

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

**Substantive Hearing
03 October 2022 – 05 October 2022
10-11 October 2022**

Virtual Hearing

Name of registrant:	Arnold Bejerano
NMC PIN:	02Y04830
Part(s) of the register:	Sub Part 1 RN1 – Adult Nursing 22 January 2018
Relevant Location:	Epsom
Type of case:	Misconduct
Panel members:	Caroline Rollitt (Chair, Lay member) Matthew Wratten (Lay member) Susan Field (Registrant member)
Legal Assessor:	Nicholas Levisaur
Hearings Coordinator:	Roshani Wanigasinghe
Nursing and Midwifery Council:	Represented by Matthew Kewley, Barrister
Mr Bejerano:	Present and represented by Stephen McCaffrey
Facts proved by admission:	Charge 1c and 1d
Facts proved:	Charges 1a, 1b, 1e, 1f, 2, and 3 in relation to charge 1a, 1b and 1f.
Facts not proved:	Charge 3 in relation 1c
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Details of charge

That you, a registered nurse:

1. On 21 September 2018, while speaking to Colleague 1;
 - a. Asked if he was in a relationship, or words to that effect;
 - b. Asked questions about his sexual orientation;
 - c. Asked him to write down his contact details;
 - d. Touched his stomach one or more times;
 - e. Slid your hand down inside his trousers;
 - f. Asked for his telephone number.
2. Your actions at charge 1d and/or 1e above were sexually motivated in that you sought to pursue a future sexual relationship and/or sought sexual gratification.
3. Your actions at charge 1a and/or 1b and/or 1c and/or 1f above were sexually motivated in that you sought to pursue a future sexual relationship.

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

Application for special measures in accordance with Rule 23

Mr Kewley, on behalf of the Nursing and Midwifery Council (NMC) invited the panel to provide for suitable screening when Colleague 1 gave evidence. He submitted that measures were required; this being a case involving sexual allegations in which Colleague 1 was the alleged victim. Mr Kewley suggested that whilst Colleague 1 was giving evidence, you should turn your camera off. This would allow Colleague 1 to give his evidence whilst you are out of his line of sight. It would also allow you to observe all of the proceedings. This application was made in accordance with Rule 23 (1)(e) of the Fitness

to Practice Rules (the Rules) which allows special measures to be put in place in cases of a sexual nature in order to protect a vulnerable witness.

Mr McCaffrey, on your behalf, agreed to this application.

The panel accepted the advice of the legal assessor.

Since this was a case that involved sexual allegations so that the use of special measures was required, the panel accepted the NMC's application and required your camera to be switched off during Colleague 1's evidence.

Background

On 16 November 2018 the NMC received a referral from a Nurse Consultant at Epsom and St Helier University Hospitals NHS Trust (the Trust) in relation to concerns relating to your failure to maintain professional boundaries at work. You have been employed by the Trust as a staff nurse since 2012.

You had allegedly touched a healthcare worker, Colleague 1 inappropriately and/or in a sexually motivated manner by putting your hands inside Colleague 1's trouser. You have consistently denied the allegation and subsequently a jury at Croydon Crown Court had found you not guilty.

It is alleged that Colleague 1 had visited the Trust to assess a patient for his care home and whilst discussing this patient in the staff room, it is alleged that you had touched Colleague 1 on his stomach one or more times and slid your hand inside Colleague 1's trousers to the top of his underpants.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr McCaffrey on your behalf, who informed the panel that you made admissions to charge 1c in that you asked for Colleague 1's contact details to be inserted into the patient record. He said you also made an admission to charge 1d in full.

The panel therefore finds charges 1c and 1d proved, by way of your admissions.

In reaching its decisions on the disputed facts, the panel considered all the oral and documentary evidence in this case together with the submissions made by Mr Kewley on behalf of the NMC and by Mr McCaffrey on your behalf.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard oral evidence from the following witness called on behalf of the NMC:

- Colleague 1: [PRIVATE];

The panel heard evidence from you under affirmation and received a witness statement from you dated 28 September 2022.

The panel also received written statements from Colleague 2, Colleague 3, Colleague 4 and Colleague 5.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and you.

Before considering each of the charges, the panel first considered the accounts it had heard from both Colleague 1 and yourself. The panel accepted that the evidence provided by Colleague 1, in his police statement on 24 October 2018, his NMC witness statement dated 21 September 2020 and oral evidence was largely consistent with one another. The panel accepted the evidence of Colleague 1.

In considering your evidence, the panel was particularly concerned about the credibility of your evidence. It found your evidence to be consistent but implausible. This was a professional meeting with a care home manager whom you had never met in a hospital setting to assess the suitability of a patient for transfer to a nursing home. Your evidence was that you initiated discussion with this stranger about his physique and fitness regime and that you admitted touching his stomach on one or more occasions. This occurred in a staff room but you accepted that this rather more personal discussion and the touching only began when there were no other staff members present. The panel found there to be no professional justification why anyone would comment on Colleague 1's physique nor why anyone should have touched his body. The panel found these behaviours which you had admitted to, to be wholly inappropriate and unprofessional.

The panel considered the evidence provided by Colleagues 2,3,4 and 5 respectively which presented you as a highly professional nurse who always behaved appropriately in the clinical environment. The panel then considered your admissions to touching Colleague 1 and making comments about his physique in a professional setting and found these admissions to be wholly incongruent with the evidence provided by Colleagues 2,3,4 and 5. The behaviour to which you had admitted is so unprofessional and so utterly unlike the character described by the witnesses as to lead the panel to conclude that it can place little weight on the evidence of these witnesses.

The panel found your evidence about these matters to be less than credible. The panel's conclusion about your credibility has informed the way in which it has approached the evidence given by you.

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

Charge 1a)

- 1. On 21 September 2018, while speaking to Colleague 1;**
 - a. Asked if he was in a relationship, or words to that effect.**

This charge is found proved.

In reaching this decision, the panel considered the evidence of Colleague 1 in his police statement dated 24 October 2018, his NMC statement dated 21 September 2020, his oral evidence and your evidence.

The panel noted that Colleague 1 said in his police statement dated 24 October 2018:

“...then I found his questions peculiar so kept diverting back to the patient conversation. He was asking me about... do I have a relationship with anyone...”

The panel also accepted his NMC statement dated 21 September 2020, in which he stated:

“The nurse then started asking me questions about whether I was in a relationship...”

The panel considered the evidence which had been presented and noted that when you and Colleague 1 first entered the staff room, another member of staff was in the room. A conversation took place between you and Colleague 1 which lasted approximately 10 minutes. The other member of staff then left the room, leaving just the two of you and the conversation which you accept you initiated became more personal. During this conversation the panel accepted Colleague 1’s account that you asked him if he was in a relationship.

The panel therefore found charge 1a, on the balance of probabilities, proved.

Charge 1b)

- 1. On 21 September 2018, while speaking to Colleague 1;**
 - b. Asked questions about his sexual orientation.**

This charge is found proved.

In reaching this decision, the panel accepted the evidence of Colleague 1 in his police statement dated 24 October 2018, his NMC statement dated 21 September 2020 and his oral evidence.

The panel accepted your evidence in which you admitted you had touched Colleague 1's stomach, commented on his physique and asked him about his gym regime.

The panel noted that Colleague 1 said in his police statement dated 24 October 2018:

"...then I found his questions peculiar so kept diverting back to the patient conversation. He was asking me about my sexual orientation..."

The panel also accepted his NMC statement dated 21 September 2020, in which he stated:

"The nurse then started asking me questions about...my sexual orientation."

The panel accepted that the discussion between Colleague 1 and yourself had lasted for about 10 minutes in the staff room in the presence of another staff member. For the reasons that the panel have already given in relation to charge 1a above, it considers it to

be more likely than not, that Colleague 1's evidence is correct and that you asked him about his sexual orientation.

The panel therefore found charge 1b, on the balance of probabilities, proved.

Charge 1c)

- 1. On 21 September 2018, while speaking to Colleague 1;
c. Asked him to write down his contact details.**

This charge is found proved by admission.

In reaching this decision, the panel accepted the evidence of Colleague 1 in his police statement dated 24 October 2018, his NMC statement dated 21 September 2020 and his oral evidence.

The panel accepted that you had asked for Colleague 1's contact details to complete the patient's records for the purposes of transfer to the care home.

The panel noted that asking for Colleague 1's contact details appeared to have been a request in an appropriate professional capacity. The panel accepted Colleague 1's police statement dated 24 October 2018, in which he said that his contact details were required to be included in the patient notes.

The panel therefore found charge 1c, proved but accepted that there was no impropriety in asking for these details.

Charge 1d)

- 1. On 21 September 2018, while speaking to Colleague 1;
d. Touched his stomach one or more times.**

This charge is found proved by admission.

In reaching this decision, the panel accepted the evidence of Colleague 1 in his police statement dated 24 October 2018, his NMC statement dated 21 September 2020, his oral evidence and your evidence and your police interview record dated 31 October 2018.

The panel considered your admission to this charge which was that you touched Colleague 1's stomach under his clothing after he had lifted his top up to permit you to do so. However, the panel accepted Colleague 1's police statement dated 24 October 2018, in which he said:

"He asked me if I went to the gym and then he put his hand on my lower abdomen."

The panel further accepted Colleague 1's evidence contained in his NMC statement dated 21 September 2020 that:

"The nurse touched my stomach a couple of times as he was making comments."

The panel considered your police interview record dated 31 October 2018 in which you said:

"... And then in the middle of our conversation, I asked him 'you've got really a nice body,' and I asked him 'do you go to gym,' and he said 'yes,' and I said 'how many times,' he said 'four to five times, a week;' And I also told him that's what I really wanted to do, but I cannot go, because of my job, and I hold my, look at my tummy – it's really big- that's what I wanted to aim as well that's what I wanted to aim, like your body, but I could not really do it, because of my job.

... So I just rubbed my tummy, by own tummy; ` And then during our conversation, I just asked him as well, 'can I see your body,' he straightaway stood up and show

and pull up his shirt up and show his body and I asked permission 'can I touch him,' and he come closer to me, because I'm eating, he come closer to me and then I just straight poke it, with finger like this (demonstrates)."

You provided consistent evidence during your oral testimony. You said:

"I asked him if he went to the gym, asked him if i could see his body, asked him if i could touch him and I poked his stomach with 4 fingers. I said again that he had a nice physique when he stood up and asked to touch again."

The panel accepted the evidence of Colleague 1. The panel was of the view that Colleague 1 provided more detailed and credible evidence. He said that you touched him a couple of times and that it was on top of his clothing. The panel finds that the touching occurred over clothing. This is because it believed that to lift Colleague 1's top up, as you said he did, would be a wholly inappropriate action to have done in a professional setting and to do so to a perfect stranger in these circumstances seems, on the balance of probabilities, most unlikely. Therefore, the panel concluded, that on 21 September 2018, whilst speaking to Colleague 1, you touched his stomach one or more times over his clothing.

The panel therefore found charge 1d proved.

Charge 1e)

- 1. On 21 September 2018, while speaking to Colleague 1;
e. Slid your hand down inside his trousers.**

This charge is found proved.

In reaching this decision, the panel accepted the evidence of Colleague 1 in his police statement dated 24 October 2018 and his NMC statement dated 21 September 2020 and

his oral evidence. The panel adopted its reasoning as to the conclusion it reached as to charge 1d above.

The panel noted that Colleague 1 said in his police statement dated 24 October 2018:

“...the suspect has put his right hand down the front of my trousers. His hand went under my trousers and touched the top of my boxers inside my jeans.”

He further said in his NMC statement dated 21 September 2020:

“...the nurse then put his hand on my abdomen and slid it down my trousers to the top of my boxers.”

You deny this charge. The panel however believed Colleague 1’s account. Colleague 1 has been consistent in his evidence in relation to this. The panel did not accept your evidence about this.

The panel considered Mr McCaffrey’s submissions that Colleague 1 might have been in shock and might therefore have some memory loss about these events. The panel accepted that Colleague 1 was indeed shocked by your behaviour, but accepted his evidence that he had a very clear recollection of these events.

The panel therefore found on 21 September 2018, while speaking to Colleague 1, you slid your hand down inside his trousers.

The panel therefore found charge 1e proved.

Charge 1f)

- 1. On 21 September 2018, while speaking to Colleague 1;
f. Asked for his telephone number.**

This charge is found proved.

In reaching this decision, the panel accepted the evidence of Colleague 1 in his police statement dated 24 October 2018, his NMC statement dated 21 September 2020 and his oral evidence.

The panel noted that Colleague 1 said in his police statement dated 24 October 2018:

“As I was trying to get away he asked me for my number but I said it might be easier if you give me yours and your name which he did...”

He further said in his NMC statement dated 21 September 2020:

“I then went to leave and I think I took the lift...he then approached me and said I could come work for you and maybe you should give me your number. Because I didn't want to make a scene I said 'maybe it would be better if you give me your number'... I just wanted to leave and not give my details.”

In your oral and written evidence, you accepted that you had followed Colleague 1 downstairs and that *“I gave him my mobile number.”* You explained in your evidence that this was because you were seeking extra work at the care home. You denied asking Colleague 1 for his telephone number except in the context of the professional details which were to be written in the patient notes.

The panel accepts Colleague 1's evidence which it found to be consistent with the pattern of events which it has found to have occurred in relation to charges 1a-1e.

The panel therefore found charge 1f, proved.

Charge 2)

- 2. On 21 Sept Your actions at charge 1d and/or 1e above were sexually motivated in that you sought to pursue a future sexual relationship and/or sought sexual gratification.**

This charge is found proved in relation to sexual gratification.

The panel finds that, in relation to both charges 1d and 1e, the touching of Colleague 1's stomach and the sliding down of your hand inside Colleague 1's trousers were sexually motivated in that you sought sexual gratification. The panel finds that you touched Colleague 1 twice on his stomach; the first occasion was during your discussion with him in the staff room; the second was when Colleague 1 stood up and was attempting to leave the room. On both occasions, you had asked him intimate, inappropriate personal questions. In your police interview, you said that these were '*man to man conversations*'. In your oral evidence, you told the panel that your comments about Colleague 1's physique arose out of your understanding that he worked out 4-5 times a week and in your witness statement you said that '*I noticed that he had a good physical build and asked him if he went to the gym*'. The panel finds that touching a stranger's stomach with whom you have just met in a professional capacity and in a professional environment for the purposes of carrying out a patient assessment, to be wholly inappropriate. Placing your hand inside a person's trousers with or without consent in a non-clinical context can only be for the purpose of sexual gratification. The panel rejects your explanation of how you came to touch Colleague 1's stomach and finds that on the balance of probabilities, you did so for reasons of sexual gratification.

The panel considered whether there was any innocent or credible explanation for your behaviour other than that of sexual gratification and is satisfied that there was not.

Having considered the totality of the evidence, the panel finds that your primary intentions in this respect were restricted to sexual gratification. The evidence was not sufficient for

the panel to conclude that you sought to pursue a future sexual relationship when you were touching Colleague 1.

The panel therefore found charge 2 proved, in that on 21 September 2018, your actions at charge 1d and 1e above were sexually motivated in that you sought sexual gratification.

Charge 3)

- 3. Your actions at charge 1a and/or 1b and/or 1c and/or 1f above were sexually motivated in that you sought to pursue a future sexual relationship.**

This charge is found proved in relation to charges 1a, 1b and 1f.

This charge is found NOT proved in relation to charge 1c.

In relation to charges 1a and 1b, the panel determined that there would be no other reason for you to ask Colleague 1 whether he was in a relationship, or ask questions about his sexual orientation, other than for the purpose of it being sexually motivated in order to seek to pursue a future sexual relationship. The panel found that this was a professional meeting in a professional capacity in a professional environment. There was no other credible explanation as to why such personal questions were asked of Colleague 1 nor did you seek to provide any.

In relation to charge 1c, the panel found this charge not proved. It found that you had asked Colleague 1 to write down his contact details in the patient records for the purposes of facilitating the transfer of that patient to the care home. That was for a professional and not a sexual reason.

The panel therefore found charge 3 in relation to 1c, not proved.

In relation to charge 1f, the panel found that your action in asking Colleague 1 for his telephone number was sexually motivated because you were seeking to pursue a future

sexual relationship. It was agreed by both parties that you followed Colleague 1 downstairs. The panel was satisfied that Colleague 1 did not want to provide you with his telephone number but nevertheless you gave him your own number. Given the panel's findings as to your motivation in respect of charges 1a, 1b, 1d and 1e, the panel finds it to be more likely than not that in seeking Colleague 1's telephone number after you had indulged in behaviour which you found sexually gratifying, you did so in order to pursue a future sexual relationship with him.

In these circumstances, the panel found charge 3 in respect of charges 1a, 1b and 1f proved. The panel found charge 3 in respect of charge 1c not proved.

Fitness to practise

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

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

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

Submissions on misconduct

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 Kewley invited the panel to take the view that the facts found proved amount to misconduct. He submitted that Colleague 1 had attended the hospital with a view to having a professional meeting with you regarding the assessment of a patient for suitability for transfer to the care home. During this meeting, he was asked personal questions which were intimate and inappropriate in the circumstances. Colleague 1 further experienced inappropriate touching by you where you touched his stomach and put your hands down his trousers. Mr Kewley submitted that these actions amount to failing to treat a colleague with respect and professionalism and your actions are considered deplorable. He reminded the panel that these were actions in a professional setting, during a professional meeting. Mr Kewley therefore invited the panel to find that your actions in the charges found proved above, amounted to misconduct.

Mr McCaffery submitted that given the panel's findings, he conceded that the behaviour amounted to misconduct but that this was a question for the panel to determine.

Submissions on impairment

Mr Kewley 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 Kewley submitted that nurses have a position of trust and therefore should act professionally. He submitted that you acted in a manner which is likely to erode the public

confidence in the profession. He invited the panel to consider that a member of the public would, in the circumstances of this case, expect some action to be taken by the regulator in respect of your failure to maintain professional boundaries. He submitted that a finding of impairment is justified, to promote proper standards and to maintain the reputation of the profession and to mark the unacceptable conduct.

Mr McCaffery advanced no positive submission in relation to impairment. He submitted that it was a matter for the panel.

The panel accepted the advice of the legal assessor.

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 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (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 ... integrity at all times, treating people fairly and without discrimination, bullying or harassment

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

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

20.6 stay objective and have clear professional boundaries at all times...

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 you acted in a manner which significantly breached professional boundaries, in that you asked Colleague 1 inappropriate personal questions and touched him on his stomach and put your hands down his trousers. The panel found that these actions had all been sexually motivated either for immediate sexual gratification or for a future sexual relationship. It found that such actions were a distinct departure from expected professional conduct by someone who holds a position of trust and responsibility. The panel therefore found your actions to be extremely serious. Such actions brought the nursing profession into disrepute.

The panel found therefore 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 standards and boundaries. Patients, their families and colleagues must be able to trust nurses. 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* [2011] EWHC 927 (Admin) 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 found that the first three limbs of the Grant test to be engaged in this case, both as to the past and the future.

The panel finds that Colleague 1 was caused emotional and psychological harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if a finding of impairment was not made in these particular circumstances.

The panel considered that you have shown no insight or remorse into your misconduct which you have denied throughout. It took into account your evidence in which you sought to normalise your behaviour by stating that it was a 'man to man conversation'. The panel found that you had no respect for the wishes of Colleague 1 or insight into the impact that your behaviour was having or had on him or how this might have impacted upon your professional relationship, given that he had not consented to your behaviour.

Further, the panel is of the view that there is a risk of repetition given your lack of insight, remorse or remediation. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The considered 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 profession and upholding the proper professional standards for members of those professions. The panel therefore determined that a finding of impairment on public interest grounds is required.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and finds your fitness to practise impaired on the grounds of public protection and public interest grounds.

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

Sanction

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

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

Submissions on sanction

Mr Kewley submitted that on the facts of this case, the most appropriate sanction is a striking-off order.

Mr Kewley invited the panel to consider the overarching objective of the NMC, to protect the health, safety and well-being of patients and public and maintain confidence. He reminded the panel that any order must be no more than necessary to address the public protection and public interest concerns identified.

In determining what sanction to impose, Mr Kewley referred the panel to the NMC guidance on Sexual Misconduct Cases (reference SAN-2). He submitted that any case relating to sexual misconduct is likely to seriously undermine the trust the public has in nurses.

Mr Kewley reminded the panel that you have no previous convictions or concerns and that you are of previous good character. He informed the panel that this is not a case involving patients or a course of conduct towards a junior colleague. He said it was a single isolated

incident in 2018 and since then, you have been working during which there have been no complaints or concerns.

However, Mr Kewley submitted that your misconduct has been found to be sexually motivated. Colleague 1 had not consented to the touching, and your actions have caused Colleague 1 emotional distress.

Mr Kewley submitted that given the seriousness of this case and the public protection and public interest concerns identified, a 12-month suspension period would be insufficient. He therefore submitted that the most appropriate sanction in your case is that of a striking-off order, however he submitted that this was a matter for the panel's professional judgement.

Mr McCaffery invited the panel to consider the seriousness of your misconduct. He submitted that there are levels of seriousness, and that not all sexual misconduct is the same.

Mr McCaffery submitted that, unlike other similar sexual misconduct cases, there have been no other complaints in respect of you either before or after these concerns. He reminded the panel that, this was a single isolated incident, without explanation in a context which does not make sense. He submitted that you have provided 30 years of professional service to the NHS. He submitted that you are good nurse who is respected and valued and is considered such by other members of the profession.

In relation to facts, he submitted that these cases often present an observable imbalance of power. However, your case is not one of these. He submitted that there had been no abuse of power or position, no evidence of premeditation or planning and no evidence of you seeking to contact Colleague 1 to aggravate the behaviour found proved following your meeting and no repetition since that or before 21 September 2018.

Mr McCaffery invited the panel to impose a suspension order. He submitted that this is the most appropriate outcome in your case. He submitted that to suspend your registration for

a period of time is fair, proportionate and would afford you the opportunity to demonstrate remorse and insight and adequately deal with your misconduct. Mr McCaffery submitted that a striking-off order being the most serious sanction, should be reserved for the most serious of cases which given all the factors of this case would not be an appropriate sanction. He said that to end the career of a dedicated nurse, would not be proportionate in the circumstances.

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 noted 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 sought to normalise your behaviour.
- Abuse of position of trust.
- Conduct caused psychological and emotional harm to Colleague 1.
- Complete lack of insight into your behaviour.

The panel found no mitigating features but did note that this was single incident with no evidence of a continued pattern or behaviour.

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.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection and public interest issues identified, an

order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum 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 noted that no deficiencies in your competence were identified. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public or satisfy the public interest.

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

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

The panel accepted that this was a single instance of isolated behaviour, which did not form part of a pattern of behaviour and was not premeditated. However, it was of the view that you have demonstrated evidence of harmful deep-seated

personality or attitudinal problems by consistently seeking to minimise your actions by saying it was a *'man to man conversation'*.

The panel also referred to the NMC guidance on 'considering sanctions for serious cases', in particular, cases involving sexual misconduct. The panel determined that the conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel considered that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register.

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

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

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

The panel was of the view that your actions raise fundamental questions about your professionalism. You were in a professional environment when these incidents occurred. You abused your position of trust. You have not reflected on or acknowledged the impact your behaviour had on Colleague 1 and have continually sought to minimise your actions. The panel was of the view that your continuing absence of insight demonstrates a risk of repetition and is extremely damaging to the reputation of the profession. The panel further considered the victim impact statement dated 21 August 2019 and Colleague 1's unredacted witness statement. It noted the significant effects your actions have had on

Colleague 1. The panel found your conduct to have been extremely damaging to other nurses and the nursing profession. It was of the view that members of the public would find your conduct deplorable. It noted your 30-year career, your subsequent practice, and statements of good character. However, the panel found these to be incongruent of the behaviour found proved.

Your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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

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

This will be confirmed to you in writing.

Interim order

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

striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Kewley. He submitted that an interim order was necessary to address the risk to public and to uphold the confidence in profession. He informed the panel that the sanction which it has imposed would not take effect for 28 days. He submitted that an 18 month interim order would address the risks identified by the panel and cover any potential period of appeal.

Mr McCaffery made no further submissions.

Decision and reasons on interim order

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

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

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

That concludes this determination.