

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

**Substantive Hearing  
Monday 8 – Friday 26 January 2024**

Nursing and Midwifery Council  
2 Stratford Place, Montfichet Road, London, E20 1EJ

**Name of Registrant:** **Kim Greaves**

**NMC PIN** 03J03640

**Part(s) of the register:** Nursing, Sub part 1  
RN1, Registered Nurse – Adult  
(10 October 2003)

**Relevant Location:** Portsmouth

**Type of case:** Misconduct

**Panel members:** Florence Mitchell (Chair, Registrant member)  
Susan Tokley (Registrant member)  
James Kellock (Lay member)

**Legal Assessor:** Peter Jennings (8 – 9 January 2024, 11 – 26  
January 2024)  
George Alliott (10 January 2024)

**Hearings Coordinator:** Petra Bernard (8 – 12 January 2024)  
Dilay Bekteshi (15 – 19 January 2024)  
Sherica Dosunmu (22 – 26 January 2024)

**Nursing and Midwifery Council:** Represented by Julian Norman, Case Presenter

**Mr Greaves:** Present and represented by Leila Tai (Counsel),  
instructed by the Royal College of Nursing (RCN)

**Proved by way of admission:** Charges 15a), 15b), 15c) and 15d)

**Facts proved:** Charges 4), 5b), 6a), 6b) i), 6b) ii), 6c), 6d), 11a),  
11b), 11c), 11d), 12a), 12b), 12c), 12d), 13),  
14d), 16a), 16b), 17a), 17b), 17c), 17d), 17e),  
17f), 18a), 18b), 18c), 18d), 18e), 18f), 19, 20,  
21, 22

23 in relation to - 6a) 6b)i) 6b)ii) 6c) 6d) 11a)  
11b) 11c) 11d) 12a) 12b) 12c) 12d) 15a) 15b)  
15c) 15d)16a) 16b) 17a) 17b) 17c) 17d) 17e)  
17f) 18a) 18b) 18c),18d) 18e)

**Facts not proved:**

Charges 1), 2), 3), 5a), 7a), 7b), 8), 9), 10), 14a),  
14b),14c)

**Fitness to practise:**

**Impaired**

**Sanction:**

**Striking-off order**

**Interim order:**

**Interim suspension order (18 months)**

## Decision and reasons on application to amend the charge

The panel heard an application made by Ms Norman, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charges 1 and 18(f). It was submitted by Ms Norman that the word 'sexual' in charge 1 should be rearranged to a later position in the charge in order to provide greater clarity; and the word 'not' in charge 18(f) found in the charges in the Notice of Hearing should be deleted.

Ms Norman submitted that the proposed amendments would provide clarity and more accurately reflect the evidence.

## Original charges

That you being a registered nurse, while employed as a Team Leader and from 2018 as a Clinical Manager

1. In or about 2016 asked Colleague 1 on one or more occasion to invite you to her house for a barbecue and a few drinks making the sexual innuendo that something would follow the drinks

18. Between approximately July 2017 to 2019 sexually harassed Colleague 5 whilst at her work in that:

...

(f) The acts at (a) – (e) inclusive were committed without Colleague 5's consent or any reasonable belief on your part that she did not consent

## Proposed amended charges

1. In or about 2016 asked Colleague 1 on one or more occasion to invite you to her house for a barbecue and a few drinks making the ~~sexual~~ innuendo that something **sexual** would follow the drinks

18. Between approximately July 2017 to 2019 sexually harassed Colleague 5 whilst at her work in that:

...

(f) The acts at (a) – (e) inclusive were committed without Colleague 5's consent or any reasonable belief on your part that she did **not** consent

Your representative Ms Tai raised no objection to these amendments.

During the reading of the charges a number of clerical errors were noticed in the charge as set out in the Notice of Hearing. Ms Norman and Ms Tai agreed that these should also be amended.

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

The panel was of the view that the amendments, as applied for, were 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 amendments being allowed. It was therefore appropriate to make the amendments, as applied for, to ensure clarity and accuracy.

### **Details of charges (as read)**

That you being a registered nurse, while employed as a Team Leader and from 2018 as a Clinical Manager

1. In or about 2016 asked Colleague 1 on one or more occasion to invite you to her house for a barbecue and a few drinks making the innuendo that something sexual would follow the drinks.
2. In or about 2019, looked Colleague 1 up and down in a sexualised and / or suggestive way and stated words to the effect "You look nice in those jeans."

3. In or about 2019, stated in the presence of other men, that you and Colleague 1 were going into the next office making the sexual innuendo that you and Colleague 1 would probably be a long time.
4. Since the occasion referred to at Charge 2 above, have made numerous suggestive and / or sexual remarks to Colleague 1 and / or sexual innuendoes about Colleague 1 to her male peers in her presence.
5. In the period up to September 2017, made one or more sexualised remarks to Colleague 2 by suggesting:
  - a. That she have one night stands with you;
  - b. That you would like to see her naked outside work.
6. In or about September 2017
  - a. Took hold of Colleague 2's mobile phone and viewed naked photographs of her;
  - b. Made sexual remarks to Colleague 2 by words to the effect that she:
    - i. "had a nice bum;"
    - ii. "would look better in a nice thong;"
  - c. Asked Colleague 2 for more photographs to view;
  - d. Searched Colleague 2's phone for more photographs.
7. After the event at Charge 6 above treated Colleague 2 unfairly by
  - a. Removing her from her usual post in theatre without good reason;
  - b. Reducing the number of overtime shifts available to Colleague 2 without good reason.
8. From May 2017, you sexually harassed Colleague 3 by saying on numerous occasions words to the effect of "I really like you, I know that you like me".
9. In May 2017, you approached Colleague 3 in the scrub room and made sexualised comments to her to the effect of "I don't know why you don't want something from me, your boyfriend is in Spain, come on, he'll never know".

10. From in or about the summer of 2017, sexually harassed Colleague 3 on numerous occasions by making sexual innuendoes.

11. After approximately September / October 2017

- a. Pulled Colleague 4 into an empty theatre by the wrist;
- b. Intentionally attempted sexually to touch Colleague 4's breasts and / or hips;
- c. Attempted to kiss Colleague 4;
- d. The acts at one or more of (a), (b) and (c) were committed without Colleague 4's consent or any reasonable belief on your part that she did consent.

12. Following the incident at Charge 11 above, sexually harassed Colleague 4 over a period of 2 years in that

- a. In theatre, you repeatedly intentionally sexually touched Colleague 4's breasts and / or hips and / or attempted to do the same whilst purporting to assist with her sterile gown;
- b. Pulled Colleague 4 into the store room, on several occasions, stated inappropriate things to her and / or tried to kiss her;
- c. Habitually made sexually explicit comments to Colleague 4, namely words to the effect of
  - i. "What type of underwear do you wear?"
  - ii. "Send me some photographs such as in your underwear"
- d. The acts at (a) and / or (b) were committed without Colleague 4's consent or any reasonable belief on your part that she did consent.

13. Harassed and/or intimidated Colleague 4 on one or more occasion by following Colleague 4 in your car whilst she was walking home.

14. Sexually harassed and / or intimidated Colleague 4 on her walk home on one or more occasions by

- a. Inducing and / or constraining her to get into your car;

- b. Making sexualised comments such as about her dress;
- c. Making other inappropriate remarks;
- d. By asking her to kiss you.

15. From approximately February 2017, wrote sexualised texts to Colleague 5 which stated words to the effect:

- a. Of complimenting Colleague 5 sexually;
- b. That you wanted to sleep and/or have sex with Colleague 5;
- c. That sex with you would be amazing and/or great;
- d. You would like to fuck Colleague 5.

16. In or about May 2017, at Colleague 5's home, you had sexual intercourse with Colleague 5:

- a. Despite knowing she had earlier expressed reluctance;
- b. After continuing to pressure Colleague 5 until she consented to have intercourse.

17. After the event at charge 16, between May 2017 to April 2018, you engaged in a coercive and controlling relationship with Colleague 5 and/or in behaviour to like effect towards Colleague 5 in that:

- a. In July 2017, you borrowed £1,000 from her and delayed repayment;
- b. You repeatedly told her that she was your woman;
- c. You told her that you were the only person she could trust;
- d. You told her that she was not allowed to talk to certain people;
- e. You told her who to trust and who to be close to;
- f. You ignored her, not speaking or texting her for significant periods.

18. Between approximately July 2017 to 2019 sexually harassed Colleague 5 whilst at work in that:

- a. When in theatre, you intentionally tried to kiss Colleague 5 on one occasion;
- b. When you were tying her gown, you intentionally sexually touched her breasts and/or body on more than one occasion;

- c. In the instrument room, you intentionally hugged Colleague 5 and/or tried to kiss her;
- d. In an empty theatre, you intentionally and inappropriately pulled Colleague 5 towards you and stated that you were missing her;
- e. After Colleague 5 moved department you still on occasion intentionally hugged her and stated you missed her;
- f. The acts at (a) — (e) inclusive were committed without Colleague 5's consent or any reasonable belief on your part that she did consent.

19. In approximately December 2019, in the presence of a male colleague, you asked Colleague 5 if "she had any toys."

20. In November 2020 and/or in June 2021, rang a friend of Colleague 5 to request the friend to ask Colleague 5 to retract the allegations made against yourself.

21. Your actions at charge 20 above lacked integrity in that you sought to pressure another for your own benefit.

22. Your actions at charges 11 (a) - (c) inclusive, 12 (a) and (b), 16 and 18 (a) - (e) inclusive were motivated by sexual gratification.

23. Your actions at any one or more of charges 1 to 22 above constituted an abuse of power on your part in that you sought to manipulate or otherwise exert control over another, typically more junior, colleague.

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

Ms Tai indicated that there are no admissions to the charges.

**Decision and reasons to admit Colleague 7's witness statement into hearsay evidence**



Ms Norman asked the panel to admit in evidence the statement of Colleague 7 without the need for her to give oral evidence. This was because of Colleague 7's [PRIVATE] if she were to give oral evidence at the hearing. It appears that her evidence is not significantly in dispute. Ms Tai raised no objection to the statement being admitted.

The panel had regard to the provisions of Rule 31 which empowers the panel to admit in evidence any material so long as it is fair and relevant. The panel, having read the statement and considered the circumstances in which it was being offered in evidence, was satisfied that its admission would be fair and relevant. The statement was therefore admitted. What weight is attached to the statement would depend on the view the panel takes when it has heard the evidence as a whole.

### **Decision and reasons on application to admit into evidence the supplementary witness statement and voice recordings of Colleague 5**

The panel heard an application made by Ms Norman under Rule 31 to allow into evidence a supplementary witness statement and corresponding voice recordings of conversations between you and Colleague 5. The recordings primarily relate to the £1,000 you are alleged to have borrowed from her.

Ms Norman submitted that the delay in providing these voice recordings beforehand, was because Colleague 5 initially thought they were lost and did not think they would still be available. Colleague 5 had checked recently and found them, whereupon she informed the NMC and asked if they could be provided in this case. She submitted that there are six voice recordings primarily relating to the issue of the alleged loan and when or if it would be repaid.

Ms Norman submitted that the voice recordings also include discussions as to what Colleague 5 may or may not say to a more senior member of staff in reporting these issues, which she submitted may support the allegations in charge 17.

Ms Norman submitted that the key words in relation to admissibility are relevance and fairness because the test of admissibility of evidence is, that the evidence is relevant to the issue the panel is considering and also that it would be fair to admit that evidence.

Ms Norman submitted that the voice recordings relate to the loan and they are relevant as they go directly to the charges and it would be fair for them to be admitted, notwithstanding they have been provided late. She further submitted that it would be fair to admit them as it is not disputed by you that it is your voice heard in the recordings.

Ms Tai objected to the inclusion of the voice recordings into evidence. She submitted that it is accepted that it is your voice, the money was borrowed and you would repay Colleague 5. Ms Tai initially conceded that they were relevant. However, she submitted that the objection is in relation to fairness. She submitted that the local investigations took place in 2021 and multiple statements have been taken between that time and now. She submitted that Colleague 5 has had plenty of opportunity to provide this material and has produced other material late in June 2023. She submitted that this is not a case where these voice recordings have gone missing and been found again, rather Colleague 5 has had these recordings for the duration. Ms Tai submitted that there is no evidence before the panel to show that Colleague 5 thought these recordings were deleted or if she even checked previously to retrieve them.

Ms Tai submitted that these are covert recordings and only cover fragments of the conversations and not complete conversations. She submitted that Colleague 5 has been selective in what she has provided and there may be others that provide more context rather than fragments. Ms Tai further submitted that due to the late provision of these recordings, she has not been able to make further investigations, such as instructing an expert, to confirm the veracity of their contents. Furthermore, she submitted that given that you and Colleague 5 were in a relationship, it is not fair at this stage to admit them. She also questioned whether they are relevant, as they do not further the NMC's case and, given the matters conceded, their evidential value is seriously limited.

In relation to the possibility that there may be other recordings and that these recordings may be selective, Ms Norman submitted that if there are any other recordings in existence, there is the opportunity to cross-examine Colleague 5 under oath. She submitted that the dates when the relationship between you and Colleague 5

took place, and when you were her team leader, are significant. She submitted that you initially stated that the relationship was for two to three months and ended in December 2018. Colleague 5 states that it was from May 2017 to April 2018. She submitted that you say that you now agree with Colleague 5 that you were in a relationship together in November 2017.

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

The panel considered the application in relation to the voice recordings. The panel listened to each of the six recordings and was of the view that they are relevant to charge 17. It noted that these voice recordings included conversations which have a bearing on your relationship with Colleague 5 and your behaviour, particularly in relation to charge 17a which the panel was informed at the outset of the hearing is not admitted. The panel noted the sexualised comments you made in the conversations referring to Colleague 5's "*top*" and "*panties*".

In relation to fairness, the panel was of the view that the voice recordings were not very clear overall, and the panel was not sure of what it heard, or of where the conversations begin and end. The panel therefore decided that before reaching a definitive decision in relation to admissibility, it would need to see a transcript of the recordings.

The panel informed the parties and Ms Norman agreed to provide a transcript of the voice recordings. These were duly provided and agreed between Ms Norman and Ms Tai. The transcripts of the recordings were read by the panel. The panel had regard to the late stage at which this evidence was provided, but, having read the transcripts, the panel came to the view that it would be fair and relevant to admit into evidence the voice recordings and the supplementary written statement of Colleague 5. Ms Tai would be able to cross-examine Colleague 5 as to the authenticity of the recordings and you would be able to give evidence concerning them, if you think they are an inaccurate record of the conversations. The panel would give what it considered

appropriate weight to the evidence once it had heard and evaluated all the evidence before it.

## **Background**

The charges arose whilst you were employed as a registered nurse at Queen Alexandra Hospital (the Hospital), part of the Portsmouth Hospitals University NHS Trust (the Trust). You started working at the Trust in September 2009, and worked there until 9 July 2020.

During the course of your employment at the Trust, it is alleged that you used your position to obtain a loan from a colleague. You also made inappropriate comments to colleagues and inappropriately touched colleagues. A number of colleagues were subordinate to you and you were their manager.

## **NMC opening submissions**

Ms Norman submitted that this case is about sexual harassment and assault in the workplace. She submitted that it has many similarities with the '*Me Too*' cases of the last five years or so. By way of background, she outlined the history of the '*Me Too*' movement including relevant sexual harassment cases particularly of women in the workplace.

Ms Norman submitted that there were patterns common to the '*Me Too*' scandal. The first is that a driving force which enables sexual harassment and sexual assault in the workplace to flourish is that it often goes unreported, often due to fear. Fear that the victim will not be believed. That she will be considered a prude who cannot enjoy ordinary banter. That she will be considered the opposite of a prude for having supposedly led him on. That her job will be affected and that she will be passed over for opportunities. That she will be disliked, condemned by her peers as crazy or a liar or bitter. The second being power, that this behaviour was generally perpetrated by those who had more power either in seniority or in other ways than their victims. The third is the minimisation of behaviours by others around, characterising them as banter, or perpetrators as just a bit of '*a ladies man*', '*handsy*', '*not safe in taxis*', or other

euphemisms that disguise what in reality is sexual assault or harassment. She submitted that these are patterns which the panel may well see in the course of this case, because it is on a microcosmic scale the ‘*Me Too*’ movement of the Trust.

Ms Norman submitted that this case is looking specifically at your behaviour and the complaints by colleagues that your behaviour amounted to sexual misconduct on a number of occasions. She submitted that the panel will hear from a number of witnesses for the NMC, who will say that you made sexual innuendoes and suggestive remarks to them. That you commented on their appearances. That you made open sexual invitations to them, sometimes repeatedly. That you made attempts to touch or did touch colleagues sexually, and you opened another colleague’s mobile telephone and found naked photographs of her, commenting on them and asking her for more.

In relation to charge 17, she submitted that this charge relates to a coercive and controlling relationship with Colleague 5 or behaviour to like effect. Coercive control does exist as a discrete criminal offence. Yet for this panel’s purposes she invited the panel to adopt the approach of the family courts to coercive and controlling behaviour, for three reasons: 1. that the family courts, like the NMC panels, have a protective rather than a punitive function; 2. that the same standard of proof applies; and 3. that it is a pattern of behaviour which is alleged and which the panel is tasked with considering.

She submitted that the leading cases on coercive and controlling behaviour are *Re H-N and Others (Children) (Domestic Abuse: Finding of Fact Hearings) (Rev 2)* [2021] EWCA Civ 448 and *F v M* [2021] EWFC 4, which include the following:

*“ ‘coercive behaviour ‘ means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim; ‘controlling behaviour’ means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.”*

...

*“ It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour.” “*

*F v M: “ The nature of the allegations included in support of the application can succinctly and accurately be summarised as involving complaints of 'coercive and controlling behaviour' on F's part. In the Family Court, that expression is given no legal definition. In my judgement, it requires none. The term is unambiguous and needs no embellishment. Understanding the scope and ambit of the behaviour however, requires a recognition that 'coercion' will usually involve a pattern of acts encompassing, for example, assault, intimidation, humiliation and threats. 'Controlling behaviour' really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key to both behaviours is an appreciation of a 'pattern' or 'a series of acts', the impact of which must be assessed cumulatively and rarely in isolation’ ”.*

The NMC will say that your behaviour towards Colleague 5 amounted to controlling and/or coercive behaviour and will invite the panel to apply these criteria in making its findings.

She submitted that the panel will note there are a number of allegations of innuendo. It is agreed between the parties that the most useful definition of innuendo for these purposes is that in the Cambridge Dictionary, (the making of) a remark or remarks that suggest something sexual or something unpleasant but do not refer to it directly.

In respect of the other charges, she submitted that there are allegations that you were suggestive and made innuendoes to female members of staff. Of sexual touching when assisting with gowns. Of taking advantage of unoccupied rooms or areas for sexual touching or uninvited advances. Of comments on the appearances of members of staff, of asking for pictures, of asking them out at work. Two witnesses say that you were

charming and supportive until you crossed the line into harassment. Almost all were junior to you.

She submitted that you were responsible for your own behaviour, that it was in breach of a number of workplace policies and of the NMC's code of conduct, and you were a perpetrator of sexual misconduct in the workplace.

### **Decision and reasons on application to admit the statements of Colleague 3 as hearsay evidence**

Ms Norman invited the panel to admit Colleague 3's evidence, including her witness statements and exhibits, as hearsay under Rule 31, emphasising the significance of the evidence in relation to charges 8, 9, and 10. She said that while the relevance of the material is undisputed, the central issue at hand is fairness. Ms Norman made reference to cases including *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) and *EI Karout v NMC* [2019] EWHC 28 (Admin).

Ms Norman submitted that it would be fair to admit Colleague 3's evidence, referencing her local statement and the interview. She said that there has been no challenge to the accuracy of the transcript of Colleague 3's local interview, and none of the NMC's witnesses have implied any inaccuracy. Additionally, Ms Norman submitted that Colleague 6, who is scheduled to give evidence later, can offer further clarification on the investigation.

Ms Norman also directed the panel's attention to the hearsay bundle, demonstrating the NMC's efforts to engage Colleague 3. She said that although Colleague 3 initially provided a signed and dated statement, she is believed to be abroad and is no longer on the NMC register. Despite attempts to reach her in Spain, these efforts have not yielded results.

Ms Tai, on your behalf, opposed the application on the grounds of fairness. She emphasised the relevance of the material, specifically its crucial role in the NMC's case concerning charges 8, 9, and 10. Ms Tai submitted that Colleague 3 stands as the primary witness regarding the allegations in these charges, making the evidence in

question central to this application. Ms Tai submitted that admitting Colleague 3's witness statements and exhibits would be prejudicial to you, given that the evidence is disputed and cannot be subject to cross-examination. She said that while it is acknowledged that the NMC has made efforts to secure Colleague 3's attendance, it remains unfair to you to admit the evidence without her presence.

Ms Tai said that the accounts provided have not been tested or challenged in any way, especially considering the minimal exploration of Colleague 3's account during the interview by the Trust. Furthermore, Ms Tai said that oral evidence can differ from previous statements, particularly if they were given years ago as part of a different investigation. She expressed concerns that this situation would limit your ability to challenge the evidence. While acknowledging the panel's discretion to weigh the evidence, she stressed that simply adjusting the weight is inadequate to address the fundamental unfairness in admitting Colleague 3's evidence.

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

The panel noted that there is no dispute on the relevance of the evidence presented. However, the panel had regard to the issue of fairness. The panel therefore gave careful consideration to the facts, submissions, and relevant case law.

Regarding Colleague 3's absence, the panel acknowledged the NMC's extensive effort to locate the witness. The panel also recognised the clear and compelling reasons for the NMC's inability to present their witness and closely reviewed the hearsay bundle, including correspondence from the NMC Case Coordinator to Colleague 3.

The panel noted the relevance of Colleague 3's evidence to charges 8, 9, and 10, considering it to be crucial to these charges. It also took into account the time lapse between the incidents in question and the filing of the NMC witness statement, acknowledging that recollection of events can fade over time. It also noted that even the local statement and interview of Colleague 3 were some three years after the



events in question, and they were also at a time when there had been discussions with other witnesses who are alleged to be victims. The panel expressed its concern that without Colleague 3's oral evidence, there would be no opportunity for cross-examination. Additionally, the panel considered the gravity of the allegations and the potential impact on you if such charges were found proved.

The panel also bore in mind that whether charges 8 to 10 were made out would involve a careful and nuanced approach to the consideration of Colleague 3's evidence. In relation to charge 10 in particular, the witness statement is very general and briefly expressed. In these circumstances the panel was not persuaded that it was fair to admit the evidence without any opportunity for you, or for the panel, to explore the evidence through oral questions.

Whilst the panel had regard to the need to be fair to all parties, including the NMC, and to proactively ensure the NMC fulfils its role in protecting the public and upholding the wider public interest, the panel concluded that admitting Colleague 3's evidence as hearsay in these circumstances would cause undue prejudice and unfairness to you.

Given these considerations, the panel determined that it would be unfair to admit Colleague 3's evidence as hearsay and therefore decided to reject the application.

### **Application to offer no evidence**

In light of the panel's decision not to admit the hearsay statements and exhibits of Colleague 3, Ms Norman made an application to offer no evidence in relation to charges 8, 9 and 10. She submitted that in the absence of Colleague 3's evidence, the NMC had no evidence to support charges 8, 9 and 10.

Ms Tai, on your behalf, did not oppose the application.

The panel accepted the advice of the legal assessor.

The panel was satisfied that it was appropriate to accept the NMC's application to offer no evidence in relation to charges 8, 9 and 10. The panel will take this into account when deliberating on the facts.

### **Admissions to charges**

Prior to the conclusion of your case on the facts stage, you made full admissions to charges 15a), 15b), 15c) and 15d). The panel therefore found charges 15a), 15b), 15c) and 15d) proved by way of admission.

### **Further amendment to charge**

The panel, of its own volition, considered whether the heading of the charge should be amended from "That you, being a registered nurse, while employed as a Team Leader and from 2018 as a Clinical Manager" to "That you, being a registered nurse, while employed as a scrub nurse, as a team leader, and from 2018 as a clinical manager."

The need for amendment stemmed from the recognition that you did not assume the role of Team Leader until 2017, while one of the heads of charge relates to an event in 2016 before you became a Team Leader.

The panel invited the submissions of Ms Norman and Ms Tai and neither opposed the suggested amendment. The panel bore in mind the advice on its powers of amendment which the legal assessor had given earlier in the hearing.

The panel considered that the proposed amendment did not alter the substance of the allegations against you, or your understanding of the charges, or your defence. It was satisfied that the amendment should be made and that it could be made without injustice. The panel therefore made this amendment.

As a result, the amended charges now read as follows:

"That you, being a registered nurse, while employed as a scrub nurse, as a team leader, and from 2018 as a clinical manager."

1. In or about 2016 asked Colleague 1 on one or more occasion to invite you to her house for a barbecue and a few drinks making the innuendo that something sexual would follow the drinks.
2. In or about 2019, looked Colleague 1 up and down in a sexualised and / or suggestive way and stated words to the effect “You look nice in those jeans.”
3. In or about 2019, stated in the presence of other men, that you and Colleague 1 were going into the next office making the sexual innuendo that you and Colleague 1 would probably be a long time.
4. Since the occasion referred to at Charge 2 above, have made numerous suggestive and / or sexual remarks to Colleague 1 and / or sexual innuendoes about Colleague 1 to her male peers in her presence.
5. In the period up to September 2017, made one or more sexualised remarks to Colleague 2 by suggesting:
  - a. That she have one night stands with you;
  - b. That you would like to see her naked outside work.
6. In or about September 2017
  - a. Took hold of Colleague 2’s mobile phone and viewed naked photographs of her;
  - b. Made sexual remarks to Colleague 2 by words to the effect that she:
    - i. “had a nice bum;”
    - ii. “would look better in a nice thong;”
  - c. Asked Colleague 2 for more photographs to view;
  - d. Searched Colleague 2’s phone for more photographs.
7. After the event at Charge 6 above treated Colleague 2 unfairly by
  - a. Removing her from her usual post in theatre without good reason;

- b. Reducing the number of overtime shifts available to Colleague 2 without good reason.
8. From May 2017, you sexually harassed Colleague 3 by saying on numerous occasions words to the effect of “I really like you, I know that you like me”.
9. In May 2017, you approached Colleague 3 in the scrub room and made sexualised comments to her to the effect of “I don’t know why you don’t want something from me, your boyfriend is in Spain, come on, he’ll never know”.
10. From in or about the summer of 2017, sexually harassed Colleague 3 on numerous occasions by making sexual innuendoes.
11. After approximately September / October 2017
  - a. Pulled Colleague 4 into an empty theatre by the wrist;
  - b. Intentionally attempted sexually to touch Colleague 4’s breasts and / or hips;
  - c. Attempted to kiss Colleague 4;
  - d. The acts at one or more of (a), (b) and (c) were committed without Colleague 4’s consent or any reasonable belief on your part that she did consent.
12. Following the incident at Charge 11 above, sexually harassed Colleague 4 over a period of 2 years in that
  - a. In theatre, you repeatedly intentionally sexually touched Colleague 4’s breasts and / or hips and / or attempted to do the same whilst purporting to assist with her sterile gown;
  - b. Pulled Colleague 4 into the store room, on several occasions, stated inappropriate things to her and / or tried to kiss her;
  - c. Habitually made sexually explicit comments to Colleague 4, namely words to the effect of
    - i. “What type of underwear do you wear?”
    - ii. “Send me some photographs such as in your underwear”

- d. The acts at (a) and / or (b) were committed without Colleague 4's consent or any reasonable belief on your part that she did consent.
13. Harassed and/or intimidated Colleague 4 on one or more occasion by following Colleague 4 in your car whilst she was walking home.
14. Sexually harassed and / or intimidated Colleague 4 on her walk home on one or more occasions by
- a. Inducing and / or constraining her to get into your car;
  - b. Making sexualised comments such as about her dress;
  - c. Making other inappropriate remarks;
  - d. By asking her to kiss you.
15. From approximately February 2017, wrote sexualised texts to Colleague 5 which stated words to the effect:
- a. Of complimenting Colleague 5 sexually;
  - b. That you wanted to sleep and/or have sex with Colleague 5;
  - c. That sex with you would be amazing and/or great;
  - d. You would like to fuck Colleague 5.
16. In or about May 2017, at Colleague 5's home, you had sexual intercourse with Colleague 5:
- a. Despite knowing she had earlier expressed reluctance;
  - b. After continuing to pressure Colleague 5 until she consented to have intercourse.
17. After the event at charge 16, between May 2017 to April 2018, you engaged in a coercive and controlling relationship with Colleague 5 and/or in behaviour to like effect towards Colleague 5 in that:
- a. In July 2017, you borrowed £1,000 from her and delayed repayment;
  - b. You repeatedly told her that she was your woman;

- c. You told her that you were the only person she could trust;
- d. You told her that she was not allowed to talk to certain people;
- e. You told her who to trust and who to be close to;
- f. You ignored her, not speaking or texting her for significant periods.

18. Between approximately July 2017 to 2019 sexually harassed Colleague 5 whilst at work in that:

- a. When in theatre, you intentionally tried to kiss Colleague 5 on one occasion;
- b. When you were tying her gown, you intentionally sexually touched her breasts and/or body on more than one occasion;
- c. In the instrument room, you intentionally hugged Colleague 5 and/or tried to kiss her;
- d. In an empty theatre, you intentionally and inappropriately pulled Colleague 5 towards you and stated that you were missing her;
- e. After Colleague 5 moved department you still on occasion intentionally hugged her and stated you missed her;
- f. The acts at (a) — (e) inclusive were committed without Colleague 5's consent or any reasonable belief on your part that she did consent.

19. In approximately December 2019, in the presence of a male colleague, you asked Colleague 5 if "she had any toys."

20. In November 2020 and/or in June 2021, rang a friend of Colleague 5 to request the friend to ask Colleague 5 to retract the allegations made against yourself.

21. Your actions at charge 20 above lacked integrity in that you sought to pressure another for your own benefit.

22. Your actions at charges 11 (a) - (c) inclusive, 12 (a) and (b), 16 and 18 (a) - (e) inclusive were motivated by sexual gratification.

23. Your actions at any one or more of charges 1 to 22 above constituted an abuse of power on your part in that you sought to manipulate or otherwise exert control over another, typically more junior, colleague.

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

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

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Norman on behalf of the NMC and by Ms Tai on your behalf. The panel heard and accepted the advice of the legal assessor.

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. It bore in mind the advice that it received that the seriousness of the allegation or its inherent improbability may mean that the facts should be examined more critically before the panel concludes that the allegation has indeed been established on the balance of probabilities.

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

- Colleague 1: Band 6 Team Leader and later, Band 7 Clinical Manager (Trauma and Orthopaedics) at the Trust, at the relevant times
- Colleague 2: Healthcare Support Worker in the Trust Orthopaedic Theatres at the Trust, at the relevant time

- Colleague 4: Operating Department Practitioner in the Trauma and Orthopaedic Theatres at the Trust, at the relevant time
- Colleague 5: Band 5 Scrub Nurse in Orthopaedics Department Theatres (ODT) at the Trust, at the relevant time
- Colleague 6: Senior Sister at the Trust, at the relevant time

The panel also heard Colleague 8 called on your behalf. Colleague 8 was an Operating Department Practitioner (ODP) at the Hospital at the relevant time. You did not give evidence.

The panel received a number of exhibits, which included the account given by you to the local investigation.

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

### **Charge 1)**

That you, being a registered nurse, while employed as a scrub nurse, as a team leader, and from 2018 as a clinical manager

1. In or about 2016 asked Colleague 1 on one or more occasion to invite you to her house for a barbecue and a few drinks making the innuendo that something sexual would follow the drinks.

**This charge is found NOT proved.**



The panel considered Colleague 1's accounts, particularly in her local statement and her witness statement. In her descriptions, she outlined instances where you suggested social activities, including a request for an invitation for drinks and a barbecue, which she considered suggestive. She expressed discomfort and surprise at your comments, noting that she redirected the conversation back to work-related matters.

In Colleague 1's local statement dated 28 January 2020, she states:

*"KG began to suggest and imply that I should invite him around for a few Drinks sometime and continued to repeat in a suggestive manger [sic] that I should indeed invite him round for a BBQ; enjoy a few drinks and he ended he conversation with an AND!"*

Further, in Colleague 1's witness statement dated 16 July 2021, she states:

*"I said Kim "you do realise that I am in a relationship with someone else who works here as well". He said, "oh yes, no it was not meant like that". I then said let us just focus on the task at hand learning about the instrumentation. His comment took me back because I was not expecting it, after that incident he did not say anything like that for a while. He was a Band 5 at the time, and I think he understood there were boundaries with me."*

The panel accepted that you asked Colleague 1 to invite you round for a barbecue and drinks, but the panel is not persuaded that you were implying that something sexual would follow the drinks. The panel was of the view that it could not confidently draw the inference necessary to prove the charge. Accordingly, the panel found charge 1 not proved.

## **Charge 2)**

2. In or about 2019, looked Colleague 1 up and down in a sexualised and / or suggestive way and stated words to the effect "You look nice in those jeans."

**This charge is found NOT proved.**

The panel considered the witness statement of Colleague 1, which states:

*“In 2019 (I do not remember the date), Kim made a comment to me that, you look nice in those jeans and he was also looking at me up and down as he made the comment. As a Clinical Manager in the department, I noticed that he would imply and/or make sexual innuendos about me in front of my male colleagues. For me, it was reaching a point where I felt it necessary to address the issue with him (when he returned from his planned leave) and convey that while I am open to light-hearted banter, I found his comments disrespectful.”*

The panel also took into account Colleague 1’s investigation interview, particularly under questions 21 and 22. When asked *“What did he say about your appearance?”*, Colleague 1 responded:

*“He has commented that I looked nice in my jeans, but would be looking and at a point I would be thinking are you seriously taking the mick.”* When asked:

*“When you say would be looking, do you mean looking you up and down?”*, Colleague 1 answered, *“Yes, he would look and just say oh yes you look nice in those jeans.”*

The panel noted that Colleague 1 was consistent in her account that you commented that she looked nice in her jeans. However, there was no mention in her evidence that you were looking at her in a *“sexualised or suggestive way”* as set out in the charge, and the panel was not convinced that it should draw that inference. Consequently, the panel found charge 2 not proved.

**Charge 3)**

3. In or about 2019, stated in the presence of other men, that you and Colleague 1 were going into the next office making the sexual innuendo that you and Colleague 1 would probably be a long time.

**This charge is found NOT proved.**

The panel considered the investigation interview with Colleague 1 and noted the following exchange under question 34. *“When was that [Colleague 1]?”* Colleague 1 responded:

*“He was off 3 weeks ago for his 2 week holiday, so I was going to speak to him because I think it must have been 10 days before. It was getting to the point where the boys were having banter, but he was actually talking about me in front of 2 other Clinical Managers, implying that we were going to go into the next office, but we are going to keep the door closed and we are going to be probably a long time. It was all innuendoes in front of me, and I actually said yes in your dreams. There was a bit of a nervous laugh between the male and the female Clinical Manager, and that really got me because I thought I am your peer, you do not disrespect or talk about me in front of me like that.”*

Under question 35, *“Who were the other Clinical Managers that he was talking to?”* Colleague 2 replied:

*“There were [two nurses], so they were in one of the side offices with the door open. But the thing is, is that they might not even remember that situation. It’s a build-up of things, and those snide or sarcastic comments. They are innuendos, they are implying that we are going to have or do things in the next office, and I don’t think that’s appropriate, especially as we are now in a role of great responsibility.”*

Under question 36, *“When you are talking about innuendos, are you talking about sexual innuendos?”* Colleague 1 stated:

*“Yes, I did actually say to him yes, cheers, in your dreams Kim, and they laughed [two nurses]. So, you put them down a bit, but I think genuinely with me, and these comments, I genuinely believe he thinks it’s banter. I don’t think now there was any banter at this time, there was no genuine intent. The first I met*

*him in that lay-up room environment, it was a different way, different body language, and there was intent there. He meant it. There were two different messages I got. So inappropriate banter now.”*

This is the only evidence in support of this charge: Colleague 1’s oral evidence did not add significantly to it. The charge alleges that you stated that you and Colleague 1 were going into the next office and this involved an innuendo that you would probably be a long time. The panel noted that Colleague 1’s investigation interview does not say that you said this. It does not state or indicate what you said at the time: Colleague 1 just described what was implied. The panel was not persuaded that you said what is alleged in the charge; there is no evidence of what you said. Accordingly, the panel found charge 3 not proved.

#### **Charge 4)**

4. Since the occasion referred to at Charge 2 above, have made numerous suggestive and / or sexual remarks to Colleague 1 and / or sexual innuendoes about Colleague 1 to her male peers in her presence.

**This charge is found proved.**

The panel considered the local statement dated 28 January 2020, which states:

*“From then to present day have had received on occasions inappropriate suggestive remarks directly made towards me and sexual innuendoes regarding me to my male peers, even if these sexual comments were made by KG in a joking manger [sic]; responses were received with awkward laughing; and comments made have been the most inappropriate and the most unexpected times which I find distasteful and totally unnecessary especially within a professional environment.”*

Furthermore, the panel also considered Colleague 1’s witness statement, which states:

*“For me it was getting to the stage that I felt I needed to say to him, (when he returned from his planned leave) that whilst I am happy to have a bit of banter, I was now finding his comments disrespectful. This was particularly in relation to the way he was speaking about me as a woman in my presence and in front of my colleagues. However, I did not have that conversation with him as a concern about him had been escalated to a senior manager.”*

The panel noted that Colleague 1 was clear in her oral evidence about when the remarks began to become disrespectful. She also explained that she was not formally reporting you, but instead planned to speak to you face-to-face upon your return from holiday. The panel took note of Colleague 1’s evidence that while she felt she was able to cope with these comments, there was a build-up, and it reached a point where she felt compelled to take action. The panel found her evidence convincing and, therefore, found charge 4 proved.

#### **Charges 5a) and 5b)**

5. In the period up to September 2017, made one or more sexualised remarks to Colleague 2 by suggesting:
  - a. That she have one night stands with you;
  - b. That you would like to see her naked outside work.

**Charge 5a) NOT proved.**

**Charge 5b) proved.**

In relation to charge 5a), the only evidence before the panel is Colleague 2’s investigation interview and oral evidence. In the investigation interview, Colleague 2 said:

*“So he is quite forward with things, he is quite personal in that sort of level, he makes jokes about going off and having one night stands, and things like that.”*

This was part of her answer to a general question asking her to explain what she meant by *“This is just Kim.”*

She does not say that you suggested having a one-night stand with herself. The panel was not convinced that you made sexualised remarks to Colleague 2 by suggesting that she have one-night stands with you. Accordingly, the panel found charge 5a) not proved.

Regarding charge 5b), the panel considered the investigation interview with Colleague 2, specifically question 11. "*When you say he's quite forward and personal, has he been quite forward and personal to you?*" Colleague 2 said that up until September 2017, you had been making jokes and saying that you would like to see her naked, among other things, outside of work. After this incident, she felt that you avoided her and did not talk to her much.

While there was no other evidence to corroborate that you made specific statements about wanting to see Colleague 2 naked outside of work, the panel was persuaded by Colleague 2's oral evidence and the investigation interview and found that you made those sexual remarks. Accordingly, the panel found charge 5b) proved.

#### **Charges 6a), 6b), 6c) and 6d)**

6. In or about September 2017
  - a. Took hold of Colleague 2's mobile phone and viewed naked photographs of her;
  - b. Made sexual remarks to Colleague 2 by words to the effect that she:
    - i. "had a nice bum;"
    - ii. "would look better in a nice thong;"
  - c. Asked Colleague 2 for more photographs to view;
  - d. Searched Colleague 2's phone for more photographs.

#### **These charges are found proved in their entirety.**

Regarding charge 6a), Colleague 2 in her oral evidence identified two potential ways someone could have accessed her telephone: either by picking it up before the automatic lock engaged, which she estimated to be around 30 seconds or a minute, or by observing her entering the four-digit password. The panel bore in mind that for you

to have had access to the telephone would involve either knowing her password, or picking up the telephone before it was locked. It considered however that it is possible for someone to see another person's password, and also that you might have been nearby when she put the telephone down. The panel found Colleague 2 a convincing witness and did not consider that the need for you to find a way to access her telephone was a reason to reject her evidence.

The panel accepted Colleague 2's evidence that you accessed her mobile telephone and viewed private photographs. She provided a detailed account. She knew that she should not have the telephone in that room, and she was told this when she reported this incident. She also expressed embarrassment about having the photographs on her telephone. Given those matters the panel considered it unlikely that Colleague 2 would report the incident to management if it were not true. Accordingly, the panel found charge 6a) proved.

In relation to charge 6b), the panel considered Colleague 2's local statement, the local Investigation Interview, and her witness statement. Colleague 2's witness statement states:

*"I had some nude pictures of myself on my phone (some selfies taken from behind my body) and you could see my naked body from the back the whole of my bum and some side breast from the angle had taken the photos. Kim said to me (these words are not precise) something along the lines that, I had a really nice bum and it would look better if I was wearing a nice thong in the picture. He then asked me if I had any more pictures and he came off my pictures and went into my WhatsApp. He was looking for a conversation between me and my boyfriend because he said that is where I send my pictures. There were no other witnesses to this incident."*

In respect of charge 6b) i), the panel accepted the evidence that the photograph in question depicted Colleague 2 naked, showing her bottom and part of her breast. With regard to your alleged remark about her bottom, the panel noted that she expressed this slightly differently in her local statement, her investigation interview and her witness statement and that she said that her recollection of the words was not precise. The

panel also noted however that the details of your reported remarks aligned with what the photograph showed.

The panel carefully weighed the evidence on charge 6b) i) and concluded that your words were those set out in the charge or words to that effect. It therefore found the charge proved.

In respect of charge 6b) ii), the panel found that Colleague 2's evidence in relation to your remark about a thong was consistent in her local statement, her investigation interview and her witness statement. It accepted that evidence. Consequently, the panel found charge 6b) ii) proved.

In addressing charges 6c) and 6d), the panel assessed the evidence relating to your request for additional photographs from Colleague 2, as well as the act of searching her telephone for more images. The panel took into account Colleague 2's witness statement, which states your request for additional photographs:

*“He then asked me if I had any more pictures and he came off my pictures and went into my WhatsApp. He was looking for a conversation between me and my boyfriend because he said that is where I send my pictures.”* Her recollection during the investigation interview further substantiated these claims. Based on this evidence, the panel found charges 6c) and 6d) proved in their entirety.

### **Charges 7a) and 7b)**

7. After the event at Charge 6 above treated Colleague 2 unfairly by
  - a. Removing her from her usual post in theatre without good reason;
  - b. Reducing the number of overtime shifts available to Colleague 2 without good reason.

**These charges are found NOT proved in their entirety.**

In relation to charge 7a), the panel considered Colleague 2's evidence that she had been removed from 'Theatre 20', her typical working space, and moved to another



theatre. During this process, she felt mistreated and felt that she was being penalised when she had done nothing wrong. The panel also took into account her response in interview, to the effect that she had been relocated to a different theatre and was told, not by you but by a more senior manager, that it made more sense to move her rather than you.

The panel also considered your investigation interview where you said Colleague 2 was asked to be removed from Theatre [PRIVATE] due to earlier allegations involving a surgeon.

The panel was unable to determine who was responsible for Colleague 2's removal from the usual post. However, more importantly, while understanding Colleague 2's feelings the panel was not convinced that there was no good reason to keep you and Colleague 2 apart. The panel was of the view that it may well have been sensible to move Colleague 2 to a different theatre rather than rearranging your responsibilities as Team Leader. Consequently, the panel was not satisfied that you treated Colleague 2 unfairly or that her removal from her usual post was done without a good reason. The panel therefore found charge 7a) not proved.

In relation to charge 7b), the panel was not persuaded that Colleague 2's overtime shifts were unfairly reduced. While Colleague 2 mentioned receiving fewer shifts, the panel noted that this was a common complaint among staff and was not necessarily due to inappropriate managerial changes. Additionally, there was no other evidence such as a rota to provide confirmation of any change in the shifts allocated or of the extent of the change. The panel therefore found charge 7b) not proved.

### **Charges 8), 9) and 10)**

Following the panel's decision to reject the NMC's application to admit Colleague 3's evidence, and the subsequent submission by the NMC that it was offering no evidence regarding these charges, the panel was of the view that charges 8, 9, and 10 were not supported by the evidence. The panel therefore found charges 8, 9, and 10 not proved.

### **Charges 11a), 11b), 11c) and 11d)**

11. After approximately September / October 2017

- a. Pulled Colleague 4 into an empty theatre by the wrist;
- b. Intentionally attempted sexually to touch Colleague 4's breasts and / or hips;
- c. Attempted to kiss Colleague 4;
- d. The acts at one or more of (a), (b) and (c) were committed without Colleague 4's consent or any reasonable belief on your part that she did consent.

**These charges are found proved. (Charge 11a) is found proved only on the basis that you pulled Colleague 4 into an empty theatre.)**

Regarding charge 11a), the panel considered Colleague 4's witness statement, which detailed that you pulled Colleague 4 and held her by the wrist:

*"The first physical incident involving Mr Greaves was when he attempted to kiss me when the theatres were empty. We only work during the day so it would have been sometime between 8.00 am to 6.00pm. I cannot remember the precise date as it happened some time ago. There were only the two of us in the department when this happened. He pulled me, held me by the wrist, tried to touch me inappropriately (my breasts and hips) and kiss me. I was in complete shock when it happened. I left the area and walked to the corridor where there were other staff. I can't remember if he said anything during the incident or when I walked away."*

Additionally, the panel considered the investigation interview in which Colleague 4 described the incident in further detail, and the panel was of the view that her account was consistent. The panel therefore accepted the evidence of Colleague 4 and was satisfied that you pulled Colleague 4 into an empty theatre. However, while Colleague 4 says both that you pulled her and that you held her by the wrist, it is not clear that it was "by the wrist" that she was pulled. Accordingly, the panel found charge 11a) proved except for the words "by the wrist".

In respect of charges 11b) and 11c), Colleague 4's witness statement emphasised the inappropriate touching and kissing, with the panel recognising the sexual nature of these actions. The panel found finding charges 11b) and 11c) proved based on Colleague 4's consistent evidence.

With regard to charge 11d), the panel accepted that the action was unwanted from Colleague 4's perspective. Colleague 4's account also confirmed her shock and lack of consent. In the panel's view there is nothing to suggest any reasonable belief on your part that she was consenting. The panel therefore found charge 11d) proved.

### **Charges 12a), 12b) 12c) and 12d)**

12. Following the incident at Charge 11 above, sexually harassed Colleague 4 over a period of 2 years in that
- a. In theatre, you repeatedly intentionally sexually touched Colleague 4's breasts and / or hips and / or attempted to do the same whilst purporting to assist with her sterile gown;
  - b. Pulled Colleague 4 into the store room, on several occasions, stated inappropriate things to her and / or tried to kiss her;
  - c. Habitually made sexually explicit comments to Colleague 4, namely words to the effect of
    - i. "What type of underwear do you wear?"
    - ii. "Send me some photographs such as in your underwear"
  - d. The acts at (a) and / or (b) were committed without Colleague 4's consent or any reasonable belief on your part that she did consent.

**This charge is found proved in its entirety.**

The allegations in charges 12, 13, and 14 pertain to sexual harassment and harassment. The advice of the legal assessor, with which Ms Norman and Ms Tai agreed, was that the definition of "*harassment*" under the Equality Act 2010 was appropriate in this case. The panel accepted this and applied that definition in its deliberations.

A harasses B if:

A engages in unwanted conduct of a sexual nature, and the conduct has the purpose or effect of violating B's dignity (whether this was intended or not), or creating an intimidating, hostile, degrading, humiliating or offensive environment for B (whether this was intended or not).

In deciding whether conduct has that effect, each of the following must be taken into account— the perception of B; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect.

In respect of charge 12a), the panel considered Colleague 4's local statement dated 3 February 2020, as well as her local investigation interview. During the interview, question 7 asked about the frequency of the incidents, to which Colleague 4 stated she was uncertain but estimated it to be around twenty or more times. In response to question 8 regarding the time frame, Colleague 4 said it occurred over a period of about two years (2017-2019). When asked if it had stopped, Colleague 4 indicated that while it had lessened physically, it had transitioned more to verbal harassment. The panel also took into account Colleague 4's witness statement, which detailed ongoing attempts at physical contact in inappropriate situations. She confirmed this evidence orally.

The panel was provided with a video-demonstration of how one person, usually the circulating nurse, assists another with tying a sterile gown. In the panel's view it is not necessary for the assisting person's hands to touch the other's breast, and your witness Colleague 8, an experienced operating department practitioner, confirmed this in her evidence.

The panel therefore found proved that you repeatedly/intentionally sexually touched Colleague 4's breasts and/or hips and / or attempted to do the same whilst purporting to assist with her sterile gown.

Concerning charge 12b), the panel considered the investigation interview and Colleague 4's account of being pulled into the orthopaedic set storeroom multiple times. The panel also considered Colleague 4's witness statement, which supported

these occurrences. The panel accepted Colleague 4's evidence and found the matters set out in 12b) proved.

As regards charges 12c) i) and 12c) ii), the panel referred to the investigation interview where Colleague 4 described inappropriate behaviour, including requests for intimate photographs. This was supported by her local statement and her witness statement, which reinforced the sexually explicit nature of these requests. The panel therefore found proved that you made sexually explicit comments to the effect set out in 12c) i) and ii).

Regarding charge 12d), the panel accepted that Colleague 4 did not consent to your actions in 12a) and b), and the evidence indicated that she was deeply affected by your behaviour. Your denial of the charges was considered, but the panel found that your actions were unjustifiable and that there was nothing to suggest that you had any reasonable belief that she consented to them. Consequently, the panel found the facts set out at 12d) proved.

The panel then carefully considered whether your actions at 12a)-d) constituted harassment. It noted that Colleague 4 perceived these actions to be only happening to her, which is why they went unreported. The panel was satisfied that each of these actions was unwanted conduct of a sexual nature. In considering the effect of that conduct the panel took into account Colleague 4's evidence of her feelings about these events and all the other circumstances. It was satisfied that they had the effect of violating Colleague 4's dignity and creating an environment that was degrading, humiliating, and offensive. The panel therefore concluded that these actions constituted sexual harassment.

Accordingly, the panel found charges 12a), b), c) and d) proved.

### **Charge 13)**

13. Harassed and/or intimidated Colleague 4 on one or more occasion by following Colleague 4 in your car whilst she was walking home.

**This charge is found proved.**

The panel considered the local statement of Colleague 4, where she stated that she felt harassed and intimidated walking home from work due to your behaviour, as she noted:

*"for a while, on my walk home from work he would follow me in his car until I was forced to get in, where yet again he would try verbal and physical harassment."*

In addition, the panel took into account the responses provided during the investigation interview, particularly when Colleague 4 was asked to explain the incidents in her statement. She described feeling pressured to comply, stating:

*"just because he knows the road that I walk down, it's quite a long road and a lot of the time he would just come past in his car and then pull into the next road. I was about to cross the road so it was kind of like I can't sort of say no to that."*

Further, the witness statement of Colleague 4 reinforced her earlier accounts, emphasising the distressing nature of your actions. The witness statement described your repeated attempts to persuade her to enter your car, followed by inappropriate conversations and comments when she did comply. Colleague 4 stated:

*"He would drive by in his car to try and get me to get into his car. When I did get into his car the whole conversation he had with me would be inappropriate."*

During her oral evidence Colleague 4 explained her rationale for compliance as being influenced by a sense of resignation, expressing:

*"I think at the time I thought 'I'll only be in the car for a couple of minutes, it's just easier. Rather than to face up to him.'"*

The panel found Colleague 4's evidence compelling, particularly given the recurring nature of the incidents and the intimidation she felt. In considering the effect of your

conduct the panel again took account both of Colleague 4's perception and of the other circumstances. It concluded that this behaviour, especially in the context of the inappropriate conversations and attempts to kiss her which followed if she complied and got into the car, was unwanted conduct which had the effect of creating an intimidating and offensive environment.

Based on the evidence and the context of the situation, the panel reached the conclusion that your actions did amount to harassment and intimidation. Accordingly, the panel found charge 13 proved.

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

14. Sexually harassed and / or intimidated Colleague 4 on her walk home on one or more occasions by
- a. Inducing and / or constraining her to get into your car;
  - b. Making sexualised comments such as about her dress;
  - c. Making other inappropriate remarks;
  - d. By asking her to kiss you.

**This charge is found NOT proved in respect of charges 14a), 14b and 14c), but proved in respect of charge 14d).**

In respect of charge 14a), during her oral evidence Colleague 4 explained that she felt it was easier to comply and enter the car than to resist, as she believed it would only be for a brief period. She also recounted how you would stop on an adjacent street, further contributing to her feeling of being cornered.

During the investigation interview, Colleague 4 mentioned getting into the car approximately four times but emphasised that you would drive past her almost daily for a significant period, causing her distress. Further, Colleague 4's witness statement reiterated your repeated attempts to persuade her to enter the car, creating a disturbing situation that left her feeling pressured.

The panel noted Colleague 4's reluctance and the perceived pressure. However, the panel noted that her consistent evidence was that she made a decision to enter the car because she thought it would be for a brief period and that this was the easier course. The panel was not persuaded that Colleague 4 could properly be described as induced or constrained to enter the car. Consequently, the panel found charge 14a) not proved.

Regarding charge 14b), the panel took into account Colleague 4's witness statement, and noted that she found the whole conversation, including your comments about her dress, uncomfortable and inappropriate. The panel was not however persuaded that the comments should be characterised as “*sexualised*”. The panel therefore determined that charge 14b) was not proved.

With regard to charge 14c), the panel acknowledged Colleague 4's evidence of inappropriate conversations, but without specific details or clarity as to the content of the remarks. While her evidence was that she found the conversations inappropriate as a whole, the panel was not satisfied that you made remarks which should be described as unwanted conduct of a sexual nature, in the sense needed for a finding of sexual harassment. It was also not satisfied that these conversations intimidated Colleague 4. The panel therefore found charge 14c) not proved.

In the case of charge 14d), the panel referred to Colleague 4's responses during the Investigation Interview, where she detailed you asking to kiss her, which she resisted. She said that she felt uncomfortable because of your behaviour.

The panel found charge 14d) proved based on the compelling evidence presented by Colleague 4 during the investigation interview. Her accounts of your request for a kiss and her related discomfort clearly illustrated a violation of personal boundaries, which she found disconcerting and unwelcome. The panel was satisfied that this was unwanted sexual conduct, and that it had the effect of creating a degrading, humiliating and offensive environment. Accordingly, the panel found charge 14d) proved.

**Charges 15a), 15b), 15c) and 15d)**



15. From approximately February 2017, wrote sexualised texts to Colleague 5 which stated words to the effect:

- a. Of complimenting Colleague 5 sexually;
- b. That you wanted to sleep and/or have sex with Colleague 5;
- c. That sex with you would be amazing and/or great;
- d. You would like to fuck Colleague 5.

**Proved by way of admission.**

**Charges 16a) and 16b)**

16. In or about May 2017, at Colleague 5's home, you had sexual intercourse with Colleague 5:

- a. Despite knowing she had earlier expressed reluctance;
- b. After continuing to pressure Colleague 5 until she consented to have intercourse.

**These charges are found proved in their entirety.**

Regarding charge 16a), the panel considered Colleague 5's evidence, affirming that a sexual relationship with you occurred. Ms Tai did not contest this. While you acknowledged the relationship with Colleague 5, there was some question as to how long it lasted.

The panel took into account various pieces of evidence, including text messages and Colleague 5's local statement, investigation interview, and witness statement. The text messages revealed Colleague 5's reluctance to engage in sexual activity, and she clearly communicated this to you.

In the investigation interview, Colleague 5 stated that the relationship started as a friendship and eventually turned into something more, with her feeling pressured into a sexual encounter. Colleague 5's witness statement further emphasised her initial reluctance and her feeling pressured into the sexual act despite that reluctance.

The panel accepted Colleague 5's evidence on these matters, supported as it was by other evidence such as the text messages. As a result, the panel found charge 16a) to be substantiated, given Colleague 5's initial reluctance but ultimate engagement in sexual intercourse with you.

Regarding charge 16b), the panel noted that the charge does not allege rape – the charge expressly states that Colleague 5 consented - and it acknowledged Ms Norman's submission that the NMC was not asking the panel to consider whether this was a case of mere submission as opposed to reluctant consent.

The panel considered the evidence, including Colleague 5's oral evidence that she invited you for dinner without the intention of engaging in sexual activity but that she felt pressured and eventually relented. Having considered Colleague 5's statements and oral evidence the panel concluded that, despite her initial reluctance, there was continued pressure leading to her eventual consent. Therefore, the panel found charge 16b) proved.

#### **Charges 17a), 17b), 17c), 17d), 17e) and 17f)**

17. After the event at charge 16, between May 2017 to April 2018, you engaged in a coercive and controlling relationship with Colleague 5 and/or in behaviour to like effect towards Colleague 5 in that:

- a. In July 2017, you borrowed £1,000 from her and delayed repayment;
- b. You repeatedly told her that she was your woman;
- c. You told her that you were the only person she could trust;
- d. You told her that she was not allowed to talk to certain people;
- e. You told her who to trust and who to be close to;
- f. You ignored her, not speaking or texting her for significant periods.

**These charges are found proved in their entirety, but in respect of a controlling relationship only.**

**They are found NOT proved in respect of a coercive relationship.**

In relation to charge 17a), the panel took into account among other evidence the following passage from Colleague 5's written witness statement:

*'In July 2017 Kim borrowed £1000 from me, I gave it to him by bank transfer. I produce a copy of my bank statement with this transfer as **Exhibit AV/1**. [PRIVATE] and he had been there for me, I lent him the money. He also told me that he is a band 6 and under the NMC so I can trust him with the money transaction, and he will pay on the agreed time. After I gave him the money his behaviour changed. He wasn't the same person that he was in the previous months. He would never really talk to me much.'*

The panel found that Colleague 5's evidence was supported by her account given in a local statement for the Trust's investigation, her account at the investigation interview, screenshots of text messages with you between April 2017 to May 2018, recordings of conversations with you, and a bank statement evidencing a £1000 transaction to you on 19 July 2017. Further, it had regard to a handwritten receipt signed by Colleague 5, dated 13 August 2019, which indicated that Colleague 5 received a sum of £1000 from you. The panel also understood that you do not dispute that you borrowed this sum from Colleague 5 and repaid it. On this basis the panel was satisfied that it was provided with consistent and compelling evidence that you borrowed £1000 from Colleague 5.

The panel considered that there was no evidence that a repayment date was agreed when the loan was originally made. However, it noted that in the recorded conversations between you and Colleague 5 in 2017, Colleague 5 requested repayment on a number of occasions. In one recording you stated in response to Colleague 5's request that you *'needed the money more'* than she did. The panel considered Colleague 5's repeated requests in 2017 in conjunction with your responses promising that you would repay the loan. In one conversation you agreed to pay by February 2018. The panel concluded that there was clear evidence that the repayment was delayed as you did not make the payment to Colleague 5 in full until 13 August 2019. Accordingly, the panel found the matters set out at charge 17a) proved.

In relation to charge 17b), the panel took into account the evidence of Colleague 5, in which she stated that you told her she was your '*woman*'. It found that her evidence was supported by her response given at the Trust's investigation interview, dated 28 February 2020, where Colleague 5 stated that you said things to her such as '*ok you know you are my woman*'. Colleague 5 was consistent about this in her written witness statement and in her oral evidence.

Further, the panel found that Colleague 5's account was corroborated by text messages she sent to you on 5 May 2018 in which she stated:

*'you keep saying I'm your woman.'*

The panel was therefore satisfied that it was presented with consistent, corroborated evidence that you repeatedly told Colleague 5 '*she was your woman*'. Accordingly, the panel found the matters set out at charge 17b) proved.

In relation to charge 17c), the panel took into account Colleague 5's evidence, in which she stated that you told her you were the only person she could trust. It noted that Colleague 5 provided the following account in her witness statement:

*'He reassured to me that I am his woman, nothing wrong happened and that he is the only one I can trust.*

*[...]*

*...he was telling me who not to trust and not be too close with and it is only him I can trust'*

This was reiterated in Colleague 5's oral evidence.

The panel found that Colleague 5's evidence was also supported by her response given at the investigation interview. When asked if she felt intimidated by you, Colleague 5 stated that she did and in her explanation detailed that you would tell her you were the only person she could trust.

The panel was therefore satisfied that Colleague 5 has given consistent evidence that you told her you were the only person she could trust. Accordingly, the panel found the matters set out at charge 17c) proved.

In relation to charges 17d) and 17e), the panel considered these charges together as the evidence for these charges appears concurrently. It took into account the evidence of Colleague 5, in which she stated you did not allow her to talk to certain people and told her whom to trust. Colleague 5 provided the following account in her witness statement:

*'Only he can call me. I can't call him on the phone, rarely replies to my messages. And he would tell me that I was not allowed to talk to certain people at work, some work colleagues, he was telling me who not to trust and not be too close with and it is only him I can trust).'*

Colleague 5 confirmed this in her oral evidence.

The panel found that Colleague 5's evidence was supported by her answers to the investigation interview, where she said:

*'He would infiltrate my mind in the time we were seeing each other he would say I'm the only guy in your life you're not allowed to see other people he would say you're not allowed to talk to this person. He would say if you have problems only me, I'm the only person you can trust. I can't even talk to my house mates.'*

The panel was therefore satisfied that Colleague 5 gave a consistent account that you told her that she was not allowed to talk to certain people and told her whom to trust and who to be close to. Accordingly, the panel found the matters at charges 17d) and 17e) proved.

In relation to charge 17f), the panel took into account the evidence of Colleague 5, in which she stated that you ignored her and did not speak to her or text her for significant periods.

At the investigation interview, when explaining how she felt '*manipulated*' by you Colleague 5 stated the following:

*'It was like the money thing once he got the money, poof! He would only see me when he liked to, it was all about him, everything was on his terms. I can't call him, he had to call me, you can't text me at a certain time. I don't know why, but I was following him I was following his rules.'*

The panel noted that Colleague 5 provided the following account in her witness statement:

*'He would never really talk to me much. Only he can call me. I can't call him on the phone, rarely replies to my messages.'*

This was reiterated in Colleague 5's oral evidence.

Further, the panel found that Colleague 5's account was corroborated by the text message she sent to you on 5 May 2018 in which she stated, '*you only communicate when you need something from me.*'

The panel was therefore satisfied that it was presented with consistent evidence, corroborated by the text message she sent, that you would ignore Colleague 5 and would not speak or text her for significant periods. Accordingly, the panel found the matters set out charge 17f) proved.

#### Coercive and controlling relationship with Colleague 5

The panel went on to consider whether those events amounted to your engaging in a coercive and controlling relationship with Colleague 5.

The panel looked at each sub-charge individually and considered whether there was a pattern of acts in charges 17(a-f) which amounted to a controlling relationship with Colleague 5. This included your taking money from her and not repaying it for a lengthy period in spite of her requests and your promises, your use of expressions of ownership

to her, isolating her from sources of support and regulating her behaviour and to whom she could speak. It took into account that during the investigation interview she described feeling '*manipulated*' by you. It also bore in mind that, while these events were taking place, Colleague 5 was your junior at work.

The panel acknowledged that telling Colleague 5 that she was your woman may have been part of a denial by you that you were having a relationship with another woman, but it was nonetheless of the view that, in the context of your relationship and of your other behaviour, this was a use of language tending to make her the subordinate partner.

Whilst the panel was not satisfied that the relationship between you and Colleague 5 was coercive, it concluded that charges 17(a-f) amounted to a controlling relationship, in the sense of a pattern of acts designed to make Colleague 5 subordinate and dependent on you. Accordingly charge 17 is found proved in respect of a controlling relationship only.

**Charges 18a), 18b), 18c), 18d), 18e) and 18f)**

18. Between approximately July 2017 to 2019 sexually harassed Colleague 5 whilst at work in that:
- a. When in theatre, you intentionally tried to kiss Colleague 5 on one occasion;
  - b. When you were tying her gown, you intentionally sexually touched her breasts and/or body on more than one occasion;
  - c. In the instrument room, you intentionally hugged Colleague 5 and/or tried to kiss her;
  - d. In an empty theatre, you intentionally and inappropriately pulled Colleague 5 towards you and stated that you were missing her;
  - e. After Colleague 5 moved department you still on occasion intentionally hugged her and stated you missed her;
  - f. The acts at (a) — (e) inclusive were committed without Colleague 5's consent or any reasonable belief on your part that she did consent.

**These charges are found proved in their entirety.**

In relation to charge 18a), the panel took into account Colleague 5's local statement during the Trust's investigation, dated 2 July 2021, in which she stated:

*'But there were multiple instances I was harassed [sic] by him. He would touch my breast while I'm preparing to get scrubbed up, groped me, even tried to kiss me inside the theatre while some people are tucked in the lay-up room. I felt disgusted. I was slightly relieved that I got assigned to Trauma Theatres, that way I have more distance from him'*

This was supported by Colleague 5's response given at the investigation interview, dated 28 February 2020, where when asked to explain the inappropriate touching she referred to in her local statement, Colleague 5 stated:

*'Every time I tell him to stop. 3 times (groping and kissing) more than 3 times.'*

The panel found that Colleague 5's earlier accounts to the local investigation were consistent with her oral evidence, which it regarded as compelling. On this basis the panel was satisfied that you intentionally tried to kiss Colleague 5 when in the theatre. Accordingly, the panel found the matters at charge 18a) proved.

In relation to charge 18b), the panel took into account Colleague 5's evidence that on more than one occasion you touched her breasts when she needed help to tie her gown. It noted that Colleague 5 provided the following account in her witness statement:

*'Before we assist in surgery we put on our gowns and we need someone to tie the back of the gown. I remember that when Kim tied the back of my gown, on one occasion, he touched my breasts. I did not want to make a scene because the patient was there at the time. I just wanted to stop and go home but I tried to focus on the patient. There were other occasions, more than 3 occasions when this happened.'*

Colleague 5 also stated:



*'One example was that when he was tying my gown and touched my breast, as I was about to assist a surgery. I can vividly recall that while I was assisting the case, I was not one hundred percent focused. All I could think about was what had happened and was there anything I could have done to avoid that situation. I did not want to make a scene as the patient was being anaesthetised and my colleagues were setting up. I felt violated, degraded and disgusted. All I wanted to do was go home and cry that time, but I reminded myself there is a patient in front me so I have to man up and just get it over with.'*

The panel found that this was consistent with Colleague 5's oral evidence. It was of the view that Colleague 5 provided a detailed account of what happened and of her reaction, which it regarded as compelling.

As the panel stated earlier in this determination, it has seen a video-demonstration of how one person assists another with tying a sterile gown and it is satisfied that it is not necessary for the assisting person's hands to touch the other's breast. This view is supported by the evidence of Colleague 7, Colleague 1 and Colleague 8. On this basis the panel was satisfied that you intentionally sexually touched Colleague 5's breasts. Accordingly, the panel found charge 18b) proved.

In relation to charge 18c), the panel took into account the evidence of Colleague 5, in which she stated that you intentionally hugged and tried to kiss her in the instrument room. It noted that Colleague 5 provided the following account in her witness statement:

*'During this time he would touch me inappropriately at work. This happened inside the instrument room which is on the corner of the ODT. I would go there to get instruments for theatre, Kim would come in, pull me towards him, hug me really tightly and try to kiss me. I told him it was inappropriate for him to do this. He thought that because we were seeing each other it was acceptable but I told him it was wrong because we were at work. I think there were more than 3 occasions when Kim touched me inappropriately or groped me at work, in the instrument room or store room and also when he tied the sterile gown I was wearing. On all those occasions I repeatedly said NO'*

The panel found that this was consistent with Colleague 5's oral evidence. It accepted her evidence. On this basis the panel was satisfied that you intentionally hugged and tried to kiss Colleague 5 in the instrument room. Accordingly, the panel found the matters at charge 18c) proved.

In relation to charge 18d), the panel took into account Colleague 5's evidence that you inappropriately pulled her towards you and told her that you missed her in an empty theatre room. It noted that Colleague 5 provided the following account in her witness statement:

*'On another occasion, I think it was on a Saturday where there are only a few operating theatres running, I went into an empty theatre to get some equipment. Kim also came in and one of my colleagues was also in the theatre at the time. As soon as my colleague left the theatre, and I was about to follow her, Kim pulled me towards him and said he was really missing me. There was nothing romantic between us at the time.'*

In the panel's view this was consistent with Colleague 5's oral evidence and the panel accepted her evidence. The panel was satisfied that you pulled Colleague 5 towards you in an empty theatre and said you missed her. The panel bore in mind the evidence that this occurred at a time when you were not in a romantic relationship with Colleague 5 and, in any event, it took place in the work environment. It was therefore satisfied that your conduct was inappropriate. Accordingly, the panel found the matters at charge 18d) proved.

In relation to charge 18e), the panel took into account Colleague 5's response at the Investigation Interview on 28 February 2020:

*'Did it continue after the relationship ended until you moved department in 2019?*

*Yes even after I moved, there were times when he would pass by and hug me and say I miss you so much, he was still my manager so we had to talk, I asked him to stop doing it, but he seemed to think he could still keep doing it.'*

The panel again found that this was consistent with Colleague 5's oral evidence and it accepted her evidence. The panel was satisfied that you continued to hug Colleague 5 and state you missed her even after she moved departments in 2019. Accordingly, the panel found the matters at charge 18e) proved.

In relation to charge 18f), the panel took into account that the conduct in charges 18(a-e) occurred within the context of the professional work environment. It noted that in her evidence Colleague 5 regarded your conduct as inappropriate and your actions were met with a clear pattern of reluctance on her part. It noted that at the investigation interview she said that it distressed her to remember it. There was nothing in the evidence to suggest that she was consenting or that you had any reason to believe that she was.

The panel therefore concluded that your actions in charges 18(a-e) were committed without Colleague 5's consent or any reasonable belief on your part that she consented. Accordingly, the panel found the matters set out at charge 18f) proved.

### Sexually Harassed Colleague 5

The panel then considered whether your conduct in each sub-charge amounted to sexual harassment in the sense which it set out earlier in this determination and which was agreed by the parties.

The panel was satisfied that each of the matters in charges 18(a-f) was unwanted conduct of a sexual nature. It was also satisfied that the conduct had the effect of violating Colleague 5's dignity, and of creating an intimidating, degrading and offensive environment for her within the workplace. It found that you sexually harassed Colleague 5.

The panel therefore concluded that charge 18 is found proved in its entirety.

## **Charge 19)**

19. In approximately December 2019, in the presence of a male colleague, you asked Colleague 5 if "she had any toys."

### **This charge is found proved.**

In reaching this decision, the panel took into account Colleague 5's response at the investigation interview on 28 February 2020:

*'Can you remember when from April 2018 to 2019?*

*I had to do my revalidation as he was my manager, I had to do it with him we were in the 8 man office at the computer, we had to do the reflection and things like that. One of the Health Care's [Colleague 10] came in. I wasn't listening to the conversation, he (Kim) looked at me and said 'oh [Colleague 5] do you have toys? 'I thought about what he was talking about', I then realised he meant sexual toys, 'I said I'm not answering that it's nothing to do with what we are doing here. The health care said 'Kim you don't get to ask questions like that.'*

The panel also took account of the picture of a drone provided as evidence on your behalf, and of your explanation (when interviewed by the Trust) that the drone had been given as a 'Secret Santa' gift and that your question to Colleague 5 was not intended to be sexual but arose out of a conversation between you and Colleague 10 about the 'Secret Santa' gift. While Colleague 5 and, it seems, Colleague 10 interpreted the question as having a sexual innuendo, the panel bore in mind that Colleague 5's evidence was that she was not listening to the conversation and that when you asked the question she did not realise what it was about.

Notwithstanding this, the panel had regard to the fact that it was not in dispute that you did ask Colleague 5 a question about toys. Charge 19 does not deal with the interpretation of the question, but rather whether it happened or not. On this basis, the

panel was satisfied that you did ask Colleague 5 if she had any toys, in the presence of Colleague 10. Accordingly, the panel found charge 19 proved.

### **Charge 20)**

20. In November 2020 and/or in June 2021, rang a friend of Colleague 5 to request the friend to ask Colleague 5 to retract the allegations made against yourself.

### **This charge is found proved, but in relation to June 2021 only.**

In reaching this decision, the panel took into account the evidence of Colleague 5, in which she stated that on two separate occasions you rang friends of hers to request them to ask her to retract allegations made against you. Colleague 5 provided the following account in her witness statement:

*'In November (22), 2020 one of my friends in the UK told me that Kim had called them to speak to me to convince me to retract everything I had reported to the Trust. He told my friend that he has no job, he has got a family and that I should retract everything I told the Trust about him. Kim told him to let me know that he is not angry with me and that I was just being pressured by the Trust to tell those things so ONLY [Colleague 1] will be the band 7. I told my friend that I will not retract anything I have said to the Trust and that he should not answer any further calls from Kim. I was really alarmed and scared and I felt paranoid when I heard this. I was so concerned that I told the police that this guy (Kim) is bothering me and they said they cannot do anything because he has not approached me physically.'*

The panel also received in evidence an email, dated 2 July 2021, that Colleague 5 sent to the NMC during its investigation:

*'...I don't know if this will still be useful for the investigation but I just want to inform you that KG called my friend and previous colleague last 26th June around 8ish pm. My friends came over to for the weekend so I met up with them.'*

*While we were out for dinner, a private number rang her (she answered because she thought it was her manager). It was KG asking her to convince me to retract my statement about him. My friend didn't know how KG got her number as she changed it and moved to a different work place.*

*We don't know if it was a coincidence that he called her while I was there or he knew they were meeting up with me.*

*This is very disturbing as I just want peace and now he's bothering my close friends.'*

While the panel accepted Colleague 5's evidence of what she was told, the panel has not heard from, or seen a witness statement from, either of the friends, and what was related to Colleague 5 by the two friends is hearsay.

However, while the panel kept well in mind the dangers of relying on hearsay evidence, it noted that the second occasion occurred when the friend took a telephone call in Colleague 5's presence, and that the friend was not expecting the call and was not sure how you had obtained her number. That scenario is not consistent with the possibility that the friend was, on her own initiative and without any request from you, seeking to persuade Colleague 5 to drop the allegations. Also, in the panel's view it would be highly improbable that the telephone call was not from you but from somebody else, and that the friend was telling an invented story in order to get you into trouble.

The panel therefore determined on the balance of probabilities that in June 2021 you requested Colleague 5's friend to ask her to retract the allegations made against you.

The incident in November 2020, on the other hand, did not occur in Colleague 5's presence. The panel was concerned that there is no direct evidence of what, if anything, you said to the friend or what you asked him to do. While the panel noted that the account of the telephone call contained a degree of detail as to what was related to Colleague 5, the circumstances which the panel found persuasive in relation to the June 2021 conversation are absent. In the light of these matters the panel is not

persuaded, on the balance of probabilities, that the charge is proved in relation to the incident in November 2020.

Accordingly, the panel found charge 20 proved in relation to June 2021 alone.

### **Charge 21)**

21. Your actions at charge 20 above lacked integrity in that you sought to pressure another for your own benefit.

**This charge is found proved.**

The panel bore in mind its reasoning in finding charge 20 proved.

It determined that it was in the nature of the incident in June 2021, being an act of putting pressure, for your own benefit, on a witness in an NMC investigation into your actions, that your conduct lacked integrity. Accordingly, the panel found charge 21 proved.

### **Charge 22)**

22. Your actions at charges 11 (a) - (c) inclusive, 12 (a) and (b), 16 and 18 (a) - (e) inclusive were motivated by sexual gratification.

**This charge is found proved.**

The panel looked at each of these charges individually. It determined that the events in charges 11(a-c), 12 (a) and (b), 16, and 18 showed a pattern of intimate acts of an intrinsically sexual nature towards Colleague 5.

In the panel's view there was nothing in the evidence to indicate any other possible explanation for your conduct in charges 11(a-c), 12 (a) and (b), 16, and 18. It concluded that your actions found proved in these charges were motivated by sexual gratification. Accordingly, the panel found charge 22 proved.

## **Charge 23)**

23. Your actions at any one or more of charges 1 to 22 above constituted an abuse of power on your part in that you sought to manipulate or otherwise exert control over another, typically more junior, colleague.

**This charge is found proved in relation to charges 6a) 6b)i) 6b)ii) 6c) 6d) 11a) 11b) 11c) 11d) 12a) 12b) 12c) 12d) 15a) 15b) 15c) 15d) 16a) 16b) 17a) 17b) 17c) 17d) 17e) 17f) 18a) 18b) 18c) 18d) and 18e).**

**The charge is found NOT proved in relation to charges 4, 5b, 13, 14d, 19, 20, 21 and 22.**

In reaching this decision, the panel took into account that your colleagues involved in the charges found proved were all junior members of staff to you, except Colleague 1.

In relation to charge 4, the panel bore in mind that you made sexual remarks to Colleague 1 which she found disrespectful. However, it had regard to the fact that Colleague 1 was a Band 7 Clinical Manager of similar rank and authority to you at the Trust.

The panel noted that in her evidence Colleague 1 explained that she was intending, when you returned from holiday, to have a conversation with you about the type of '*banter*' you would have with her in front of colleagues. In the event this did not happen because another concern was escalated to senior management. The panel considered that you had no authority over Colleague 1, and she felt in a position to have a conversation with you about your conduct.

The panel therefore determined that your actions proved in charge 4 did not constitute an abuse of power in relation to Colleague 1. Accordingly, the panel found charge 23 not proved in relation to charge 4.

In relation to charge 5b, you made sexual remarks to Colleague 2 by saying that you would like to see her naked outside of work. When considering this charge, the panel



had regard to the fact that Colleague 2 was a more junior colleague to you at the time the remark was made.

However, the panel noted that there was no evidence to indicate that your conduct involved anything more than an inappropriate remark. It was not persuaded that, in making this remark to Colleague 2, you were seeking to manipulate or exert control over her. The panel therefore concluded that your conduct in charge 5b did not constitute an abuse of power in relation to Colleague 2. Accordingly, the panel found charge 23 not proved in relation to charge 5b.

In relation to charges 6(a-d), you took hold of Colleague 2's mobile telephone, viewed naked photographs of her, made sexual remarks, asked her to see more photographs and searched Colleague 2's telephone for this. The panel had regard to the fact that Colleague 2 expressed embarrassment over the incident. She reported this to management in circumstances where she was at a disadvantage because she was a junior colleague and she knew she should not have had the telephone in theatre.

The panel was of the view that your actions in charge 6 consisted of more than inappropriate remarks: they included attempts to get Colleague 2 to do something which she did not want to do. The panel determined that you sought to manipulate Colleague 2 and concluded that your conduct constituted an abuse of power. Accordingly, the panel found charge 23 proved in relation to charges 6(a-d).

In relation to charges 11(a-d), Colleague 4 was a junior colleague and you attempted a number of acts of a sexual nature without her consent.

The panel noted that your behaviour was unwanted from Colleague 4's perspective, but you proceeded without her consent or any reasonable belief on your part that she consented. The panel found that by this behaviour you were exerting control over Colleague 4. It concluded that your conduct constituted an abuse of power. Accordingly, the panel found charge 23 proved in relation to charges 11(a-d).

In relation to charges 12(a-d), the panel bore in mind that your actions in charge 11 amounted to sexual harassment of a junior colleague, involving repeated attempts at

intimate contact as well as sexually inappropriate remarks to Colleague 4 over a period of over two years.

The panel noted that your behaviour was unwanted from Colleague 4's viewpoint and your actions created a degrading, humiliating and offensive environment for her. In the panel's view you were exerting control over Colleague 4 as you consistently attempted to get her to do something she did not want to do. It concluded that this conduct constituted an abuse of power. Accordingly, the panel found charge 23 proved in relation to charges 12(a-d).

In relation to charge 13, the panel found that you harassed and intimidated Colleague 4 as she walked home from work.

The panel was of the view however that, while your behaviour amounted to harassment, it was not persuaded that the evidence showed that you sought to manipulate or exert control over Colleague 4. The panel therefore concluded that your conduct in charge 13 did not constitute an abuse of power in relation to Colleague 4. Accordingly, the panel found charge 23 not proved in relation to charge 13.

In relation to charge 14(d), when Colleague 4 had got into your car, you harassed and intimidated her by asking her to kiss you.

However, the panel was again of the view that the evidence in relation to this charge did not indicate that your request for a kiss, whilst inappropriate, was an attempt to manipulate or exert control over Colleague 4. The panel was not persuaded that your conduct in charge 14(d) amounted to an abuse of power in relation to Colleague 4. Accordingly, the panel found charge 23 not proved in relation to charge 14(d).

Charges 15(a-d) were proved by admission. You sent a number of sexualised texts to Colleague 5, who was a more junior colleague.

The panel noted that when texting you Colleague 5 expressed that she viewed you as a '*brother*' and her initial responses demonstrated reluctance to cross her expressed boundary with you. It found that your repeated sexualised text messages sought to

manipulate Colleague 5. The panel concluded that this conduct constituted an abuse of power. Accordingly, the panel found charge 23 proved in relation to charges 15(a-d).

In relation to charges 16(a-b), you had sexual intercourse with Colleague 5, despite knowing she had earlier expressed reluctance, and you continued to pressure her until she consented.

The panel took into account that Colleague 5 initially expressed reluctance to progress to a relationship with you after starting off as a friendship, but she felt pressured by you into a sexual encounter. While the panel has kept clearly in mind that Colleague 5 consented, it found that you had intercourse with her after continuing to pressure her until she consented. The panel was of the view that your behaviour demonstrated that you sought to manipulate Colleague 5 into a sexual encounter, and it concluded that this constituted an abuse of power. Accordingly, the panel found charge 23 proved in relation to charges 16(a-b).

In relation to charges 17(a-f), you engaged in a controlling relationship with Colleague 5 through taking money from her and delaying payment despite her requests, using expressions of ownership towards her, isolating her from sources of support and regulating her behaviour. It took into account that during the Trust's investigation Colleague 5 described feeling '*manipulated*' by you.

Colleague 5 was junior to you and the panel found that, by the very nature of what was proved under charge 17, your actions sought to manipulate and exert control over Colleague 5. It concluded that this conduct constituted an abuse of power. Accordingly, the panel found charge 23 proved in relation to charges 17(a-f).

In relation to charges 18(a-e), over a period of two years you sexually harassed Colleague 5 while she was at work. Your conduct was unwanted and the panel found that it created an intimidating, degrading and offensive environment within the workplace.

Your actions constituted harassment of a junior colleague. In the panel's view, by repeatedly initiating intimate acts of a sexual nature without her consent you were

exerting control over Colleague 5. The panel concluded that this amounted to an abuse of power. Accordingly, the panel found charge 23 proved in relation to charges 18(a-e).

In relation to charge 19, you asked Colleague 5, in the presence of Colleague 10, another male colleague, if she had any toys.

The panel bore in mind that it is disputed whether your comment contained a sexual innuendo or whether it was an innocent question arising from your conversation with Colleague 10 about the drone which had been given as a present. In either case, the panel was of the view that this was simply a remark and it was not persuaded that by making this remark you were seeking to manipulate or exert control over Colleague 5. The panel therefore concluded that your conduct in charge 19 did not constitute an abuse of power as set out in the charge. Accordingly, the panel found charge 23 not proved in relation to charge 19.

In relation to charges 20 and 21, the panel bore in mind that you requested Colleague 5's friend to ask Colleague 5 to retract her allegations against you. However, in considering this charge, the panel had regard to the fact that Colleague 5's evidence was that the friend to whom you spoke in June 2021 was an ex-colleague who no longer worked for the Trust. Colleague 5 was working in a different department. You were under investigation and apparently out of a job, and any personal relationship with Colleague 5 was at an end.

In the light of those matters the panel was of the view that you were in no position to exercise authority over either Colleague 5 or her friend. It therefore concluded that your actions could not be characterised as an abuse of power. Accordingly, the panel found charge 23 not proved in relation to charges 20 and 21.

In relation to charge 22, the panel found proved that your actions in charges 11(a-c), 12(a-b), 16 and 18(a-e) were motivated by sexual gratification. While it has found that those incidents themselves amounted to an abuse of power, it does not regard the sexual motivation behind the incidents as involving any further instance of abuse of power, and does not consider that a separate finding in relation to charge 22 is needed. Charge 23 is found not proved in relation to charge 22.

## Adverse Inference

It is appropriate to mention that Ms Norman invited the panel to consider drawing an adverse inference from the fact that you have not given evidence. The panel received, and accepted, advice from the legal assessor concerning the matters it should take into account in deciding whether to draw an adverse inference or not.

In relation to the matters found proved, the question does not arise. Neither does it arise in relation to matters where the panel accepted the evidence of the NMC witnesses, but was not persuaded that it bore out what is set out in the charge. In other cases the panel was of the view that any evidence you gave would not have affected the principal issue. In relation to charge 7, for example, it might be that if you had given evidence the panel could have been clearer as to who decided what in relation to moving Colleague 2 to a different theatre. However, the panel decided charge 7 on the basis that it was not satisfied that moving Colleague 2 was unfair or was not for a good reason. Those are questions for the judgment of the panel on which any opinions you might have expressed in evidence would not be of assistance.

The panel was therefore of the view that, even if the necessary conditions for drawing such an inference were otherwise satisfied, drawing an adverse inference from the fact that you did not give evidence would not have helped the panel in reaching its decisions.

## **Fitness to practise**

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

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there

is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

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

### **Submissions on misconduct**

Ms Norman referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311, which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Norman invited the panel to have regard to the terms of '*The Code: Professional standards of practice and behaviour for nurses and midwives 2015*' (the Code) in making its decision. She submitted that your actions found proved in charges 4 – 23 amounted to a breach of the following sections of the Code: 8, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 16.5, 16.6, 20, 20.1, 20.2, 20.3, 20.4, 20.5, 20.6, 20.7, 20.8, 20.9, 20.10, 21, 21.1, 21.2, 21.3, 21.4, 21.5, 21.6.

Ms Norman identified the specific, relevant standards where she submitted your actions amounted to misconduct. She invited the panel to take the view that your actions in all the facts found proved in this case fell below the standards expected of a nurse and amounted to misconduct.

Ms Tai accepted that the facts proved in this case amounted to misconduct, except for your actions in charge 19.

### **Submissions on impairment**

Ms Norman moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the

need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. It also included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Re Z (Disclosure to Social Work England)* [2023] EWHC 447.

Ms Norman submitted that nurses work with the public in circumstances where the public are often vulnerable, so they must be suitable people to do that work. She submitted that the concerns in this case do not relate to a one-off incident, but instead relate to persistent and repeated controlling behaviour from 2016 to 2020, which involved junior colleagues. She submitted that you targeted multiple women and invited the panel to place significant weight on the fact that your conduct occurred mostly at work.

Ms Norman submitted that your conduct has not been remediated. She referred to your written reflective statement, dated 23 January 2024, and said that your reflection does not engage with the panel's findings. Further, she submitted that in your reflection your apology was limited, in that you have not expressed any empathy towards the victims. She submitted that you do not appear to think you did anything wrong, as you attempted to minimise your behaviour as that of an unwitting victim of a '*culture of banter*', rather than taking personal responsibility for your actions. She invited the panel to find that your insight has not developed further since the Trust's local interviews.

Ms Norman referred to the references provided on your behalf. She submitted that the panel must take into account its findings about your abuse of power as a manager and your lack of integrity when considering how the references were produced. She invited the panel to attach caution to its consideration of these references.

Ms Norman submitted that there is a real risk of repetition. She said that you have completed some courses in relation to your conduct, but your reflective statement does not indicate that you have learned from them. She submitted that there is no indication that your completion of these courses has caused you to realise the magnitude of your behaviour.

Ms Norman invited the panel to find that there are extremely serious attitudinal concerns around your sexual harassment of women over a lengthy period of time. She submitted that your fitness to practise remains impaired on public protection and public interest grounds.

Ms Tai referred to your reflective statement. She submitted that you recognise your error and have taken significant steps to minimise recurrence. She submitted that you now know what constitutes acceptable behaviour. She submitted that you have taken time to reflect on the seriousness of these matters, have offered an apology and have undertaken a number of courses to address the concerns.

Ms Tai submitted that the panel is entitled to take into account your working environment at the time. She stated that the panel has heard from multiple witnesses regarding the culture at the Hospital, which encouraged you to say things you would not normally say. She submitted that, removed from that environment, repetition is less likely. However, she submitted that making reference to context was not an attempt to diminish your responsibility in this case.

Ms Tai said that you have addressed the concerns in this matter through reflection and further training.

Ms Tai outlined that there are no previous concerns and submitted that you were an excellent manager, which is evidenced in the testimonials provided on your behalf. She submitted that it is a very serious allegation to suggest that referees would attempt to mislead the regulator in any way. She said that it is unlikely you would have any influence over so many references written on your behalf in 2022/23, when you were no longer working with your referees. She said that your references demonstrate that you do work well with others and there are no attitudinal problems. She submitted that it is clear this was a case where repetition is not likely.

The panel accepted the advice of the legal assessor which included reference to the principles in a number of relevant judgments.

## **Decision and reasons on misconduct**



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

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

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

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

*20.2 act with... 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*

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

***21 Uphold your position as a registered nurse, midwife or nursing associate***

*21.3 act with... integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the facts proved amounted to misconduct, the panel considered the charges individually and collectively, as well as the circumstances of the case as a whole. It took account of all the evidence before it including the testimonials and other materials in the bundle provided by you for the impairment stage, and of the submissions of the parties.

The panel first considered the facts found proved individually and found that your actions in all, except charge 19, amounted to misconduct which was serious. The panel was of the view that your actions in charges 15 and 16, seen in the light of the panel's findings under charge 23 that these actions were an abuse of power, constituted

misconduct. If your actions in charges 15 and 16 had stood alone, without the abuse of power, the panel might not have found that they were misconduct.

When considering the circumstances of this case as a whole, the panel found that the facts found proved collectively demonstrated a pattern of sexual misbehaviour over a significant period of time and a failure to acknowledge professional boundaries. The panel noted that the concerns in this case relate to four female victims who were colleagues, with the majority in a more junior position than you.

The panel had regard to its findings in charge 23, in which it was found that you abused your position of power on multiple occasions to manipulate or otherwise exert control over more junior colleagues. The panel was of the view that this was an unacceptably low standard of professional conduct, which fell seriously short of the conduct and standards expected of a registered nurse. It determined that the variety and combination of your actions would be considered deplorable by fellow practitioners and damaging to the trust that the public places in the profession.

### **Decision and reasons on impairment**

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

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

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

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of*

*the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

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

*'Do our findings of fact in respect of the (doctor's) misconduct... show that his/her fitness to practise is impaired in the sense that s/he:*

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the (medical) profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the (medical) profession; and/or*
- d) ...'*

Taking into account all of the evidence adduced in this matter, the panel determined that the first three limbs in the above test were engaged in this case.

The panel found that your actions put the well-being of others at unwarranted risk of harm, and that the upsetting and distracting effect of your behaviour, about which the panel heard evidence, presented an indirect risk of harm to patients. In the panel's view your sexual misconduct towards colleagues and your lack of integrity brought the profession into disrepute. The panel also determined that your misconduct breached the fundamental professional tenets of acting with integrity and treating colleagues with

respect. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not regard these matters extremely seriously.

Regarding insight, the panel considered your reflective statement, dated 23 January 2024. Whilst you provided an apology, the panel found that where you did reflect on some of the concerns raised, there were notable attempts to deflect blame and responsibility. Further, the panel was of the view that your reflection did not demonstrate an understanding of the impact of your actions on the victims or of how you would handle situations differently in the future. It determined that you have demonstrated a lack of insight and remorse.

The panel was of the view that the misconduct in this case was of a kind that is inherently more difficult to put right. It carefully considered the evidence before it in determining whether or not you have taken appropriate steps to strengthen your practice. The panel noted that you have completed a number of training courses which may be relevant to the concerns in this case. However, it found that it was presented with little evidence demonstrating that you have learnt from these courses and have been able to apply this to your interactions with colleagues.

Further, the panel acknowledged that you have provided a range of positive testimonials from previous colleagues. It considered that these references indicated that you were a good nurse in operational terms and in other respects an effective manager. However, the panel bore in mind that the facts found proved did not concern issues with your clinical practice. It also took into account that one of the referees indicated that they were not aware of the details of the allegations in this case.

The panel had regard to the contextual factors in this case. It noted that it heard from Colleague 1 and Colleague 8 who gave evidence relating to the workplace environment at the time. Colleague 8 stated:

*‘To conclude, in my opinion, there is a heavy culture of “theatre banter” and innuendos used across ALL of the multidisciplinary team.’*

The evidence indicated that the culture at the Hospital involved '*banter*' which did not always contribute to a healthy respectful environment towards colleagues. However, when considering the context of your actions, the panel took into account that you were a senior colleague and therefore had the authority to influence the behaviour in your workplace. Additionally, the concerns in this case involved conduct which went far beyond comments that some might regard as '*banter*'. In the panel's view you were not merely going along with a culture of '*banter*', but you were going well beyond it.

The panel was of the view that there is a high risk of repetition based on the insufficient evidence of insight, remorse, and strengthened practice. The panel considered that your actions set out in the charges found proved demonstrated a pattern of behaviour that fails to acknowledge professional boundaries. It took into account the fact that the concerns were repeated over a number of years with different colleagues. On the basis of all the information before it, the panel decided that there is a risk to the public if you were allowed to practise without restriction. The panel therefore determined that a finding of current impairment on public protection grounds is necessary.

The panel bore in mind that the overarching objectives of the NMC are not only to protect, promote and maintain the health, safety, and well-being of the public and patients, but also to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding proper professional standards for members of those professions.

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

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

## **Sanction**

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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. It took account of the submissions of Ms Norman and Ms Tai. The panel received no further evidence from anyone at this stage.

The panel accepted the advice of the legal assessor.

### **Submissions on sanction**

Ms Norman informed the panel that the NMC was seeking the imposition of a striking-off order as your conduct is incompatible with remaining on the register.

Ms Norman submitted that the following aggravating factors are met in this case:

- Abuse of a position of trust;
- Lack of insight;
- A pattern of misconduct over a period of time;
- Conduct which put patients at potential risk of harm.

Ms Norman referred to the contextual factors previously identified in this matter in relation to your work environment. She submitted that the panel may regard the level of support at your workplace at the time as a mitigating factor.

Ms Norman referred to the SG '*considering sanctions for serious cases*', in particular, she outlined the section relating to '*sexual misconduct*'. She submitted that this case falls squarely within the guidance on sexual misconduct, which states that often the only proportionate sanction will be to remove the nurse from the register. She also outlined the section relating to '*dishonesty*' in respect of the panel's findings on your lack of integrity.

Ms Norman submitted that making no order or imposing a caution order would be inadequate given the seriousness of this case. She submitted that a conditions of practice order would not be appropriate as the concerns do not relate to clinical issues. She submitted that a suspension order would not be proportionate as the factors apparent in this case include misconduct over a significant period of time, attitudinal problems, repetition with a number of colleagues, and insufficient insight. She submitted that your conduct raises fundamental questions about your professionalism, and a striking-off order is the only appropriate sanction given the level of risk identified and to maintain public confidence in the profession.

Ms Tai invited the panel to consider the least restrictive sanction first, and if this was not appropriate, consider escalation to a striking-off order as a last resort. She submitted that striking you off the register would not be proportionate to the degree of sexual misconduct in this case.

Ms Tai submitted that a suspension order would be enough to achieve public protection and to satisfy the public interest. She submitted that any sanction imposed would have a negative consequence on you, but a striking-off order would have an unduly punitive effect as this would deprive you of your livelihood for a minimum of five years before you could apply for restoration to the register. She submitted that the panel should take into account that you have already been unable to work as a nurse for the last four years due to suspension from the Trust and an interim suspension order extended by the NMC three times due to a delay in the scheduling of this hearing. She submitted that a suspension order would adequately mark to the public that your behaviour was unacceptable and show a need for a change in your attitude.

Ms Tai invited the panel to have regard to the steps you have already taken to address the concerns in this case. She referred the panel to your apology in your written reflection and submitted that there is still potential for further development of insight. She submitted that this was not a case where there is evidence of incurable deep seated attitudinal problems.

Ms Tai reminded the panel that, in evidence Colleague 1 described you as an excellent manager. She referred to the positive testimonials provided on your behalf and said that the panel can find an echo of this praise in your references. She submitted that it is highly relevant that your referees say they would be happy to work with you again and for you to remain on the register.

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

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

The panel found the following aggravating features:

- Conduct which put patients at potential risk of harm;
- A pattern of misconduct over a period of time, which involved several victims;
- Lack of integrity as well as sexual misconduct;
- Lack of insight;
- Abuse of a position of power.

The panel also found the following mitigating features:

- No direct patient harm.

The panel also bore in mind that you have had no previous regulatory concerns.

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



It then considered the imposition of a caution order but again determined that, due to the seriousness of the case and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. In view of the nature and seriousness of your misconduct the panel concluded that the placing of conditions on your registration would not be sufficient to meet the public interest or to uphold standards. The panel also noted that the misconduct identified in this case did not concern issues with your clinical practice, and was of the view that there are no practicable or workable conditions that could be formulated, given the nature of the facts found proved.

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

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

The panel considered that the concerns in this case do not relate to a single incident, but rather a pattern of misconduct repeated over a prolonged period of time with several victims. Whilst the panel could not reach a firm conclusion on whether you have

deep-seated personality or attitudinal problems, it was of the view that your misconduct related to behaviour that is difficult to change. The panel acknowledged that it has not been presented with any evidence of repetition of your behaviour since the referral. However, it noted that it has not received any information to evidence a change in your behaviour in the work environment since you left the Trust. The panel also took into account that it had little or no evidence of insight or remorse, and therefore found a consequent risk of repetition.

Your misconduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. In the panel's judgement the serious breach of the fundamental tenets of the profession evidenced by your actions, including the requirement to treat your colleagues with respect and the obligation to act with integrity at all times, is fundamentally incompatible with you remaining on the register. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction to protect the public or meet the public interest.

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

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

The panel noted that you have demonstrated a lack of insight into your misconduct and a lack of remorse regarding the impact of your misconduct on the victims and the wider profession. Additionally, there was insufficient evidence to demonstrate that you have strengthened your practice in respect of the specific concerns in this matter.

The panel considered that the misconduct in this case related to a repeated failure to acknowledge professional and personal boundaries over a prolonged period of time,

with several victims. It noted that your actions impacted on the well-being of your colleagues and indirectly presented a risk of harm to patients. The panel found that you have not demonstrated that you can be trusted as a registered nurse to keep others safe from unwarranted risk of harm, which raises fundamental questions about your professionalism. Having balanced the aggravating factors with the mitigating factors in this case, and taking account of all the circumstances, the panel reached the conclusion that public confidence in the profession would not be maintained if you remained on the register. Taking account of the SG and the guidance on serious cases, the panel concluded that in your case nothing less than a striking-off order would maintain professional standards, keep the public protected and address the public interest.

The panel therefore determined that the appropriate and proportionate sanction is a striking-off order. The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to declare to the public and the profession the standards of behaviour required of a registered nurse.

This will be confirmed to you in writing.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period or the conclusion of an appeal, the panel has considered whether an interim order, until the striking-off order takes effect, 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 your own interests.

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

### **Submissions on interim order**

The panel took account of the submissions made by Ms Norman. She submitted that an interim order should be made on the grounds that it is necessary for the protection of the public and it is otherwise in the public interest. She invited the panel to impose

an interim suspension order for a period of 18 months for the reasons stated in the panel's findings on the substantive sanction.

Ms Tai indicated that she did not oppose the interim order application.

### **Decision and reasons on interim order**

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

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

In reaching this decision the panel had regard to the impact that the order will have on you and balanced your interests with the public interest. The panel was satisfied that the order is proportionate.

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

That concludes this determination.