

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

**Substantive Hearing
19-22 April and 11-13 May 2022**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ
(19-22 April 2022)

Virtual Hearing
(11-13 May 2022)

Name of registrant:	Leonard Maximillan Marana
NMC PIN:	03I0094O
Part(s) of the register:	Registered Nurse- Adult (8 September 2003)
Relevant location:	Warwickshire
Type of case:	Misconduct
Panel members:	Nicola Dale (Chair, lay member) Janine Ellul (Registrant member) Linda Redford (Lay member)
Legal Assessor:	Tracy Ayling QC
Hearings Coordinator:	Holly Girven
Nursing and Midwifery Council:	Represented by Vishal Misra, Case Presenter
Mr Marana:	Present and represented by Laura Bayley, instructed by Wright Hassall
Facts found proved by admission:	Charges 1b (partially), 4a, 4b (partially) and 5
Facts found proved:	Charges 1a, 2a, 2b, 3, 4b, 6 (in relation to charges 1a, 1b, 2a, 2b, 4a, 4b and 5)
Facts not proved:	Charges 1b (partially) and 6 (in relation to Charge 3 only)

Fitness to practise:

Impaired

Sanction:

Suspension order (1 month) with no review

Interim order:

No order imposed

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr Misra, on behalf of the Nursing and Midwifery Council (NMC), made a request that Colleague 1's evidence be heard in private due to the nature of her evidence, and in order for her to give her best evidence. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Bayley, on your behalf, submitted that it is unusual for a witness to give evidence in private, and that there were other measures that could be put in place to ensure Colleague 1 gives her best evidence. She submitted that the presumption is for a hearing to be held in public, and Colleague 1 will be anonymised in any documentation. She requested that, if the application were to be allowed, your solicitor who was also present should be permitted to stay in the hearing room.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest. The legal assessor further referred the panel to the NMC's guidance entitled *Hearings in private and in public*.

The panel determined that it was not necessary, or in the public or any party's interest, for Colleague 1's evidence to be heard in private. The panel noted that the presumption is that hearings will be heard in public. It further noted that screens would be in place when Colleague 1 was giving evidence. It further determined that due to the nature of her evidence, Colleague 1 should be anonymised during the hearing and in any documents, including the transcript and determination. The panel determined that these measures would be sufficient to enable Colleague 1 to give her best evidence without her evidence being heard in private.

Details of charge

That you, a registered nurse:

- 1) On 30 May 2019 at Cromwell Road car park
 - a) attempted to kiss Colleague 1 on the lips;
 - b) put your hands on her lower back and/or her bottom.

- 2) On an unknown date between May 2019 and July 2019 whilst in the theatre department store room
 - a) attempted to kiss Colleague 1 on the lips;
 - b) put your arms around Colleague 1 and/or on her waist.

- 3) On an unknown date between May 2019 and July 2019 whilst you and Colleague 1 were in a corridor you said to her "I like my view" or words to that effect.

- 4) On 15 July 2019 whilst in an operating theatre
 - a) said to Colleague 1 "Do you want me to massage your back" or words to that effect;
 - b) touched Colleague 1 on her lower back and/or her bottom.

- 5) On an unknown date between May 2019 and July 2019 hugged Colleague 1 and touched her lower back.

- 6) Your conduct at charges 1 to 5 above was sexually motivated in that it was done for sexual gratification and/or in pursuit of a future sexual relationship with Colleague 1.

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

Decision and reasons on application for hearing to be held in private

During the hearing, Ms Bayley made a request that parts of this case be held in private on the basis that your health would be referred to during the hearing. The application was made pursuant to Rule 19.

Mr Misra did not make any submissions in relation to this application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined that any reference to your health would be heard in private in order to protect the confidentiality of such matters.

Background

The charges arose whilst you were employed as a registered nurse by University Hospitals Coventry and Warwickshire NHS Trust (the Trust), working at St Cross Hospital (the Hospital) in the Theatre Department (the Department).

You started working at the Trust in 2003, and worked there until 2011, when you moved abroad. You returned to the Trust in July 2013. At the time of the alleged incidents in 2019 you were working as a Band 6 Team Leader in the Department. Colleague 1 started working at the Trust in September 2018 and was employed as an Apprentice Healthcare Assistant.

The panel heard evidence that at the time of the allegations, it was not unusual for some colleagues in the department to greet one another with a hug.

It is alleged that on 30 May 2019, having walked with Colleague 1 to her car, you attempted to kiss Colleague 1 on the lips and hugged her. It is further alleged that

following this incident, you attempted to kiss Colleague 1 on the lips and hugged her in a store room in the Department. It is also alleged that on one occasion, when Colleague 1 had passed you pushing a trolley, you said '*I like my view*' to her and that on another occasion you gave Colleague 1 a massage on her lower back/bottom. It is alleged that the above actions were sexually motivated.

On 19 July 2019, Colleague 1 informed Ms 2 and Ms 3 of the allegations. As a result, the Trust conducted a local investigation.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Bayley, who informed the panel that you made full admissions to charges 4a and 5. She also informed the panel that you admitted to charges 1b and 4b to the extent that you put your hands on Colleague 1's lower back, but that you deny putting your hands on her bottom.

The panel therefore finds charges 4a and 5 proved in their entirety, by way of your admissions. As your admissions to charges 1b and 4b were partial, the panel went onto consider whether those charges are found proved in their entirety.

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 Misra on behalf of the NMC and by Ms Bayley.

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:

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

Charge 1a

- 1) On 30 May 2019 at Cromwell Road car park
 - a) attempted to kiss Colleague 1 on the lips;

This charge is found proved.

The panel considered that Colleague 1 has provided a consistent account of this incident, including in her local statement and her NMC witness statement. The panel noted that it is recorded that during the local investigation meeting of Colleague 1 on 14 August 2019 she stated that you tried to kiss her on the lips, and this is also in her statement dated 22 July 2019. In her oral evidence, Colleague 1 stated that she didn't believe that she had misinterpreted your actions. The panel determined that the statement dated 22 July 2019 was provided closest to the time of the allegations, and therefore attached the most weight to this statement.

The panel noted evidence from Colleague 1 that she felt uncomfortable as a result of this interaction and also heard evidence from other witnesses about subsequent changes in Colleague 1's demeanour. It determined that this was indicative that during the incident on 30 May 2019 you had acted in a way that was different from your usual interactions with Colleague 1. The panel determined that Colleague 1 had a genuine belief that you tried to kiss her on the lips.

You denied attempting to kiss Colleague 1 in your witness statement dated 21 April 2022. However, in your local statement dated 26 July 2019, you state that you kissed Colleague 1 on the cheek but deny attempting to kiss her on the lips. The panel noted that in your oral evidence you acknowledged that when you hugged you may have both put your heads the same way, but that you were intending to kiss '*cheek to cheek*'.

The panel determined that Colleague 1 has provided a consistent account of the incident, which it considered to be credible. The panel took account of your evidence, but decided that there were some inconsistencies in your account, for example in your statement dated 21 April 2022 you stated that Colleague 1 kissed you on the cheek, but in your statement dated 26 July 2019 you state that it was you who kissed Colleague 1.

The panel determined that it was more likely than not that you attempted to kiss Colleague 1 on the lips.

Charge 1b

- 1) On 30 May 2019 at Cromwell Road car park
 - b) put your hands on her lower back and/or her bottom.

This charge is found proved in relation to lower back only.

In reaching this decision, the panel took into account that you admitted at the outset of the hearing that you put your hands on Colleague 1's lower back. The panel went on to consider whether you put your hands on Colleague 1's bottom.

In her initial local statement dated 22 July 2019, Colleague 1 states '*put his hand on the very lower of my back/bum*'. In Colleague 1's NMC witness statement dated 21 October 2020, it is stated '*he put his hands on my lower back, on my arse*'. In her oral evidence, Colleague 1 stated that she could not remember where you put your hands due to the time that has elapsed since the incident.

In your local statement dated 26 July 2019, you stated that '*I hugged her as usual and do not recall my hands being any lower than usual, but if they were it was not intentional*'. In your oral evidence, you provided consistent evidence that you did not touch Colleague 1's bottom, only her lower back.

Whilst the panel accepted your admission, and the evidence of Colleague 1, that you put your hands on her lower back, it determined that there was not enough evidence that you put your hands on her bottom during this incident. The panel determined that Colleague 1's evidence suggests she herself was unsure as to whether your hand was on her lower back or bottom. This charge is therefore found proved only in relation to the lower back and is found not proved in relation to bottom.

Charge 2a

2) On an unknown date between May 2019 and July 2019 whilst in the theatre department store room

a) attempted to kiss Colleague 1 on the lips;

This charge is found proved.

In reaching this decision, the panel considered that Colleague 1 has provided a consistent account of this alleged incident. The panel noted in her local interview, she stated you put your arms around her waist and tried to kiss her. In Colleague 1's NMC witness statement, she stated that you tried to kiss her on the lips. In Ms 2 and Ms 3's evidence, they state that Colleague 1 told them that you tried to kiss her in the store room when she first reported the incidents to them. The panel determined that this was corroborative of and increased the credibility of Colleague 1's account.

You acknowledged that you may give Colleague 1 a hug as a greeting, including in a store room. The panel noted that in your local statement dated 26 July 2019, you stated that

'there may have been occasions when the first time I saw her that on that shift was in the store room, so, as it was the first time I saw her that day I have greeted her with a kiss on the cheek and a hug as I would to other colleagues that I am close with'.

The panel determined this was inconsistent with your most recent witness statement in which you state:

'In my honest recollection and reflection about this allegation, I cannot and do not recall a situation where I attempted or planned to kiss and put my arm around [Colleague 1] or any staff for that matter in any of the store rooms I mentioned for I deemed it not only foolish but also malicious. I found this allegation beneath the expected standard of conduct I have for many years worked hard to achieve.'

The panel determined that your original statement in 2019 was likely to be more accurate as it was written closer in time to the incident. The panel noted in your oral evidence you stated you cannot remember if you tried to kiss Colleague 1 on the cheek in the store room.

The panel determined that Colleague 1 has provided a consistent, and credible, account of the incident. The panel decided that there are some inconsistencies in your account. It therefore found it was more likely than not that Colleague 1's account was accurate, and found this charge proved.

Charge 2b

2) On an unknown date between May 2019 and July 2019 whilst in the theatre department store room

b) put your arms around Colleague 1 and/or on her waist.

This charge is found proved.

For the same reasons as set out at charge 2a above, the panel found this charge proved.

Charge 3

3) On an unknown date between May 2019 and July 2019 whilst you and Colleague 1 were in a corridor you said to her "I like my view" or words to that effect.

This charge is found proved.

In reaching this decision, the panel noted that in your local statement dated 26 July 2019, you stated that it is possible you might have made this comment in a *'jokey'* way, and you did not realise this would cause offence as you thought of it as *'banter'*. This was inconsistent with your recent statement dated 21 April 2022 in which you state:

'I tend not to joke around colleagues, especially female ones, if they have not jokingly said something towards me first. Commenting on someone's body inappropriately is malicious and unacceptable most especially to a junior female colleague.'

The panel determined that Colleague 1 has provided a consistent account of this incident. In her local statement dated 22 July 2019 she describes this incident, stating he made the comment referring to her *'behind'*. The panel considered in her NMC witness statement dated Colleague 1 states that you made the comment referring to her *'arse'*. Colleague 1 was also consistent in her oral evidence that you stated *'I like my view'*, describing the incident as her bending over slightly whilst pushing a trolley up a slanted walkway.

The panel decided that Colleague 1 has provided a consistent and credible account of this incident, whilst your account has some inconsistencies. The panel was therefore satisfied that it is more likely than not that you made the comment outlined in the charge.

Charge 4b

- 4) On 15 July 2019 whilst in an operating theatre
 - b) touched Colleague 1 on her lower back and/or her bottom.

This charge is found proved.

In reaching this decision, the panel took into account that you admitted at the outset of the hearing that you touched Colleague 1's lower back. The panel went on to consider whether you touched Colleague 1's bottom.

The panel noted that whilst you deny actually touching Colleague 1's bottom, in your witness statement dated 21 April 2022 you acknowledge that Colleague 1 said *“that's my bottom” and told me to stop.*

In Colleague 1's statement dated 22 July 2019, she states that you were massaging her 'bum'. In Colleague 1's NMC witness statement, she states that you touched her 'bum' and that she told you to stop as you were touching her 'bum', which is consistent with your evidence that she told you to stop. In her oral evidence, Colleague 1 confirmed that you touched her bottom.

The panel determined that Colleague 1 has provided a consistent and credible account of this incident, and you acknowledged that Colleague 1 told you that you touched her bottom. The panel was therefore satisfied that it is more likely than not that you touched her bottom and finds this charge proved in its entirety.

Charge 6

6) Your conduct at charges 1 to 5 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 relation to charges 1a, 1b, 2a, 2b, 4a, 4b and 5.

The panel considered whether your actions set out in each of the charges found proved were sexually motivated.

In relation to charges 1a, 1b, 2a and 2b, the panel has found proved that you attempted to kiss Colleague 1 on the lips. The panel also has found proved that you put your hands on

Colleague 1's lower back, which it determined was lower than would ever be appropriate in a work setting. The panel also found proved that you put your hands around Colleague 1's waist. It noted that there was a significant grading and age differential between you which put you in a position of seniority. The panel determined that there was no other explanation for attempting to kiss a colleague on the lips and placing your hands inappropriately on a junior colleague's body than for sexual gratification. The panel heard your evidence that you hugged and kissed other colleagues on the cheek, but determined that your interactions with Colleague 1 went beyond your interactions with other colleagues. The panel decided that there was not sufficient evidence that you were in pursuit of a future sexual relationship with Colleague 1. The panel was satisfied that your actions at charges 1a, 1b, 2a and 2b were sexually motivated in that it was done for sexual gratification.

In relation to charge 3, the panel considered that the charge relates solely to words as opposed to an action. Whilst the panel did determine that the comment '*I like my view*' was sexual in nature, due to the context it was made in, it decided that it was not sexually motivated. The panel determined that there was insufficient evidence that the comment was made for your sexual gratification, or pleasure, and instead determined that the comment amounted to inappropriate and demeaning teasing of Colleague 1.

In relation to charges 4a and 4b, the panel noted that you accept that you started massaging Colleague 1 before waiting for her to respond whether she wanted you to provide the massage. The panel noted that you deny that it was sexually motivated. However, it considered that you continued to massage Colleague 1 until she explicitly told you to stop, and that you massaged an intimate part of her body. The panel determined that massaging her lower back and bottom was sexually motivated in that it was for your sexual gratification.

In relation to charge 5, the panel noted that you admitted this charge. In your evidence you stated that you used to hug Colleague 1. The panel considered this action in the context of the other actions, in particular the evidence from Colleague 1 that this event was after the

car park incident in charge 1. In light of this, taken together with the age and seniority differential, the panel determined that this was a pattern of behaviour by you in relation to Colleague 1 and therefore was sexually motivated in that it was for your sexual gratification.

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

Mr Misra submitted that as charges 1a, 1b, 2a, 2b, 4a, 4b and 5 were found proved, and it was found proved that your actions relating to these charges were sexually motivated, serious misconduct has been made out. He submitted that charge 3 also amounts to misconduct as the panel found it to be '*demeaning*'.

Ms Bayley stated that you accept that your actions amount to misconduct, and referred the panel to your reflective statement in which you acknowledge that your actions breached the standards set out in the Code.

Submissions on impairment

Mr Misra 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), *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Yeong v General Medical Council* [2009] EWHC 1923.

Mr Misra submitted that the panel should consider both your past actions and look forward when considering whether your fitness to practise is impaired. He invited the panel to consider the context of your actions when considering the questions set out in *Cohen*, which are;

- a. Are the failures easily remediable?
- b. Have the failures been remedied?
- c. Are the failures highly unlikely to be repeated?

Mr Misra acknowledged that there is some evidence of your heightened level of self-awareness since the incidents. He also submitted it is relevant that you were involved in a general culture of lowered professional boundaries in the Department. He submitted that your failure to maintain professional boundaries was widespread, which indicates that there remains a risk of repetition.

Mr Misra referred the panel to *Yeong* and submitted that the principle was laid out that fitness to practise might be impaired if the public was left with the impression that no steps had been taken by the [NMC in this instance] to bring forcibly to the registrant's attention the profound unacceptability of his behaviour. He further submitted that where a firm declaration of professional standards is needed in order to promote public confidence in the profession, the efforts made by a registrant to address the risk might be considered to be less significant than in other cases, such as those involving clinical errors or incompetence.

Mr Misra acknowledged that you do not present a risk to patient safety as a result of the incidents, but submitted that a finding of impairment can be made on public interest grounds. He submitted that the panel should consider your insight and assess whether there remains a risk of repetition.

Ms Bayley submitted that due to your remorse, remediation, insight, reflection, training and good practice, the risk of repetition is low and a finding of impairment on public protection grounds is not necessary. She stated that you have never been accused of professional misconduct before, or since, the incident. She submitted that you have made meaningful changes to your practice and conduct. She stated that the local investigation and the NMC proceedings have been a salutary experience for you, and you have no desire to find yourself in this situation again.

Ms Bayley submitted that your misconduct is capable of remediation, you have done all you reasonably can to remediate the misconduct and as a result the misconduct is highly unlikely to recur. She stated that you have expressed remorse for your actions since you

were first informed of Colleague 1's complaint. She stated that you sought to reflect on the charges, including those you did not admit and have shown genuine and significant insight. She submitted that you now pose no greater risk of harm than any other registrant.

Ms Bayley acknowledged that in light of the seriousness of the facts found proved, the public interest is likely to require a finding of current impairment, in order to declare and uphold proper professional standards of conduct and performance, to maintain public confidence in the profession and the NMC as a regulator.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance, Yeong, Grant and Martin v GMC (2011) EWHC 3204 (Admin)*.

Decision and reasons on misconduct

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

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

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

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

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 ... 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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

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 acting with sexual motivation towards a younger and a very much junior colleague, including by attempting to kiss her on the lips, was serious misconduct. Whilst the panel did not find charge 3 was sexually motivated, it had found that the comment made was demeaning and therefore determined that it amounted to misconduct. These were not isolated incidents. Rather they amounted to a pattern of misconduct. The panel also noted that you accept that your actions amounted to misconduct.

The panel 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. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) ...'

The panel finds that there is no evidence that patients were put at risk of harm as a result of your misconduct, but determined that your actions did cause Colleague 1 to experience harm. Due to the serious nature of your misconduct, the panel determined that you did breach the fundamental tenets of the nursing profession and brought its reputation into disrepute.

Regarding insight, the panel noted that you made admissions to some of the charges, and decided that you have expressed genuine remorse for your actions. The panel determined that you have shown insight in your reflective statement, and noted that you acknowledged that your behaviour fell below the standard expected of a registered nurse. The panel noted that in your reflective statement you state:

'I have reflected, done training then have the utmost will to improve my practise to make me a better nurse. I will never repeat these actions. I have a better understanding of the professional boundaries and how my actions could be seen by others. I am sorry I made [Colleague 1] feel that way. I never want to make anyone feel like that again.'

The panel considered the factors set out in the case of *Cohen* and determined that the misconduct is such that it can be addressed so as to reduce the risk presented to the public. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account your reflective statement, the numerous positive testimonials provided, and the training course on professional boundaries that you have completed. The panel further noted that there are no previous allegations against you, and that you have worked since the incident with no further concerns raised.

The panel was satisfied that due to your insight and strengthened practice in terms of understanding appropriate professional boundaries, there was a minimal risk of repetition

of the charges found proved. The panel finds that, although your fitness to practise may have been impaired on public protection grounds at the time of the incidents, given all of the above, a finding of current impairment is not necessary on public protection grounds.

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

The panel determined that a finding of impairment on public interest grounds is required. The panel determined that a member of the public would be appalled if the NMC did not take action following a finding of such misconduct, which involved conduct that was sexually motivated towards a colleague junior in professional status, age and experience, where you had a leadership role within the team. The panel determined that a finding of impairment was necessary to mark the serious nature of your misconduct, and to uphold public confidence in the nursing profession and the NMC as its professional regulator.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of one month. 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 Misra informed the panel that in the Notice of Hearing, dated 14 March 2022, the NMC had advised you that it would seek the imposition of a suspension order for between six and 12 months, with a review, if it found your fitness to practise currently impaired. Mr Misra referred the panel to the SG and submitted that the panel should impose an appropriate and proportionate order.

Ms Bayley acknowledged the aggravating factors, and submitted that there were several mitigating factors present. She submitted that a striking off order would be disproportionate and was not necessary to maintain public confidence in the profession. She submitted that your misconduct was not incompatible with continued registration.

Ms Bayley reminded the panel that it should impose the least restrictive sanction possible to maintain public confidence in the profession and uphold proper professional standards. She submitted that if the panel determined that a suspension order was necessary, it should impose it for the shortest available period that would maintain public confidence.

Ms Bayley submitted that a conditions of practice order may be deemed appropriate and could adequately reflect the serious nature of your misconduct. She further submitted that a caution order may be appropriate due to the finding of impairment on public interest grounds only. She submitted that the panel could find that a caution order strikes a proportionate balance in this case, ensuring the public interest is marked whilst allowing a kind, caring and compassionate nurse to remain in practice.

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:

- You were senior to Colleague 1 in age, experience and professional status
- Colleague 1 was a new and very young member of staff
- During the local investigation your insight was limited
- You were a team leader in a department with a culture of overfamiliarity
- You caused Colleague 1 to experience emotional harm and feel uncomfortable at work

The panel also took into account the following mitigating features:

- You are of previous, and subsequent, good character
- You have provided a large number of positive testimonials from colleagues
- Your actions did not cause patients harm
- You made some admissions to the charges and made an early admission that your actions were inappropriate, together with remorse towards Colleague 1 and a wish to apologise to her
- Your actions were at the lower end of seriousness of sexual misconduct
- The charges relate to actions towards one colleague
- You have provided an in-depth reflection, demonstrated insight and completed a three day training course on professional boundaries of your own volition and expense.

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 taking no action would not maintain public confidence in the profession and would not sufficiently mark the seriousness of your misconduct.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, 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 whilst your actions were at the lower end of seriousness of sexual misconduct, any sexual misconduct is not at the lower end of the impaired fitness to practise spectrum. Therefore, a caution order would be inappropriate in view of the seriousness of the issues identified. The panel decided that a caution order would not sufficiently mark the misconduct found proved nor maintain public confidence in the nursing profession or the NMC as its regulator. The panel further determined that a caution order would not sufficiently uphold proper professional standards.

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.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the sexual nature of the charges in this case. The panel noted that there are no concerns about your clinical practice.

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

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

The panel was satisfied that in this case your misconduct is remediable, and not fundamentally incompatible with remaining on the register. The panel found that a finding of impairment is not needed on public protection grounds.

It considered whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, 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 considered that your misconduct was serious, and caused a junior colleague to experience emotional harm. The panel determined that a suspension order was necessary to sufficiently mark your misconduct.

The panel noted the hardship such an order will inevitably cause you and also noted that a suspension order will prevent an otherwise competent nurse from practising. However, this is outweighed by the public interest in this case.

The panel found 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.

In determining the appropriate length of a suspension order, the panel considered the impact this case has already had on you in terms of dismissal from your job, financial hardship and the lengths that you have gone to in order to remedy your professional behaviour with colleagues.

The panel determined that a suspension order for a period of one month was appropriate and proportionate in this case to mark the seriousness of the misconduct, to uphold public confidence in the nursing profession and declare proper professional standards.

In accordance with Article 29 (8A) of the Nursing and Midwifery Order 2001 (the Order) the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary.

The panel determined that it made the substantive order having found your fitness to practise currently impaired solely on the grounds of public interest. The panel was satisfied that the suspension order will satisfy the public interest in this case and will maintain public confidence in the profession as well as the NMC as the regulator. Further, the suspension order will declare and uphold proper professional standards. Accordingly, the suspension order will expire, without review, one month after it takes effect.

This will be confirmed to you in writing.

Interim order

Mr Misra did not make an application for an interim order.

Ms Bayley did not make any submissions in relation to an interim order.

The panel accepted the advice of the legal assessor.

As no interim order was applied for, the panel did not go on to consider whether an interim order was necessary.

That concludes this determination.