

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

**Substantive Meeting
Wednesday, 12 April 2023 – Friday, 14 April 2023**

Virtual Hearing

Name of Registrant: Kenneth Kanti Rathod

NMC PIN 19J07380

Part(s) of the register: Registered Nurse
Sub Part 1 – 23 October 2019

Relevant Location: Bedfordshire

Type of case: Misconduct

Panel members: John Vellacott (Chair, lay member)
Sharon Peat (Registrant member)
Susan Laycock (Lay member)

Legal Assessor: Caroline Hartley (12 April 2023)
Justin Gau (13-14 April 2023)

Hearings Coordinator: Clara Federizo

Facts proved: All charges

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Striking-off Order**

Interim order: **Interim Suspension Order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Rathod's registered email address by secure email on 3 March 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and the fact that this meeting was to be heard virtually.

In the light of all of the information available, the panel was satisfied that Mr Rathod has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse:

1. On one or more unknown dates in February 2021, inappropriately engaged in online communication with a person you believed to be a 14 year old girl ("Child A") in that you:
 - a. addressed Child A as "*babe*" **[PROVED]**
 - b. asked Child A to send you pictures of:
 - i. herself **[PROVED]**
 - ii. her mother **[PROVED]**
 - c. said: "*wat are ur fantasies*" **[PROVED]**
 - d. said: "*I would luv a threesome with ur mum and u*" **[PROVED]**
2. Your actions at charge 1 above were sexual in nature. **[PROVED]**

3. Your actions at charge 1 above were sexually motivated in that you sought to pursue a sexual relationship with Child A and/or sought sexual gratification.
[PROVED]

4. On one or more occasions, communicated with Child A whilst at work.
[PROVED]

5. During the course of your communications with Child A, provided information which identified your place of employment, in that you:
 - a. posted a picture of yourself in uniform outside of Godber Ward, Coronary Care Unit; **[PROVED]**
 - b. provided a telephone extension number to the Acute Accident Unit
[PROVED]

6. Whilst engaging in conversation with Child A, you held yourself out to be doctor.
[PROVED]

7. Your action as set out in charge 6 was dishonest in that you attempted to mislead Child A to believe you were a doctor when you knew you were not.
[PROVED]

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

Background

Mr Rathod was referred to the NMC on 24 May 2021 by Bedford Hospital NHS Trust ('the Trust'). At the time of the events, Mr Rathod worked as a Band 5 Staff Nurse within the Acute Accident Unit ('AAU') at the Trust.

On 23 February 2021, members of the public identifying themselves as Paedophile Hunters ('the Hunters') attended the Trust site and raised concerns about the actions of a staff member. The Hunters stated that they had conducted an undercover conversation which led them to become concerned that a "doctor" had exchanged inappropriate and sexualised messages with someone claiming to be a 14 year old female. They had identified the "doctor's" location via a ward name and telephone number and intended to confront the "doctor" and perform a citizen's arrest.

The Hunters provided the Head of Nursing for Safeguarding with screenshots of the undercover conversation and copies of photographs which the "doctor" had sent during the course of that conversation. Enquiries with colleagues at the Trust identified Mr Rathod as the staff member in the photographs provided by the Hunters, and it was confirmed that he was not a doctor, but a nurse.

The concerns were referred to the Police, and Mr Rathod was suspended from nursing duties. The Police visited Mr Rathod and seized two devices. However, none of the chat records or live images sent were found. Without that evidence, it was considered that there was no prospect of conviction, and no further action was taken against Mr Rathod by the police.

On 1 April 2021, Mr Rathod was interviewed by the Deputy Head of Therapies at the Trust, as part of the Trust investigation. Initially, Mr Rathod denied engaging in any conversation of a sexual nature with a 14 year old girl. He insisted that once he was aware of the 'girl's' age he had only engaged in conversation with her in order to speak with her mother and enquire after the mother's health. Mr Rathod also denied purporting to work as a doctor during his conversation.

When Mr Rathod was shown the screenshots provided by the Hunters, he accepted that the transcript was of a conversation he had with someone who purported to be a 14 year old girl, but continued to deny that the conversation had any sexual undertones or

connotations. Mr Rathod did, however, admit that he had pretended to be a doctor during the conversation.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

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 had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Employed by Bedfordshire NHS Foundation Trust as a Deputy Head of Therapies at the Trust;
- Witness 2: Previously employed, at the time of the incident, as the Head of Nursing for Safeguarding at the Trust from October 2016 until June 2021.

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

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

Charge 1a)

“That you, a registered nurse:

1. On one or more unknown dates in February 2021, inappropriately engaged in online communication with a person you believed to be a 14 year old girl (“Child A”) in that you:

a. addressed Child A as ‘babe’ ”

This charge is found proved.

In reaching this decision, the panel took into account the screenshots of the conversation placed before it between the Hunters, posing as Child A, and Mr Rathod, under the name of ‘Royston’.

The panel had particular regard to the relevant screenshots of the online conversation between ‘Child A’ and Mr Rathod (‘KR’), which reads as follows:

“Child A: So why message me. No I’m 14 lol

KR: I know but ur mom

KR: Babe

KR: ???

...

KR: Babe

KR: Just think

Child A: I am thinking and no

KR: Mmmmm come on

KR: Just once

KR: Babe plz”

The panel found clear evidence within the screenshots provided of the conversation where Mr Rathod has addressed Child A as “babe” more than once, throughout the online conversation. The panel noted that Mr Rathod admitted in the Trust investigation interview that the screenshots represented a record of the conversation that he had had.

The panel therefore finds this charge proved.

Charge 1b(i)

“That you, a registered nurse:

1. *On one or more unknown dates in February 2021, inappropriately engaged in online communication with a person you believed to be a 14 year old girl (“Child A”) in that you:
 - b. *asked Child A to send you pictures of:
 - i. *herself ”***

This charge is found proved.

The panel considered the relevant screenshots of the online conversation between ‘Child A’ and Mr Rathod (‘KR’), which reads as follows:

*“KR: Now can u awbd [send] the pics
KR: Let’s see the loads of pics u got babe
...
KR: Mums pics plz then urs babe”*

The panel was satisfied that there was evidence within the screenshots provided of the conversation where Mr Rathod has asked Child A to send pictures of herself more than once, throughout the online conversation.

The panel also had regard to the Trust investigations interview held on 1 April 2021. The relevant summary notes of the meeting read as follows:

*“66. MB: Pictures that were sent from the girl to you, did you ask for those to be sent?
67. KR: Yes I asked for them.
68. MB: For a picture of the 14 year old girl?
69. KR: Yes I think so.”*

The panel therefore finds this charge proved by way of Mr Rathod's own admission.

Charge 1b(ii)

"That you, a registered nurse:

1. *On one or more unknown dates in February 2021, inappropriately engaged in online communication with a person you believed to be a 14 year old girl ("Child A") in that you:
 - b. *asked Child A to send you pictures of:
 - ii. *her mother "***

This charge is found proved.

The panel considered the relevant screenshots of the online conversation between 'Child A' and Mr Rathod ('KR'), which reads as follows:

"KR: I would luv a threesome with ur mum and u

KR: Come on

KR: U got a pic of her

...

KR: U got one pic of her

...

KR: Even a full dressed pic will do

...

KR: Mums pics plz then urs babe"

The panel was satisfied that there was sufficient evidence within the screenshots provided of the conversation where Mr Rathod has asked Child A to send pictures of her mother more than once, throughout the online conversation.

The panel therefore finds this charge proved.

Charge 1c)

“That you, a registered nurse:

1. *On one or more unknown dates in February 2021, inappropriately engaged in online communication with a person you believed to be a 14 year old girl (“Child A”) in that you:*

c. said: ‘wat are ur fantasies’ ”

This charge is found proved.

The panel had regard to the relevant screenshots of the online conversation between ‘Child A’ and Mr Rathod (‘KR’), which reads as follows:

“Child A: Chatting meeting new people having a laugh having fun wbu

...

KR: Anything fun

Child A: If I enjoy it yeah

KR: Wat are ur fantasies

Child A: Don’t have any at the moment

Child A: U

KR: Mmmmm

KR: Many I luv milfs

KR: Married women”

The panel found clear evidence within the screenshots provided of the conversation where Mr Rathod has said *“wat are ur fantasies”* during the online conversation.

The panel therefore finds this charge proved.

Charge 1d)

“That you, a registered nurse:

1. On one or more unknown dates in February 2021, inappropriately engaged in online communication with a person you believed to be a 14 year old girl ("Child A") in that you:

d. said: 'I would luv a threesome with ur mum and u' "

This charge is found proved.

The panel had regard to the relevant screenshots of the online conversation between 'Child A' and Mr Rathod ('KR'), which reads as follows:

"KR: She is a milf

KR: Isint she

Child A: She my mum I don't look at her like that

KR: I would luv a three some with ur mum and u"

The panel found sufficient evidence within the screenshots provided of the conversation.

The panel also noted Mr Rathod's response when questioned about the comment in question, during the Trust investigation interview on 1 April 2021. The notes of the meeting read as follows:

"49. MB: The comment about the threesome with the mum is where I'm getting stuck. At that point you were aware she was 14 and what was the intention of continued conversation?"

50. KR: The thing was at that point it was just a conversation that happened and I did not even thing [sic] about that because after that if you read I never spoke to her about anything. After that I did not mention anything about having sex or anything like that in other conversations with the girl.

51. MB: The tone of the messages, although possibly not directed at this girl, in terms of how appropriate it is for the access to mum through the daughter, do you have an explanation for that?"

52. SM: *What were the intentions?*

53. KR: *I thought she's an adult, the mother is an adult so I can have a conversation with her mother. That was my only intention, I did not even think anything that way. It was just an intention that the mother was an adult and I can have a good conversation, a serious conversation, I can talk, I can share, that was my only thing at that point. Just like you say are you doing this for sex I said no it was not for that, I can talk, that was the only thing."*

The panel found, on the balance of probabilities, that the individual behind the online conversation was indeed Mr Rathod as during the interview he does not deny having made such comments, he then expands on this with an explanation for it. For this reason, the panel found that Mr Rathod has said *"I would luv a threesome with ur mum and u"* during the online conversation.

The panel noted Mr Rathod stated he recognised the screenshots as the conversation that he had engaged in.

The panel therefore finds this charge proved.

Charge 2)

"That you, a registered nurse:

2. Your actions at charge 1 above were sexual in nature."

This charge is found proved.

In reaching this decision, the panel took into account the screenshots of the online conversation placed before it, as well as Mr Rathod's Trust investigation interview on 1 April 2021. The panel had particular regard to the following summary notes of the meeting:

"80. SM: Previously you said that as soon as you found out that the individual was 14 you stopped all sexual conversation.

81. KR: Yes in the sense I was not speaking to the girl. Afterwards she said her mother was talking.”

In light of Mr Rathod’s response above during the interview, the panel found that Mr Rathod does not deny having a ‘*sexual conversation*’, he in fact confirms it, albeit claiming that it was with the mother. The panel also found that sexualised language is used throughout the screenshots referenced above in charge 1. Thus, Mr Rathod’s actions in charge 1 were sexual in nature.

The panel therefore finds this charge proved.

Charge 3)

“That you, a registered nurse:

3. Your actions at charge 1 above were sexually motivated in that you sought to pursue a sexual relationship with Child A and/or sought sexual gratification.”

This charge is found proved.

The panel had regard to the screenshots of the online conversation placed before it, as well as Mr Rathod’s interview held by the Trust investigation team on 1 April 2021.

Having found that the language used throughout the online conversation was sexual in nature the panel also found, on the balance of probabilities, that it is more likely than not that Mr Rathod’s actions at charge 1 were sexually motivated and that Mr Rathod sought sexual gratification.

The panel determined from the screenshots provided it was more likely than not that Mr Rathod attempted to pursue a sexual relationship with a 14 year old based upon Mr Rathod’s sexualised requests. The panel also determined that Mr Rathod’s actions were sexually motivated as highlighted by the sexualised language in the screenshots of his conversation. The only conclusion the panel could find was that Mr Rathod was seeking a relationship of a sexual nature for his sexual gratification.

The panel therefore finds this charge proved.

Charge 4)

“That you, a registered nurse:

4. On one or more occasions, communicated with Child A whilst at work.”

This charge is found proved.

The panel had regard to the screenshots of the online conversation placed before it, which set out:

“Child A: So out of interest if I called them now they put me through to u. If u honest u can meet us both Sammie likes u

KR: Yea I am in one of the wards now

KR: But definitely yea

KR: My extension 5083”

The panel recognised that within the conversation above, Mr Rathod sent his work extension number and a photograph of himself at work.

The panel also noted Mr Rathod’s Trust investigation interview on 1 April 2021. The panel had particular regard to the following notes of the meeting:

“39. MB: Did that conversation happen whilst you were on duty?

40. KR: No. One conversation I was at work probably but not the others. One or two conversations yes I was at work during my break time. Messages kept coming and I was on my break. Not after that, I wasn’t at work.

41. SM: You said that you took a picture, you did confirm you recognised these pictures. 42. KR: Yes, that was the only picture.

43. SM: So you remember taking those pictures?

44. KR: I didn’t take them, I had them.

45. SM: Did you send these while on a working shift?

46. KR: No I was not on a working shift. After that I was working. There were two conversations, not the initial bit but the later one.”

The panel acknowledged that Mr Rathod admits the charge as he states: “*One conversation I was at work probably but not the others. One or two conversations yes I was at work during my break time”.*

In light of all of the above, the panel found, on the balance of probabilities, that it was more likely than not that Mr Rathod, had on one or more occasions, communicated with Child A whilst at work.

The panel therefore finds this charge proved.

Charge 5a)

“That you, a registered nurse:

5. During the course of your communications with Child A, provided information which identified your place of employment, in that you:

a. posted a picture of yourself in uniform outside of Godber Ward, Coronary Care Unit;”

This charge is found proved.

The panel had regard to the screenshots of the online conversation placed before it, which set out:

“Child A: Send me a live pic of u on ward with ward name

Child A: Then I trust u totally

Child A: I do trust just BN hurt all my life

KR: Okie

Child A: So please do this one thing

[KR photograph]

KR: Checked

KR: Trust me now”

The panel recognised that within the conversation above, Mr Rathod sent a photograph of himself at work. The panel was satisfied that there is clear evidence that Mr Rathod posted a photograph of himself in uniform outside Godber Ward, Coronary Care Unit during the course of his communications with Child A and provided information which identified his place of employment as the ward sign is clearly visible in the photograph.

The panel therefore finds this charge proved.

Charge 5b)

“That you, a registered nurse:

5. During the course of your communications with Child A, provided information which identified your place of employment, in that you:

b. provided a telephone extension number to the Acute Accident Unit”

This charge is found proved.

The panel had regard to the screenshots of the online conversation placed before it, which set out:

“Child A: So out of interest if I called them now they put me through to u. If u honest u can meet us both Sammie likes u

KR: Yea I am in one of the wards now

KR: But definitely yea

KR: My extension 5083”

The panel recognised that within the conversation above, Mr Rathod sent his work extension number.

The panel also noted Mr Rathod's interview held by the Trust investigation team on 1 April 2021. The panel had particular regard to the following notes of the meeting:

"98. SM: I'm trying to understand why you would send a Trust extension number.

99. KR: I don't know I must have just sent that. I think they wanted to know if I really worked here.

100. SM: The extension number was put in there.

101. KR: I think the conversation was do you really work there and I said yes you can check."

The panel was satisfied that there is clear evidence that Mr Rathod provided a telephone extension number to the Acute Accident Unit during the course of your communications with Child A and provided information which identified his place of employment.

The panel therefore finds this charge proved.

Charge 6)

"That you, a registered nurse:

6. Whilst engaging in conversation with Child A, you held yourself out to be doctor"

This charge is found proved.

The panel had regard to the screenshots of the online conversation placed before it, dated 22 February 2021, which set out:

"[KR photograph]

Child A: Are u a dr

KR: Yea

Child A: Omg in hospital

KR: Yea"

The panel recognised that within the conversation above, Mr Rathod sent a photograph of himself wearing scrubs and confirmed that he was a “doctor”.

The panel also noted Mr Rathod’s interview held by the Trust investigation team on 1 April 2021. The panel had particular regard to the following notes of the meeting:

“34. KR: I did say at one point that I am a Doctor, but then she said are you sure and I said no after that.

35. SM: So did you say?

36. KR: I did say initially but then I said no.

37. SM: Do you know the timespan of the conversation? In the transcript we’ve received there are no date or times to confirm this.

38. KR: I think it was two days I think.”

The panel also noted Witness 1’s statement, who interviewed Mr Rathod:

“16. ...In addition, Kenneth also failed to provide any explanation as to why he had claimed to be a doctor at Bedford Hospital, and showed no insight into how his actions could have brought the Trust’s reputation into disrepute.”

The panel was satisfied that by Mr Rathod’s own admission during the interview and in the screenshots there is evidence to support that he held himself out to be doctor whilst engaging in conversation with Child A.

The panel therefore finds this charge proved.

Charge 7)

“That you, a registered nurse:

7. Your action as set out in charge 6 was dishonest in that you attempted to mislead Child A to believe you were a doctor when you knew you were not.”

This charge is found proved.

The panel had regard to the screenshots of the online conversation placed before it, which set out:

“[KR photograph]

Child A: Are u a dr

KR: Yea

Child A: Omg in hospital

KR: Yea”

The panel was satisfied that the screenshots support that Mr Rathod was dishonest as he held himself out to be doctor knowing that he was not.

Further, the panel concluded that Mr Rathod had been consistently dishonest throughout his engagement with Child A as he did not give his correct name and disguised himself under the name of ‘Royston’ and said he worked in “*Cambridge*” at “*Addenbrookes*” and that he lived in “*St Neots*”. The panel found that, on the balance of probabilities, it was more likely than not that Mr Rathod’s action as set out in charge 6 was dishonest in that he attempted to mislead Child A to believe he was a doctor when he knew he was not.

The panel therefore finds this charge 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 Mr Rathod's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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, must the panel decide whether, in all the circumstances, Mr Rathod's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

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

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The NMC code of professional conduct: standards for conduct, performance and ethics (2015)' ("the Code") in making its decision.

The NMC identified the specific, relevant standards where Mr Rathod's actions amounted to misconduct. The NMC submissions on misconduct read as follows:

"Misconduct

14. *The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define misconduct:*

'[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'.

As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin), respectively:

'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.

And

'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.

15. *Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council's Code of Conduct.*

16. *We consider the following provisions of the Code have been breached in this case:*

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.5 respect and uphold people's human rights

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

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

20.4 keep to the laws of the country in which you are practicing

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

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

*17. Mr Rathod's alleged actions are a serious departure from the standards expected of a registered professional. The evidence such as screenshots of messages exhibited at **MB/1** (Appendix 5 of the Trust's Investigation Report, "the Report") and the notes of the Trust's investigation meeting with Mr Rathod (Appendix 4 of the Report) suggests that he inappropriately engaged in an online communication within the period of more than one day from his employer's premises where he was on duty as a nurse with a person he believed to be a 14 year old girl.*

18. The above evidence also suggests that Mr Rathod's communication above appears to be sexual in nature and sexually motivated in that he appeared to have sought to pursue a sexual relationship with the child and / or sought sexual gratification. We therefore consider Mr Rathod's alleged misconduct to be at the highest level on the scale of seriousness.

19. Mr Rathod admitted at the Trust's disciplinary proceedings that he had held himself out to be a doctor while he knew he was not at the time of his engaging in the online conversation above. Therefore, the seriousness of the alleged dishonesty is also at its highest level."

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Mr Rathod's fitness to practise impaired on the grounds set out in its written submissions:

“Impairment

20. Impairment needs to be considered as at today's date, i.e. whether Mr Rathod's fitness to practice is currently impaired. The NMC defines impairment as a registered professional's suitability to remain on the register without restriction.

*The questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin)) are instructive. Those questions were:*

- 1. has [Mr Rathod] in the past acted and / or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- 2. has [Mr Rathod] in the past brought and / or is liable in the future to bring the [nursing] profession into disrepute; and / or*
- 3. has [Mr Rathod] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and / or*
- 4. has [Mr Rathod] in the past acted dishonestly and / or is liable to act dishonestly in the future.*

21. It is the submission of the NMC that all of the above limbs can be answered in the affirmative in this case.

22. Despite the above online communication relating to Mr Rathod's private life, he carried out this communication from his workplace where he was employed as a

nurse and the conduct of this type presents a risk of emotional and physical harm to children, who Mr Rathod may come in contact with at work. Registered professionals occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and families must be able to trust registered professionals with their lives and the lives of their loved ones. Mr Rathod's conduct raises questions about his overall integrity which may undermine public confidence in the nursing profession.

23. While Mr Rathod's inappropriate online communications were not with the patients in his care, the seriousness of his alleged conduct is such that it calls into question his continuing suitability to remain on the register without restriction. This therefore has a negative impact on the reputation of the nursing profession and, accordingly, has brought the profession into disrepute.

24. The Code divides its guidance for nurses into four categories which can be considered as representative of the fundamental principles of nursing care. These are:

- a) Prioritise people;*
- b) Practice effectively;*
- c) Preserve safety and*
- d) Promote professionalism and trust*

25. The NMC has set out above how, by identifying the relevant sections of the Code, Mr Rathod has breached fundamental tenets of the profession. These sections of the Code define in particular, the responsibility to promote professionalism and trust to ensure safe conduct and practise.

*26. The panel may also find it useful to consider the comments of **Cox J in Grant at paragraph 101:***

27. "The Committee should therefore have asked themselves not only whether [Mr Rathod] continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in [Mr

Rathod] and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case”.

28. Impairment is a forward thinking exercise which looks at the risk Mr Rathod’s practice poses in the future. NMC guidance adopts the approach of **Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin)** by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

29. The NMC’s guidance entitled **“Serious concerns based on public confidence or professional standards”** FTP-3c, states as follows:

“We may also need to take action in cases where the concerns were not directly related to the care the nurse, midwife or nursing associate provided to people, but which call into question the basics of their professionalism. This may cover things that have happened in the nurse, midwife or nursing associate’s private life”.

“A need to take action because the public may not feel able to trust nurses, midwives or nursing associates generally is a high threshold. It suggests that members of the public might take risks with their own health and wellbeing by avoiding treatment or care from nurses, midwives or nursing associates”.

“We may need to take restrictive regulatory action against nurses, midwives or nursing associates whose conduct has had this kind of impact on the public’s trust in their profession, who haven’t made any attempt to reflect on it, show insight, and haven’t taken any steps to put it right. This may mean they can’t stay on the register”.

30. Despite Mr Rathod showing limited insight into his conduct during the Trust’s disciplinary proceedings, we consider that Mr Rathod has displayed no insight into the regulatory concerns in relation to his conduct as he has not engaged with the NMC’s proceedings.

31. *The NMC considers there is a continuing risk to the public due to Mr Rathod's lack of full insight.*

32. *The NMC considers there is a public interest in a finding of impairment being made in this case to maintain and uphold proper standards of conduct and behavior. The public expects nurses to act with honesty and integrity so that patients and their family members can trust registered professionals. Mr Rathod's actions undermine public confidence in the nursing profession.*

33. *The NMC also considers a finding of impairment is appropriate on public protection grounds as the lack of insight and reflection from Mr Rathod indicates there is an ongoing risk of emotional and physical harm to patients, particularly children, if they happened to be in Mr Rathod's care."*

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, *Cohen v General Medical Council* [2008] EWHC 581 (Admin), *CHRE v NMC & Grant* [2011] EWHC 927 (Admin), *Ashton v The General Medical Council* | [2013] EWHC 943, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

The panel heard and accepted the advice of the legal assessor.

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 Mr Rathod's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Rathod's 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

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

20.4 keep to the laws of the country in which you are practicing

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 there had been serious breaches of the standard one would expect of a nurse because Mr Rathod engaged in inappropriate online dialogue with someone whom he believed to be a 14 year old girl, and on his own admission, the dialogue was over a period of two days. His language and motivation was sexual in nature. Moreover, Mr Rathod shared images of himself at work with a ward name clearly identifiable and had provided a telephone extension number at a ward in the hospital, which he claimed was his. This indicates that this behaviour was taking place whilst working as a nurse, thereby concerning his practice. Further, Mr Rathod was dishonest in that he disguised himself online under a different name and profession. The

panel noted that despite Mr Rathod's engagement with the Trust's investigation and some partial admissions during the interview, there was no insight nor remorse shown by Mr Rathod. He had also not engaged with the NMC since June 2021.

The panel found that Mr Rathod's conduct would be considered deplorable and unacceptable by members of the public and fellow members of the nursing profession. The panel also considered that Mr Rathod's conduct fell well below the standard expected of a registered nurse. The panel therefore determined that Mr Rathod's actions amounted to serious misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Rathod's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. 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 be honest and open and 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/their fitness to practise is impaired in the sense that S/He/They:

- 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 all four limbs, as set out above, were engaged.

The panel finds that although there is no evidence of actual harm, Mr Rathod's misconduct would have caused serious and far-reaching harm if, in reality, he had been communicating with a 14 year old girl, because the dialogue was inappropriate and of a sexual nature and took advantage of their inherent vulnerability as a child. The panel noted that although the NMC focused on the risk of harm to young girls, there is also a risk to any females that Mr Rathod may have contact with whether it be patients, colleagues or the public. Mr Rathod's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was also satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty and sexual misconduct extremely serious.

Regarding insight, the panel found that although Mr Rathod made some partial admissions during his Trust investigation interview, he denied these until presented with evidence. Mr Rathod has not demonstrated an understanding of how his actions could have put the '14 year old' at a risk of harm nor demonstrated an understanding of why what he did was

wrong and how this impacted negatively on the reputation of the nursing profession. The panel noted there were no signs of remorse or regret from Mr Rathod for his behaviour.

The panel determined that the misconduct in this case is difficult to address as it involves behavioural and attitudinal issues as opposed to clinical concerns. The panel noted that Mr Rathod has not engaged with the NMC process. Thus, the panel concluded that a significant risk of harm and repetition remain and there is no evidence placed before it to suggest that he is not currently impaired. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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 recognised that members of the public would be shocked to find that a nurse, responsible for providing safe and effective care to patients, had acted in such a manner, which contravened the expected standards for members of the profession. The panel therefore determined that a finding of impairment on public interest grounds was necessary to maintain public confidence in the nursing profession and in the NMC as a regulator, and to declare and uphold proper standards of conduct.

Having regard to all of the above, the panel was satisfied that Mr Rathod's 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 Mr Rathod off the register. The effect of this order is that the NMC register will show that Mr Rathod has been struck-off the register.

In reaching this decision, the panel 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.

Representations on sanction

The panel noted that in the Notice of Meeting, dated 3 March 2023, the NMC had advised Mr Rathod that it would seek the imposition of a striking-off order if it found Mr Rathod's fitness to practise currently impaired.

The NMC submissions in relation to sanction are as follows:

“Sanction

34. The NMC considers the appropriate and proportionate sanction in this case to be a striking-off order.

35. The aggravating factors in this case include:

- Serious misconduct involving inappropriate online conversation with a person believed to be a child for more than one day, including receiving photographs of the child and posting photographs of oneself wearing a nurse's uniform from the place of employment as a nurse.*
- The above communication was sexually motivated purporting to seek sexual relationship with a child.*
- Dishonestly holding oneself as a doctor while knowing that it was not true.*
- Lack of insight into the serious misconduct described above.*

36. *There are no mitigating factors in this case.*

37. *The following aspects have led the NMC to this conclusion:*

38. **No further action** - *The NMC Guidance (**SAN-3a**) states that taking no action will be rare at the sanction stage and this would not be suitable where the nurse presents a continuing risk to patients. In this case, the seriousness of the alleged misconduct of inappropriate online communication of sexual nature with a person believed to be a child, seeking sexual relationship with a child and intended dishonesty means that taking no further action would not be appropriate.*

39. **Caution Order** – *According to the NMC Guidance (**SAN-3b**), a caution order would also not be appropriate as this would not mark the seriousness and would be insufficient to protect the public or maintain high standards within the profession or the trust the public places in the profession. Therefore, it is submitted that a caution order would not be appropriate in this case.*

40. **Conditions of Practice Order** – *The Guidance (**SAN-3c**) states that a conditions of practice order may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):*

- *no evidence of harmful deep-seated personality or attitudinal problems*
- *identifiable areas of the nurse, midwife or nursing associate's practice in need of assessment and / or retraining*
- *no evidence of general incompetence*
- *potential and willingness to respond positively to retraining*
- *the nurse, midwife or nursing associate has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision*
- *patients will not be put in danger either directly or indirectly as a result of the conditions*
- *the conditions will protect patients during the period they are in force*
- *conditions can be created that can be monitored and assessed.*

41. *The alleged misconduct listed in the charges, and the facts behind such conduct, do indicate harmful deep-seated personality or attitudinal problems. There are also no areas of clinical concern which might more readily be addressed by way of training or assessment. There are no practical conditions that could be put in place that would protect the public or maintain public confidence. Therefore, it is submitted that a conditions of practise order would not be appropriate in this case.*

42. **Suspension Order** - *The Guidance (SAN-3d) states that a suspension order may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):*

- *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, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour*
- *in cases where the only issue relates to the nurse, midwife or nursing associate's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions*
- *in cases where the only issue relates to the nurse, midwife or nursing associate's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

43. *As mentioned at paragraph 43 [sic] above the alleged misconduct listed in the charges, and the facts behind such conduct, do indicate harmful deep-seated personality or attitudinal problems. There is no evidence of Mr Rathod's insight into his alleged misconduct which is quite serious, and therefore a significant risk of repeating behaviour remains. Mr Rathod's alleged misconduct is of a kind of being particularly serious and more difficult to put right under the NMC's guidance. A suspension order would also not be sufficient in the case to mark the seriousness of Mr Rathod's actions, undermining his trustworthiness entirely. If he were to stay on the register, this would risk substantially undermining public confidence in the profession, given the nature of his alleged misconduct.*

Therefore, it is submitted that a suspension order would not be appropriate in this case.

44. Striking-Off Order - *A striking-off order would be the most appropriate and proportionate sanction to impose in this case. The guidance considering sanctions for serious cases (**SAN-2**) states:*

“Panels deciding on sanction in cases about serious sexual misconduct will, like in all cases, need to start their decision-making with the least severe sanction, and work upwards until they find the appropriate outcome. They will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse, midwife or nursing associate from the register. If the panel decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision very clearly and very carefully. This will allow people who have not heard all of the evidence in the case, which includes the victims, to properly understand the decision.”

45. *The NMC guidance at **SAN-3e** states:*

“The courts have supported decisions to strike off healthcare professionals where there has been lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the professional’s clinical skills or any risk of harm to the public. Striking-off orders have been upheld on the basis that they have been justified for reasons of maintaining trust and confidence in the professions”.

46. *Mr Rathod’s conduct and behaviours displayed are extremely serious and regarded as being fundamentally incompatible with being a registered professional. By their very nature, they involve sexual misconduct and intended dishonesty involving the most vulnerable members of society, children. Allowing continued registration would not only place the public at a risk of harm but it would be seriously damaging to the reputation of the profession.*

47. Therefore, it is submitted that a striking off order would be most appropriate in this case.”

Decision and reasons on sanction

Having found Mr Rathod’s 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 panel also considered the NMC guidance for serious cases involving dishonesty and sexual misconduct (SAN-2). The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Lack of insight into failings
- Conduct which could have put a young girl at risk of suffering severe and far-reaching harm
- Attitudinal problems which are difficult to address
- Lack of professional judgement, in that these were calculated actions by Mr Rathod and he had taken his private life into the workplace
- Abuse of position of trust, held as a registered nurse
- A pattern of misconduct over a period of time

The panel also took into account the following mitigating features:

- Some partial admissions after being challenged with evidence

The panel considered the NMC sanctions guidance it had been referred to. 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 issues identified, an order that does not restrict Mr Rathod's 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 Mr Rathod's misconduct was not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on Mr Rathod's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining as these present attitudinal issues as opposed to clinical concerns. Furthermore, the panel concluded that the placing of conditions on Mr Rathod's 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:

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

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel was satisfied that the serious

breaches of the fundamental tenets of the profession evidenced by Mr Rathod's actions are incompatible with Mr Rathod remaining on the register. The panel also concluded that a period of suspension is not sufficient to protect the public due to evidence of deep-seated personal and attitudinal problems which raised fundamental questions about his professionalism. 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?*

Mr Rathod's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Rathod's actions were serious and to allow him 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 matters it identified, in particular the effect of Mr Rathod's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mr Rathod 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 Mr Rathod's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC:

"Interim Order Consideration

48. A substantive sanction cannot take effect until the end of the appeal period, which is 28 days after the date on which the decision letter is served, or, if an appeal has been lodged, before the appeal has been finally determined.

49. If a finding is made that Mr Rathod's fitness to practise is impaired on a public protection and / or public interest basis and a restrictive sanction imposed we consider an 18 month interim suspension order should be imposed on the basis that it is necessary for the protection of the public and is otherwise in the public interest."

Decision and reasons on interim order

Under Article 31 of the Nursing and Midwifery Order 2001 ("the Order"), the panel considered whether an interim order should be imposed in this case. A panel may only make an interim order if it is satisfied that it is necessary for the protection of the public, and/or is otherwise in the public interest, and/or is in the registrant's own interests.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.