

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

**Substantive Hearing  
Monday 6 – Monday 20 November 2023**

Virtual Hearing

<b>Name of Registrant:</b>	Andy Kyeremeh
<b>NMC PIN</b>	10H3324E
<b>Part(s) of the register:</b>	Registered Nurse – RNA Adulting Nursing – January 2014
<b>Relevant Location:</b>	Hampshire
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Philip Sayce (Chair, Registrant member) Melanie Lumbers (Registrant member) Keith Murray (Lay member)
<b>Legal Assessor:</b>	Gelaga King (6 – 10 November 2023) David Swinstead (13 – 20 November 2023)
<b>Hearings Coordinator:</b>	Khadija Patwary
<b>Nursing and Midwifery Council:</b>	Represented by Tom Hoskins, Case Presenter
<b>Mr Kyeremeh:</b>	Present and represented by Conor Leonard, instructed by the Royal College of Nursing (RCN)
<b>Facts proved:</b>	Charges 4), 10), 11)b) and 16)c)
<b>Facts proved by admission:</b>	Charge 12)
<b>Facts not proved:</b>	Charges 1), 2), 3), 5), 6), 7), 8), 9), 11)a), 13), 14), 15), 16)a) and 16)b)
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Caution order (3 years)</b>

## Details of charge

That you, a registered nurse:

- 1) Between 1 January 2020 and 30 October 2021, on one or more occasions:  
**(not proved in its entirety)**
  - a) Hugged colleague A.
  - b) Moved your hands down Colleague A's back towards her bottom.
  
- 2) Between 1 January 2020 and 31 December 2020 attempted to put your hands down Colleague A's leggings/trousers. **(not proved)**
  
- 3) Your conduct in charges 1 and 2 was sexually motivated in that you were:  
**(not proved in its entirety)**
  - a) Seeking sexual gratification; and/or
  - b) Intending to pursue a future sexual relationship with Colleague A.
  
- 4) Between 1 May 2021 and 31 July 2021 you attended the home address of Colleague B where you: **(proved in its entirety)**
  - a) Banged on the door.
  - b) Shouted through the letterbox.
  - c) Looked through the windows at the back of the house.
  
- 5) Your conduct in charge 4 was harassing in that you engaged in unwanted contact with Colleague B, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B. **(not proved)**
  
- 6) After the incident in charge 4 you attempted to persuade Colleague B to withdraw her complaint to the police. **(not proved)**
  
- 7) Your actions in charge 6 lacked integrity because you sought to influence Colleague B to withdraw the complaint she had made to the police about you. **(not proved)**

- 8) On an unknown date you: **(not proved in its entirety)**
- a) Pushed Colleague C against a wall.
  - b) Touched Colleague C's breasts.
  - c) Touched Colleague C's bottom.
- 9) Your conduct in charge 8 was sexually motivated in that you were: **(not proved in its entirety)**
- a) Seeking sexual gratification; and/or
  - b) Intending to pursue a future sexual relationship with Colleague C.
- 10) Between 17 April 2021 and 31 July 2021 and before you were in a relationship with Colleague D, on one or more occasions: **(proved in its entirety)**
- a) made comments to Colleague D about her body.
  - b) told Colleague D she had a nice bottom, or words to that effect.
- 11) Your conduct in charge 10 was:
- a) harassing in that you engaged in unwanted contact with Colleague D related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague D's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague D and/or **(not proved)**
  - b) sexually motivated in that you intended to pursue a future sexual relationship with Colleague D. **(proved)**
- 12) On 9 October 2021 you: **(proved in its entirety by admission)**
- a) Sent text messages to Colleague D.
  - b) Called Colleague D.
  - c) Attended Colleague D's home address.
  - d) Stayed at Colleague D's house for about 20 minutes.
- 13) Your conduct in charge 12 was harassing in that you engaged in unwanted contact with Colleague D, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague D's dignity or

creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague D. **(not proved)**

14) On 24 October 2021 you attended the home address of Colleague E and while Colleague D was present you: **(not proved in its entirety)**

- a) Banged on the front door.
- b) Reached through the letter box.
- c) Looked through the living room window.

15) Your conduct in charge 14 was harassing in that you engaged in unwanted contact with Colleague D related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague D's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague D. **(not proved)**

16) On a date or dates unknown accessed personal information of colleagues, without their knowledge, consent or good reason and shared the following with Colleague D:

- a) Colleague B's interview notes. **(not proved)**
- b) Colleague B's request for annual leave. **(not proved)**
- c) Colleague D's emergency contact. **(proved)**

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

### **Decision and reasons on application to amend the charge**

The panel heard an application made by Mr Hoskins, on behalf of the Nursing Midwifery Council (NMC), to amend the wording of charges 10)a) and 2).

Mr Hoskins submitted that charge 10)a) as read out this morning was not the same charge as contained in the notice of hearing. He further submitted it would be fair to proceed on the charges as contained in the notice of hearing. Mr Hoskins submitted that it is fair to proceed on the basis of charge 10)a) as it is currently charged and

read out in the hearing today as opposed to the version written in the notice of hearing.

Mr Hoskins submitted that an amendment to charge 2) should include an addition of “*attempted to*” as when he reviewed the evidence the allegation made by Colleague A was that she sat on a table, and she repeatedly stated that “*attempts*” were made. He submitted that the proposed amendment would provide clarity and more accurately reflect the evidence.

2) *‘Between 1 January 2020 and 31 December 2020 attempted to put your hands down Colleague A’s leggings/trousers.’*

10) ***Between 17 April 2021 and 31 July 2021 and before you were in a relationship with Colleague D, ~~On unknown dates and~~ on one or more occasions:***

a) *made comments to Colleague D about her body.*

b) *Told Colleague D she had a nice bottom, or words to that effect.*

Mr Leonard on your behalf did not object to the amendments of charges 10)a) and 2).

The panel accepted the advice of the legal assessor and had regard to Rule 28 of ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules).

The panel was of the view that such amendments, as applied for, were in the interests of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for ensure clarity and accuracy.

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

Mr Hoskins on behalf of the NMC, made a retrospective request that parts of the hearing be held in private on the basis that Colleague B's oral evidence included references to her children's names. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Leonard on your behalf did not object to the application.

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

As Colleague B's children were named during her oral evidence, the panel determined to hold the relevant parts of the hearing in private in order to preserve Colleague B's children's privacy. The panel was satisfied that the need to protect the children's identity justified taking this course of action, and that this outweighed any prejudice to the general principle of hearings being in public. The panel determined that parts of the hearing that referenced the children of any party would be applied both retrospectively and prospectively in the case.

## **Background**

The charges arose whilst you were employed as a Band 6 Deputy Charge Nurse at Basingstoke North Hampshire Hospital (the Hospital) between 2020 and 2022. It is alleged that you:

- Breached professional boundaries with colleagues, in that you inappropriately touched a number of colleagues in the workplace and engaged in harassing behaviours towards at least one colleague;
- Some or all of the actions described above were sexually motivated; and

- Breach of confidentiality in that you accessed private information about a colleague without their consent or reasonable cause.

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

At the outset of the hearing, the panel heard from Mr Leonard on your behalf, who informed the panel that you made admissions to charges 12)a), 12)b), 12)c) and 12)d).

The panel therefore finds charges 12)a), 12)b), 12)c) and 12)d) proved, by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Hoskins on behalf of the NMC and by Mr Leonard 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 live evidence from the following witnesses called on behalf of the NMC:

- Colleague A: Healthcare Assistant at the Hospital at the time of the allegations;
- Colleague B: Healthcare Assistant at the Hospital at the time of the allegations and had a relationship with you;

- Colleague C: Healthcare Assistant at the Hospital at the time of the allegations;
- Colleague D: Healthcare Assistant at the Hospital at the time of the allegations and had a relationship with you.

The panel also heard evidence from you under oath.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the oral and documentary evidence including a number of references and testimonials placed before it on your behalf.

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

**Charge 1)a)**

- 1) Between 1 January 2020 and 30 October 2021, on one or more occasions:
  - a) Hugged colleague A.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account Colleague A's witness statement and oral evidence. It also took into account your oral evidence.

The panel considered Colleague A's witness statement in which she stated that "*When I saw Andy at handover, he would hug me...*" and her oral evidence in which she told the panel that she was a hugger and that you were very "*handsy*" at work. The panel also considered your oral evidence in that you told the panel that you were not a hugger.



The panel noted that it did not have any contemporaneous evidence of anyone observing these alleged events or being in a position to corroborate Colleague A's evidence that these incidents had occurred. The panel further noted that Colleague A had stated that these alleged incidents had occurred in a public place during a handover. However, it was of the view that if these events had occurred then they would have been witnessed by a staff member as there would have been an increase in staff during handovers with staff members coming in and out of the corridors of the ward. It was also of the view that that during this period social distancing would have been in place, and it would have been more unusual to see colleagues touching unnecessarily.

The panel noted Colleague A's oral evidence in which she told the panel that when she was asked during the investigation as to why she did not say anything earlier, she stated that she wished she had said something, but she did not want to lose her job as it was her word against yours. The panel took account of the power imbalance between you and Colleague A. However, it determined that in the absence of any other evidence, it could not be satisfied, on the balance of probabilities, that between 1 January 2020 and 30 October 2021, on one or more occasions you hugged Colleague A.

In light of the above, the panel therefore finds that the NMC has not discharged its burden of proof and finds charge 1)a) not proved.

### **Charge 1)b)**

- 1) Between 1 January 2020 and 30 October 2021, on one or more occasions:
  - b) Moved your hands down Colleague A's back towards her bottom.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account the evidence it considered in respect of charge 1)a). It also took into account the meeting notes dated 25 November 2021.

The panel considered the meeting notes dated 25 November 2021 in which Colleague A stated that *“there was one instance I remember where he hugged me and touched me inappropriately on a night shift.”* The panel had regard to the facts found not proved in relation to charge 1)a). The panel considered Colleague A’s witness statement in which she stated *“on some occasions, he would move his hands lower down my back towards my bum. This happened approximately five times. When it did happen, I would say something along the lines of “no thank you” and brush him off. He would then remove his hands.”* The panel considered the wider evidence in this case specifically that of the *“gossipy”* nature of the Ward and noted that these incidents did not form part of the gossip on the Ward. The panel also noted that your best friend also worked on the Ward; however, these matters were not reported to anyone at the time and there were no contemporaneous records. The panel bore in mind that there is no evidence before it that *“hugs”* were observed in a public place where generally it would be expected that social distancing was in operation. Colleague A in her oral evidence told the panel that she continued to hug you, because she said she was a *“huggy”* person.

The panel determined that in the absence of any other evidence, it could not be satisfied, on the balance of probabilities that between 1 January 2020 and 30 October 2021, on one or more occasions you moved your hands down Colleague A’s back towards her bottom.

In light of the above, the panel therefore finds that the NMC has not discharged its burden of proof and finds charge 1)b) not proved.

### **Charge 2)**

- 2) Between 1 January 2020 and 31 December 2020 attempted to put your hands down Colleague A’s leggings/trousers.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account Colleague A's witness statement and oral evidence. It also took into account your oral evidence and the meeting notes dated 25 November 2021.

The panel considered Colleague A's witness statement in which she stated that *"on one occasion, I was working on a night shift with Andy. This was during the summer of 2020 however I cannot recall the exact date due to the amount of time that has passed. I was sat on the table in the break room on my own and Andy came in and crouched next to me. He then tried to put his hands down my leggings. I pushed his hand away and said "don't touch me like that." He removed his hands."*

The panel further considered the meeting notes dated 25 November 2021 in which Colleague A stated that *"...he also came into the break room when I was there alone and crouched by the table. He attempted to put his hand down my trousers. I told him no, pushed him away and said 'don't touch or speak to me like that.' He stopped doing it to me after that."*

The panel was mindful of the timeframe contained within this charge and that it did not have any evidence of contemporaneous documentation or evidence from independent witnesses, and it noted the lack of detail regarding the date this matter occurred as Colleague A was not able to recall this despite the seriousness of the alleged event. Further it had regard to the fact that although the staff on the ward were described as gossipy by Colleagues A, B, C and D it would seem that this matter had not been spoken about nor had Colleague A informed Colleague D, who was her best friend, of this when it had first occurred. The panel noted that Colleague A only shared this information with Colleague D when you and Colleague D started a relationship, of which Colleague A disapproved.

The panel determined that in the absence of any other evidence, it could not be satisfied, on the balance of probabilities that between 1 January 2020 and 31 December 2020, you attempted to put your hands down Colleague A's leggings/trousers.

In light of the above, the panel therefore finds that the NMC has not discharged its burden of proof and finds charge 2) not proved.

**Charges 3)a) and 3)b)**

- 3) Your conduct in charges 1 and 2 was sexually motivated in that you were:
- a) Seeking sexual gratification; and/or
  - b) Intending to pursue a future sexual relationship with Colleague A.

**This charge is found NOT proved.**

As charges 1) and 2) have been found not proved, charge 3) in its entirety falls away.

**Charges 4)a), 4)b) and 4)c)**

- 4) Between 1 May 2021 and 31 July 2021 you attended the home address of Colleague B where you:
- a) Banged on the door.
  - b) Shouted through the letterbox.
  - c) Looked through the windows at the back of the house.

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague B's witness statement and oral evidence. It also took into account your oral evidence.

The panel considered Colleague B's witness statement in which she stated that *"On a date either in late June or early July 2021, Andy arrived at my house and began banging on the door, shouting through the letterbox and walking around the back of the house to look in the windows. This lasted approximately 15 minutes. Andy knew this was where I lived due to our relationship. I felt uncomfortable, anxious and scared. I was also angry because my children, who were 4, 6 and 11 years old at the time, were also in the house and they were confused and asking questions about*

*what was happening” and “while this was happening, I called the police. I told them that a man who had been in a relationship with was banging on my door and that I did not feel comfortable or safe. The police could hear Andy in the background of the call...”* The panel further considered Colleague B’s oral evidence in which she told the panel that you shouted “*I love you*” to her child.

The panel was of the view that Colleague B’s oral evidence was credible and consistent. The panel noted that although Colleague B only saw your silhouette, she recognised your voice when you were shouting through the letterbox, and it accepted her evidence that she saw you at her window on the side of her house.

The panel determined that, on the balance of probabilities, between 1 May 2021 and 31 July 2021 you attended the home address of Colleague B where you banged on the door, shouted through the letterbox and looked through the windows at the back of the house.

Therefore, the panel finds charges 4)a), 4)b) and 4)c) proved.

### **Charge 5)**

- 5) Your conduct in charge 4 was harassing in that you engaged in unwanted contact with Colleague B, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague B’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account Colleague B’s witness statement and oral evidence. It also took into account your oral evidence.

The panel reminded itself that the standard of proof in a criminal matter is different to that applied by the panel in this case, however the panel found the comments of the learned judge to be of assistance when deciding on the issue of harassment.

The panel took a two-stage approach when considering this charge. Firstly, whether your behaviour in charge 4) amounted to harassment. The panel had regard to the legal assessor's advice:

*'You may also receive some assistance from the case of Majrowski v. Guy's and St Thomas's NHS Trust [2007] 1 AC 224, in which Lord Nicholls of Birkenhead said, at paragraph 30, that where the quality of the conduct said to constitute harassment is being examined, courts and tribunals are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary the gravity of the misconduct must be of an order which would sustain criminal liability under section 2 of the Protection from Harassment Act 1997.'*

The panel had regard to the way the learned judge and set out the issues to be considered in this case. It concluded that, whilst your conduct could be described as unattractive, and possibly unreasonable, it did not consider your conduct to be oppressive or unacceptable. The panel noted that this incident occurred whilst you were in a relationship with Colleague B. With this in mind the panel then went on to consider whether the behaviour related to a protected characteristic namely sex as alleged in charge 5). The panel concluded that your conduct in charge 4) was a one-off incident in which you and Colleague B had an argument. It noted that there was no physical violence nor any continuation of this behaviour. The panel further noted that as you and Colleague B were in a relationship this was the reason for what occurred at the material time, and the events were not connected with Colleague B's sex. The panel was concerned at the reliance upon a protected characteristic in this charge, which it considered was inappropriate based on the facts before it.

The panel considered Colleague B's oral evidence in which she told the panel that yours and Colleague B's relationship at work remained professional.

The panel determined that it could not be satisfied, on the balance of probabilities that your conduct in charge 4) was harassing in that you engaged in unwanted

contact with Colleague B, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B. In light of the above, the panel therefore finds charge 5) not proved.

### **Charge 6)**

- 6) After the incident in charge 4 you attempted to persuade Colleague B to withdraw her complaint to the police.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account Colleague B's witness statement and oral evidence. It also took into account your oral evidence and the meeting notes dated 18 November 2021.

*The panel considered Colleague B's witness statement in which she stated that "I later spoke to Andy about this incident at work. He said that he was upset and thought that I was not at home at the time. He also said that I could get him in trouble if I talked to the police and that he could lose his job. He apologised and said that he did not know that my children were in the house, saying that he did not want to scare them. I wondered why he continued to bang on the door if he did not think anyone was in. I said it was fine and Andy and I ended up being on speaking times...As a result of the phone call and speaking to Andy, I withdrew my complaint to the police a little while afterwards. I also deleted the messages that I received from the police on my phone. I was having a breakthrough in my marriage at this time and did not want anything to remind me of an unhappy time. As a result, I deleted everything."*

The panel had regard to the wording of this charge "you attempted to persuade Colleague B." It gave the words in the charge their ordinary meaning and looked particularly at the words "attempted to persuade". It then took into account the evidence of Colleague B and the conversation as described by her with you as "he also said that I could get him in trouble if I talked to the police," the panel was not

satisfied that you persuaded her to withdraw her complaint. It noted that the issue of the police was raised in your conversation with Colleague B. However, it had no corroborating evidence to suggest that you “*attempted to*” persuade Colleague B. The panel was not provided with the police report, Colleague B’s statement of evidence nor her statement of withdrawal.

The panel determined that in the absence of any other evidence, it could not be satisfied, on the balance of probabilities that after the incident in charge 4) you attempted to persuade Colleague B to withdraw her complaint to the police.

In light of the above, the panel therefore finds that the NMC has not discharged its burden of proof and finds charge 6) not proved.

### **Charge 7)**

- 7) Your actions in charge 6 lacked integrity because you sought to influence Colleague B to withdraw the complaint she had made to the police about you.

**This charge is found NOT proved.**

As charge 6) has been found not proved, charge 7) falls away.

### **Charges 8)a), 8)b) and 8)c)**

- 8) On an unknown date you:
  - a) Pushed Colleague C against a wall.
  - b) Touched Colleague C’s breasts.
  - c) Touched Colleague C’s bottom.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account Colleague C’s witness statement and oral evidence. It also took into account your oral evidence.



The panel looked at charges 8)a), 8)b) and 8)c) individually. However, it dealt with the charges collectively as they relate to separate actions within a single incident. The panel considered Colleague C's oral evidence in which she told the panel that she mentioned this incident to Mr 1 in a "jokey way." It further noted that this incident was not reported until other allegations concerning you had come to light and that no internal investigation was carried out at the time. The panel noted that Colleague C's evidence in relation to this charge was vague and lacked detail which included when it had happened, anything said at the time and where Colleague C was standing in relation to the wall. The panel was not provided with any other contemporaneous evidence to support this charge and did not hear from Mr 1 who the incidents had been reported to.

In your evidence you provided a detailed description regarding the layout of the room and access to the room. You also provided personal details of your height and weight which the panel took into consideration. Colleague C confirmed the height difference whilst providing her details to the panel. The panel noted that Colleague C was some eight inches taller than you and described herself as "*bigger*" than you.

The panel considered the difference in height and build between you and Colleague C, the layout and dimensions of the room and determined that in the absence of any other evidence, it could not be satisfied, on the balance of probabilities that on an unknown date you pushed Colleague C against a wall, touched Colleague C's breasts and touched Colleague C's bottom.

In light of the above, the panel therefore finds that the NMC has not discharged its burden of proof and finds charges 8)a), 8)b) and 8)c) not proved.

### **Charges 9)a) and 9)b)**

- 9) Your conduct in charge 8 was sexually motivated in that you were:
- a) Seeking sexual gratification; and/or
  - b) Intending to pursue a future sexual relationship with Colleague C.

**This charge is found NOT proved.**

As charge 8) had not been found not proved, charge 9) in its entirety falls away.

**Charge 10)a)**

10)Between 17 April 2021 and 31 July 2021 and before you were in a relationship with Colleague D, on one or more occasions:

a) made comments to Colleague D about her body.

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague D's witness statement and oral evidence. It also took into account your oral evidence.

The panel considered Colleague D's witness statement in which she stated, "*these comments made me feel slightly uncomfortable but I was also flattered...I did not speak to Andy about these comments, I just let them go.*" The panel did not hear from Colleague D in her oral evidence that the comments made by you were unwanted. It noted that at the time of the incident Colleague D's reaction to your comments were not one of upset or any concern regarding the comments made.

The panel determined that on the balance of probabilities that between 17 April 2021 and 31 July 2021 and before you were in a relationship with Colleague D you made comments to Colleague D about her body.

Therefore, the panel finds charge 10)a) proved.

**Charge 10)b)**

10)Between 17 April 2021 and 31 July 2021 and before you were in a relationship with Colleague D, on one or more occasions:

b) told Colleague D she had a nice bottom, or words to that effect.

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague D's witness statement and oral evidence. It also took into account your oral evidence.

The panel considered Colleague D's witness statement in which she stated, "*Andy would make a lot of comments about my body to me before we were in a relationship. He would say things about my bum, saying that it was really nice. He started making these comments a few weeks after I started working on the Ward.*" The panel regard to the fact that Colleague D confirmed this in her oral evidence. The panel noted that Colleague D did not mention this in the investigation meeting notes.

The panel determined that on the balance of probabilities that between 17 April 2021 and 31 July 2021 and before you were in a relationship with Colleague D, you told Colleague D she had a nice bottom, or words to that effect. The panel noted that following this you entered into a consensual relationship with Colleague D.

Therefore, the panel finds charge 10)b) proved.

### **Charge 11)a)**

11)Your conduct in charge 10 was:

- a) harassing in that you engaged in unwanted contact with Colleague D related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague D's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague D and/or

**This charge is found NOT proved.**

In reaching this decision, the panel took into account Colleague D's witness statement and oral evidence. It also took into account your oral evidence.

The panel reminded itself of the approach it took in charge 5) with regard to the issue of harassment and the legal advice provided and followed a similar decision-making process when considering this charge.

The panel concluded that this conduct could not be considered unattractive or unreasonable, in that Colleague D gave evidence that at the time she was flattered by it. The panel then went on to look at whether the behaviour related to a protected characteristic namely sex and was of the view that your conduct in charge 10) arose from the fact that, again, you were seeking to pursue a relationship with Colleague D. Again, it noted that Colleague D had stated she was flattered by your comments albeit she also felt somewhat uncomfortable, however the panel determined that this conduct did not amount to harassment.

It noted that Mr Hoskins advanced no arguments in support of this charge in his closing remarks.

The panel determined that it could not be satisfied, on the balance of probabilities that your conduct in charge 10) was harassing in that you engaged in unwanted contact with Colleague D related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague D's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague D. Therefore, the panel finds charge 11)a) not proved.

### **Charge 11)b)**

11)Your conduct in charge 10 was:

- b) sexually motivated in that you intended to pursue a future sexual relationship with Colleague D.

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague D's witness statement and oral evidence. It also took into account your oral evidence.

The panel had regard to the nature of the comments and the apparent context in which they were delivered. It noted that you and Colleague D did form a relationship and consequently it was satisfied on the balance of probabilities that your conduct in charge 10) was sexually motivated in that you intended to pursue a future sexual relationship with Colleague D.

Therefore, the panel finds charge 11)b) proved.

### **Charge 13)**

13)Your conduct in charge 12 was harassing in that you engaged in unwanted contact with Colleague D, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague D's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague D.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account Colleague D's witness statement and oral evidence. It also took into account your oral evidence, your admissions in relation to charge 12), the WhatsApp screenshot messages between you and Colleague D and the call logs.

The panel reminded itself of the approach it took in charge 5) and 11)a) with regard to the issue of harassment and the legal advice provided and followed a similar decision-making process when considering this charge.

The panel considered Colleague D's oral evidence in which she told the panel that she invited you to her parents' house earlier in the day and that it had no evidence to suggest that this was retracted. It had regard to the content of the WhatsApp screenshot messages between you and Colleague D. The panel then went on to look at whether the behaviour related to a protected characteristic namely sex and was of the view that your conduct in charge 12) was not harassment as you were invited by Colleague D to the house and that you were in a relationship at the time. It was of

the view that calling or texting someone you are in a relationship with is not unusual nor excessive. It further noted that you stayed in Colleague D's house for 20 minutes as there was conversation between you as to whether you would cook her a meal.

The panel determined that it could not be satisfied, on the balance of probabilities that your conduct in charge 12) was harassing in that you engaged in unwanted contact with Colleague D, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague D's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague D.

Therefore, the panel finds charge 13) not proved.

#### **Charges 14)a), 14)b) and 14)c)**

14) On 24 October 2021 you attended the home address of Colleague E and while Colleague D was present you:

- a) Banged on the front door.
- b) Reached through the letter box.
- c) Looked through the living room window.

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

In reaching this decision, the panel took into account Colleague D's witness statement and oral evidence. It also took into account your oral evidence; the WhatsApp screenshot messages between you and Colleague D, her email to the senior sister dated 24 October 2021, the meeting notes dated 19 November 2021 and an email from the police dated 23 February 2022.

The panel looked at charges 14)a), 14)b) and 14)c) individually. However, it dealt with the charges collectively as they relate to separate actions within a single incident.

The panel considered Colleague D's witness statement in which she stated "*I sent a text to Andy at 10pm saying that I did not want to be in a relationship with him*

*anymore. Andy then tried to call me a few times but I did not answer. [Colleague E] and I were sleeping in the living room of his house. Andy called [Colleague E] at approximately 3am on 24 October 2021. At around 4am, Andy started banging on the door and reaching for the door handle through the letter box. He was also trying to look through the living room window. This lasted for around 10 to 15 minutes. I knew it was Andy because he had just rung [Colleague E] and because I recognised his hand. Andy also knew where [Colleague E] lived because he had been to [Colleague E]'s house before.*" The panel noted Colleague D in her oral evidence told the panel that she assumed it was you as she described a hand which was of the same skin colour as yours. However, no voice was heard to suggest that it was you. It further noted the email dated 23 February 2022 and that the police eliminated you from any inquiries.

The panel determined that it had no corroborating evidence to suggest it was you; Colleague D could not positively identify any distinguishing features that attributed the hand through the letterbox nor the holder of the light of the window to you. Therefore, on the balance of probabilities the panel could not be satisfied that on 24 October 2021, you attended the home address of Colleague E.

In light of the above, the panel therefore finds that the NMC has not discharged its burden of proof and finds charges 14)a), 14)b) and 14)c) not proved.

### **Charge 15)**

15)Your conduct in charge 14 was harassing in that you engaged in unwanted contact with Colleague D related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague D's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague D.

**This charge is found NOT proved.**

As charge 14) had not been found not proved in its entirety, charge 15) falls away.

### **Charge 16)a)**

16)On a date or dates unknown accessed personal information of colleagues, without their knowledge, consent or good reason and shared the following with Colleague D:

- a) Colleague B's interview notes.

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

In reaching this decision, the panel took into account Colleague D's witness statement and oral evidence. It also took into account your oral evidence.

The panel noted that you were not part of the interview panel and therefore it was satisfied that you would not ordinarily be privy to the interview notes. The expectation of the panel would be that interview notes made by an interview panel would be collected and stored appropriately by HR and it had not received any evidence to suggest that this general practice would not be in place at the Hospital. The panel also had received no evidence that you had access to HR records on your computer at your level as a Band 6 nurse, nor if your login status would have allowed you access to such records.

The panel determined that in the absence of any other evidence, it could not be satisfied, on the balance of probabilities that on a date or dates unknown you accessed personal information of colleagues, without their knowledge, consent or good reason and shared with Colleague D, Colleague B's interview notes.

In light of the above, the panel therefore finds that the NMC has not discharged its burden of proof and finds charge 16)a) not proved.

### **Charge 16)b)**

16)On a date or dates unknown accessed personal information of colleagues, without their knowledge, consent or good reason and shared the following with Colleague D:



b) Colleague B's request for annual leave.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account Colleague D's witness statement and oral evidence. It also took into account your oral evidence.

The panel also had no corroborating evidence that you had access to HR data on your computer at your level as a Band 6 nurse nor if your login status would have allowed you access.

The panel determined that in the absence of any other evidence, it could not be satisfied, on the balance of probabilities that on a date or dates unknown you accessed personal information of colleagues, without their knowledge, consent or good reason and shared with Colleague D, Colleague B's request for annual leave.

In light of the above, the panel therefore finds that the NMC has not discharged its burden of proof and finds charge 16)b) not proved.

**Charge 16)c)**

16)On a date or dates unknown accessed personal information of colleagues, without their knowledge, consent or good reason and shared the following with Colleague D:

c) Colleague D's emergency contact.

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague D's witness statement and oral evidence. It also took into account your oral evidence.

The panel considered Colleague D's witness statement in which she stated, "*Andy had also once said to me "I know where your nan lives" and when I asked him how he said because she is your emergency contact.*" The panel also considered your

oral evidence in which you told the panel that you were classed as a senior on the ward and put yourself within the same category as Band 7 and 8 nurses in relation to seniority. The panel was satisfied that you would be privy to such information as a Band 6 nurse, that you had no good reason to access this information and that you did access it due to the specific identity of Colleague D's emergency contact.

The panel determined that on the balance of probabilities on a date or dates unknown accessed personal information of colleagues, without their knowledge, consent or good reason and shared with Colleague D her emergency contact.

Therefore, the panel finds charge 16)c) 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 Hoskins invited the panel to take the view that the facts found proved amount to misconduct. He directed the panel to the terms of "The Code: Professional standards of practice and behaviour for nurses and midwives (2018) (the Code) and to the specific paragraphs where, in the NMC's view, your actions amounted to a breach of those standards.

Mr Hoskins submitted that in the charges in relation to Colleague A, albeit the charges have not been found proved, the panel has identified that there was a power imbalance between you and Colleague A. He submitted that this also relates to matters that have been proved in relation to Colleague B and Colleague D and that this power imbalance is relevant. He referred the panel to your reflective statement in which you stated that *"I don't think it's appropriate for someone senior, like me, to enter into a relationship with someone junior at work. I believe that workplace relationships, especially when there's a significant hierarchy, can create complications like power imbalances and conflicts of interest."* Mr Hoskins submitted that there is a presence of a power imbalance.

Mr Hoskins further submitted that your conduct did have a negative effect on these women as Colleague B in her oral evidence told the panel that she was hiding in her corridor, and she had to send her children upstairs. He submitted that although this did not occur at work this was still a relationship that started on the Ward and had repercussions on the ward thereafter. He said that Colleague D had informed the panel she feels better having been moved away from the situation but on the night of 9 October she said that she felt really scared and tried to block it out.

Mr Hoskins referred the panel to your reflective statement in which you stated that *"The lack of harmony among team members, influenced by my unprofessional*

*conduct, eroded team cohesion. This impacted our ability to work cohesively, collaborate effectively, and deliver high-quality patient care.*” He submitted that whilst your behaviour in relation to the charges did not involve a matter of direct patient care there was the risk that these repercussions and negative relationships could have an effect on the function of the nursing profession. Mr Hoskins submitted that there are repeated instances involving more than one complaint of inappropriate behaviour where you were led by your emotions and feelings rather than your dedication to the nursing profession. He stated that the matters found proved are not single isolated incidents.

Mr Leonard submitted that the panel should bear in mind that the harassment charges have not been found in this case and it is only appropriate for the panel to fully consider the conduct found proved or is otherwise accepted when considering your behaviour within the charges. He submitted that your conduct found proved does not amount to serious professional misconduct. He stated that the NMC, as per its guidance, takes concerns about bullying, harassment, discrimination and victimisation very seriously so just because this behaviour is disapproved of or is inappropriate does not mean that it amounts to professional misconduct.

Mr Leonard submitted that your behaviour in respect of the charges found proved may have been undesirable, but this does not reach the level of seriousness to amount to professional misconduct. He submitted that in relation to charge 10) and 11), there was no harassing element to it and whilst it was not the most sophisticated of chat up lines, Colleague D stated that she was flattered by these comments and that the two of them did end up in a consensual relationship. In relation to charge 4), he submitted that this is not serious enough to amount to professional misconduct as it could only be described as undesirable behaviour.

Mr Leonard submitted in relation to charge 16)c), you should not have done what you did and was not the most professional behaviour but that this did not constitute the level of seriousness which amounts to professional misconduct. He submitted that in relation to the admitted charge the panel did not find that harassment. He said that you endeavour to improve your practice and that you have outlined everything

that you could possibly do as a precaution to keep your practice at a high standard in your reflective piece.

### **Submissions on impairment**

Mr Hoskins 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Hoskins submitted that there is an element of repetition in the misconduct and whilst it is remediable and that you have put forward a reflective piece, it is a matter for the panel as to whether it is of the view that this reduces any future risk both inside and outside the workplace. He submitted that the misconduct in this case is sufficiently serious when considering the declaring and upholding the standards of the profession and that the panel should make a finding of impairment to indicate that colleagues are entitled to feel safe and respected at work. Mr Hoskins submitted that this is not a situation where you were naive as to your position. He referred the panel to an email which you sent alerting your colleagues to your relationship with Colleague D. He said that your actions were a choice and therefore when the panel is considering its decision on impairment it should be satisfied that you are able to demonstrate that you can make different choices in the workplace.

Mr Leonard submitted that your fitness to practice is not impaired. If the panel were of the view that misconduct is found, then it is remediable as you have already taken steps to reduce any risks to patients and the public. He submitted that there is no pattern of behaviour in this case as the charges found proved are all of a different nature. He stated that there is no pattern of behaviour given the fact that you have worked for 10 years without any issues and do not want to act like this in the future. He referred the panel to the testimonials from past colleagues and invited the panel to consider those in their decision.

Mr Leonard submitted that you are a good nurse and referred the panel to your training certificates. He submitted that the charges found proved are less serious in nature and that your fitness to practice is not impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

### **Decision and reasons on misconduct**

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

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

#### ***'5 Respect people's right to privacy and confidentiality***

*As a nurse, midwife or nursing associate, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately.*

*To achieve this, you must:*

*5.4 share necessary information with other health and care professionals and agencies only when the interests of patient safety and public protection override the need for confidentiality*

#### ***10 Keep clear and accurate records relevant to your practice***

*This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.*

*To achieve this, you must:*

*10.6 collect, treat and store all data and research findings appropriately*

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

*To achieve this, you must:*

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

*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. The panel considered each of the charges individually.

In relation to charge 4), the panel was of the view that it did not amount to misconduct. However, it determined that your behaviour was highly undesirable and unacceptable.

In respect of charge 10), the panel was of the view that this amounts to misconduct as you used inappropriate language to describe Colleague D's body whilst on a shift on the Ward. The panel determined that a nurse is expected to be professional at all times and your actions in charge 10) would by the standards of ordinary people, and fellow professional nurses, be judged to fall far below the standard expected of a registered nurse.

In respect of charge 11)b), the panel was of the view that this amounts to misconduct due to the specific words used and references made to Colleague D's body in charge 10). The panel concluded that these words were used by you in order to pursue a future sexual relationship with Colleague D. The panel determined that a nurse is expected to be professional at all times and your actions in charge 10) would by the standards of ordinary people, and fellow professional nurses, be judged to fall far below the standard expected of a registered nurse. The panel determined that your actions in relation to this charge amounted to a serious departure from acceptable standards expected of a registered nurse.

In respect of charge 12), the panel was of the view that it did not amount to misconduct given that you and Colleague D were in a relationship at the time of the

event. The panel noted that there was a preexisting arrangement for you to attend Colleague D's parents' house and that your behaviour in this charge did not amount to misconduct.

In respect of charge 16)c), the panel was of the view that this amounts to misconduct. The panel noted that the public and your colleagues would be concerned by your actions in this charge as it would be expected that sensitive information would be kept secure and accessed only when needed. It further noted that if a colleague was aware that you had mistreated personal information in the past, that would cause concern to that colleague even though the record accessed was not a clinical record. The panel determined that this is extremely serious and that your actions would by the standards of ordinary people, and fellow professional nurses, be judged to be deplorable falling far below the standard expected of a registered nurse.

The panel found that your actions with respect to charges 10)a), 10)b), 11)b) and 16)c) 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 whether, as a result of the misconduct, your fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest 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/ fitness to practise is impaired in the sense that S/He:*

- a) ...
- 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 considered that limbs b) and c) were engaged as you have brought the profession into disrepute and that you have breached one of the fundamental tenets of the nursing profession, in that you have failed to maintain professional boundaries. The panel noted that although this may have impacted on Colleague D, there was no clinical harm caused, nor were there any defects in your clinical practice.

In terms of public protection, the panel noted that you have taken some steps to develop your insight and to remediate your actions, and this is shown through your oral evidence and reflective piece in relation to maintaining professional boundaries and your evidence of relevant further training.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to address your shortcomings. The panel took into account that you have taken steps to address the conduct and have undertaken relevant training on maintaining professional boundaries. The panel had regard to your positive testimonials and the reflective piece which detailed some in-depth learning around many of the regulatory concerns which were identified at the stage of misconduct.

The panel noted that your insight in relation to maintaining professional boundaries and what you did wrong has developed, but your insight into how your actions impacted on Colleague D, the nursing profession as a whole and the NMC as your regulator, appeared less developed.

The panel determined that there were no public protection issues in this case. It noted that you had taken steps to address the issues concerning your behaviour on the ward in terms of how you treated colleagues. The panel was satisfied that the steps you had taken would ensure that there are no outstanding patient safety issues. The panel considered it to be highly unlikely that you will repeat the misconduct. The panel therefore decided that a finding of impairment is not necessary on the grounds of public protection.

The panel reviewed the remedial steps that you have taken and noted that it appeared that you had not addressed the matter concerning the accessing and sharing of personal information. The panel determined there appeared to be a lack of remedial action as far as this matter was concerned and, whilst this did not relate to public protection, this would be of concern to the public and could erode public confidence in the nursing profession. Further, the panel was mindful of its duty to declare and uphold proper standards of the profession and maintain confidence in

the NMC as a regulator. The panel also determined that the language you had used in the workplace with Colleague D would concern members of the public, the profession and should the panel not find impairment on the public interest ground, the NMC.

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, patients and colleagues, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that a finding of impairment on public interest grounds is required because the misconduct was a serious breach of a fundamental tenet of the profession, namely maintaining professional boundaries and maintaining confidentiality. To maintain public confidence in the NMC as a regulator, the public would expect action to mark the seriousness of the conduct.

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

### **Sanction**

The panel considered this case very carefully and decided to make a caution order for a period of three years. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

### **Submissions on sanction**

The panel heard evidence from you under oath.

Mr Hoskins informed the panel that in the Notice of Hearing, dated 28 November 2023, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired. During the course of the

hearing, the NMC revised its proposal and submitted that a caution order for a period of five years was more appropriate in light of the panel's findings.

Mr Hoskins submitted that there are aggravating factors in this case which includes Colleague D being an HCA and you being significantly older than Colleague D. He submitted that as you were in a senior role you should have known that it is unacceptable to make such comments regarding Colleague D's body and accessing her personal information. Mr Hoskins submitted that this is a case where you have realised the effect of your misconduct on you and that is the proper extent of your insight. He submitted that the panel found that you do not present any ongoing risk to patients but that you were responsible for undermining public trust and breaching the fundamental tenets of the nursing profession, it would not be appropriate to take no further action due to the seriousness.

Mr Hoskins submitted that the panel may consider imposing a caution order for a period of five years. He said your current role does not require registration and that the length of time would be a significant reminder for the period of the order as well as marking the seriousness of what has been found. In relation to a conditions of practice order, Mr Hoskins submitted that as the panel have not identified any public protection issues. He also submitted that a suspension order is not appropriate neither would be an order for conditions. He further submitted that a suspension order would not be appropriate as the panel has found no evidence of harmful deep-seated personality or attitudinal issues and that the likelihood of repetition is low. He submitted that a caution order for five years will mark the seriousness of the misconduct identified.

Mr Leonard submitted that this is a case where you have shown remorse and good insight. He reminded the panel that you have written a detailed reflective piece which was completed prior to the hearing. He submitted that the panel heard evidence from you that you have had a profound learning experience in relation to personal relationships within the workplace and that you have completed specific training in terms of maintaining professional boundaries which you achieved 100%. He further submitted that you have undertaken training in relation to information governance

and data protection GDPR which shows that you have insight into the areas of concerns that have been found proved.

Mr Leonard submitted that in relation to charge 16)c), this was a one-off incident. He said that this is not a case where you accessed personal information and then used it in a threatening or conniving way. It was said by you to Colleague D within the context of a relationship. He submitted that you accept that you made mistakes and that you hope the panel will impose a sanction that is proportionate in terms of the seriousness. Mr Leonard submitted your clinical practice has not been called into question and that we have also heard from colleagues that you are a good nurse. He submitted that the public would have confidence in you to continue practise without any further action given that your insight has been shown in the training that you have completed.

Mr Leonard submitted that any sanction above that of a caution order would be wholly disproportionate. He said that if the panel were to consider imposing a caution order, then it should be for one year as your nursing practice has been subject to an interim suspension order for nearly 18 months.

The panel accepted the advice of the legal assessor.

### **Decision and reasons on sanction**

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- You held a position of seniority as a Band 6 Nurse at the material time; and

- You breached a fundamental tenet of the nursing profession, which should have been already apparent to you as a registrant.

The panel also took into account the following mitigating features:

- Limited impact of your misconduct in relation to Colleague D; and
- You have developing insight into the regulatory concerns.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the public interest issues identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where *‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’*

The panel had regard to the fact that it had only made a finding of current impairment based on the public interest ground alone. The panel noted that you have shown some insight into your misconduct as demonstrated in your reflective piece and the targeted training that you have undertaken in relation to maintaining professional boundaries and GDPR. The panel was also of the view that there have been no adverse findings in relation to your clinical practice either before or since these incidents. The panel was therefore determined, taking into account all the factors in this case, that the misconduct was at the lower end of the spectrum, and that a caution order would be appropriate and proportionate to mark the public interest in this case.

The panel considered whether it would be proportionate to impose a more restrictive sanction. It first considered a conditions of practice order but was of the view that as there were no concerns relating to your clinical practice, a conditions of practice

order would not address the concerns found proved. It concluded that no useful purpose would be served by a conditions of practice order.

The panel did seriously consider a suspension order due to the sexualised nature of the comments you made to Colleague D and the accessing of her confidential data. However, it took into account that you have been subject to an interim suspension order for nearly 18 months and determined, in light of this a further period of suspension would be unduly punitive and was not required to protect the public.

The panel determined that a caution order for a period of three years would address the public interest in this case. For the next three years, any prospective employer of yours will be on notice that your fitness to practise has been found to be impaired and that your practice is subject to this sanction. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for a period of three years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse.

At the end of this period the note on your entry in the register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is impaired, the record of this panel's finding, and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.