identified the specific, relevant standards where your actions amounted to misconduct. He submitted that the charges found proved were serious and amounted to misconduct and that your behaviour was persistently in breach of these rules. Mr Underwood submitted that your actions were, according to Colleague 2, repeated in public settings, such as the dining room. He submitted that harassment is clearly not consistent with the values set out in the Code. Your actions clearly caused Colleague 1 a significant level of distress and upset. He reminded the panel that Colleague 1 was also vulnerable so far as she was a very young woman in a very junior role while you were a 31 year-old man in a responsible position.

Mr Underwood told the panel that there has been no suggestion that you acted inappropriately towards any other members of staff or residents during your registration as a nurse. He also reminded the panel that there is also no question that you are an otherwise good and competent nurse, and in fact submitted that Colleague 3 spoke highly of your skills and your manner with residents. However, Mr Underwood submitted that the

way in which you treated Colleague 1 fell far below the standards expected of a registered nurse and as such has brought the nursing profession into disrepute, and that the breaches of the Code were so serious, that your actions amounted to misconduct.

In your submissions, you accepted that you had breached the Code by your conduct, although you said that you did not accept that you had taken advantage of Colleague 1's vulnerability as the NMC suggested.

### **Submissions on impairment**

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

Mr Underwood submitted you had in the past brought and/or are liable in the future to bring the medical profession into disrepute; and/or has in the past breached and/or are liable in the future to breach one of the fundamental tenets of the medical profession.

He submitted that this is a case in which insight on your part into your behaviour is a crucial aspect of impairment. He submitted that the sort of behaviour identified in the charges can only be addressed by a change of attitude and insight into how the incidents came about and how to avoid them in the future. He reminded the panel that it is assessing current impairment, not impairment at the time the misconduct took place. However, he submitted that impairment has not been cured and remains today. Whilst you have admitted some of your actions, you have continued to diminish your own behaviour by suggesting in these proceedings that this was simply workplace 'banter'. Mr Underwood further submitted that although you have shown some insight into your behaviour by accepting it was not acceptable or professional to have behaved in such a

manner and expressed remorse, your insight remains limited. He submitted that, in particular, you were unable to provide proper explanations to the panel and simply provided bare denials.

Mr Underwood invited the panel to consider that you had tried to shift the blame, and have tried to diminish your behaviour when considering your level of insight. He submitted that, so far, you have simply demonstrated too little remediation of your conduct. Mr Underwood also submitted that you insist in your reflective piece that this will not happen again, however, the reflection you have provided thus far is very limited in scope, and until full and detailed insight is demonstrated there remains a risk of repetition in this case. In these circumstances, Mr Underwood invited the panel to find your fitness to practise currently impaired.

You told the panel that you have completed some reflection and reading about sexual harassment at work. You said that you have undertaken training on “relation and boundaries at work”. You told the panel that you feel very bad about your past behaviour and you have apologised to Colleague 1 for your conduct.

You told the panel that you have read the NMC Code of Conduct and in particular, understand the importance of paragraph 20, “Uphold the reputation of your profession at all times” as well as paragraph 20.5 “treat people in a way that does not take advantage of their vulnerability or cause them upset or distress”. You said that you accept that you breached the reputation of the profession. You also said that although you did not take advantage of Colleague 1’s vulnerability, you did cause her distress and upset and for that you feel sorry and have apologised to Colleague 1. You said that you have learnt from training and through reflection that you must always show “respect and keep appropriate space between colleagues and patients”. You further said that you have learnt that you should not make such jokes and told the panel that you will never joke in the work environment or with members of the public in such a way. You again told the panel that you feel very sorry about everything that has happened.

You told the panel that you come from a family of nurses. You said that some members of your family do not want to talk to you about these proceedings because of the nature of the charges. You said that you feel ashamed by your past actions. You said that these proceedings have been an experience you have learnt from and now know what you should and should not do and will not repeat your past behaviour. You said that your fitness to practice is currently not impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Johnson & Maggs* [2013] EWHC 2140 Admin and *R (Remedy UK Ltd) v GMC* [2010] EWHC 1245 (Amin).

### **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:

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

*To achieve this, you must:*

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

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

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

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 your behaviour was sexually motivated and some of it was carried out for sexual gratification, which was particularly serious as you were in a position of seniority, noting that you directed this inappropriate behaviour towards a junior, 19 year-old, colleague. The panel also noted that your actions were repeated and sustained over a period of two and a half months. The panel found that such behaviour was not consistent with the values set out in the Code and your actions clearly caused Colleague 1 a significant level of distress and upset. The panel identified that although, specifically, charges 2, 9a, 11b, 11c and 11d individually did not amount to misconduct, that each of the other charges individually amounted to professional misconduct, each being serious departures from acceptable standards. As a whole given the circumstances of the case, the charges found proved amounted to serious professional misconduct. Indeed the charges listed above were considered by the panel to also be part of an unwelcome course of conduct designed to pursue a sexual relationship, all of which made Colleague 1 feel uncomfortable and suffer distress, even if apparently innocuous if taken in isolation. The panel was of the view that fellow professionals would have found your behaviour, to be unacceptable.

The panel therefore found that your actions did fall seriously short of the conduct and standards expected of a 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 act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that limbs b and c of the Grant test to be engaged in this case.

The panel did not consider that your actions placed patients at a risk of harm. It noted the evidence provided by Colleague 3 who spoke highly of your nursing skills and that you were a good and otherwise competent nurse. The panel was therefore confident that you were a competent nurse and accepted that there were no issues with your clinical practice.

However, the panel considered that your actions brought the profession into disrepute and that your misconduct breached the fundamental tenets of the profession. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to the use of this kind of sexualised language and inappropriate touching as charged, extremely serious.

Regarding insight, the panel considered that you have demonstrated developing insight into the impact of your actions on Colleague 1, the wider reputation of the profession or public confidence in the profession. The panel did however note that you have demonstrated some insight into your misconduct by admitting some charges at the outset of the hearing, and acknowledging in your evidence at facts stage and through your submissions during the impairment stage, that your behaviour had been wrong and said that you would not repeat this. The panel was encouraged that this demonstrated some insight. However, the panel was of the view that although you have provided the panel with a reflective piece, it remained brief. Further, the panel read your case management form, in which you said, *“Also I have been taking training about harassment and the first correct stage of escalation of when harassing [sic] is talking to the person that what are they doing is offensive. This stage was not followed. [Colleague 2] didn't ever tell me not to talk her or that I'm doing something to offend her. If that stage would have happened I would have never talked to [Colleague 1] again.”* The panel found that you have not yet taken full responsibility for your actions and have failed to identify that although Colleague 1 did not directly say “no” to you, she was clear in other ways that your attention was not

welcomed by her. In fact, the panel accepts the evidence of Colleague 1 that she had on two occasions in June 2020 indicated verbally that she did not want a sexual relationship with you, namely, when she first of all told you that she did not want to go on holiday with you and secondly when she said *"I would never want to have fun with you"*. In any event, the panel was satisfied that it was your primary responsibility not to harass Colleague 1 and not her responsibility to tell you not to do it.

The panel was satisfied that such behaviour as charged is capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not you have remedied your practice. The panel determined that it has insufficient evidence before it to satisfy it that you have remediated the concerns identified. It noted that although you have said that you attended some training, the panel has no evidence of this. You have yet to show full insight into your behaviour and put yourself in Colleague 1's shoes to understand why she did not feel able directly to challenge your behaviour. The panel was of the view that your submission focused on the effect of these proceedings on you, rather than the effect of your behaviour on Colleague 1.

The panel was of the view that these proceedings have acted as salutary lesson for you and noted your remorse and multiple apologies to the panel. However, the panel bore in mind that the lack of full insight or remediation indicated that it cannot be satisfied that your conduct is highly unlikely to be repeated and that there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection. Protecting the public includes protecting other staff at your work place, both registered nurses and other unregistered staff.

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 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 both on public protection and public interest grounds.

## **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months. The effect of this order is that the NMC register will show that your registration has been suspended.

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**

Mr Underwood informed the panel that in the Notice of Hearing, dated 17 January 2022, the NMC had advised you that it would seek the imposition of a suspension order for a period of 12 months if the panel found your fitness to practise currently impaired. Mr Underwood submitted that the position has not changed.

Mr Underwood, whilst recognising that the decision and sanction was for the panel alone, submitted that the NMC considered a suspension order with review, to be the appropriate sanction.

He took the panel through each of the sanctions available and told the panel what the NMC's view was. He submitted that these were serious breaches, which went beyond banter. He reminded the panel of the imbalance of power and the serious nature of the sexual allegations.

Mr Underwood however also reminded the panel that it had found that you have shown some insight and that your behaviour was remediable. He submitted that imposing a suspension order for a period of 12 months would give you an opportunity to demonstrate that you are capable of returning to practice without further concerns. However, he submitted that, if the panel was not in agreement, it could consider a conditions of practice order, restricting you to regular meetings with your line manager and being supervised indirectly. Mr Underwood submitted that a striking-off would be wholly disproportionate in this case.

You told the panel that you have already been suspended by the NMC on an interim basis for a period of 17 months. You said that during this time, you undertook reading and training on sexual behaviour and boundaries. You said that you understood what you did was “totally unprofessional.” You told the panel that you have taken positive steps to remediate. You informed the panel that a further 12 months of suspension would cause serious hardship. You said that you have attempted to find a role as a carer, however, due to these proceedings and the allegations, you were turned down.

### **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:

- Your misconduct was persistent over a period of two and a half months;

- Your behaviour was directed towards a junior colleague, whilst you were in a position of responsibility, thereby abusing your position of trust;
- Your lack of full insight into your failings and you have shifted blame onto Colleague 1;
- You have minimised your behaviour by describing it as “banter”;
- Some of your actions were found to be for sexual gratification.

The panel also took into account the following mitigating features:

- You made admissions at the outset that your behaviour was inappropriate and admitted some of the regulatory concerns;
- You have demonstrated some developing insight; you took some responsibility and made apologies;
- No evidence of any other similar concerns and behaviour to other patients or colleagues;
- No clinical concerns.

The panel found that there were more serious aggravating factors in this case which were not offset by the mitigating factors.

The panel then moved on to consider the NMC Guidance on cases involving sexual misconduct which states:

*‘Sexual misconduct will be particularly serious if the nurse, midwife or nursing associate has abused a special position of trust they hold as a registered caring professional ... The level of risk to patients will be an important factor, but the panel should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses, midwives and nursing associates.’*

The panel noted that the sexual misconduct in this case relates to the inappropriate use of sexualised language and physical touching towards a junior colleague. The panel

reminded itself that Colleague A described that your behaviour made her feel uncomfortable and her description that she suffered emotional harm so that she sometimes was scared to go to work. Further it found at Charge 12 that your behaviour was sexually motivated in that it was done for sexual gratification and/or in pursuit of a future sexual relationship with Colleague 1. In this regard the panel considered your misconduct to be serious.

The panel noted that your misconduct was not directed towards patients. The panel had regard to the SG, which treats sexual misconduct as serious, as did the panel, although it considered that your behaviour was at the lower end of the spectrum of seriousness in sexual misconduct cases. The panel also read the Council for Healthcare Regulatory Excellence (CHRE) Guidance dated January 2008 on “Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels”. It was of the view that this Guidance provided helpful context regarding expectations of registered professionals in a clinical environment.

Notwithstanding the panel’s findings above, the panel was satisfied that the implications of your actions were serious to Colleague 1. It particularly noted that Colleague 1 stated:

*“The registrant’s actions did not cause any physical harm to me but his actions caused me emotional harm in that the registrant made me very uncomfortable and sometimes I was scared of going to work. The registrant made me very anxious, he also made me feel very sexually objectified”.*

The panel took into account that you have been under an Interim Suspension Order for a period of 17 months and that you have been unable to get work in a clinical environment. It was encouraged by your assurances that you intended to undertake further training and more detailed reflection. The panel considered that your insight is developing, but not yet comprehensive, and has found that it could not yet conclude that any repetition was highly unlikely. The panel noted that throughout these proceedings you have not been legally represented and that English is not your first language.

Having considered the factors relating to seriousness in terms of sexual misconduct, the panel moved on to consider what sanction would be appropriate in view of its findings.

The panel was aware that it could impose any of the following sanctions; take no 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 decided that it would be neither proportionate nor in the public interest to take no further action. Further it would not protect the public.

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

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

the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems.*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining.*
- *No evidence of general incompetence.*
- *Potential and willingness to respond positively to retraining.*
- *The conditions will protect patients during the period they are in force.*
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges found proved in this case. The panel found that it would be difficult to formulate conditions to address the risk of repetition identified in this case at this stage. It considered that, in terms of the charges found proved, conditions of practice would be insufficient to address the misconduct. The panel noted that the charges do not relate to your clinical competence and that, in the panel's view, the misconduct identified in this case was not something which can be easily addressed through conditions of practice. 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 suspension order may be appropriate where some of the following factors are apparent:

- *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 considered that the misconduct in this case is so serious that it requires temporary removal from the register and that this is required to protect the public and address the public interest in this case to protect the reputation of the nursing profession and its regulator.

The panel noted that the charges found proved related to two and a half months of misconduct against one colleague. It did consider that this amounted to a pattern of behaviour, but took into account that there was no evidence of similar previous behaviour against another colleague or a patient. The panel considered that there is no evidence of harmful, deep-seated attitudinal problems such as are incapable of remediation, and there is no evidence that the behaviour has been repeated since the incidents in 2020.

Whilst recognising that sexual misconduct is always serious, the panel has determined that this was at the lower end of the spectrum. The panel was of the view that your insight was developing. It bore in mind that whilst you admitted some of the charges and said that you recognised that your behaviour was inappropriate in the workplace, you appeared to shift blame onto Colleague 1, stating she never verbally said 'no' to you. The panel in fact found that Colleague 1 had clearly indicated to you verbally in June 2020 that she did not want a relationship with you, but your persistent misconduct continued for a further month. The panel was of the view that your written and verbal reflections to date demonstrated a lack of full insight into the effect of this kind of sexualised behaviour on Colleague 1, your colleagues, or the impact on the reputation of the profession. The panel therefore concluded that there is some risk of repetition of this behaviour.

Taking into consideration its findings regarding the sexual misconduct, the panel was satisfied that in this case, the misconduct was not fundamentally incompatible with you remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be

disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of six months was appropriate in this case to mark the seriousness of the misconduct and to allow you time to reflect and develop your insight further to a satisfactory level. It was satisfied that, taking account of the 17 months interim suspension order you have been subject to and a further six months of suspension, totalling a period of 1 year and 11 months was an appropriate length of suspension to mark the seriousness of the case and the standards expected of a registered nurse.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

The panel was reassured by your statement that you would undertake a reflective exercise every month. On this basis, this panel noted that any future panel reviewing this case would be assisted by:

- Your attendance and participation at any future hearing;

- A full and detailed written reflective account addressing the following matters:
  - The impact of your behaviour on Colleague 1 and on the wider nursing profession.
  - Your understanding of the relevance of power imbalances in a clinical environment
  - Your understanding of appropriate workplace behaviour
- Testimonials and references which can be from clinical, non clinical and voluntary working environments.
- Evidence of training courses undertaken, for example: certificates and course logs.
- Any other documentary evidence that would support your case.

This will be confirmed to you in writing.

### **Interim order**

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

### **Submissions on interim order**

The panel took account of the submissions made by Mr Underwood. He submitted that an interim suspension order, for a period of 18 months, should be made to cover the 28 day appeal period. He submitted that this was appropriate given the panel's findings.

You did not make any submissions in regards to the interim order.

## **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 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 first considered whether it was appropriate to impose an interim conditions of practice order, but considered that no workable conditions could be formulated as identified at the sanction stage.

Therefore the panel decided to impose an interim suspension order for the same reasons as it imposed the substantive order and, having accepted Mr Underwood's submissions, to do so for a period of 18 months in light of the likely length of time that an appeal would take to be heard if one was lodged.

If no appeal is made, then the interim suspension order will be replaced by the substantive suspension order 28 days after you are sent the decision of this hearing in writing. If an appeal is lodged then the interim suspension order will continue until the appeal is determined.

That concludes this determination.

