

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

**Substantive Hearing
Tuesday 11 April 2023 to Monday 24 April 2023
Thursday 18 May 2023 (in-Camera)
Friday 20 October 2023 – Thursday 26 October 2023**

Virtual Hearing

Name of registrant: Reuben Chamunoita

NMC PIN: 00B0853E

Part(s) of the register: Registered Nurse – Sub part 1
Mental Health Nursing - February 2003

Relevant Location: Somerset, Suffolk and Pembrokeshire

Type of case: Misconduct

Panel members: Gregory Hammond (Chair, lay member)
Richard Curtin (Registrant member)
David Boyd (Lay member)

Legal Assessor: Attracta Wilson

Hearings Coordinator: Chantel Akintunde
(11 – 24 April 2023, 18 May 2023)
Anya Sharma
(20 – 24 October 2023)
Petra Bernard (25 October 2023)
Rene Aktar (26 October 2023)

Nursing and Midwifery Council: Represented by Shekyena Marcelle-Brown,
Case Presenter

Mr Chamunoita: Present and represented by counsel Alex
Lawson, instructed by Royal College of
Nursing (RCN)

Evidence not offered: Charges 7, 8 and 9

No case to answer: Charges 1(a), 2 and 3

Facts proved: Charge 1(c), 1(d), 1(e), 1(f), 4(a), 4(b), 4(c),
4(d), 5, 6(b), 6(c), 10(a), 10(b), 10(c), 10(d),
10(e), 10(f), 10(g), 10(h), 10(i), 11 and 12

Facts not proved:	Charges 1(b) and 6(a)
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim order:	Interim suspension order (18 months)

Details of charge as amended

That you, a registered nurse,

1. *Whilst working at [PRIVATE] on 26 June 2015:*
 - a. *Asked a female carer for her phone number;*
 - b. *Dismissed Colleague A's medical opinion on whether Resident A should be given PRN Lorazepam or PRN Diazepam medication;*
 - c. *Grabbed Colleague A's wrists;*
 - d. *Pulled Colleague A's arms back;*
 - e. *Squeezed Colleague A;*
 - f. *Did not release Colleague A when she asked you to do so.*

2. *Your conduct at Charge 1a was sexually motivated because you sought to instigate a sexual relationship with the female carer.*

3. *Your conduct at one or more of Charges 1c and/or Charge 1d and/or Charge 1e and/or Charge 1f was sexually motivated because you sought sexual gratification from one or more of these acts.*

4. *Whilst working at [PRIVATE] on 02 August 2019:*
 - a. *Stood too close to Colleague B;*
 - b. *On one or more occasion made comments with underlying sexual innuendo;*
 - c. *Said to Colleague B, words to the effect 'I know what you can do with that ice cream';*
 - d. *Asked for Colleague B's phone number.*

5. *Your conduct at Charge 4a and/or Charge 4b and/or Charge 4c and Charge 4d above was sexually motivated as you sought to instigate a sexual relationship with Colleague B.*

6. *Whilst working at [PRIVATE] on 02 August 2019:*
 - a. *Dropped medication and failed to pick it up timeously;*

- b. Displayed anger when asked to carry out one to one observations;*
- c. Did not respond to the panic alarm timeously.*

7. [PRIVATE]

8. [PRIVATE]

9. [PRIVATE]

10. Whilst working at [PRIVATE] on between 21 June 2018 and 26 June 2018:

- a. On one or more occasion, poked Colleague D's leg;*
- b. Put your arms around Colleague D and/or rubbed her back;*
- c. Said to Colleague D 'Please tell me you're going to take your clothes off' or words to that effect;*
- d. Massaged Colleague D's shoulders;*
- e. Wrote 'forever' on her right wrist;*
- f. Commented on Colleague D's appearance and/or her sister's appearance/s;*
- g. Pushed yourself up against Colleague D's back;*
- h. Asked Colleague D questions about her sexual preferences;*
- i. Commented to Colleague D that you wanted lip balm from her lips.*

11. Your conduct at Charge 10a and/or Charge 10b and/or Charge 10c and/or Charge 10d and/or Charge 10e and/or Charge 10g and/or Charge 10h and/or Charge 10i was sexually motivated because you sought sexual gratification from one or more of these acts.

12. Your conduct at Charge 10f and/or Charge 10h was sexually motivated because you sought to instigate a sexual relationship with Colleague D.

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

Application for amendments to proceedings

The panel heard an application made by Mr Lawson, on your behalf, to amend the timings for the first three days of this hearing.

Mr Lawson requested that, on Days 1, 2 and 3, the hearing commence at 10AM, conclude at 4PM, and that there be a lunch break from 12PM to 2PM.

Mr Lawson understood that the panel may have received indication from the paperwork that you would be absent for the first three days of this hearing [PRIVATE]. He submitted that this is no longer the case as you have chosen to remain in the UK and be present for these proceedings.

[PRIVATE]

Mr Lawson submitted that, if such allowances are not made, [PRIVATE].

Ms Marcelle-Brown submitted that the NMC opposes this application.

Ms Marcelle-Brown submitted that the initial referral for this case was made in 2018 and, since then, there have been a number of case conferences, pre-meetings and emails between you and the NMC. However, she submitted that you only informed the NMC on Thursday 6 April 2023 that you were unable to attend the first three days of the hearing [PRIVATE].

Ms Marcelle-Brown submitted that she understood during earlier preliminary discussions that you were one of the actual carers in the business, rather than the driver/transporter as indicated in Mr Lawson's submissions. In that case, she submitted that [PRIVATE].

Ms Marcelle-Brown further submitted that the timing amendments proposed by Mr Lawson on your behalf present issues with regard to time management of the hearing. She submitted that NMC hearings usually begin around 9AM and conclude around

5PM, therefore, the proposed timings would result in the loss of half a day for the first three days of this hearing.

Ms Marcelle-Brown submitted that all four witnesses in this case are [PRIVATE] and, given the nature of the allegations, were initially reluctant to engage in these proceedings. She submitted that the proposed timings, particularly the request for a break from 12PM to 2PM, will be disruptive if this happened to fall in the middle of the witnesses' live evidence. Ms Marcelle-Brown further submitted that such timings would make it difficult to effectively manage the progress of this case and the flow of evidence.

[PRIVATE]

In response to Ms Marcelle-Brown's submissions, [PRIVATE].

Mr Lawson submitted that it is appreciated that there are [PRIVATE] witnesses involved in this case but submitted that the proposed timings would in fact assist the witnesses in enabling them to have a reasonable break in between their evidence, which he understood is part of normal practice in NMC hearings. He submitted that such proposed timings would not have a negative effect on the already generous timetable of this hearing.

In any event, Mr Lawson requested that the panel allow you to be absent at least for today (Tuesday 11 April 2023) between 12PM and 2PM for the reasons given in earlier submissions.

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

The panel considered your request carefully in determining whether it would be fair to allow the proposed timing amendments for this hearing. It took into account the submissions made by Mr Lawson on your behalf and the submissions made by Ms Marcelle-Brown on behalf of the NMC.

[PRIVATE]

The panel took into account the seriousness of the allegations, some of which are sexual in nature, and the impact this could have on your nursing career should any of the charges be found proved. It also considered the fact that you have shown willingness to engage in these proceedings and be present at this hearing.

The panel determined that it would be fair and in the interest of justice to accept the requests made by Mr Lawson on your behalf, which is for the first three days of this hearing to start at 10AM, finish at 4PM, and for there to be a break from 12PM to 2PM.

Decision and reasons on application to amend the charges

The panel heard an application made by Ms Marcelle-Brown, on behalf of the NMC, to amend typographical errors in the wording of charges 4(c), 5, 11 and 12 as follows:

4. Whilst working at [PRIVATE] on 02 August 2019:

c. Said to Colleague B, words to the effect 'I know what you can do with that ice **cream**';

5. Your conduct at ~~Charge 3a~~ **Charge 4a** and/or ~~Charge 3b~~ **Charge 4b** and/or ~~Charge 3c~~ **Charge 4c** and ~~Charge 3d~~ **Charge 4d** above was sexually motivated as you sought to instigate a sexual relationship with Colleague B.

11. Your conduct at ~~Charge 8a~~ **Charge 10a** and/or ~~Charge 8b~~ **Charge 10b** and/or ~~Charge 8c~~ **Charge 10c** and/or ~~Charge 8d~~ **Charge 10d** and/or ~~Charge 8e~~ **Charge 10e** and/or ~~Charge 8g~~ **Charge 10g** and/or ~~Charge 8h~~ **Charge 10h** and/or ~~Charge 8i~~ **Charge 10i** was sexually motivated because you sought sexual gratification from one or more of these acts.

12. Your conduct at **Charge 10f** ~~Charge 8f~~ and/or **Charge 10h** ~~Charge 8h~~ your ~~conduct~~ was sexually motivated because you sought to instigate a sexual relationship with Colleague D.

The Chair drew Ms Marcelle-Brown's attention to typological errors in the wording of charges 8 and 9, for which Ms Marcelle-Brown proposed the following amendments:

*8. Your conduct at one or more of **Charge 7a** ~~Charges 6a~~ and/or **Charge 7b** ~~Charge 6b~~ and/or **Charge 7c** ~~Charge 6c~~ and/or **Charge 7d** ~~Charge 6d~~ was sexually motivated because you sought to instigate a sexual relationship with Colleague C.*

*9. Your conduct in one or more of **Charge 7e** ~~Charges 6e~~ and/or **Charge 7f** ~~Charge 6f~~ and/or **Charge 7g** ~~Charge 6g~~ was sexually motivated because you sought sexual gratification from one or more of these acts.*

Mr Lawson did not oppose the amendments to the respective charges proposed by the NMC.

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 decided that such an amendment, as applied for, was in the interest 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, to ensure clarity and accuracy.

Background

The charges arose whilst you were employed by a number of agencies as a registered nurse.

On 26 June 2015, whilst working a shift at [PRIVATE] (the Home) as an agency nurse, it is alleged that you acted inappropriately towards a female carer and made her feel uncomfortable by asking for her phone number. It is also alleged that you acted

inappropriately towards Colleague A by grabbing her wrists from behind, pulling her arms back and squeezing her, which caused her some pain. It is alleged that when she asked you to let go of her, you did not release her.

It is further alleged that, you dismissed Colleague A's medical opinion on whether Resident A should be administered PRN Lorazepam medication.

Between 21 June and 26 June 2018, it is alleged that whilst working a shift at [PRIVATE] as an agency nurse, you acted inappropriately towards Colleague C by grabbing and stroking her either by the wrist, arms or hands, touching her shoulders and by poking her in the ribs. It is also alleged that you made a number of inappropriate comments towards her of a sexual nature.

During this same period, it is further alleged that you also acted inappropriately towards Colleague D by poking her leg, putting your arms around her to rub her back, massaging her shoulders and by pushing your body up against her back. It is also alleged that you made a number of inappropriate comments towards her of a sexual nature and wrote 'forever' on her right wrist.

On 2 August 2019, it is alleged that whilst working a shift at [PRIVATE] as an agency nurse, you acted inappropriately towards Colleague B and made her feel uncomfortable by standing too close to her, asking for her phone number and by making inappropriate comments towards her of a sexual nature.

It is further alleged that whilst on the same shift, you failed to pick up medication you had dropped on the floor in a timely manner, displayed an aggressive manner when asked to carry out a one-to-one observation task, and failed to respond to a panic alarm in a timely manner.

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

During the facts stage, Mr Lawson made a request that any reference to Colleague B's health during her live evidence be held in private. The application was made pursuant to

Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Marcelle-Brown indicated that she had no objections 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.

[PRIVATE], the panel determined to hold her live evidence in private as and when needed in order to preserve her privacy.

Decision and reasons on application to admit hearsay evidence of Colleague C

The panel heard an application made by Ms Marcelle-Brown under Rule 31 to allow the hearsay evidence of Colleague C into evidence, specifically her NMC written statement and associated exhibit [PRIVATE].

Ms Marcelle-Brown submitted that Colleague C's evidence is relevant in this case as it directly deals with the allegations outlined in charges 7 to 9.

Ms Marcelle-Brown referred the panel to the NMC guidance, and the principles outlined in the case of *Thorneycroft v Nursing and Midwifery Council* [2014] All ER (D) 161.

Ms Marcelle-Brown submitted that Colleague C's evidence is the sole and decisive evidence in respect of charges 7 to 9. She submitted that Colleague C is the complainant of the allegations outlined in these charges, and that there are no other witnesses that attest to these charges.

Ms Marcelle-Brown accepted that, as a result of Colleague C's non-attendance, her evidence will not be subject to questioning and cross-examination. However, the panel may attach appropriate weight to her evidence as it deemed fit.

Ms Marcelle-Brown submitted that Colleague C's evidence is both credible and reliable. She referred the panel to your written response to her allegations within Exhibit 4, which the panel can consider when determining whether Colleague C's evidence should be admitted. She submitted that such evidence can be tested even without Colleague C's presence.

Ms Marcelle-Brown acknowledged that you do not accept the allegations and has suggested that Colleague C's allegations are fabricated. She submitted that there is no evidence, or valid reason, to suggest that Colleague C has made up these allegations. Ms Marcelle-Brown noted that other similar allegations have been made in this case by individuals in separate workplaces, which she submitted adds to Colleague C's credibility.

Ms Marcelle-Brown submitted that Colleague C initially raised the allegations as a formal complaint within her workplace, for which she produced a local statement. Ms Marcelle-Brown further submitted that this adds to the reliability and credibility of Colleague C's evidence.

Ms Marcelle-Brown submitted that the allegations outlined in charges 7 to 9 are of a serious sexual nature. Whilst she acknowledged the serious implications such allegations, if found proved, would have on your nursing career, this is outweighed by the public interest in this case being fully explored and dealt with appropriately.

Ms Marcelle-Brown submitted that the NMC have made several attempts to secure Colleague C's attendance at this hearing, but to no avail. She referred the panel to Exhibit 9, which shows the communications between Colleague C and the NMC to date.

Ms Marcelle-Brown submitted that Colleague C was at first willing to engage in these proceedings and signed a declaration when providing her NMC statement in 2019 that she was willing to attend a hearing and give evidence before this panel if required. She submitted that the Notice of Hearing was sent to Colleague C on 21 March 2023, informing her that her attendance is required at this hearing.

Ms Marcelle-Brown submitted that Colleague C's position has since changed due to personal circumstances and work commitments. She submitted that, whilst Colleague C claims she informed the NMC prior to this hearing that she would be unable to attend, there is no evidence of this. Ms Marcelle-Brown submitted that the NMC have proposed solutions to Colleague C to accommodate her circumstances and enable her attendance at this hearing (such as offering to contact her employer and pay for her attendance at the hearing). Despite this, Ms Marcelle-Brown submitted that Colleague C has made it clear that she no longer wishes to participate in these proceedings and has ceased communication with the NMC.

With regard to Colleague C's request to withdraw her NMC statement as seen in her emails, Ms Marcelle-Brown submitted that this does not indicate that Colleague C wishes to withdraw her allegations, but rather that she wishes to withdraw her participation in these proceedings as a witness. She reminded the panel that Colleague C signed a declaration of truth in respect of her allegations.

Ms Marcelle-Brown accepted that no formal notice of this application was sent to you or the RCN in advance. Nevertheless, you were made aware of this application the day before (Tuesday 18 April 2023) and were already made aware in advance that the NMC would be relying on Colleague C's statement as evidence in this case. Ms Marcelle-Brown also noted that during the hearing yesterday, Mr Lawson indicated on record that there would be no objections to this application.

In light of her submissions, Ms Marcelle-Brown requested that the hearsay evidence of Colleague C be admitted into evidence as it is both fair and relevant. Ms Marcelle-Brown submitted that, should the panel be of the view that Colleague C's attendance is necessary in order to test her evidence in respect of charges 7 to 9, then it may wish to adjourn these proceedings and direct that the NMC make further attempts to secure her attendance.

Mr Lawson submitted that given the serious nature of the charges you face in this case, it would be unfair to admit the hearsay evidence of Colleague C in her absence and therefore he opposed the application. He clarified that his position on this application as

indicated during the hearing yesterday was subject to receipt of Exhibit 9 and taking further instructions from you.

Mr Lawson submitted that the NMC gave the impression until yesterday that Colleague C was available and willing to attend this hearing. However, he pointed out that in an email from Colleague C to the NMC dated 12 April 2023 (Day 2 of this hearing), she clearly indicated that she did not wish to participate. Mr Lawson submitted that this contradicts the declaration signed by Colleague C where she agreed to participate in the hearing in respect of her evidence if required.

Mr Lawson reminded the panel that hearsay evidence should always be treated with caution, and that Colleague C's unwillingness to engage and attest to her evidence affects the reliability and credibility of her evidence. He submitted that all other witnesses in this case have attended the hearing, and their evidence has been tested through cross-examination and panel questioning. Therefore, Mr Lawson submitted that to be denied the opportunity to test Colleague C's evidence in the same format as done with the other witnesses' evidence would be unfair to you.

Mr Lawson referred the panel to Colleague C's email dated 14 April 2023 where she queried how long her evidence would take, for which the NMC responded stating that it would only take a short time and would simply involve her reading out her statement and answering a few questions. Mr Lawson submitted that this raises deep concerns as Colleague C was clearly misinformed by the NMC on how long she would be expected to give evidence, and what the process would involve, especially given the seriousness of the allegations she has put forward.

Mr Lawson also referred to the principles outlined in *Thorneycroft* [2014].

Mr Lawson noted that Colleague C's evidence is the sole and decisive evidence in respect of charges 7 to 9. He submitted that, as you have denied all the charges in this case, the extent of your challenge to these allegations will be at its highest, as demonstrated in cross-examination of the other witnesses who have attended the hearing.

Mr Lawson submitted that whilst there may be no reason for Colleague C to fabricate these allegations, it has been suggested during cross-examination of the other witnesses that senior management at their respective workplaces may have “*gently*” encouraged them to pursue their allegations, which he would have liked to have explored with Colleague C had she attended this hearing.

Mr Lawson submitted that the charges in this case are serious as they affect your registration and future career in the nursing profession.

Mr Lawson accepted that the NMC have tried their best to secure Colleague C’s attendance, but to no avail. He submitted that the emails from Colleague C show that she does not wish to participate in this hearing, for which she has not provided good reason.

Mr Lawson reminded the panel that you did not receive advance notice of this application, and the NMC hoped it would manage to secure Colleague C’s attendance at some point during this hearing. He submitted that the NMC’s indication during this hearing of a potential hearsay application should not suffice as formal prior notice of such application.

The panel heard and accepted the legal assessor’s advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is ‘fair and relevant’, a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The panel also noted the importance of carrying out a balancing exercise, balancing the statutory duty on the NMC to properly investigate allegations in the interests of public safety and the wider public interests, against your right to a fair hearing to include your interest in testing the evidence of Colleague C.

The panel noted that the more serious the charges against you, the greater the need for procedural fairness. Colleague C’s evidence relates to charges at the higher end of the spectrum of seriousness and the consequences for you, should those charges be found

proved, are potentially catastrophic. Your nursing career and your reputation are at stake.

The panel gave the application in regard to Colleague C's evidence serious consideration, noting that her statement had been prepared in anticipation of its being used in these proceedings and contained the paragraph, '*This statement is true to the best of my knowledge and belief*' and signed by her. It also bore in mind the principles outlined in *Thorneycroft* [2014]. The panel also noted that Colleague C has exhibited a contemporaneous record of the alleged events to her statement, which supports her witness statement.

The panel considered the fact that you were given no formal prior notice of this application. However, it took into account the fact that the NMC had intended on calling Colleague C to give live evidence up until Day 6 of this hearing and accepted that the NMC have taken reasonable steps to secure her attendance (despite providing Colleague C with misleading information about her involvement as a witness in these proceedings). Nevertheless, the panel did not consider that Colleague C has provided good reason for her non-attendance at this hearing, particularly as she was given advance notice of this hearing.

The panel determined that Colleague C's evidence is relevant and is the sole and decisive evidence in respect of charges 7 to 9. It also considered the significance of Colleague C's evidence in the NMC's case both in respect of the allegations themselves, and potentially in establishing a pattern of behaviour in comparison to the other charges. It further noted that there is no evidence to suggest that Colleague C fabricated her allegations. It considered the exhibit bundle provided by the NMC and it bore in mind that you deny these charges.

However, given the serious sexual nature of the allegations, the panel determined that it was important that Colleague C's evidence be tested, as has been done with other witnesses in this case, and that to rely on her statement alone would be unfair to you. Your opportunity to meaningfully challenge Colleague C's evidence would be denied to you. The panel determined that any unfairness to the NMC is outweighed by your right

to a fair hearing and mitigated by the fact that charges of a similar nature are being investigated in the course of these proceedings.

In these circumstances, the panel decided to refuse the application.

Decision and reasons on application to offer no evidence

The panel heard an application made by Ms Marcelle-Brown under Rule 28 to offer no evidence in relation to charges 7, 8 and 9 on the grounds that there is no longer a realistic prospect of proving these charges.

Ms Marcelle-Brown referred the panel to the NMC guidance on offering no evidence, which states:

'It's not in the public interest for us to pursue factual charges against a nurse, midwife or nursing associate if there isn't enough evidence to prove them. Offering no evidence because there isn't enough evidence to prove the facts, so that there's no longer a realistic prospect, will only be appropriate if [...] the charge relies on the evidence of a witness who cannot attend a hearing, and an application to rely on their statement as hearsay evidence has been rejected'

'[...] We will always make the panel fully aware of the steps we took during the investigation, including any problems we encountered, and what we did about them. When we do this, we consider that we have a duty of good faith to fairly explain how serious the allegations were, and why we no longer intend to pursue them[...]

Ms Marcelle-Brown submitted that the panel are aware of the steps the NMC have taken to secure Colleague C's attendance in order for her to attest to the evidence she gives in respect of charges 7 to 9. Following the panel's decision to refuse the hearsay application in respect of Colleague C's evidence, Ms Marcelle-Brown submitted that the NMC are no longer able to prove these charges.

Ms Marcelle-Brown referred the panel to the case of *PSA v NMC & X* [2018] EWHC 20 (Admin).

Ms Marcelle-Brown submitted that if the panel do not agree that it is appropriate for the NMC to offer no evidence in respect of these charges, then it may direct the NMC to either: carry out a further investigation into these allegations; or take further steps to secure Colleague C's attendance, should it wish for these charges to be properly explored.

In light of her submissions, Ms Marcelle-Brown invited the panel to amend the charges by removing charges 7, 8 and 9.

Mr Lawson indicated that he had no objection to the application.

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

The panel considered whether to accept the application put forward by the NMC to offer no evidence in respect of charges 7 to 9. It bore in mind its earlier decision to refuse the hearsay application in respect of Colleague C's evidence and its reasoning for this.

The panel noted the exhibit bundle provided by the NMC which contained evidence of the attempts made by the NMC to arrange Colleague C's attendance. The panel noted that in addition attempts have been made during the course of the hearing to facilitate Colleague C's attendance. The panel is satisfied that the NMC has done all that can reasonably be expected to secure her attendance and noted that, in more recent contact, Colleague C was clear that she did not wish to engage and wished to withdraw her statement. Therefore, the panel determined that there is no merit in adjourning this hearing to allow the NMC further time to secure Colleague C's attendance.

The panel found that there is no longer a realistic prospect of the NMC proving charges 7,8 and 9 in absence of Colleague C's evidence. Nevertheless, the panel was of the view that it has heard live evidence from the other three NMC witnesses so the regulatory concerns in your case will be investigated and the public interest satisfied.

The panel therefore decided to accept the application.

Decision and reasons on application of no case to answer

The panel considered an application from Mr Lawson that there is no case to answer in respect of charges 1(a), 1(b), 2, 3, 5, 11 and 12. This application was made under Rule 24(7).

With regard to charge 1(a), Mr Lawson submitted that this is hearsay as it relates to another individual and not Colleague A herself. He submitted that Colleague A during her live evidence appeared uncertain as to the alleged interaction between you and the carer at the time, as she did not witness this herself. Mr Lawson submitted that, other than Colleague A's evidence, there is no direct evidence available which speaks to this charge.

With regard to charge 1(b), Mr Lawson submitted that Colleague A in cross-examination accepted that people could have different medical opinions to each other, and that the situation at the time was you making a judgment call about a resident who was assigned under your care.

With regard to charges 2 and 3, Mr Lawson submitted that Colleague A in cross-examination reacted with surprised when told that her allegations were particularised in the charges as sexual by the NMC. In any event, he submitted that if the panel were to find no case to answer for charge 1(a), then charge 2 will automatically fall away.

With regard to charge 5, Mr Lawson submitted that Colleague B's assumption of sexual motivation behind any of the alleged behaviour is a stretch and unlikely to be the case, based on what was heard during her live evidence.

With regard to charges 11 and 12, Mr Lawson submitted that the suggestion from Colleague D during her live evidence was that she did not consider your alleged actions to be your seeking to instigate a sexual relationship with her. Whilst he accepted that Colleague D did indicate that some of your actions may have been sexually motivated,

Mr Lawson submitted that the alleged acts were in fact not sexually motivated or for sexual gratification.

Mr Lawson referred the panel to the case of *R v Galbraith* [1981] 1 WLR 1039 and outlined the test set out. He submitted that the first part of the second limb in this test has been met in your case, and the first limb was met in respect of charge 3.

In these circumstances, Mr Lawson submitted that the NMC have not done enough to create a real possibility that these charges could be proved.

Ms Marcelle-Brown submitted that, with regard to charge 1(a), Colleague A in her live evidence made it clear that this alleged act did occur as she was able to detail the conversation she had with the female carer at the time, which was that you allegedly asked for the female carer's phone number and she responded with the detail that she had a boyfriend. Ms Marcelle-Brown submitted that Colleague A was also able to explain the steps she took to ensure that the female carer was able to continue her shift as the female carer described the interaction as making her feel uncomfortable.

With regard to charge 2, Ms Marcelle-Brown submitted that it is for the panel, not the witness, to determine whether the alleged act in charge 1(a) was sexually motivated. She submitted that whether Colleague A perceived the alleged conduct towards her and the female carer as sexual is irrelevant. Ms Marcelle-Brown further submitted that having heard the live evidence of Colleague A, it can be satisfied that there is sufficient evidence to support this charge, including the element of instigating a sexual relationship. She submitted that this is because the female carer, according to Colleague A, had to disclose the fact that she had a boyfriend to you, an important detail which suggest that the alleged act of asking for her phone number was not on a friendship basis.

With regard to charge 1(b), whilst Ms Marcelle-Brown acknowledges that there was some exploration during Colleague A's live evidence of a difference of opinion when it came to the resident's care, she submitted that Colleague A stated that she is an experienced mental health nurse and that you dismissed her view and did not consider

the resident's care plan. She submitted that Colleague A made it clear that you gave no consideration to her medical opinion on the matter.

With regard to charge 3, Ms Marcelle-Brown submitted that it is expected that Colleague A would be surprised about the particularisation of the charges as witnesses are not provided a copy of them in advance. She submitted that the sexual nature of the charges is based on the information gathered during the NMC's investigation and is a matter for the panel to determine whether the alleged acts outlined were sexually motivated, irrespective of the witness's perception of this. Ms Marcelle-Brown gave an example separate to this matter that, in cases where people are assaulted, the victims may not recognise this to have been sexual at the time.

With regard to charge 5, Ms Marcelle-Brown submitted that Colleague B's evidence was clear and consistent in that there was a sexual element to your alleged behaviour towards her. She submitted that Colleague B in her live evidence was able to describe your body language and perceived your alleged behaviour as flirtatious, rather than light-hearted banter. Furthermore, Colleague B described the alleged interaction as feeling like she was being approached by a *"guy in a nightclub"*, with the intention of trying to pursue a sexual relationship with her. Ms Marcelle-Brown submitted that Colleague B comparing the professional clinical setting to a nightclub in her alleged interaction with you is clear evidence to support the sexual elements of this charge. Therefore, taking all four limbs of charge 4 as a whole, Ms Marcelle-Brown submitted that there was sexual motivation behind your alleged actions.

With regard to charge 11, Ms Marcelle-Brown submitted that, taking the eight limbs from charge 10 as a whole, it is also reasonable to assume sexual motivation from your alleged actions. She submitted that your alleged poking of Colleague D's thigh and the rubbing of her back and shoulders can be considered as invasions of intimate areas of the body. Ms Marcelle-Brown also submitted that Colleague D was able to describe feeling your groin around her bottom area and your torso on her back when you allegedly pushed your body up against her, which in itself clearly shows intentional sexual motivation. She submitted that Colleague D was also able to describe the suggestive comment you made when she offered you lip balm in a friendly gesture upon

your request, and explained how you went about writing 'forever' on her wrist when asking about her tattoo.

With regard to charge 12, Ms Marcelle-Brown submitted that, commenting on someone's appearance and asking for their sexual preferences/orientation can only be perceived as sexually motivated in an attempt to instigate a sexual relationship. She submitted that Colleague D in her live evidence described the alleged interaction as making her feel uncomfortable and scared to be alone with you as she feared further potential sexual advances.

In light of her submissions, Ms Marcelle-Brown submitted that these charges should therefore remain before the panel as there is a case to answer.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor. She referred to the case of *Galbraith* and mentioned that whilst this case relates to the criminal law, it applies equally to regulatory proceedings.

The legal assessor reminded the panel of the following guidance taken from that case which states:

*'If there is **no evidence** that the crime alleged has been committed, then there is no difficulty. The Judge will of course stop the case. The difficulty arises where there is some evidence but it is of **a tenuous character**, for example because of its inherent weakness or vagueness or because it is inconsistent with other evidence. Where the judge comes to the conclusion that the Crown's evidence taken at its highest is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of the witness reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence that upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.'*

In reaching its decision, the panel has made an initial assessment of all the evidence in relation to the individual charges, which are subject to this application. The panel was solely considering whether sufficient reliable evidence had been presented so to determine whether you have a case to answer in accordance with the Galbraith test.

The panel considered each charge mentioned in this application as follows:

In respect of charge 1(a)

1. Whilst working at [PRIVATE] on 26 June 2015:

a. Asked a female carer for her phone number;

The panel noted the evidence provided by Colleague A in relation to this charge, so the first limb of the Galbraith test is not engaged. The panel further noted that Colleague A's evidence is the only evidence relative to this charge and it proceeded to consider the quality of that evidence in the context of the second limb of the test. Colleague A's evidence is hearsay and is supported by an email she wrote to her manager dated 26 June 2015. Colleague A in her evidence admitted under cross-examination that she did not see or hear any interaction between you and the female carer, that she did not challenge you at the time, that the female carer did not come forward, and no complaint has been received from her. There is no direct evidence to support this charge.

The panel determined that the evidence in relation to this charge when taken at its highest was inherently weak, vague and unreliable in accordance with the *Galbraith* test. The panel was therefore not satisfied that there was a case to answer in respect of this charge.

The panel next considered charge 2 and determined that it is inextricably linked with charge 1(a) and therefore automatically falls away.

In respect of charge 1(b)

1. *Whilst working at [PRIVATE] on 26 June 2015:*

b. Dismissed Colleague A's medical opinion on whether Resident A should be given PRN Lorazepam medication;

The panel noted that Colleague A has given evidence of the alleged interaction between you and her concerning the resident's care, and of her medical opinion at the time. The panel therefore determined that there is some evidence to support this charge.

The panel proceeded to assess the quality of Colleague A's evidence, in the context of the second limb of the *Galbraith* test. It considered that Colleague A gave detailed evidence of this interaction, of her concerns at the time, of what was said and how your alleged response made her feel. The panel considered that this goes to the reliability of Colleague A's evidence and determined that it is not tenuous, inherently weak or vague within the meaning of the *Galbraith* test.

The panel determined that there was a case to answer to this charge.

In respect of charge 3

3. Your conduct at one or more of Charges 1c and/or Charge 1d and/or Charge 1e and/or Charge 1f was sexually motivated because you sought sexual gratification from one or more of these acts.

The panel noted Colleague A's 'surprised' reaction at the fact that her allegations were particularised in a sexual nature within the charges, and that she made it clear during her live evidence that she did not consider your alleged actions as sexually motivated. There is also no evidence of a sexual motivation in respect of charges 1(c),1(d),1(e) or 1(f). The panel was therefore not satisfied that there was a case to answer in respect of this charge.

In respect of charge 5, the panel carefully considered the link between this charge and charge 4:

4. Whilst working at [PRIVATE] on 02 August 2019:

- a. Stood too close to Colleague B;
- b. On one or more occasion made comments with underlying sexual innuendo;
- c. Said to Colleague B, words to the effect 'I know what you can do with that ice cream';
- d. Asked for Colleague B's phone number.

5. Your conduct at Charge 4a and/or Charge 4b and/or Charge 4c and Charge 4d above was sexually motivated as you sought to instigate a sexual relationship with Colleague B.

The panel considered the four limbs of charge 4 individually. It considered the evidence of Colleague B in its entirety as it related to each limb of the charge. Colleague B gave detailed evidence relative to charges 4(a) to (d). Her evidence included a description of the individual alleged incidents, where they took place, of how your alleged behaviour made her feel, and her perception of your alleged behaviour. The panel considered that this is a matter which goes to the reliability of Colleague B's evidence which should go forward for determination. Further, the panel decided that Colleague B's evidence was not tenuous, inherently weak or vague within the meaning of the *Galbraith* test.

In respect of charge 11, the panel considered this charged to be inextricably linked to charge 10:

10. Whilst working at [PRIVATE] on between 21 June 2018 and 26 June 2018:

- a. On one or more occasion, poked Colleague D's leg;
- b. Put your arms around Colleague D and/or rubbed her back;
- c. Said to Colleague D 'Please tell me you're going to take your clothes off' or words to that effect;
- d. Massaged Colleague D's shoulders;
- e. Wrote 'forever' on her right wrist;
- f. Commented on Colleague D's appearance and/or her sister's appearance/s;

- g. Pushed yourself up against Colleague D's back;*
- h. Asked Colleague D questions about her sexual preferences;*
- i. Commented to Colleague D that you wanted lip balm from her lips.*

11. Your conduct at Charge 10a and/or Charge 10b and/or Charge 10c and/or Charge 10d and/or Charge 10e and/or Charge 10g and/or Charge 10h and/or Charge 10i was sexually motivated because you sought sexual gratification from one or more of these acts.

The panel carefully considered the relevant limbs of charge 10 separately, and took into account the evidence it heard from Colleague D. It considered her detailed description relative to the limbs of the charge of alleged physical contact, comments of a sexual nature and questions of a sexual nature. The panel assessed Colleague D's evidence against the Galbraith test and was satisfied that her evidence was direct, detailed and specific. She gave evidence to how your alleged behaviour made her feel and her perceptions of your behaviour. The panel did not find her evidence to be tenuous, inherently weak or vague within the meaning of the *Galbraith* test and therefore determined that there is a case to answer in respect of this charge.

In respect of charge 12

12. Your conduct at Charge 10f and/or Charge 10h was sexually motivated because you sought to instigate a sexual relationship with Colleague D.

The panel considered the relevant limbs under charge 10 separately and took into account the evidence it heard from Colleague D. It considered Colleague D's evidence to be detailed, specific and direct as described above. It determined that such alleged acts individually and combined, in the absence of an innocent explanation, are potentially capable of being viewed as seeking to instigate a sexual relationship. The panel was therefore satisfied that there was evidence of sufficient quality and reliability in relation to this charge to support a case to answer.

The panel therefore decided to accept this application of a no case to answer in respect of charges 1(a), 2 and 3, and reject the application in respect of charges 1(b), 5, 11 and 12.

Decision and reasons on application to admit hearsay evidence of Colleague F

The panel heard an application made by Mr Lawson under Rule 31 to admit hearsay evidence, specifically a screenshot of text messages between you and Colleague F, into evidence.

Mr Lawson submitted that Colleague F's evidence is relevant to this case as it speaks to the credibility of Colleague A and her evidence in respect of charges 1(b) to 1(f).

Mr Lawson submitted that the content of the text messages was explored with Colleague A during her cross-examination. He submitted that, at the time, he had received no instructions to request inclusion of the text messages into evidence. Mr Lawson acknowledged that Ms Marcelle-Brown neither had sight of such text messages, nor the opportunity to explore the content with Colleague A before the close of the NMC's case at the facts stage.

Mr Lawson submitted that it would be disproportionate to call Colleague F as a witness to attest to this small element of the text message exchange which happened five years ago. He submitted that you are no longer in contact with Colleague F, and that he did not consider it necessary for Colleague F to be called as a witness on your behalf in this case.

Mr Lawson submitted that Colleague F's evidence is relevant and carries weight as it provides a possible ulterior motive for Colleague A bringing forward the allegations against you. He submitted that such evidence supports your case that the allegations are fabricated.

Mr Lawson reminded the panel that it should refer to the principles outlined in the case of *Thorneycroft* [2014] when considering this hearsay application and in making its decision.

In light of his submissions, Mr Lawson requested that the hearsay evidence of Colleague F be admitted into evidence as it is both fair and relevant.

Ms Marcelle-Brown referred the panel to the NMC guidance. She submitted that it would be unfair to admit the hearsay evidence of Colleague F into evidence, and also referred to the relevant principles in the case of *Thorneycroft* [2014].

Ms Marcelle-Brown submitted that, whilst the contents of the text messages may have been put to Colleague A in cross-examination, an actual copy was not provided to her. She also submitted that, as the NMC were previously unaware of the existence of these text messages, it did not have the opportunity to explore its contents with Colleague A during her evidence-in-chief or in re-examination.

Ms Marcelle-Brown submitted that as this evidence goes to the credibility of Colleague A as a witness, such evidence cannot be considered a “*small element*” as put by Mr Lawson, but rather important in suggesting a potential motive for Colleague A to bring forward her allegations. Therefore, she submitted that there is a need for the contents of the text messages to be properly explored.

Ms Marcelle-Brown submitted that good reason has not been provided for Colleague F’s non-attendance as a witness during these proceedings. She submitted that you have known about these proceedings for several years, and the text messages are dated 2018. Therefore, Ms Marcelle-Brown submitted that you had sufficient time to arrange for Colleague F to participate in this hearing as a witness but chose not to.

Furthermore, Ms Marcelle-Brown submitted that there is no evidence demonstrating that any reasonable steps have been taken to secure Colleague F’s attendance as a witness.

In light of her submissions, Ms Marcelle-Brown submitted that it would be unfair to admit the hearsay evidence of Colleague F into evidence, as the opportunity to properly explore and test such evidence has passed.

Ms Marcelle-Brown also noted that there is no evidence of a declaration of truth being signed by Colleague F to attest to the credibility of her evidence, nor is there sufficient information available on this individual and her involvement with the parties in this case. She therefore invited the panel to exercise its discretion and refuse this application on the ground of fairness.

In response to panel questions, Mr Lawson clarified that the evidence of Colleague F is relevant as it relates to your case and speaks to Colleague A's credibility. He also noted that Colleague A made reference to Colleague F in her NMC witness statement.

Ms Marcelle-Brown in response submitted that there is no relevance. She clarified that the reference in Colleague A's statement is to an individual named Colleague G, not Colleague F. She therefore submitted that it is not clear whether this is the same person and there is no way of exploring this further.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application in regard to the hearsay evidence of Colleague F serious consideration in determining whether it would be fair and relevant to admit this into evidence. It noted that Colleague F's evidence appears to speak to the credibility of Colleague A and the reliability of her evidence in respect of charges 1(b) to 1(f), although it is ambiguously written. The panel bore in mind the principles outlined in *Thorneycroft*.

The panel acknowledged that the content of the text messages was put to Colleague A during her cross-examination but noted that no application was made at the time to

admit this into evidence prior to the closure of the NMC's case. As a result, Colleague A did not have sight of the text messages, and the NMC did not have the opportunity to test this evidence with her in re-examination.

The panel noted that no steps have been taken to call Colleague F as a witness for this hearing in order for her to attest to her evidence and was not satisfied with the reasoning provided by Mr Lawson for this. The panel further considered that you were given sufficient prior notice of this hearing, which included a list of witnesses the NMC intended to call upon. It therefore found that you were provided with sufficient opportunity to disclose the text messages well in advance to be relied on in your defence.

The panel determined that, whilst the hearsay evidence of Colleague F might be relevant, it would be unfair to the NMC to admit this into evidence at this stage in the proceedings.

In these circumstances, the panel decided to refuse the application.

Decision and reasons on application to amend the charges

Following closing submissions on the facts stage, the panel heard an application made by Ms Marcelle-Brown, on behalf of the NMC, to amend the wording of charges 1(b) as follows:

1. Whilst working at [PRIVATE] on 26 June 2015:

*b. Dismissed Colleague A's medical opinion on whether Resident A should be given PRN Lorazepam **or PRN Diazepam** medication;*

Mr Lawson did not oppose the amendments to the respective charge proposed by the NMC.

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', (the Rules).

The panel decided that such an amendment, as applied for, was in the interest 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, to ensure accuracy.

Decision and reasons on imposition of an interim order

Following the confirmation that this case will be going part heard, and in accordance with Rule 32(5), the panel considered whether to impose an interim order.

Ms Marcelle-Brown submitted that the NMC are not making an application for imposition of an interim order on your practice at this time.

Mr Lawson submitted that you currently do not have an interim order in place on your nursing practice. He submitted that the panel have not received any new evidence or information during the course of this hearing that would suggest that an interim order is required. Mr Lawson therefore submitted that an interim order is not necessary at this time.

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

The panel considered whether it was necessary to impose an interim order on your practice. It took into account the fact that the NMC has chosen not to apply for an interim order. In light of this, and the fact that no new evidence or information has been provided to suggest that temporary restrictions on your practice are required ahead of the panel making substantive findings, it decided that the test for the necessity of an interim order has not been met.

The panel therefore determined that it would be disproportionate to impose an interim order at this time.

Decision and reasons on facts

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 Ms Marcelle-Brown on behalf of the NMC and by Mr Lawson 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: Staff Nurse at [PRIVATE] NHS Foundation Trust, at the time of the incident;
- Colleague B: Healthcare Assistant at [PRIVATE] Mental Health Partnership NHS Trust, at the time of the incident;
- Colleague D: Staff Nurse at [PRIVATE] at the time of the incident.

The panel also heard live evidence from you under affirmation.

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

Charge 1(b)

Whilst working at [PRIVATE] on 26 June 2015:

b. Dismissed Colleague A's medical opinion on whether Resident A should be given PRN Lorazepam medication;

This charge is found NOT proved.

The panel noted that in Colleague A's witness statement she states:

'I felt that Reuben was unprofessional and he was trying to argue with me in front of other staff. I recall that one of the resident's who had been in the Home for a long time and had [PRIVATE] was very agitated and kept heading towards the stairs. This resident was on Reuben's floor and was prescribed Lorazepam PRN, which means as required. I recall speaking to Reuben about this resident as I was concerned they were at risk of falling and said he should consider the option of giving this resident Lorazepam medication. I feel that Reuben disregarded everything I said about this resident and became confrontational, Reuben said it was his patient and his call to make. I do not think the resident was given the medication and I did not want to argue with Reuben so I left the matter alone. I do not recall the resident's [PRIVATE]. I was more concerned that the resident had a care plan in place that was not being followed...' [sic]

And in your written response, you state:

'I was ordered to give Lorazepam to [Resident A] by nurse in charge [Colleague A]. I asked for justification and there was no explanation. After I insisted. It became apparent that the resident was confused and was reportedly threatened staff with his walking aid. This was only disclosed after I insisted. I went to the resident's room and negotiated to use walking aid for walking and not to assault staff. There was no need to give medication with sedative effects at that time after communication had resolved issues. [Colleague A] did not assess the resident before giving instructions. Additionally, she had access to both medication charts and clinic room. Although it does not make material difference, Resident was prescribed Diazepam and not Lorazepam.'

In your oral evidence, you told the panel that you had seen and spoken to the patient at the time in order to clinically assess whether Resident A required medication.

The panel understood that Resident A was assigned to your care at the time and is aware that clinicians will sometimes have a difference in medical opinion when it comes to the care of a patient.

The panel found the reasoning behind your decision in respect of Resident A's care to be reasonable and credible. It noted that the manner in which you expressed your clinical opinion may have been "*rude*" as Colleague A describes in her oral evidence. However, the panel did not consider this as a 'dismissal' of Colleague A's medical opinion as set out in the charge, but rather you asserting your own opinion as Resident A's assigned nurse at the time.

Based on the above, the panel did not find this charge proved.

Charges 1(c), 1(d), 1(e) and 1(f)

Whilst working at [PRIVATE] on 26 June 2015:

- c. Grabbed Colleague A's wrists;*
- d. Pulled Colleague A's arms back;*
- e. Squeezed Colleague A;*
- f. Did not release Colleague A when she asked you to do so.*

These charges are found proved.

The panel noted that Colleague A emailed her concerns to Colleague F on 28 June 2015, two days after the incidents specified in charges 1(c) to (f) occurred. In her email, she states:

"...he for some reason felt the need to take both my arms whilst stood just behind me and squeeze me so hard I had to repeatedly ask him to let go, whilst also telling him he was hurting me, and he appeared to have no regard for what he

was doing. It was bad enough that he thought it was appropriate to touch me but the fact that he actually hurt me is unacceptable...”

In Colleague A’s witness statement, she states:

“There was another incident during the afternoon where Reuben and I had to check a resident’s syringe driver. ...Reuben grabbed both my wrists from behind and pulled my arms back and squeezed me very hard. Reuben was hurting me and I had to ask him several times to let go...”

Colleague A in her oral evidence explained how the acts occurred within the span of two minutes, and she described in detail how you went about grabbing her wrists, pulling her arms and squeezing her, and how she repeatedly told you to release her.

You told the panel that you and Colleague A were checking on a resident’s syringe pump together and that she was carrying a tray at the time. Given these circumstances, you said it would have been impossible for you to have done the acts alleged by Colleague A.

The panel noted that you did not provide this explanation in your written response to these charges. The panel therefore found Colleague A’s account to be more consistent and credible compared to your own.

The panel also noted that Colleague A reported these acts to the police as stated in her witness statement, which would have carried serious implications if these allegations were fabricated as you have claimed. Whilst no further action was taken by the police, the panel considered the fact that a report was made adds to the reliability of Colleague A’s account.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you grabbed Colleague A by the wrist, proceeded to pull her arms and squeezed her, and did not release Colleague A from this position when she asked you to do so, as set out in the charges.

In respect of all sub charges that fall under Charge 4

Mr Lawson in cross-examination of Colleague B suggested that Colleague B's [PRIVATE] (which she disclosed prior to the start of her oral evidence) may have been a factor in her interpretation of your alleged conduct as set out in the charges. Colleague B told the panel that she was diagnosed with depression in 2011, [PRIVATE]. Colleague B stated that she does not take prescribed medication [PRIVATE].

The panel took this into consideration and was satisfied that Colleague B's [PRIVATE] was not a contributing factor in her interpretation of your behaviour when putting forward these allegations.

Charge 4(a)

Whilst working at [PRIVATE] on 02 August 2019:

a. Stood too close to Colleague B;

This charge is found proved.

The panel noted that, in Colleague B's email to her line manager dated 2 August 2019, she states:

"He has made me feel very uncomfortable today with his body language ...He was invading personal space when I was in the clinic..."

In her witness statement, Colleague B also states:

"From the beginning of the shift I felt very uncomfortable working alongside Reuben. I felt he was...standing very close to me..."

"...his body language made me feel on edge – he would stand behind me so I could not see him and would be very close to me. I did ask him to give me some space and I recall his response was 'I'm not doing anything.'"

Colleague B in her oral evidence said that you invaded her personal space by standing a few inches from her, and that she had asked you to move away from her. She also described how uncomfortable you made her feel at the time.

In your written response and your oral evidence, you told the panel that you understood the concept of personal space, that you are unable to recall this incident, and that it is very unlikely that this incident occurred.

The panel considered that common sense dictates that, when someone indicates that you are standing too close to them, you would automatically move away to create space. The panel did not find your response to this charge credible. On the other hand, it found Colleague B's account to be consistent and therefore credible.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you stood too close to Colleague B.

Charge 4(b)

Whilst working at [PRIVATE] on 02 August 2019:

b. On one or more occasion made comments with underlying sexual innuendo;

This charge is found proved.

The panel noted that, in Colleague B's email to her line manager dated 2 August 2019, she states:

"He has made me feel very uncomfortable today with some of his flirtatious comments whilst on shift..."

In her witness statement, Colleague B also states:

"... I told him I was married and not interested in him. Reuben in response to this was 'Don't worry nothing will happen unless you want it to'. I recall that Reuben's

tone was suggestive and the comment he said to me were full of innuendos. I told Reuben that the comments he was making were inappropriate to say in the corridor where patients were in bed and could possibly hear...”

Colleague B in her oral evidence explained how another male colleague present at the time had overheard the sexual innuendo comment you made towards her on one occasion, and that he had told you to stop (although the panel noted that this is not supported by either a written statement or oral evidence from this male colleague).

In your written response, you stated that you do not recall making these comments and that it is very unlikely they occurred. In oral evidence, you told the panel that people who work in the mental health profession have the tendency to make complaints similar to the one set out in this charge.

The panel took your oral response into account but did not consider this to be a plausible reason for Colleague B bringing forward such an allegation. Rather it found Colleague B's evidence to be consistent and credible.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you made comments with underlying sexual innuendo to Colleague B on more than one occasion.

Charge 4(c)

Whilst working at [PRIVATE] on 02 August 2019:

c. Said to Colleague B, words to the effect 'I know what you can do with that ice cream';

This charge is found proved.

In Colleague B's witness statement, she states:

“...I recall an assisting with a patient's afternoon medication and put the medication in a pot of ice cream and then gave this to Reuben. When I handed

this to Reuben he said to me 'I know what you can do with that ice cream'. I felt this was very inappropriate: I am able to have 'banter' with colleagues I know well but I had only just met Reuben and thought his behaviour was over the top..."

Colleague B in her oral evidence explained that at the time you made this comment, she was about to covertly administer medication that had been crushed and mixed into a bowl of ice cream she was holding.

The panel noted that, in Colleague B's email to her line manager dated 2 August 2019, she makes no specific reference to this comment and the context surrounding this incident. However, she does mention in her email that you made her feel uncomfortable by making flirtatious comments towards her and stated that you were '*a little over the top*' with your banter.

In your written response, you confirmed that some dementia patients did require covert administration of medication by it being mixed into their food. However, you said you could not recall this incident.

The panel found Colleague B to be consistent in her evidence. It considered that there is no reasonable explanation for you to have phrased the comment about the ice cream in such a way.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you said to Colleague B '*I know what you can do with that ice cream*' or words to that effect.

Charge 4(d)

Whilst working at [PRIVATE] on 02 August 2019:

d. Asked for Colleague B's phone number.

This charge is found proved.

The panel noted that, in Colleague B's email to her line manager dated 2 August 2019, she states:

"...made comments such as asking for my number or if I wanted his..."

In her witness statement, Colleague B also states:

"Throughout the day Reuben kept asking me for my phone number, I am unable to say how many times he asked, but I did not give this to him and I told him I was married and not interested..."

In oral evidence, Colleague B maintained that you repeatedly asked for her personal phone number but could not recall how many times you asked, only that it was more than once.

In your written response and your oral evidence, you stated that you are fully aware of professional boundaries, that you do not recall this incident, and that it is very unlikely this incident occurred. You also mentioned that you were close to another female colleague (Colleague Y) at [PRIVATE] Hospital and have never asked for her number.

The panel found Colleague B's account to be consistent and credible, and considered that there was no reasonable explanation for you to ask Colleague B for her phone number.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you asked for Colleague B's phone number.

Charge 5

Your conduct at Charge 4a and/or Charge 4b and/or Charge 4c and Charge 4d above was sexually motivated as you sought to instigate a sexual relationship with Colleague B.

This charge is found proved.

The panel took into account that the conduct set out in charges 4(a) to (d) occurred on the same day and found that this establishes a similar pattern of behaviour from you.

In oral evidence, both you and Colleague B confirmed that the day the incidents occurred (2 August 2019) was the first time you had ever interacted with one another, and that you did not know each other prior to these incidents.

Colleague B in her oral evidence compared the interaction between you both to being approached by a guy in a nightclub who had sexual intentions towards her, rather than what was appropriate in a professional workplace setting.

In oral evidence, you told the panel that you did not consider that the conduct set out in charges 4(a) to (d) would have any sexual connotation attached to it.

The panel considered both your evidence in comparison to the evidence of Colleague B. It was unsatisfied with your responses in respect of charges 4(a) to (d).

In considering these charges individually, the panel was satisfied that your conduct was more likely than not sexually motivated.

In considering these charges collectively, the panel determined that it is more likely than not that your conduct in charges 4(a) to (d) was motivated by your seeking to instigate a sexual relationship with Colleague B.

Charge 6(a)

Whilst working at [PRIVATE] on 02 August 2019:

- a. Dropped medication and failed to pick it up timeously;*

This charge is found NOT proved.

The panel noted that, in Colleague B's email to her line manager dated 2 August 2019, she states:

"I was helping patients out of he[sic] dining room after tea and found a tablet on the floor...he laughed and said "oh yeah, I dropped that by accident but replaced it and hadn't picked it up". It concerned me as we had a patient at that table who picks up and collects objects. She thought it was hers when I had first picked it up and tried to take it off me. I don't know what medication it was."

In her witness statement, Colleague B also states:

"...During the afternoon medication round I found a tablet on the floor in the dining room...I spoke to Reuben about this...His response was 'Oh yeah I dropped that by accident but replaced it and hadn't picked it up'. This was concerning because another patient could have picked it up and swallowed it. ..."

Colleague B maintained in her oral evidence that you told her you had dropped the medication by accident.

In your written statement, you state:

"I was administering medication in the dining room and a female patient dropped medication under the table. There were at least two staff members in the dining room (Colleague B and Y). I asked [Colleague] Y to pick the tablet after the meal and I replaced tablet for the patient. I am not sure if [Colleague] B heard me pass the request to [Colleague] Y who was a qualified nurse. I clearing the floor, [Colleague] B brought the tablet to my attention and I did not make an issue out of it and disposed appropriately."

However, in oral evidence, you stated that either you or the female patient may have dropped the medication, and that you did not pick it up at the time as the female patient was in the middle of her meal, so you instructed Colleague Y to pick it up after the patient had finished her meal.

The panel considered the inconsistencies with regard to who dropped the medication. It noted that Colleague B makes no reference to Colleague Y in her evidence, and that

you are unable to fully recall whether it was you or the female patient who dropped the medication.

Taking the above into account, the panel determined that, on the balance of probabilities, it is more likely than not that you dropped the medication. However, the panel was satisfied with your explanation for not picking up the medication in a timely manner. It therefore found the charge not proved.

Charge 6(b)

Whilst working at [PRIVATE] on 02 August 2019:

b. Displayed anger when asked to carry out one to one observations;

This charge is found proved.

The panel noted that, in Colleague B's email to her line manager dated 2 August 2019, she states:

"I asked if he could cover a 1:1 observation because Colleague H had been in [PRIVATE] with a patient and needed a break. He stated that he wanted to look at the allocations and I explained he had no tasks assigned at that time which is why I had asked him. He became very angry and stated "I want to see the allocations" I answered that I just needed to write in an observation and Colleague H needed to go when he angrily stated 'I want to see the allocations now as it's my right' before snatching the folder off me. He then stated that he needed a break and it hadn't been marked in so what was going to happen with his break ..."

In her witness statement, Colleague B also states:

"...I asked Reuben if he could complete one-to-one observations for a patient so that another member of staff could have a break. Reuben had no tasks assigned to him at the time and that is why I asked him. Reuben became very angry and

raised his voice to say 'I want to see the allocations'...I had the observation folder in my hand and Reuben snatched this off me..."

Colleague B in oral evidence explained that you were angry when she asked you to carry out the one-to-one observations, and that you snatched the allocation folder from her hands.

In your oral evidence, you admitted that you were angry as you felt that Colleague B should not have asked you to do the one-to-one observations as it was not your assigned task on the allocation sheet.

The panel found Colleague B's account to be consistent and took into account your admission that you were indeed angry when Colleague B asked you to carry out the one-to-one observations. It did not find your explanation behind your anger to be reasonable and found that it was more likely than not that you displayed your anger in the manner described by Colleague B.

Charge 6(c)

Whilst working at [PRIVATE] on 02 August 2019:

c. Did not respond to the panic alarm timeously.

This charge is found proved.

The panel noted that, in Colleague B's email to her line manager dated 2 August 2019, she states:

"There was an incident with a patient when I had to pull the panic alarm due to being attacked by a patient and although other staff had assisted me he did not appear until after the incident had occurred. He was asked where he had been and he pointed at the clinic."

In her witness statement, Colleague B also states:

“...a patient put me in a headlock and I pulled the panic alarm...I do not recall the exact time; but I think this was around 20:00 hours. Rueben did not appear until after the incident had occurred even though he was working in the clinic which was two doors down from where I was, but he did not come to help. Two other members of staff did come to help me very quickly...”

In oral evidence, Colleague B stated that she was in the headlock for about five minutes, and that the clinic room where you were located in at the time the alarm was activated was a two-minute walk from where she was.

In your written response, you state:

“Although alarms went off on a regular basis and briefly, I recall around 8pm when the alarms went off whilst in the clinic room preparing controlled drugs my second nurse responded and I was left to lock the cupboards. This delayed my response time...”

In your oral evidence, you confirmed that you were in the clinic room at the time the panic alarm went off. You told the panel that you were delayed because you were in the middle of preparing a controlled drug (CD) medication, and therefore had to put this back in the CD cupboard and lock it before responding.

The panel considered that Colleague B in oral evidence was not reliable in her recollection of the timings and distances surrounding this incident. Nevertheless, as you have accepted that you were in the same vicinity as Colleague B when the panic alarm went off, the panel found that there would have been a reasonable expectation for you to respond to the alarm to assist.

The panel estimated that placing medication back into a CD cupboard and locking it before exiting the clinic room would have taken a matter of seconds to complete. It did not consider that this action would delay someone from responding to an emergency in the way you have stated. The panel therefore did not accept the explanation you have put forward for failing to respond to the panic alarm in a timely manner.

Based on the above, the panel was satisfied on the balance of probabilities that you did not respond timeously to the panic alarm activated by Colleague B.

In respect of all sub charges that fall under Charge 10

The panel noted that the seven-page handwritten contemporaneous statement exhibited in Colleague D's evidence was written by Colleague E, the Nurse in Charge at [PRIVATE] Hospital to whom Colleague D had reported her concerns. The panel also noted that the handwritten contemporaneous statement was signed by Colleague D, and she confirmed in her witness statement and oral evidence that the contents of that statement was true to the best of her knowledge.

Based on this, the panel was satisfied that the handwritten contemporaneous local statement was created with Colleague D's personal input about her recollection of the incidents that are alleged to have occurred as outlined in charges 10(a) to (i) and the statement is an accurate reflection of what Colleague D reported.

Charge 10(a)

Whilst working at [PRIVATE] on between 21 June 2018 and 26 June 2018:

a. On one or more occasion, poked Colleague D's leg;

This charge is found proved.

In the handwritten contemporaneous statement, Colleague D states:

"Wiping tables first floor lounge – he came over and started poking my leg with his finger several times."

In oral evidence, Colleague D detailed how you went about poking her in the leg and specified that you poked her in the thigh area.

In your written response and oral evidence, you stated that Colleague D fabricated this incident as it did not occur.

The panel found Colleague D's evidence to be consistent and her account of the incident to be credible. It considered that that there is no reasonable explanation for a colleague to poke another colleague in an intimate area of their body.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you poked Colleague D in the leg.

Charge 10(b)

Whilst working at [PRIVATE] Hospital on between 21 June 2018 and 26 June 2018:

b. Put your arms around Colleague D and/or rubbed her back;

This charge is found proved.

In the handwritten contemporaneous statement, Colleague D states:

"...He put his arms around me and rubbed my back several times – I stood rigid and then I placed my hand on his shoulder and pushed him back."

In oral evidence, Colleague D described how you gave her a "bear hug" by putting your arms around her body and using the palm of your hands to rub up and down her back. Colleague D stated that she stood rigid as she felt uncomfortable, and then proceeded to put her hands on your shoulders and push you away from her.

In your written response and oral evidence, you stated that Colleague D fabricated this incident as it did not occur.

The panel found Colleague D's evidence to be consistent and her account of the incident to be credible. It considered that that there is no reasonable explanation for you to have hugged Colleague D at the time.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you put your arms around Colleague D and rubbed her back.

Charge 10(c)

Whilst working at [PRIVATE] Hospital on between 21 June 2018 and 26 June 2018:

c. Said to Colleague D ‘Please tell me you’re going to take your clothes off’ or words to that effect;

This charge is found proved.

In the handwritten contemporaneous statement, Colleague D states:

*“I was sat in the lounge by the window
Sun was beaming through the window
I was hot and began taking my jacket off – took my arm out of the sleeve and the nurse said ‘please tell me your[sic] going to take your clothes off’. I responded by saying ‘oh no don’t be stupid’ the nurse responded by laughing...”*

In oral evidence, Colleague D described the incident consistently with what is written in her statement.

In your written response and oral evidence, you stated that you could not recall this incident, and that it is unlikely that this incident occurred.

The panel found Colleague D’s evidence to be consistent and her account of the incident to be credible. It considered that that there is no reasonable explanation for you to have made such a comment in a professional work environment.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you said to Colleague D ‘Please tell me you’re going to take your clothes off’ or words to that effect.

Charge 10(d)

Whilst working at [PRIVATE] Hospital on between 21 June 2018 and 26 June 2018:

d. Massaged Colleague D's shoulders;

This charge is found proved.

In the handwritten contemporaneous statement, Colleague D states:

*"...then proceeded to massage my shoulders
I felt uncomfortable with this and said 'stop it I'm ticklish' he then stopped..."*

In oral evidence, Colleague D told the panel that she was "*shocked*" when you stood behind where she was sat at her desk and started rubbing her shoulders, and that she felt really uncomfortable and unable to assert herself by telling you to stop touching her. Colleague D also stated that this action came soon after you made the comment in charge 10(c) in response to her taking off her jacket.

In your written response and oral evidence, you stated that Colleague D fabricated this incident as it did not occur.

The panel found Colleague D's evidence to be consistent and her account of the incident to be credible. It considered that that there is no reasonable explanation for you to rub Colleague D's shoulders in a professional work environment.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you massaged Colleague D's shoulders.

Charge 10(e)

Whilst working at [PRIVATE] Hospital on between 21 June 2018 and 26 June 2018:

e. Wrote 'forever' on her right wrist;

This charge is found proved.

In the handwritten contemporaneous statement, Colleague D states:

"...as I was stretching my arm to wipe [right arm] the surface – the nurse walked over and stood next to me, he then took my wrist [right arm] and clicked his pen and proceed to right[sic] 'forever' along my forearm in pen. I reacted by saying 'why did you right[sic] that on my arm?' he said 'to match your tatoo[sic]. I have a tatoo[sic] on my [left] wrist which says 'I love you forever' earlier in the day the nurse had noticed this in the morning and asked the reason behind it which I had explained to him"

In oral evidence, Colleague D explained to the panel how you wrote 'forever' on her wrist after querying one of her tattoos.

The panel had regard to a photo of Colleague D's wrist showing the word 'forever' written in black pen ink, which Colleague D said in oral evidence that she herself had taken on the day of the incident.

In your written response, you state:

"I do not recall this, unlikely to have happened. I have tested my handwriting by writing 'forever' several times and handwriting mismatch even though I am not an expert."

In oral evidence, you maintained that you did not write 'forever' on Colleague D's wrist, and that the handwriting does not match your own.

In the NMC's cross-examination of your oral evidence, the photo of Colleague D's wrist with the word 'forever' written was put to you, along with a written statement dated 8 August 2018 that you provided during SP Hospital's local investigation where you also

wrote the word 'forever'. The panel noted that the NMC have not arranged for a graphologist to analyse your handwriting in order to ascertain whether the handwriting on Colleague D's wrist matches your own. In the absence of this, the panel considered that it was not in a position to determine with accuracy whether the handwriting on Colleague D's wrist is actually your own.

Nevertheless, having considered the evidence overall, the panel found Colleague D's evidence to be consistent and supported by the photo exhibited. The panel therefore preferred her account over your evidence.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you wrote 'forever' on Colleague D's right wrist.

Charge 10(f)

Whilst working at [PRIVATE] Hospital on between 21 June 2018 and 26 June 2018:

f. Commented on Colleague D's appearance and/or her sister's appearance/s;

This charge is found proved.

In the handwritten contemporaneous statement, Colleague D states:

"...the nurse commented on 2 pictures that he had noticed in the room and said 'is that your sister?' I replied yes that's [REDACTED] she's away at uni...the nurse then said 'there[sic] not as good looking as you are' I replied joking 'yeah I already know that' I then said 'no I'm only joking' the nurse said 'I'm being serious'..."

In oral evidence, Colleague D told the panel that your sister used to work at [PRIVATE] Hospital, which explains why she was in the photos located in one of the rooms. She

also described the comment you made as inappropriate and that she was “*taken aback*” as it was said in front of a resident.

In your oral evidence, you said you could not recall what you said, but that it is likely you made some comments regarding Colleague D and her sister’s appearance as a means of making small talk with the resident.

The panel found Colleague D’s evidence to be consistent and her account of the incident to be credible. It also took into account your admission in your oral evidence to making comments about Colleague D and her sister’s appearance.

Charge 10(g)

Whilst working at [PRIVATE] Hospital on between 21 June 2018 and 26 June 2018:

g. Pushed yourself up against Colleague D’s back;

This charge is found proved.

In the handwritten contemporaneous statement, Colleague D states:

“I went down to [resident]’s bedroom...the door was shut so I knocked and walked in – at this point I realised the nurse was right behind me... as I opened [resident]’s bedroom door the nurse pushed himself up against my back – I then side stepped away – I walked quickly down the corridor and he said ‘your[sic] not trying to run away from me are you?’ I continued up the corridor and did not respond to his comment. I felt uncomfortable...”

In oral evidence, Colleague D explained that she could feel your chest, torso and groin area up against her back and bottom, and that she felt this action was deliberate rather than accidental based on the previous behaviour and the previous remarks you made towards her earlier that day (as outlined in charges 10(a) to (f)). Colleague D further stated that this action made her feel uncomfortable and was “*extremely inappropriate*”.

In your written response, you stated that Colleague D fabricated this incident as it did not occur. However, in oral evidence, you told the panel that you simply bumped into Colleague D at the doorway to the resident's bedroom.

The panel noted that Colleague D during her oral evidence appeared extremely uncomfortable in describing this incident. However, the panel found Colleague D's evidence to be detailed, consistent and the account of the incident to be credible, compared to your own account which it did not accept.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you pushed yourself up against Colleague D's back.

Charge 10(h)

Whilst working at [PRIVATE] Hospital on between 21 June 2018 and 26 June 2018:

h. Asked Colleague D questions about her sexual preferences;

This charge is found proved.

In the handwritten contemporaneous statement, Colleague D states:

"I was in the downstairs lounge with Colleague I. The nurse came in and sat at the table with me as I was making bunting. The nurse then asked 'are you gay or straight; do you like men or women?' I didn't answer at first, but he kept looking at me for a response so I said 'oh no I like boys' – the nurse responded by saying 'how do you know that, are you sure you don't like women' – 'no I've had boyfriends' he said 'are you sure you don't like women'. Colleague I who was also in the lounge said to me come on lets do this (meaning hanging the bunting up) when the nurse left the lounge Colleague I made a comment 'what a creep'"

In oral evidence, Colleague D stated that she was unaware as to what prompted you to ask such questions and that she considered this to be inappropriate.

In your written response and your oral evidence, you stated that you could not recall this incident, and that it is unlikely that this incident occurred.

The panel noted that Colleague D mentioned that another colleague overheard the questions you were asking her regarding her sexual preference. However, it understood that the NMC have not secured a witness statement or the attendance of that colleague as a witness as part of its case.

Nevertheless, the panel found Colleague D's evidence to be consistent and her account of the incident to be credible and it noted the absence of an outright denial by you in your oral evidence.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you asked Colleague D questions about her sexual preferences.

Charge 10(i)

Whilst working at [PRIVATE] Hospital on between 21 June 2018 and 26 June 2018:

i. Commented to Colleague D that you wanted lip balm from her lips.

This charge is found proved.

In the handwritten contemporaneous statement, Colleague D states:

"He asked me have you got any lip balm so I said yes – whilst looking into my bum bag which was around my waist I pulled out my lip balm and said 'pass your finger you can have some' the nurse replied 'oh no I don't want that', I asked 'what do you mean?', the nurse replied I want lip balm from your lips, I replied shut up, the nurse then walked out of the room"

In oral evidence, Colleague D told the panel that she interpreted your comment as you potentially wanting a kiss from her, and that your comment made her feel [PRIVATE].

In your written response, you stated that you could not recall this incident, and that it is unlikely that this incident occurred. In your oral response, you told the panel that you usually keep your own tub of Vaseline to use on your lips when needed, and that you would not have asked for Colleague D's lip balm.

The panel found Colleague D's evidence to be consistent and her account of the incident to be credible.

Based on the above, the panel determined that, on the balance of probabilities, it is more likely than not that you commented to Colleague D that you wanted lip balm from her lips.

Charge 11

Your conduct at Charge 10a and/or Charge 10b and/or Charge 10c and/or Charge 10d and/or Charge 10e and/or Charge 10g and/or Charge 10h and/or Charge 10i was sexually motivated because you sought sexual gratification from one or more of these acts.

This charge is found proved.

The panel took into account that the conduct set out in charges 10(a) to (e) and 10(g) to (i) occurred on the same day and found that this establishes a pattern of behaviour from you.

In oral evidence, both you and Colleague D confirmed that the day on which the incidents occurred (between 21 June 2018 and 26 June 2018) was the first time you had ever interacted with one another, and that you did not know each other prior to these incidents.

Colleague D in her oral evidence repeatedly stated that she felt that your behaviour towards her was inappropriate, and agreed when asked during her evidence-in-chief that your behaviour was sexual in nature.

In your written response, you state:

“There was nothing sexual with my conduct with Colleague D. She looked younger than my daughter. Other than professional relationship, I would have considered father-daughter relationship with her. What I fully remember was that from the start of the shift she was not sure if she was sick or she was tired. She managed to stay the whole shift and I had no problems working with [Colleague] D. To date I am still surprised she raised a complaint against me.”

In oral evidence, you told the panel that you did not consider there to be any sexual motive behind any of the behaviour set out in charges 10(a) to (e) and 10(g) to (i).

In considering these charges individually, the panel was satisfied that your conduct was sexually motivated as follows:

- You chose to poke Colleague D in the thigh, which is an intimate area of her body, and, on the balance of probabilities, the panel interpreted as sexually motivated;
- Putting your arms around Colleague D and rubbing her back, on the balance of probabilities the panel interpreted as sexually motivated;
- You sexualised the action of Colleague D taking off her jacket by saying to her *‘Please tell me you’re going to take your clothes off’*;
- Massaging Colleague D’s shoulders was more likely than not sexually motivated as this act came straight after you made the comment in charge 10(c);
- You writing ‘forever’ on Colleague D’s arm was more likely than not in order to initiate further physical contact with her;
- The act of your pushing your groin area up against Colleague D’s bottom can only be interpreted as sexually motivated;
- Asking for Colleague D’s sexual preference in order to establish whether she was

- attracted to males or females can only be interpreted as sexually motivated; and
- Telling Colleague D that you wanted lip balm directly from her lips, thereby indicating that you wanted to initiate physical contact by touching her lips, the panel, on the balance of probabilities, interpreted as sexually motivated.

In considering these actions collectively, the panel determined that, on the balance of probabilities, your conduct in charges 10(a) to (e) and 10(g) to (i) was committed with the intent of your seeking to gain sexual gratification.

Charge 12

Your conduct at Charge 10f and/or Charge 10h was sexually motivated because you sought to instigate a sexual relationship with Colleague D.

This charge is found proved.

The panel took into account the circumstances in which the conduct in charges 10(f) and 10(h) were committed and considered that you have not provided a reasonable explanation for your behaviour. The panel determined that, individually and collectively, your conduct was sexually motivated as follows:

- Commenting on Colleague D's appearance and comparing it to her sister's appearance indicated that you were more likely than not sexually attracted to Colleague D; and
- Asking for Colleague D's sexual preference to establish whether she was attracted to males or females (to determine whether you would have a chance of a sexual relationship with her) can only be interpreted as sexual.

In considering these charges individually and collectively, the panel determined that the only plausible reason for such behaviour was that you sought to instigate a sexual relationship with Colleague D.

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.*' Ms Marcelle-Brown also invited the panel to consider the NMC Guidance on *How we determine seriousness Reference: FTP-3*.

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

Ms Marcelle-Brown identified the specific, relevant standards where she submitted that your actions amounted to misconduct.

Mr Lawson submitted that it naturally follows from the panel's findings that there must be some element of misconduct and that he accepts misconduct in your case.

Submissions on impairment

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

Ms Marcelle-Brown submitted that if the panel finds that your actions do amount to serious misconduct, in considering your level of insight, the panel may wish to take into account your engagement in these proceedings, as well as at the local level. She submitted that as evidence of insight, and in fairness to you, you have been properly engaged in the NMC process. She submitted that whilst the extent of any remediation is a matter for the panel's assessment, it is for you to show insight, remorse and remediation and that there is no longer a risk of repetition. Ms Marcelle-Brown submitted that where there is not clear evidence of this, the panel should find that there does remain a risk of repetition and therefore should find that your fitness to practise is currently impaired.

When considering insight, Ms Marcelle-Brown invited the panel to note the NMC Guidance on insight and strengthened practice, Reference FTP-13. She explained that the Guidance provides that when assessing evidence of a registrant's insight and the steps that they have taken to strengthen their practice, panels will need to take into account the following questions: '*can the concern be addressed? has the concern been addressed? and is it highly unlikely that the conduct will be repeated?*'.

Ms Marcelle-Brown submitted that in relation to the first point, namely that the panel needs to consider whether the concern has been addressed, the NMC Guidance sets out that there are examples of conduct which it may not be possible to address and

where training courses, for example, are not likely to address the concerns. These include harassment, including sexual harassment, that has taken place in the professional context. Ms Marcelle-Brown submitted that, to be clear, there were no charges against you in terms of harassment, but that her submission is made on the basis that there is a pattern of behaviour towards your colleagues in these shifts. She submitted that although it is not meant in terms of harassment by way of a charge, the nature of the behaviour was quite harassing in a professional context, being that some of it was of a sexual nature.

Ms Marcelle-Brown submitted that, in relation to the first question the panel needs to consider, these are the sort of concerns that are so serious that it is not possible to properly address. She submitted that if the panel feels that it is the type of concern that can be addressed, the panel should then move on to consider *Has the concern be addressed?* She submitted that you have shown little to no insight or understanding into the nature of the concerns in this case. The Guidance sets out that a registrant who shows insight will usually be able to step back from the situation and look at it objectively, recognise what went wrong, accept their role and responsibilities and how they are relevant to what happened, appreciate what could have been done differently and understand how to act differently in the future to avoid similar situations. She submitted that, although you have denied the allegations, the Guidance does provide that where a panel has found that the registrant was responsible for incidents which they denied or continue to deny, it should not be a bar to their being able to show insight. A registrant may not have insight into particular events that occurred, but they may be able to show insight by having an understanding of the need to minimise the risk of similar events occurring in the future, and the steps that might be taken to achieve this.

Ms Marcelle-Brown submitted that, although you do not accept the allegations, even after the panel's findings, your reflective pieces lack insight in that you have not shown that you have taken a step back from the situation, recognised what went wrong and how to avoid it in the future. She submitted that, whilst you have made efforts to satisfy the panel of your insight, they are insufficient and do not properly address the concerns in this case.

Ms Marcelle-Brown then addressed the panel in relation to the final question, namely *Is it highly unlikely that the conduct will be repeated?* She submitted that the guidance sets out that the likelihood of conduct being repeated may be reduced where a registrant has demonstrated sufficient insight and taken appropriate steps to address the concerns where the behaviour arose in unique circumstances. Ms Marcelle-Brown explained that this might suggest that the risk of repetition is reduced where the registrant has otherwise a positive professional record, including an absence of any other concerns from the past or current employers or any other regulatory body, and where the registrant has engaged throughout the NMC process.

Ms Marcelle-Brown submitted that, in fairness to you, you do have an unblemished record and no other regular regulatory findings against you, and you have also properly engaged with the NMC process. However, she submitted that there is not anything particularly unique in the circumstances of this case, and you have also failed to demonstrate sufficient insight and the steps taken to address the concerns.

Ms Marcelle-Brown submitted that as she had mentioned before these are the type of concerns which are difficult to address in any event, as they relate to sexual misconduct and raise attitudinal concerns. She submitted that, for example, at times during your evidence, you sought to downplay your actions or the ones that you could recall taking place, for example, saying that you bumped into Colleague D when she described that you had pressed your groin against her bottom. Ms Marcelle-Brown submitted that even if these are the sort of concerns which could have been addressed, the reflective pieces you have provided are insufficient. She submitted that there is no evidence of remediation and there is limited evidence of the steps that have been taken to address the concern.

Ms Marcelle-Brown submitted that the panel note from the registrant's bundle that there is only one course that was completed on professional boundaries by you, but this was completed some time ago in 2020, and there has not been any further training or evidence of development since then. She submitted that, in the absence of sufficient insight and remediation, there remains a risk of repetition.

In relation to public confidence in the nursing profession, Ms Marcelle-Brown invited the panel to consider the test for impairment in the case of *Grant* and set out her submission that the second and third limbs are engaged in this case. She submitted that you have in the past and or are liable in the future to bring the nursing profession into disrepute and have breached one of the fundamental tenants of the profession.

Ms Marcelle-Brown submitted that the panel may consider that the first limb is also engaged, in that you have in the past or are liable in the future to act in a way to put patients at an unwarranted risk of harm. She submitted that there is a domino effect effectively by the level of discomfort that you caused your colleagues that it would inevitably have some effect on the care that they are able to give to patients, which the panel may feel puts patients at risk of unwarranted harm.

Ms Marcelle-Brown submitted that a finding of impairment in relation to the public interest can also be made based on the test. She submitted that it is the NMC's position that, even if these were the types of concern which could be addressed, there is insufficient insight and remediation. Further, in the absence of a finding of impairment, public confidence would be undermined. She therefore invited the panel to find your fitness to practise currently impaired on the grounds of public protection and is also in the public interest.

Mr Lawson submitted that Ms Marcelle-Brown is quite correct in mentioning that a denial of an allegation does not necessarily result in impairment following immediately where that allegation is found as proved and he invited the panel to bear this in mind. Mr Lawson submitted that he accepts that there are, in effect, a pattern of three similar incidents. You are working in a place, someone complains, various things happen, as have been found. Mr Lawson submitted that, whilst Ms Marcelle-Brown seeks to suggest that there is some risk to patients, this is tenuous at best. He submitted that these are staff on staff incidents, and it is accepted by the NMC that, barring these proceedings, you are otherwise of good character.

Mr Lawson explained to the panel that the three incidents are spaced out, with one in 2015, one in 2018 and one in 2019. He submitted that the most recent incident took

place four years ago, and the oldest eight years ago. There have been no new complaints. Mr Lawson submitted that you, as of today, are somewhat different, naturally, by passage of time, to the man who has been found to have been involved in, for example, the most recent incident in 2019.

Mr Lawson submitted that you have undertaken some training and the panel will have had sight of the CPD certificate within the registrant's bundle, as well as the references. He invited the panel to take into account the 'old reflection' from 2020, and compare the insights shown in that as to the most recent reflection. Mr Lawson submitted that you have now realised the importance of these actions, the significance of them, and indeed the impact they may have had on others. That this is a recent realisation following a denial does not necessarily detract from that.

Mr Lawson submitted that you now understand what has happened, why it has happened, and why we are here. He set out that the panel will note this within the most recent reflective piece, and that you provide a sincere apology that appears under the heading. Although you do not necessarily engage with the specific complaints in the most recent reflective piece, you do attempt to do so as you understood the complaints in the older reflective piece.

Mr Lawson invited the panel to note the change in your circumstances, namely since October 2019. It is mentioned in your reflective piece that you work with your wife now. Your reflective piece also provides some detail in terms of training and remedial actions, and a better understanding of professional boundaries from the course. You have also stated that you have learnt a lot in understanding different cultures.

Mr Lawson submitted that your initial lack of understanding appears to have fallen away and you have provided details in relation to your nursing future and what you do now, as well as the three incidents. He submitted that you have a long and otherwise unblemished nursing career, and you are a man who cares deeply about your nursing career. Mr Lawson submitted that, given what has been found in terms of misconduct, you are someone who understands that you are not going to be doing this again.

Combined with a change of circumstances, Mr Lawson submitted that this should go towards considering whether your fitness to practise is currently 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.

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:

8 Work co-operatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

15 Always offer help if an emergency arises in your practice setting or anywhere else

15 Always offer help if an emergency arises in your practice setting or anywhere else

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

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered that the conduct found proved in this case spans a period of time from June 2015 to August 2019 and involves findings of sexually motivated conduct towards two separate colleagues, namely Colleague B and Colleague D. The panel also determined that your conduct toward Colleague A, whilst not amounting to sexual misconduct, was extremely unprofessional and fell far short of the standards of behaviour expected of a registered nurse. The panel further determined that the conduct found proved indicates deep-seated attitudinal concerns in regard to your behaviour towards female colleagues, and identified a pattern of behaviour which goes towards your overall professionalism, character, personality and integrity.

The panel was of the view that the conduct in all the charges found proved in this case is serious professional misconduct. The panel found the nature of the behaviour in respect of Colleagues B and D amounted to sexual misconduct in the workplace directed towards female colleagues, one being a junior member of staff, and your behaviour in respect of Colleague A amounted to highly inappropriate physical conduct. The panel found that your actions are deplorable and did fall seriously short of the conduct and standards expected of a registered nurse and therefore amounted to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

- a) ...
- 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, whilst Ms Marcelle-Brown in her submissions suggested that limb a) might be engaged, it was not satisfied that there was/is a risk to patients in this case. The panel was, however, of the view that that limbs b) and c) of Dame Janet Smith's test were engaged in this case and that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel was of the view that it has had nothing before it to suggest that there is sufficient insight such that there would be no future risk of repetition, and therefore finds current impairment.

Regarding insight, the panel considered all of the information before it, including your registrant's bundle. It considered your most recent reflective piece dated 23 October 2023, where you do apologise for your behaviour, which demonstrates early stages of developing insight. The panel also considered that there is a positive change of position in your 2023 reflective piece, when compared with your previous reflective piece dated 2020, albeit very little. In respect of remediation and whether or not you have taken steps to strengthen your practice, whilst the panel noted your training certificate in Professional Boundaries Level 2 dated 30 November 2020, it was of the view that your misconduct in this case is difficult to remediate. The panel determined that you have not taken the necessary steps to remediate the regulatory concerns and that there is a risk that this behaviour is likely to be repeated. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection. You still show little sign of understanding the impact of your misconduct on your colleagues or on the reputation of the nursing profession.

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 also determined that a finding of impairment on public interest grounds is required, as a well-informed member of the public would expect a finding of impairment, given the panel's decisions in relation to your deep-seated attitudinal problems, as well as your deplorable behaviour towards female members of staff on more than one occasion. The panel was also of the view that public confidence in the profession would be undermined if a finding of impairment were not made in this case.

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

Sanction

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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor which included reference to the case of *Council for the Regulation of Healthcare Professionals v the General Medical Council and Leeper* [2004] EWHC 1850 (Admin).

Submissions on sanction

Ms Marcelle-Brown submitted that the NMC's position is to seek the imposition of a striking-off order.

Ms Marcelle-Brown referred the panel to the SG Reference SAN-3 in relation to the aggravating factors in this case. She submitted that there is a clear pattern of behaviour over a long period of time, between June 2015 and August 2019. She submitted that your conduct was sexually motivated and involved two separate colleagues. She submitted that you have deep-seated attitudinal problems especially towards female colleagues. You were in a position of trust, notably you were the more senior member of

staff compared to Colleague B who was a healthcare assistant. Ms Marcelle-Brown submitted that you have demonstrated limited insight and understanding into the misconduct that has been found proved. Ms Marcelle-Brown acknowledged that there are some mitigating features in this case such as you are of previous good character and, as the panel noted in their findings, you have made a genuine apology and are in the early stages of developing insight. She also noted that your misconduct does not relate to your clinical practice.

Ms Marcelle-Brown referred the panel to the SG on sanctions in serious cases, Reference SAN-2, and took it through the relevant parts therein. She submitted that in light of the panel's decision, taking no action or the imposition of a caution would be inappropriate in the circumstances. She submitted that the panel has found your actions amounted to serious misconduct, that your fitness to practise is currently impaired and, as such, there is a continued risk of repetition of your misconduct. Furthermore, your conduct has undermined public trust and confidence in the nursing profession. She submitted that there are no conditions that could be formulated to address the regulatory concerns in this case.

Ms Marcelle-Brown submitted that a period of suspension would not be sufficient in this case as it would not sufficiently protect the public or maintain confidence in the nursing profession. In relation to consideration of a suspension order, Ms Marcelle-Brown submitted that the panel has described your conduct as deplorable which fell short of the conduct expected of a registered nurse. She submitted that there are multiple instances of misconduct over a prolonged period of time and, as per the guidance, a lesser sanction would not be sufficient or appropriate. As such, she submitted that a suspension order would not be sufficient as it would not sufficiently protect patients or maintain confidence in the profession or uphold professional standards.

In consideration of the seriousness of the charges found proved, Ms Marcelle-Brown submitted that the most appropriate order would be a removal from the Register, either a suspension or strike-off order. She submitted that a strike-off order is the most suitable, proportionate and appropriate sanction in this case. She submitted that a well-informed member of the public would expect a registered nurse to be removed from the

Register, given that your misconduct relates to deep-seated attitudinal problems and deplorable behaviour.

Ms Marcelle-Brown invited the panel to impose a strike-off order on the grounds of public protection and also in the wider public interest. However, she submitted that if for any reason the panel is not with her in relation to a striking-off order, she would invite the panel to impose a lengthy suspension order to mark the seriousness of your behaviour and also in light of the panel's reasons and the concerns it has identified in this case.

Mr Lawson submitted that, in relation to your misconduct being described as a pattern of behaviour, the incidents the panel found not to be sexually motivated occurred in 2015, and he relies on the panel's findings on this. He submitted that there were two separate incidents which took place relatively close in time. He submitted that this does not amount to a pattern of behaviour. He submitted, therefore, that in the lapse of time since the last incident in 2019 the likelihood of repetition has fallen away. He referred to Ms Marcelle-Brown's suggestion in her submissions [PRIVATE] you are unlikely to repeat your misconduct. [PRIVATE], there have not been any incidents reported since 2019 and you remain, other than these proceedings, of good character.

Mr Lawson submitted that a conditions of practice order which included a requirement to create and maintain a personal development plan (PDP) would be the most appropriate and applicable sanction in this case, in addition to any other conditions the panel may see fit to impose. In the alternative, he submitted that a period of suspension may be appropriate but would leave it to the panel to decide but he submitted that a striking-off order would be unnecessarily draconian in this case.

Mr Lawson acknowledged the finding of sexual motivation in this case and also that fundamental tenets of the profession have been breached. However, he submitted that not to detract from those two points, your misconduct is very much at the lower end of the scale and does not necessarily make for circumstances where it would be proportionate to strike you off. He submitted that the last incident occurred four years ago, and you are of previous good character. Further, the panel has found that you are

developing insight and you have provided a reflective piece which includes an apology. He submitted that this case is very much a public interest case and would suggest that there is extremely limited risk of any patient harm or risk to the public.

Mr Lawson submitted that he accepts that the panel may consider a strike-off order to be appropriate in this matter in order to mark the regulatory breach, but it does not necessarily mean that a strike-off order is appropriate. He submitted that a suspension order can mark the breach and also allow for a longer period of reflection.

Mr Lawson concluded that in order to give you a chance to remediate and further develop your insight, it would be appropriate to impose conditions of practice in this matter to include the above-mentioned conditions as he earlier suggested.

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 but bore in mind that it is guidance to inform the panel's discretion but not to fetter it. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- A pattern of misconduct over a long period of time, two of the incidents being sexually motivated
- Sexually motivated misconduct is always serious
- You have exhibited deep-seated attitudinal problems, specifically in relation to female staff
- Abuse of a position of trust, particularly with Colleague B who was a junior and less experienced member of staff
- Limited insight into your failings

The panel noted that you are of previous good character and also took into account the following mitigating features:

- Your most recent reflective piece includes apologies to those affected.
- Two testimonials that attest to your good character; one from a registered nurse, and both of whom were aware of the charges against you.

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 your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the 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 your registration would be a sufficient and appropriate response. The panel is of the view that there are no practicable or workable conditions that could be formulated, given the nature of the charges found proved in this case and the deep-seated attitudinal concerns identified by the panel. The misconduct identified in this case was not something that can be addressed through retraining or a PDP. The panel noted that you have undertaken a training course in 2020 and therefore show potential to engage with conditions of practice. However, it determined that it was not appropriate in this case, which is primarily attitudinal, not clinical, in nature. The panel concluded that the placing of conditions on your registration would not adequately reflect 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 panel noted that the SG states that a suspension order may be appropriate where some of the following factors are apparent:

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

The panel considered that this was not a single instance of misconduct and has already found evidence of harmful deep-seated attitudinal problems towards female staff. Whilst it accepted that there is no evidence of repetition of the behaviour since the last incident, it had already found that you have insufficient insight and pose a risk of repetition of the misconduct found proved, despite a significant period of time since the last incident in which you have had the opportunity to reflect. The panel determined that the conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel considered that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with your remaining on the Register.

The panel has therefore determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

The panel considered that your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with your remaining on the Register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you to continue practising as a registered nurse 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, including the adverse impact this will have on you, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was also 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.

Interim order

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

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

Submissions on interim order

The panel took account of the submissions made by Ms Marcelle-Brown. She submitted that an interim suspension order for a period of 18 months is required for the same reasons as set out in the panel's determination for its substantive decision and to allow sufficient time for any appeal to be heard.

Mr Lawson did not oppose this application. He said it was a matter for the panel to determine whether an interim order was necessary.

Decision and reasons on interim order

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

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order, nor according to its decision on sanction. The panel therefore imposed an interim suspension order for a period of 18 months, due to the public protection and public interest concerns in this case.

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

That concludes this determination.

This will be confirmed to you in writing.