

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

Substantive Hearing

Tuesday 24 - Friday 27 October 2023

Monday 30 - Tuesday 31 October 2023

Monday 15 - Tuesday 16 January 2024

Virtual Hearing

Name of Registrant:	Claude Richard Felix
NMC PIN	89I1711E
Part(s) of the register:	Registered Nurse - Mental Health Nursing RN3 - 25 November 1992
Relevant Location:	Lincolnshire
Type of case:	Misconduct
Panel members:	Rachel Onikosi (Chair, Lay member) Pamela Campbell (Registrant member) Vicki Harris (Lay member)
Legal Assessor:	Cyrus Katrak Michael Epstein (15 -16 January 2024)
Hearings Coordinator:	Vicky Green (24 - 27 October 2023 & 30 - 31 October 2023) Christine Iraguha (15 - 16 January 2024)
Nursing and Midwifery Council:	Represented by Clarissa Rodio, Case Presenter
Mr Felix:	Present and represented by Hywel Evans, Counsel, instructed by the Royal College of Nursing Not present and unrepresented at the resuming hearing on 15 - 16 January 2024
Facts proved by admission:	Charges 2)b), 3)a), 5) (in respect of charge 2)b)), 12)a), 12)c)
Facts proved:	Charges 2)a), 3)b), 3)c), 3)d), 5), 6), 7), 8), 9)a), 9)b), 9)c), 10), 11), 12)b)
Facts not proved:	Charges 1, 4, 12)d)

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) On 26 August 2022 during a telephone assessment asked Service User A if she would like to go for a drink with you. **[Not proved]**
- 2) On an unknown date:
 - a) Obtained Service User A's phone number from a telephone assessment. **[Proved]**
 - b) Text Service User A's regarding meeting up. **[Proved by way of admission]**
- 3) On an unknown date:
 - a) Picked up Service User A and took her to a pub. **[Proved by way of admission]**
 - b) Whilst at the pub stated that you wanted to take Service User A to a hotel that night or words to that effect. **[Proved]**
 - c) On the way to the car park after the pub, wrapped your arm around Service User A's shoulder and kissed her on the mouth. **[Proved]**
 - d) When Service User A went to get out of the car tried to kiss her. **[Proved]**
- 4) On a return envelope in the referral forms sent to Service User A wrote your name and address. **[Not proved]**
- 5) Your conduct at any or all of charges 1-4 breached professional boundaries of Service User A. **[Proved by way of admission in respect of charge 2)b) and 3)a)]**
[Proved in respect of charges 2)a), 3)b), 3)c) and 3)d)]
- 6) Your conduct at any or all of charges 1-4 was sexually motivated in that you were pursuing a future sexual relationship. **[Proved]**
- 7) On 14 October 2022 when Colleague 1 raised the conduct at charges 1-4 you denied the conduct alleged. **[Proved]**

8) Your conduct at charge 7 was dishonest in that you knew that the conduct at charges 1-4 occurred when you denied it. **[Proved]**

9) On an unknown date around November 2022 contacted Colleague 1 and said:

- a) Questioned Service User A's motives for raising this now when it happened months ago. **[Proved]**
- b) Stated that you had never stepped over the line with a patient or words to that effect. **[Proved]**
- c) Stated that you wanted to make a full confession to avoid further investigation and a referral to the NMC. **[Proved]**

10) Your conduct at charge 9b) was dishonest in that you knew that you had stepped over the line with a patient previously. **[Proved]**

11) Your conduct at any or all of charges 9a) and 9b) lacked integrity in that you were attempting to minimise the reporting of your conduct at charges 1-4. **[Proved]**

12) On 14 November 2022 told Colleague 1 and 2:

- a) That this was the first time anything like this has happened. **[Proved by way of admission]**
- b) Your conduct at charge 12a) was dishonest in that you knew that this was not the first time anything like this had happened. **[Proved]**
- c) That you told Service User A that meeting you would be inappropriate however she persisted, and you gave in. **[Proved by way of admission]**
- d) Your conduct at charge 12c) was dishonest in that you asked Service User A if she would like to go for a drink with you. **[Not proved]**

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

Application for reasonable adjustments (support measures) in respect of Service User A

Before calling its first witness, Ms Rodio, on behalf of the Nursing and Midwifery Council (NMC), made an application for support measures to be put in place to assist Service User A in giving her evidence. She informed the panel that Service User A is a vulnerable witness, concerned about her safety and does not want to be able to see you or for you to be able to see her. Ms Rodio made an application for you to dial in during Service User A's evidence so that she could give her best evidence.

Mr Evans, on your behalf, did not oppose this application.

The panel accepted the advice of the legal assessor.

The panel had regard to the submissions and noted that you did not oppose this application. It also had regard to Rule 23 of the Rules. The panel was satisfied that Service User A is a vulnerable witness and the additional special measure for you to join by telephone would enable her to give her best evidence. The panel therefore decided to grant this application and directed that you join the hearing by telephone while Service User A was giving evidence.

Decision and reasons on application to admit the written witness statement of Ms 3

Ms Rodio made an application for the written witness statement of Ms 3 to be admitted into evidence as hearsay. She submitted that Ms 3 witness statement is not the sole or decisive evidence in respect of the charges and corroborates what Service User A said. Ms Rodio submitted that the witness statement is limited and only confirms what Service User A said during a conversation with her. She submitted that there is no reason for Colleague A to have fabricated her witness statement. She submitted that the NMC did secure Ms 3's attendance but concluded that her attendance was not essential as Service User A is able to attend and to give direct evidence. Ms Rodio submitted that you had prior notice of this application and that the admission of Ms 3's

witness statement would be fair and proportionate. She referred the panel to the case of *Thorneycroft v NMC (2014) [EWHC]1565 (Admin)*.

Mr Evans submitted that you do not oppose this application and that your position is neutral as the evidence of Ms 3 does not add anything new to the evidence of Service User A or Colleague 1.

The panel accepted the advice of the legal assessor.

The panel noted that you did not oppose this application. Whilst the evidence of Ms 3 was not the sole or decisive evidence, the panel determined that it is relevant to the charges and supports the evidence of Service User A. The panel noted that the NMC made the application on the basis that calling Ms 3 was not necessary. The panel was of the view that there was no reason for Ms 3 to fabricate her evidence and that both the NMC and you were content for this statement to be admitted as hearsay evidence. The panel therefore determined that there would be no unfairness to either party if her witness statement was accepted as hearsay and read into evidence. Accordingly, the panel granted this application. The weight attached to this statement will be determined by the panel at a later stage of the hearing.

Decision and reasons on application to amend the charges

After hearing oral evidence from Service User A, the panel invited submissions from the parties on how to proceed in the light of hearing new evidence that had not been the subject of any of the charges.

Ms Rodio accordingly made an application to amend charge 3 by adding additional sub-charges. Charge 3 initially read as follows:

3) On an unknown date:

- a) Picked up Service User A and took her to a pub.
- b) When Service User A went to get out of the car tried to kiss her.

The proposed amendments to charge 3 were as follows:

3) On an unknown date:

- a) Picked up Service User A and took her to a pub.
- b) Whilst at the pub wanted to bring Service User A to a hotel.
- c) On the way to the car park after the pub, wrapped your arm around Service User A's shoulder and kissed her on the mouth.
- d) When Service User A went to get out of the car tried to kiss her

Ms Rodio submitted that the proposed amendments would better reflect the evidence provided by Service User A. She submitted that they did not change the nature of the case and would cause no injustice to you if the proposed charges were added. Ms Rodio submitted that Service User A had already been cross examined on the new information and would therefore not need to be recalled to give further evidence.

Mr Evans opposed this application. He submitted that the charges as they currently stand do not need to be amended as they are sufficiently serious and adequately reflect the evidence. Mr Evans submitted that if the panel were minded to grant this application, then he would not request that Service User A be recalled to give further evidence.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel was of the view 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 that the charges accurately reflect the evidence.

The panel accepted the substance of the proposed additions but made the following amendments to the wording of the charge which were not opposed by either party:

3) On an unknown date:

- a) Picked up Service User A and took her to a pub.
- b) Whilst at the pub stated that you wanted to take Service User A to a hotel that night or words to that effect.
- c) On the way to the car park after the pub, wrapped your arm around Service User A's shoulder and kissed her on the mouth.
- d) When Service User A went to get out of the car tried to kiss her.

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

Before hearing evidence from Service User A, Ms Rodio made an application for any parts of the hearing that relate to the health or private life of any party be heard in private. The application was made pursuant to Rule 19 of the Rules.

Mr Evans supported the application to the extent that any parts of the hearing where reference is made to health or personal circumstances should be heard in private.

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

The panel determined to go into private session as and when there is reference to health or personal circumstances to protect privacy.

Background

Prior to this referral to the NMC, you received a three year caution order on 18 May 2018 for breaching professional boundaries with patients in 2017 and a 12 month conditions of practice order in 2020 for breaching professional boundaries in 2016.

When the allegations arose for this case, you had been working as an agency nurse for the Broxtowe and Hucknall Community Mental Health Team for three months. As part of this role you were required to undertake telephone assessments with patients. On 26

August 2022 you carried out a telephone assessment with Service User A. It is alleged that following this telephone consultation, you continued to communicate with Service User A on a personal level and that soon thereafter you arranged a meeting at a pub.

It is alleged that during your meeting with Service User A, you said that you would like to take her to a hotel and made inappropriate physical contact including hugging and kissing. After meeting with Service User A, it is alleged that you failed to disclose your meeting to Colleague 1 when questioned and sought to minimise your actions and prevent further investigation and a referral to the NMC.

Decision and reasons on facts

At the outset of the hearing, Mr Evans informed the panel that you made admissions to charges 2)b), 3)a), 5(in respect of charge 2)b) and 3)a)), 12)a) and 12)c).

The panel therefore finds charges 2)b), 3)a), 5(in respect of charge 2)b) and 3)a)), 12)a) and 12)c) proved by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Rodio on behalf of the NMC and by Mr Evans 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:

- Service User A: Service user of Broxtowe and Hucknall Mental Health Services.

- Colleague 1: Acting Team Lead for Broxtowe and Hucknall Mental Health Team at the time of the referral.

The panel also considered the written evidence of the following NMC witness:

- Ms 3: Family liaison worker for Service User A's [PRIVATE] at the time of the referral.

The panel heard evidence from you under affirmation.

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

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

Charge 1)

- 1) On 26 August 2022 during a telephone assessment asked Service User A if she would like to go for a drink with you.

This charge is found not proved.

In reaching this decision the panel took into account all of the evidence before it. It had particular regard to the evidence of Service User A and to your evidence.

The panel noted that there was evidence that a telephone assessment between you and Service User A took place on 26 August 2022.

The panel had regard to the evidence of Service User A. In her oral evidence she told the panel that she could not be sure that you mentioned going for a drink first. Service User A said that after having such a good conversation and seeming to get on so well, she might have suggested going for a drink together, but that this was in a joking manner.

The panel also had regard to your evidence in which you stated that it was Service User A who instigated going for a drink and after she persisted you agreed.

Having regard to all of the evidence, the panel could not be satisfied on the balance of probabilities that you asked Service User A if she would like to go for a drink with you. The panel therefore determined that this charge is not proved.

Charge 2)a)

2) On an unknown date:

- a) Obtained Service User A's phone number from a telephone assessment.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard to the evidence of Service User A and to your evidence.

In your evidence you told the panel that you used Service User A's telephone number to carry out the telephone assessment on 26 August 2022. Under cross examination you said that you obtained Service User A's telephone number from your work on the assessment and by accessing her file and reading her patient notes.

The panel also had regard to the evidence of Service User A. It noted the following from her witness statement to the NMC:

'Mr Felix already had my phone number from the telephone assessment, so not long afterwards, he texted me to arrange to meet up. We met up less than a week later, and didn't have a lot of contact in between, though I do remember that he tried to call me at 9pm on the Saturday night (though I didn't answer).'

In light of the above, the panel was of the view that there was sufficient evidence to support that you obtained Service User A's telephone number from the telephone assessment that took place on 26 August 2022. It also noted that you appear to accept that you obtained Service User A's telephone number for the purposes of conducting the telephone assessment and this was the same number that you used for future contact. The panel therefore found this charge proved.

Charge 3)b)

3) On an unknown date:

b) Whilst at the pub stated that you wanted to take Service User A to a hotel that night or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it, having particular regard to the evidence of Service User A and to your evidence.

In her evidence, Service User A told the panel that when she met you, you were not what she had expected and that you were not "*her type*". She said that she quickly started to feel uncomfortable and that you were acting like you were in a relationship together. Service User A told the panel that shortly after arriving at the pub she sent a text message to her friend to ask her to call to fake an emergency at home so that she had a reason to leave.

When questioned further, Service User A said that she felt uncomfortable at the pub as you were being over-familiar, and you said that it was a shame she did not have a [PRIVATE] for longer as you wanted to take her to a hotel that night.

The panel noted that you deny saying to Service User A that you wanted to take her to a hotel.

Whilst the panel noted that this evidence only came to light in Service User A's oral testimony, it found her to be a credible and reliable witness on this point. It noted that this further evidence was provided when she was asked to clarify what she meant by 'too familiar' in your witness statement:

'We drove to a pub nearby, and Mr Felix tried to hold my hand on the way, but I pulled away. I felt like I wanted to leave at this point, but I didn't want to upset him, and as I didn't know Mr Felix, I wasn't sure he would react well if I did, so I went for the drink with him. Mr Felix was a bit too familiar with me while we were having the drink at the pub together, which made me feel more uneasy. I ended up getting a phone call from a friend that I could use as a reason to leave, so it didn't last very long.'

The panel noted that at the outset of this allegation there was no direct contemporaneous recording of the alleged events from Service User A. The panel also saw from the exhibits that Service User A was very reluctant to take part in the investigation at the outset. While the allegations concerning the hotel and the kiss outside of the car were not in Service User A's witness statement, she had not included any supporting detail regarding what had happened in the pub. When Service User A was questioned about why she had not included information about the new allegations, her response was that she had not been asked.

The panel after asking her direct questions determined that her evidence was coherent, persuasive on these issues and robust under examination. Taking all of the evidence together, the panel determined that it is more likely than not that whilst at the pub you

stated that you wanted to take Service User A to a hotel that night or words to that effect. Accordingly, the panel found this charge proved.

Charge 3)c)

3) On an unknown date:

c) On the way to the car park after the pub, wrapped your arm around Service User A's shoulder and kissed her on the mouth.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard to the evidence of Service User A and to your evidence.

You denied that this ever took place.

The panel referred to its reasoning as set out in charge 3)b).

Taking all of the evidence together, the panel determined that it is more likely than not that whilst on the way to the car park after the pub, you wrapped your arm around Service User A's shoulder and kissed her on the mouth. Accordingly, the panel found this charge proved.

Charge 3)d)

3) On an unknown date:

d) When Service User A went to get out of the car tried to kiss her.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard to the evidence of Service User A and to your evidence.

The panel had regard to the witness statement of Service User A in which she stated the following:

'Mr Felix drove me home from the pub, and I asked him to let me out while the car was standing behind a bus around the corner. He said he wanted to drive me further so we could talk in the car, but I insisted that I wanted to go home. Before I left, Mr Felix tried to kiss me, but I pulled away and said goodbye and got out of the car.'

In her oral evidence Service User A told the panel that when she was about to get out of the car you tried to kiss her but she pulled away. Service User A also explained to the panel that she was feeling uncomfortable and just wanted to get out of the car.

In your oral evidence you told the panel that before Service User A got out of the car, you simultaneously exchanged a mutual and friendly kiss on the cheek.

The panel found the evidence of Service User A to be consistent, credible, and reliable on this point. The panel found that it was more likely than not that you tried to kiss Service User A when she got out of your car. The panel therefore found the charge proved.

Charge 4

- 4) On a return envelope in the referral forms sent to Service User A wrote your name and address.

This charge is found not proved.

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard to the evidence of Service User A, Colleague 1 and Ms 3. It also had regard to your evidence.

The panel considered the wording of this charge and had clarified with the NMC and your representative that '*your name and address*' meant that you wrote your name and personal residential address. The panel therefore went on to consider whether there was evidence that you wrote your name and personal residential address on the return envelope in the referral forms.

The panel had sight of an email sent from a support worker to Colleague 1 dated 14 October 2022 in which the following was stated:

'I suggested she return her paperwork (which Richard Felix had sent a stamped addressed envelope with his name and work address)'

The panel also had sight of Ms 3's witness statement in which she stated the following:

'Service User A showed me a pre-paid envelope that Mr Felix had sent her with the questionnaire she had to fill out and return to support her [PRIVATE]. His name and work address were handwritten on the front.'

The panel found that there was evidence that you wrote your work address and not your personal residential address. The panel therefore found this charge not proved.

Charge 5)

5) Your conduct at any or all of charges 1-4 breached professional boundaries of Service User A.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it.

The panel noted that you admitted this charge in respect of charge 2)b) and 3)a). Having found charges 2)a), 3)b), 3)c), 3)d proved, the panel went on to consider whether you breached professional boundaries in respect of these.

The panel considered what is expected of a healthcare professional in respect of sexual boundaries. The panel had regard to the guidance '*Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals*' (January 2008). It noted the following:

'On occasion healthcare professionals find themselves sexually attracted to patients or their carers. It is the healthcare professional's responsibility never to act on these feelings and to recognise the harm that any such actions would cause.'

The panel determined that as a registered nurse you have a duty to ensure that your relationships with service users are strictly professional. The panel was of the view that communicating with Service User A on a personal level and having a '*blind date*' with her, saying that you wanted to take her to a hotel and by making physical contact, kissing and attempting to kiss Service User A, breached professional and sexual boundaries. The panel therefore found this charge proved.

Charge 6)

6) Your conduct at any or all of charges 1-4 was sexually motivated in that you were pursuing a future sexual relationship.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it.

Having found a number of charges in particulars 2-3 proved, the panel went on to consider whether your conduct in respect of these charges was sexually motivated. In your evidence you denied that any of your actions were sexually motivated.

The panel was of the view that the sequence of actions, starting with using Service User A's telephone number to send her text messages and taking her to a pub was sexually motivated. This is supported by you saying to Service User A that you wanted to take her to a hotel when you were at the pub, making inappropriate physical contact and kissing her on the way to the car and trying to kiss her when she went to get out of the car.

The panel had regard to your evidence that you were just trying to be nice to Service User A by taking her to the pub. Having regard to all of the evidence before it the panel found that this was not a plausible explanation. The panel found that it was more likely than not that your sequence of conduct at charges 2-3 was sexually motivated in that you were pursuing a sexual relationship. Accordingly, the panel found this charge proved.

Charge 7)

7) On 14 October 2022 when Colleague 1 raised the conduct at charges 1-4 you denied the conduct alleged.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard to the evidence of Colleague 1.

The panel had regard to the witness statement of Colleague 1 in which she stated the following:

'I spoke with Mr Felix over Microsoft Teams at 1pm that day to inform him of this. At that point, I didn't tell Mr Felix the name of the Service User, and Mr Felix denied all knowledge of the event. Mr Felix was adamant that he had never met with any service user outside of work.'

In her oral evidence, Colleague 1 told the panel that you denied meeting with a service user outside of work.

The panel had regard to your explanation, that as you had not had the specifics of the allegations put to you by Colleague 1 at the time, you could not properly respond.

The panel was of the view that you were aware of the nature of the allegation, namely that you had breached professional boundaries with a service user. The panel considered that this was sufficient information for you to be able to respond appropriately. The panel accepted the evidence of Colleague 1, it found that her evidence was consistent, credible and reliable. The panel therefore found that it was more likely than not that you denied the conduct alleged at the proven charges 1-4. Accordingly, the panel found this charge proved.

Charge 8)

8) Your conduct at charge 7 was dishonest in that you knew that the conduct at charges 1-4 occurred when you denied it.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard to the evidence of Colleague 1.

In your evidence you submitted that you were not dishonest.

The panel had sight of Colleague 1's witness statement in which she stated the following:

'Mr Felix was adamant that he had never met with any service user outside of work.'

The panel also considered the NMC guidance on making decisions on dishonesty charges, as well as the test set out in the case of *Ivey v Genting Casinos (UK Limited)* (2017) UKSC 67. The panel was of the view that you knew that the conduct found proved at charges 1-4 had occurred when you denied it to Colleague 1. The panel therefore concluded that your state of mind was dishonest as you had intended to deceive and mislead Colleague 1. It was also of the view that an ordinary decent person, in knowledge of all of the evidence before it would also consider this to be a dishonest act. The panel therefore found this charge proved.

Evidence of Colleague 1 in respect of Charges 9)a)-9)c)

In making its decision in respect of charges 9)a), 9)b) and 9)c) the panel had regard to the evidence of Colleague 1, in particular her witness statement in which she stated the following:

'On my return, I received a phone call from Mr Felix. He said that he questioned the service user's motives for reporting this and added that he had never stepped over the line with a patient. He also told me that he wanted to make a full confession and provide a statement to stop us from contacting the NMC.

I let Mr Felix know that a statement would not prevent us from contacting the NMC, but that he may provide a statement in future.'

The panel also had regard to the contemporaneous record of a telephone conversation that occurred on 31 October 2022 made by Colleague 1 in which the following was recorded:

'I received a phone call from a private number at 14.04hrs. It was RF. He was aware I had [PRIVATE] and wished to discuss the allegations against him. He stated he wants to make a full confession to avoid further investigation and a referral to the NMC. I explained this was not possible and it would not be appropriate to continue the conversation. I explained

that there are formal processes which are unavoidable and there is not an option of preventing escalation by confessing. He started to question the service users “motives” for raising this now when it happened months ago. I confirmed non one had informed him of the details of the service user, however he stated he guessed as never in his career has he ever stepped over the line with a patient. He asked again if I could listen to his confession and stop the NMC being contacted. I explained this would not be appropriate. He wants to be able to put his own version forward I advised he will be able to put his own statement forward if or when he is contacted however I would not be taking this information from him over the phone.’

Colleague 1 provided oral evidence which was consistent with her NMC witness statement and contemporaneous record. The panel therefore found her evidence to be credible and reliable.

Charge 9)a)

9) On an unknown date around November 2022 contacted Colleague 1 and said:

- a) Questioned Service User A’s motives for raising this now when it happened months ago.

This charge is found proved.

In your evidence you denied that you had raised the question of delay in Service User A’s raising these complaints.

As set out above, the panel found that Colleague 1’s witness statement, her contemporaneous record and oral evidence contained information about you questioning Service User A’s motive for raising the allegations a few months after they arose. Having found Colleague 1’s evidence to be consistent, credible and reliable the panel determined that it was more likely than not that you questioned Service User A’s motives for raising it when she did. Accordingly, the panel considered that

notwithstanding the motive was raised on 31 October 2022 this satisfied charge 9)a). Accordingly, the panel found this charge proved.

Charge 9)b)

- b) Stated that you had never stepped over the line with a patient or words to that effect.

This charge is found proved.

As set out above, the panel found that Colleague 1's witness statement, her contemporaneous record and oral evidence contained information about you saying that you had never stepped over the line with a patient. Having found Colleague 1's evidence to be consistent, credible and reliable the panel determined that it was more likely than not that you stated that you had never stepped over the line with a patient or words to that effect.

In your evidence you accepted that at some point, either during the telephone conversation on 31 October 2022 or a few weeks later, you had said this. In light of the contemporaneous email of Colleague 1, the panel was satisfied that you had said this on an unknown date around November 2022.

In your evidence while you also stated you had never before taken a service user to a pub outside of work and you therefore felt justified in saying that you had never stepped over the line as this type of incident had never happened before, nonetheless the panel found that you had said that you had never stepped over the line and therefore charge 9)b) is found proved.

Charge 9)c)

- c) Stated that you wanted to make a full confession to avoid further investigation and a referral to the NMC.

This charge is found proved.

As set out above, the panel found that Colleague 1's witness statement, her contemporaneous record and oral evidence contained information about you saying that you wanted to make a full confession to avoid further investigation and a referral to the NMC.

In your oral evidence you told the panel that you did not use the words '*wanted to make a confession*' but instead used the words "*I want to be open and transparent*". You further stated that you did not object to the NMC referral, but you would have preferred that it remained at a local level.

The panel noted that Colleague 1 had been rigorously cross examined on whether the words '*to make a full confession*' had been used. She maintained that she was certain about the use of these words.

Having found Colleague 1's evidence to be consistent, credible and reliable, and in light of the contemporaneous email of 31 October 2022, the panel determined that it was more likely than not that you said that you wanted to make a full confession to avoid further investigation and a referral to the NMC. Accordingly, the panel found this charge proved.

Charge 10)

10) Your conduct at charge 9b) was dishonest in that you knew that you had stepped over the line with a patient previously.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it.

In your evidence you submitted that you had not been dishonest.

The panel also considered the NMC guidance on making decisions on dishonesty charges, as well as the test set out in the case of *Ivey*. The panel was of the view that you knew that you had been dishonest when you stated words to the effect of that you had 'never stepped over the line' with a patient. The panel was aware that prior to this referral to the NMC, you received a three year caution order on 18 May 2018 for breaching professional boundaries with patients in 2017 and a 12 month conditions of practice order in 2020 for breaching professional boundaries in 2016. The panel therefore concluded that your state of mind was dishonest as you had intended to deceive and mislead Colleague 1. It was also of the view that an ordinary decent person, in knowledge of all of the evidence before it would also consider this to be a dishonest act. The panel therefore found this charge proved.

Charge 11)

11) Your conduct at any or all of charges 9a) and 9b) lacked integrity in that you were attempting to minimise the reporting of your conduct at charges 1-4.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it. The panel had particular regard to the evidence of Colleague 1.

You submitted that you denied this charge.

The panel had sight of Colleague 1's witness statement in which she stated the following:

'On my return, I received a phone call from Mr Felix. He said that he questioned the service user's motives for reporting this and added that he had never stepped over the line with a patient. He also told me that he wanted to make a full confession and provide a statement to stop us from contacting the NMC.'

The panel was of the view that your actions in questioning Service User A's motives for reporting you and denying that you had breached professional boundaries when you said this in order to attempt to minimise the reporting of your conduct at the proven charges at 1-4. The panel was of the view that this demonstrated a lack of integrity. The panel therefore found this charge proved.

Charge 12)(b)

12) On 14 November 2022 told Colleagues 1 and 2:

- b) Your conduct at charge 12a) was dishonest in that you knew that this was not the first time anything like this had happened.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it. It had particular regard to the evidence of Colleague 1.

You denied that you were dishonest.

The panel noted that you admitted Charge 12a), that you told Colleague 1 and Colleague 2 that this was the first time anything like this had happened.

The panel had sight of information about two previous NMC findings relating to breaches of professional boundaries and charges that were similar in nature. The panel was of the view that you were aware of these previous findings and by saying that this was the first time anything like this had happened you were deliberately trying to conceal information. The panel was also of the view that in trying to conceal previous concerns you were attempting to mislead Colleague 1 and Colleague 2. Further, the panel considered that ordinary decent people knowing the facts of this case would find your conduct to be dishonest. The panel therefore found that your conduct at charge 12a) was dishonest. Accordingly, the panel found this charge proved.

Charge 12)d)

12) On 14 November 2022 told Colleague 1 and 2:

- d) Your conduct at charge 12c) was dishonest in that you asked Service User A if she would like to go for a drink with you.

This charge is found not proved.

In reaching this decision, the panel took into account all of the evidence before it.

The panel considered the wording of this charge and whilst it referred to charge 12c), the substance of the charge related to charge 1. The panel previously determined that there was insufficient evidence to find that it was you who asked Service User A to go for a drink. The panel therefore found this charge not proved.

Resuming hearing 15 January 2024

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Felix was not in attendance and that the Notice of Hearing letter had been sent to Mr Felix's registered email address by secure email on 29 November 2023. The panel noted that the Notice of Hearing was also sent to Mr Felix's representative at the Royal College of Nursing (RCN) on the same date.

Ms Rodio submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Felix's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all the information available, the panel was satisfied that Mr Felix has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34 of the Rules.

Decision and reasons on proceeding in the absence of Mr Felix

The panel next considered whether it should proceed in the absence of Mr Felix. It had regard to Rule 21 and heard the submissions of Ms Rodio who invited the panel to continue in the absence of Mr Felix. Ms Rodio informed the panel that Mr Felix signed a provisional Consensual Panel Determination (CPD) agreement on 9 January 2024 and submitted that he had voluntarily absented himself from this resuming hearing.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised "with the utmost care and caution".

The panel has decided to proceed in the absence of Mr Felix. In reaching this decision, the panel has considered the submissions of Ms Rodio, the representations made on behalf of Mr Felix contained in the CPD agreement, and the advice of the legal assessor. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- Mr Felix has engaged with the NMC, has signed and dated a provisional CPD agreement which is before the panel;

- In response to the NMC, his representative stated '*Mr Felix has signed the CPD agreement. As such we will not be attending and ask that the CPD agreement is presented to the panel*';
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair, appropriate, and proportionate to proceed in the absence of Mr Felix.

Consensual Panel Determination

At the outset of this hearing, Ms Rodio informed the panel that since the adjournment on 31 October 2023, a provisional agreement of a CPD had been reached regarding this case between the NMC and Mr Felix.

The agreement, which was put before the panel, sets out Mr Felix's full admissions to the facts alleged in the charge, and that his fitness to practise is currently impaired by reason of his misconduct. It is further stated in the agreement that an appropriate sanction in this case would be that of a striking-off order.

The panel has considered the provisional CPD agreement reached by the parties as set out below.

That provisional CPD agreement reads as follows:

**'Fitness to Practise Committee
Consensual panel determination ("CPD"): provisional
agreement'**

The Nursing & Midwifery Council ("the NMC") and Mr Claude Richard Felix ("Mr Felix"), PIN 89I1711E ("the Parties") agree as follows:

1. *Mr Felix appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Registered Nurse – Mental Health Nursing (RN3) and has been on the NMC register since 25 November 1992.*
2. *The NMC substantive hearing of Mr Felix's case took place between 24 and 31 October 2023. This was the fact finding part of the hearing. The panel has found that the following charges have been proved:*

The charges which have been proved

3. *"That you a registered nurse,*
- 2) *On an unknown date:*
 - a) *Obtained Service User A's phone number from a telephone assessment. [Proved]*
 - b) *Texted Service User A's regarding meeting up. [Proved by way of admission]*
- 3) *On an unknown date:*
 - a) *Picked up Service User A and took her to a pub. [Proved by way of admission]*
 - b) *Whilst at the pub stated that you wanted to take Service User A to a hotel that night or words to that effect. [Proved]*
 - c) *On the way to the car park after the pub, wrapped your arm around Service User A's shoulder and kissed her on the mouth. [Proved]*
 - d) *When Service User A went to get out of the car tried to kiss her. [Proved]*
- 5) *Your conduct at any or all of charges 1-4 breached professional boundaries of Service User A. [Proved by way of admission in respect of charge 2)b) and 3)a)] [Proved in respect of charges 2)a), 3)b), 3)c) and 3)d)]*
- 6) *Your conduct at any or all of charges 1-4 was sexually motivated in that you were pursuing a future sexual relationship. [Proved]*

7) On 14 October 2022 when Colleague 1 raised the conduct at charges 1-4 you denied the conduct alleged. **[Proved]**

8) Your conduct at charge 7 was dishonest in that you knew that the conduct at charges 1-4 occurred when you denied it. **[Proved]**

9) On an unknown date around November 2022 contacted Colleague 1 and said:

- d) Questioned Service User A's motives for raising this now when it happened months ago. **[Proved]**
- e) Stated that you had never stepped over the line with a patient or words to that effect. **[Proved]**
- f) Stated that you wanted to make a full confession to avoid further investigation and a referral to the NMC. **[Proved]**

10) Your conduct at charge 9b) was dishonest in that you knew that you had stepped over the line with a patient previously. **[Proved]**

11) Your conduct at any or all of charges 9a) and 9b) lacked integrity in that you were attempting to minimise the reporting of your conduct at charges 1-4. **[Proved]**

12) On 14 November 2022 told Colleagues 1 and 2:

- a) That this was the first time anything like this has happened. **[Proved by way of admission]**
- b) Your conduct at charge 12a) was dishonest in that you knew that this was not the first time anything like this had happened. **[Proved]**
- c) That you told Service User A that meeting you would be inappropriate however she persisted, and you gave in. **[Proved by way of admission]**

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

4. *Mr Felix accepts the findings of the panel and current impairment.*

Misconduct

5. *Mr Felix admits that the conduct as particularised in the proven charges amounts to misconduct.*
6. *The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when considering what could amount to misconduct:*

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

7. *Further assistance may be found in the comments of Jackson J in Calhaem v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin):*

“[Misconduct] connotes a serious breach which indicates that the [nurse’s] fitness to practise is impaired”

and

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

8. *The Parties agree that Mr Felix's misconduct is serious and falls far short of what is expected of a registered nurse.*

9. *There are essentially two aspects to the misconduct in this case:*

- *Breach of professional boundaries.*

The Parties agree that Mr Felix's actions towards Service User A represent a particularly egregious breach of professional boundaries.

Mr Felix's initial contact with Service User A came about because of the privileged access he had to vulnerable people by virtue of his registration. Rather than acting as a professional and providing help and support to Service User A, he abused that contact in pursuit of a sexual relationship.

Service User A's specific vulnerabilities (suspected ADHD, history of trauma resulting from abuse by men, English as a second language and family living abroad) were known to Mr Felix and, the Parties therefore agree, are relevant to and aggravate the seriousness of this case.

Further, as a result of Mr Felix's actions, Service User A lost trust in mental health services generally and disengaged from them. That outcome was wholly foreseeable and obvious to Mr Felix when he began pursuing a sexual relationship with Service User A.

- *Failure to act in accordance with the duty of candour.*

It is acknowledged that all professionals can make mistakes and errors of judgment. Where this happens, the expectation is that such a professional will candidly acknowledge their error and seek to put it right. Mr Felix did the opposite.

Mr Felix sought to undermine Service User A's account despite knowing it to be substantially true, lied about what had passed between them and lied about

his history of breaching professional boundaries with other service users/patients.

10. Prior to this referral to the NMC, Mr Felix received a three year caution order on 18 May 2018 for breaching professional boundaries with patients in 2017 and a 12 months' conditions of practice order in 2020 for breaching professional boundaries with patients in 2016. Despite these previous sanctions, Mr Felix's behaviour has not improved. The Parties agree that Mr Felix's repeated breaching of professional boundaries elevates the seriousness of Mr Felix's conduct in this case.

11. The misconduct described above is a serious departure from expected standards and risks causing harm to the public and bringing the nursing profession into disrepute. Nurses occupy a position of privilege and trust in society and are expected at all times to be professional.

*12. At the relevant time, Mr Felix was subject to the provisions of **The Code: Professional standards of practice and behaviour for nurses and midwives (2015)** (the Code). The Parties agree that the following provisions of the Code have been breached in this case:*

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times...

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

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

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

24 Respond to any complaints made against you professionally

To achieve this, you must:

24.2 use all complaints as a form of feedback and an opportunity for reflection and learning to improve practice

13. It is acknowledged that not every breach of the Code will result in a finding of misconduct. However, Mr Felix accepts that the failings set out above are a serious departure from the professional standards and behaviour expected of a registered nurse. Mr Felix acknowledges that his conduct presents a risk of harm to Service User A and seriously undermines public trust, confidence and reputation of the nursing profession.

Impairment

14. The Parties agree that Mr Felix's fitness to practise is currently impaired by reason of his misconduct.

15. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. It is therefore imperative that nurses make sure that their conduct at all times justifies both their patients' and the public's trust in them and in their profession.

16. The NMC's guidance (DMA-1) explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The guidance invites the panel to ask, 'Can the nurse, midwife or nursing associate practise kindly, safely and professionally?'. This involves a consideration of both the nature of the concern and the public interest.

17. In addressing impairment, the Parties have considered the factors outlined by Dame Janet Smith in the Fifth Shipman Report and approved by Cox J in the case of CHRE v Grant & NMC [2011] EWHC 927 (Admin) ("Grant"). A summary is set out in the case at paragraph 76 in the following terms:

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

- a. *has in the past acted and / or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and / or*
- b. *has in the past brought and / or is liable in the future to bring the [nursing] 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 [nursing] profession; and / or*
- d. *has in the past acted dishonestly and / or is liable to act dishonestly in the future."*

18. The panel should also consider the comments of Cox J in Grant at paragraph 101:

"The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case."

19. The Parties agree that a., b., c., and d in the above case, are engaged. Dealing with each limb in turn:

Public Protection

“Has in the past acted and / or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm”

20. In accordance with **Article 3(4) of the Nursing and Midwifery Order 2001** (the Order) the overarching objective of the NMC is the protection of the public.

21. The Order states:

The pursuit by the Council of its overarching objective involves the pursuit of the following objectives-

- a) *to protect, promote and maintain the health, safety and well-being of the public;*
- b) *to promote and maintain public confidence in the professions regulated under this Order; and*
- c) *to promote and maintain proper professional standards and conduct for members of those professions.*

22. The case of Grant makes it clear that the public protection must be considered paramount and Cox J stated at para 71:

“It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations ... namely, the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession”.

23. Mr Felix’s actions placed Service User A at unwarranted risk of harm. As referred to above, that harm eventuated in this case through Service Uder A losing confidence in mental health services generally and disengaging from same.

Public Interest

“Has in the past brought and/or is liable in the future to bring the medical profession into disrepute”

24. Registered professionals occupy a position of trust in society to be responsible for the care of residents or patients. Mr Felix's conduct as described above directly constitutes a breach of the trust placed in him as a registered professional.

25. The Parties agree that such behaviour not only brought Mr Felix's reputation into disrepute, but also that of the wider profession. This in turn undermined the public's confidence in the profession as a whole.

"Has in the past breached and / or is liable in the future to breach one of the fundamental tenets of the medical profession"

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

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

27. The Parties have set out above, how, by identifying the relevant sections of the Code, Mr Felix has breached fundamental tenets of the profession. These sections of the Code define, in particular, prioritising people, practising effectively and preserving safety and the responsibility to promote professionalism and trust.

"Has in the past acted dishonestly and / or is liable to act dishonestly in the future"

28. Obviously, Mr Felix has been found to have acted dishonestly.

Remediation, reflection, insight

29. In his response dated 12 December 2022 submitted to the case examiners Mr Felix states:

"Most people find me friendly and love to get on with me. Some people misinterpret a friendly gesture as crossing boundaries.

Looking back, there were a couple of strong contributing factors that made me emotionally vulnerable. [PRIVATE]. I have not recovered from this and will never do. I learnt to live with that unexpected and painful loss and it is still painful to this day. There are some issues as well in my personal relationship which did not help me to use my full judgement at the time of the incident.

As mentioned above, I was quite vulnerable emotionally at the time and I would not have acted like this in normal circumstances. During all the years of my practice, I have never socialised with a female service user in a pub.

As I explained above, my current emotional vulnerability clouded my judgement and I agreed to a meeting that I would never have given a second thought if I had been my normal self.

I would have categorically stated that this was inappropriate and would not have arranged to meet up with her. I would then have reported the incident to my line manager.

I have reflected on the incident on several occasions. The main reason I arranged to meet with [Colleague 1] was not to 'confess' as she puts it but the words I used towards Ms 4 were that I wanted to be transparent, coming forward to clarify what happened and provide my side of the story. I noticed that [Colleague 1] kept referring to me not wanting to be referred to the NMC and hence I wanted to make a 'full confession' but if I thought that way, I would not have arranged to meet up with her, I had already resigned and was not employed by them anymore. I told her and [Colleague 2] that this was a one off incident, I had cancelled every contact with [Service User A] a few months back, as [Service User A] confirmed, and had not repeated such behaviour with another female service user as it had been a wake-up call. I realised this was a mistake and I did not intend to repeat this behaviour at

any time in the future. I did acknowledge the seriousness of the incident to both [Colleague 1] and [Colleague 2] accepted the fact that they would refer this matter to the NMC. Of course, I was not keen for this incident to be referred to the NMC due to my past history but not because I did not realise the seriousness of what occurred.

As I explained above, my current emotional vulnerability i.e. [PRIVATE] and personal relationship issues, clouded my judgement and I agreed to a meeting that I would never have given a second thought if I had been my normal self. There were no patients/staff/visitor involved.

I have since acknowledged this was a mistake and I would not repeat the same behaviour in the future. There has not been any similar incident since and there will not be.

I would make it clear this is inappropriate and would not agree to any meeting. I would also inform my line manager about the incident.

I have ensured that such an incident does not reoccur and my current service manager can attest to this if he is asked to comment about my practice/behaviour at work.”

30. At the Interim Order review on 16 December 2022 in addition to the above responses Mr Felix's representative submitted:

“Mr Felix accepts that it was inappropriate to meet up with the patient in question outside of work. He has never denied the meeting took place and, during the meeting with his employers on the 14th November 2022, demonstrated insight into his actions. He specifically acknowledged this was “a line that nobody should cross” and that he “must not ever let this happen again”.

31. In the Case Management Form dated 19 September 2023 received by the NMC Mr Felix admits that his conduct amounted to breaching professional

boundaries of Service User A. However, Mr Felix denies that his conduct was sexually motivated (charge 6). Mr Felix also denies obtaining Service User A's phone number from a telephone assessment (charge 2 a), kissing Service User A (charge 3 d) as well as dishonesty and lack of integrity in relation to what he stated to Colleagues 1 and 2 (charges 7-11, 12 b). In the meantime, as noted above Mr Felix accepts the findings of the panel regarding the charges proved.

32. NMC guidance adopts the approach of **Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin)** by asking the questions :

- Whether the conduct that led to the charge(s) is easily remediable.
- Whether it has been remedied.
- Whether it is highly unlikely to be repeated.

33. The Parties have also considered the NMC's guidance FTP-13 entitled "**Insight and strengthened practice**" which states: "Evidence of the nurse, midwife or nursing associate's insight and any steps they have taken to strengthen their practise will usually be central to deciding whether their fitness to practise is currently impaired".

34. The NMC's Guidance FTP-3b entitled "**Serious concerns which could result in harm to patients if not put right**" states:

"We will need to assess how likely the nurse, midwife or nursing associate is to repeat similar conduct or failings in the future, and if they do, if it is likely that patients would come to harm, and in what way..."

We wouldn't usually need to take regulatory action for isolated incidents of these failings unless the incident suggests that there may be an attitudinal issue such as displaying discriminatory views and behaviours. This may indicate a deep-seated

problem even if there is only one reported incident. A pattern of incidents is usually more likely to show risk to patients or service users, requiring us to act.”

35. *Even though Mr Felix has shown some insight there is a pattern of behaviour and repetition of similar behaviour in both the present case and the previous referrals. The incidents are not isolated and the repeated and similar nature of the misconduct demonstrates an attitudinal issue and indicates the presence of a harmful deep-seated personality problem. These attitudinal concerns are considered more difficult to put right.*
36. *The Parties agree that Mr Felix’s misconduct towards Service User A is more difficult to remediate. It is also agreed that dishonesty is often said to be attitudinal in nature and also difficult to remediate.*
37. *Further, the Parties agree that the Panel should have regard to the previous findings in relation to Mr Felix’s fitness to practise, which is relevant to current impairment and risk of repetition. Mr Felix was made subject to a three years’ Caution Order on 18 May 2018 for breaching professional boundaries with patients in 2017 and a 12 months’ conditions of practice order in 2020 for breaching professional boundaries with patients in 2016.*
38. *Mr Felix has provided no evidence of remediation of concern in relation to breach of professional boundaries with Service User A.*
39. *The Parties agree that while Mr Felix has shown some insight as set out in his responses, his insight is limited and requires further development. When considering risk of repetition the Parties agree that it is concerning that Mr Felix insight remains limited despite the multiple occasions his attitude towards professional boundaries has caused him to appear before Fitness to Practise Committees.*
40. *The Parties have considered the NMC’s guidance FTP-3a entitled “**Serious concerns which are more difficult to put right**” which states: “A small number of concerns are so serious that it may be less easy for the nurse, midwife or nursing associate to put right the conduct, the problems in their*

practice, or the aspect of their attitude which led to the incidents happening. In cases like this, we will be keen to hear from the nurse, midwife or nursing associate if they have reflected on the concerns and taken opportunities to show insight into what happened.”

41. *The Parties agree that the concerns here are attitudinal which are more difficult to remediate.*

42. *The Parties agree that Mr Felix has shown insight however his insight is not fully developed and he lacks insight into the wider impact on the public and the profession. While he acknowledges his behaviour towards Service User A was wrong he lacks insight into how this behaviour could have an impact on patient care and particularly on Service User A who is a vulnerable patient.*

43. *The Parties also agree that the concerns in this case have not been remedied and as such it cannot be said that it is highly unlikely that the conduct will be repeated.*

Public interest impairment

44. *A finding of impairment is also necessary on public interest grounds.*

45. In CHRE v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) Cox J commented as follows:

“71. It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations... namely, the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession ...

74. 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.

75. I regard that as an important consideration in cases involving fitness to practise proceedings before the NMC where, unlike such proceedings before the General Medical Council, there is no power under the rules to issue a warning, if the committee finds that fitness to practise is not impaired. As Ms McDonald observes, such a finding amounts to a complete acquittal, because there is no mechanism to mark cases where findings of misconduct have been made, even where that misconduct is serious and has persisted over a substantial period of time. In such circumstances the relevant panel should scrutinise the case with particular care before determining the issue of impairment.”

46. Having regard to the serious nature of the misconduct, and the principles referred to above, a finding of impairment is necessary on public interest grounds. As recognised above, an important consideration is that a finding of no impairment would lead to no record of these regulatory charges and the conduct being marked, which would be contrary to the public interest.

47. The public would be concerned about the serious failings in this case. The concerns are of such a serious nature that the need to protect the wider public interest calls for a finding of impairment to uphold the standards of the profession, maintain confidence in the profession and the NMC as its regulator. Without a finding of impairment, public confidence in the profession and the NMC would be undermined.

48. The Parties agree that Mr Felix’s fitness to practise is impaired on public protection and public interest grounds.

Sanction

49. In accordance with the Order, the overarching objective of the NMC is the protection of the public.

50. In reaching this agreement, the Parties considered the **NMC's Sanctions Guidance** ("SG"), bearing in mind that it provides guidance and not firm rules. The panel will be aware that the purpose of sanctions is not to be punitive but to protect the public and satisfy public interest. The panel should take into account the principle of proportionality and it is agreed between the Parties that the proposed sanction is a proportionate one that balances the risk to public protection and the public interest with Mr Felix's interests.

51. The NMC's guidance **SAN-1** entitled 'Factors to consider before deciding on sanctions' sates:

"Previous fitness to practise history

The nurse, midwife or nursing associate's fitness to practise history with us can be relevant to a decision on sanction. It's most likely to be useful in cases about similar kinds of concerns. If problems seem to be repeating themselves, this may mean that previous orders were not effective to help the nurse, midwife or nursing associate address them. If the panel is considering making a similar order to those made by previous panels, it may need to take this factor into account and reconsider if necessary."

52. Whilst sanction is a matter for the panel's independent professional judgement, the Parties agree that the appropriate sanction in this case is a striking-off order.

53. The aggravating features of this case have been identified as follows:

- Previous regulatory findings for same area of concern, namely breaching professional boundaries with patients on two other occasions.
- Lessons are not being learnt from the previous regulatory findings considering same area of concerns.
- Dishonesty when concerns were first raised.

- *Blaming Service User A for Mr Felix's misconduct.*
- *Lack of duty of integrity.*
- *Insight is limited to a degree.*
- *Pattern of repeated misconduct.*
- *Abuse of position of trust – resulting in Service User A not pursuing treatment.*
- *Vulnerable Service User A who had additional vulnerabilities.*

54. The mitigating features of this case have been identified as follows:

- *Some insight.*
- *Personal mitigation.*

55. Taking no action or a caution order- The NMC's guidance (**SAN-3a** and **SAN-2b**) states that it will be rare to take no action where there is a finding or current impairment and this is not one of those rare cases. The seriousness of the misconduct means that taking no action would not be appropriate. A caution order would also not be in the public interest nor mark the seriousness and would be insufficient to maintain high standards within the profession or the trust the public places in the profession. Further, a caution order has been previously imposed so consideration should be given to the fact that this type of order was not effective. Therefore, neither outcome would address the risk Mr Felix poses to the public.

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

- *no evidence of harmful deep-seated personality or attitudinal problems*
- *identifiable areas of the nurse, midwife or nursing associate's practice in need of assessment and/or retraining*

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

57. The Parties agree that the misconduct and the concerns behind the misconduct are indicative of harmful, deep-seated personality or attitudinal concerns. There are serious attitudinal and behavioural concerns in this case. This case involves conduct of a similar nature that has been repeated by Mr Felix which is indicative that repetition could occur and may raise an attitudinal concern. The fact that some of the proved charges relate to dishonesty seriously aggravates the situation. Conditions of practice would not be able to reflect the seriousness of Mr Felix's actions and conditions are particularly difficult to formulate in cases which involve dishonesty. Further, a conditions of practice order has been previously imposed so consideration should be given to the fact that this type of order was not effective.

58. Therefore, the Parties agree that a conditions of practice order is not appropriate, proportionate or workable and would not adequately protect the public or satisfy the public interest.

59. Suspension Order – *The Parties agree that this sanction would not reflect the seriousness of Mr Felix's misconduct particularly, given the fact that this is not a case of a single instance of misconduct but conduct which has been repeated. The concerns have not yet been remedied and the conduct displayed in this case demonstrates a harmful deep-seated personality and attitudinal issue towards patients which has been repeated over a period of time. A suspension order would not send a message to the professionals that such behaviour is wholly unacceptable for a registered nurse. A suspension*

*order would not address the public interest in the particular circumstances of this case. According to the NMC guidance (**SAN-d**), a suspension order would be most appropriate were the misconduct is not fundamentally incompatible with continuing registration. However Mr Felix's conduct is fundamentally incompatible with continuing registration.*

60. *The overarching objective of public protection would not be satisfied by a suspension order and would not be in the public interest. Mr Felix has shown some insight but there are also points when he has blamed Service User A. Therefore there is evidence of a harmful deep-seated personality or attitudinal problem.*

61. *Furthermore, as set out above there is evidence of a risk of repetition. As such, the Parties agree that a temporary removal from the register is insufficient to mark the seriousness of the misconduct and to meet the wider public interest. In addition as stated in the NMC guidance (**SAN-2**) entitled 'Considering sanctions for serious cases' "the law about healthcare regulation (Parkinson v NMC [2010] EWHC 1898 (Admin)) makes it clear that a nurse, midwife or nursing associate who has acted dishonestly will always be at risk being removed from the register". Further, with regard to SAN-2, the following matters said to be most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register are present in the case:*

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients*
- *misuse of power*
- *vulnerable victims*
- *direct risk to patients*
- *premeditated, systematic or longstanding deception*

62. *Having regard to the high risk of repetition, limited insight, dishonesty and lack of remediation a suspension order is not appropriate in this case.*

63. Both a suspension order and a striking-off order require the misconduct to be so serious that a removal from the register is justified. The difference is whether that removal is temporary or permanent. There is no doubt that the serious nature of the misconduct, which includes repetition of misconduct and dishonesty, means that a removal from the register is the only sanction sufficient to mark the seriousness.

64. **Striking-off Order** – The Parties agree that this is most appropriate and proportionate sanction. The Parties have considered the NMC Guidance SAN-3e entitled “**Striking-off Order**” which states:

“This sanction is likely to be appropriate when what the nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:

- Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?
- Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate 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 should refer to our guidance on seriousness, which highlights a number of factors indicating which kinds of concern it may not be possible for the nurse, midwife or nursing associate to address or put right, and which will most seriously affect their trustworthiness as a registered nurse, midwife or nursing associate.”

65. The Parties agree that for the reasons stated above Mr Felix’s misconduct is fundamentally incompatible with being a registered professional, that the

concerns about Mr Felix's practice do raise fundamental questions about his professionalism and that public confidence in nurses, midwives and nursing associates cannot be maintained if Mr Felix continues to remain on the register.

66. The Parties further agree that given the serious nature of misconduct, harm caused to very vulnerable patients, the fact of repetition of the same concerns which had already been raised with the NMC and dishonesty a lesser sanction would not adequately protect the public and address the public interest. The Parties agree that a striking-off order is the only sanction which will be sufficient to protect patients, members of the public, and maintain professional standards.

Interim order

67. An interim order is required in this case. The interim order is necessary for the protection of the public and otherwise in the public interest for the reasons given above. The interim order should be for a period of 18 months in the event panel's decision is appealed. The interim order should take the form of an interim suspension order.

The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The Parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'

Here ends the provisional CPD agreement between the NMC and Mr Felix. The provisional CPD agreement was signed by Mr Felix on 9 January 2024 and the NMC on 11 January 2024.

Decision and reasons on the CPD

The panel carefully considered the CPD and decided to accept it in its entirety.

The panel bore in mind the ‘NMC Sanctions Guidance’ (SG) and to the ‘NMC’s guidance on Consensual Panel Determinations’. The panel can accept, amend, or outright reject the provisional CPD agreement reached between the NMC and Mr Felix. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

Ms Rodio provided a brief background of the case, the charges found proved and said that parties agree that Mr Felix’s misconduct was serious and falls short of what is expected of a registered nurse. The misconduct has two aspects to it, namely, breach of professional boundaries and failure to act in accordance with the duty of candour. Prior to this referral, Mr Felix had breached professional boundaries with patients in 2016 and received a 12-month conditions of practice order in 2020. In 2017, he breached professional boundaries and in 2018 received a three-year caution order. Despite this, his behaviour did not improve.

Ms Rodio informed the panel that parties agree that Mr Felix’s repeated breaching of professional boundaries elevates the seriousness of his conduct. His serious departure from expected standards, risks causing harm to the public and bringing the nursing profession into disrepute.

Regarding impairment, Ms Rodio said that parties agree that Mr Felix’s fitness to practice is currently impaired by reason of his misconduct. She invited the panel to consider the factors set out by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* and submitted that all four limbs of *Grant* are engaged. Service User A was put at unwarranted risk of harm and a finding of impairment is necessary on the grounds of public protection and in the wider public

interest, to uphold proper professional standards and public confidence in the profession. His actions breached the fundamental tenets of the profession and he was found to have acted dishonestly.

Regarding remediation, reflection, and insight, Ms Rodio referred the panel to the relevant pages within the CPD agreement which included Mr Felix's response on 12 December 2022 to the case examiners and in the Case Management Form dated 19 September 2023. She said that although Mr Felix has shown some insight, there is a pattern of behaviour in both the present case and previous referrals. The incidents in the referrals are not isolated but repeated and similar in nature demonstrating attitudinal issues, which are difficult to remediate and further indicate a presence of a harmful deep-seated personality problem. She submitted that there is no evidence of remediation of the concerns raised and parties agree that it is of concern that Mr Felix's insight remains limited despite multiple breaches of professional boundaries.

Ms Rodio addressed the panel on the sanction agreed by both parties highlighting the aggravating and mitigating features. She stated that the misconduct is on the higher scale of the spectrum and repeated despite two previous similar concerns indicative of a risk of repetition. She asked the panel to consider imposing an interim suspension order for 18 months if Mr Felix appeals the decision and referred it to the relevant pages within the CPD agreement.

The panel heard and accepted the legal assessor's advice.

The panel carefully considered the provisional CPD to satisfy itself that this would be a fair, just, and appropriate outcome to the hearing.

Facts

The panel reminded itself of its findings on facts noting at paragraph four of the provisional CPD that Mr Felix accepts the findings detailed in paragraph three. Accordingly, the panel was satisfied that Mr Felix had signed the provisional CPD agreement in full knowledge and understanding of the panel's findings.

Decision and reasons on impairment

The panel then went on to consider whether Mr Felix's fitness to practise is currently impaired, by reason of his misconduct. Whilst acknowledging the agreement between the NMC and Mr Felix, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel bore in mind the NMC's guidance (DMA-1) which explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The guidance invites the panel to ask, '*Can the nurse, midwife or nursing associate practise kindly, safely and professionally?*'.

In respect of misconduct, the panel agreed that Mr Felix's misconduct was a most serious departure from the professional standards and behaviour expected of a registered nurse which was exacerbated by his dishonesty. In paragraph five of the CPD Mr Felix admits that the conduct as particularised in the proven charges amounts to misconduct.

The panel considered that the areas of the Code that had been identified by the NMC were appropriate. In this respect, the panel agreed with paragraphs five to thirteen of the provisional CPD agreement in respect of misconduct.

The panel then considered whether Mr Felix' fitness to practise is currently impaired. It noted that parties agree that Mr Felix's fitness to practise is currently impaired by reason of his misconduct. It also noted that Service User A was particularly vulnerable in regard to her past experience with men and Mr Felix was fully aware of this. Mr Felix's role as a registered nurse put him in a position of power and his actions clearly put Service User A at unwarranted risk of harm by his abuse of power. Furthermore, Service User A lost all confidence in mental health services generally and disengaged from the service following her encounter with Mr Felix. The panel noted that this is Mr Felix's third referral to the NMC for breach of professional standards. It determined that the four limbs of *Grant* had been engaged in this case.

Regarding insight, the panel reminded itself of the pattern of similar behaviour in this present case and the previous referrals. It considered Mr Felix's reflections and responses and noted that although parties agree that he has shown some insight, the panel concluded that this insight was minimal.

Regarding remediation, the panel observed that the parties agreed that the concerns in this case have not been remedied and as such there is a risk that the conduct will be repeated. The panel considered that there was no evidence of strengthening of practice in relation to breach of professional boundaries. It also noted that dishonesty is inherently difficult to rectify.

The panel bore in mind the vulnerability and risk of harm to Service User A and determined that a finding of current impairment is necessary on public protection grounds.

In relation to the public interest, the panel determined that a finding of current impairment is also necessary to maintain public confidence in the profession, the NMC as regulator, and to declare and uphold proper professional standards.

The panel determined that Mr Felix's actions breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find Mr Felix's fitness to practise currently impaired.

The panel concluded that Mr Felix cannot practise kindly, safely, and professionally.

In this respect, the panel accepted paragraphs 14 - 43 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Mr Felix's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in

mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered and agreed the aggravating and mitigating factors as presented in the CPD. It agreed that these were appropriate as set out in paragraph 53 - 54 of the CPD.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Felix's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.*' The panel considered that Mr Felix's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. It reminded itself that in 2017, Mr Felix breached professional boundaries and received a three-year caution order. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Felix's registration would be a sufficient and appropriate response. It considered that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case which included dishonesty. It also reminded itself that Mr Felix breached professional boundaries with patients in 2016 and received a 12-month conditions of practice order which evidently had little effect in strengthening his adherence to professional standards and acceptable conduct. It concluded that the placing of conditions on Mr Felix's registration would be inappropriate and not

adequately address the seriousness and nature 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. It took into account the SG which details the factors present where a suspension order is appropriate and found that none of these factors were relevant in this case. The misconduct was a most significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Felix's actions is fundamentally incompatible with remaining on the register. It noted that, while Mr Felix has admitted the charges and signed the CPD, and provided some reflection, the panel was of the view that his insight was minimal especially in light of his repeated behaviour on two earlier occasions. He has failed to demonstrate an understanding of the potential harm of his unprofessional behaviour on colleagues, the profession and the NMC as the regulator.

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

Finally, in considering a striking-off order, the panel took particular 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 determined that Mr Felix's actions were a significant departure from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register.

His actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. The panel was mindful that Mr Felix had repeatedly breached professional boundaries with patients on three separate occasions. It noted the comments in the CPD in relation to the serious attitudinal and behavioural concerns raised by his behaviour. Mr Felix was in a position of power; Service User A was vulnerable and Mr Felix's actions were premeditated.

Balancing all these factors and taking into account all the evidence before it, including the high risk of repetition, minimal insight, dishonesty, and lack of remediation, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order. This will be sufficient to protect patients, members of the public, and maintain professional standards.

Having regard to the effect of Mr Felix's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of removal from the register would be sufficient in this case.

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

In this regard, the panel accepted paragraphs 55 - 66 of the provisional CPD agreement.

Accordingly, the panel accepted the CPD in its entirety.

This decision will be confirmed to Mr Felix in writing.

Decision and reasons on interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or is in Mr Felix's own interests until the striking-off sanction takes effect. 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 agreed with the CPD that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.