

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

**Substantive Hearing
2 - 10 June 2025**

10 George Street, Edinburgh, EH2 2PF

Name of Registrant:	Alan Colquhoun
NMC PIN:	85I0023S
Part(s) of the register:	Registered Nurse – Mental Health Nursing (31 October 1988)
Relevant Location:	West Lothian
Type of case:	Misconduct
Panel members:	Museji Ahmed Takolia CBE (Chair, Lay member) Karen Gardiner (Registrant member) Lorraine Wilkinson (Lay member)
Legal Assessor:	Graeme Henderson
Hearings Coordinator:	Vicky Green (2-5 June 2025) Emma Norbury-Perrott (6-10 June 2025)
Nursing and Midwifery Council:	Represented by Mohsin Malik, Case Presenter
Mr Colquhoun:	Present and unrepresented Special Counsel, Safeena Rashid, assisted with cross examination (3-4 June 2025)
Facts proved:	Charges 1)b), 1)c), 1)d), 1)e)ii), 1)e)iii), 2)a), 2)b)i), 2)b)ii), 2)b)iii), 3 and 4
Facts not proved:	Charges 1)a)i), 1)a)ii), 1)e)i)
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Details of charge

That you, a registered nurse:

1) In relation to Colleague B:

- a) Between October and December 2016,
 - i) approached them at a Christmas Party and asked them to go with you to a kitchen and be alone with you; **[Not proved]**
 - ii) said to them words to the effect that you could *"have some fun"*. **[Not proved]**
- b) On unknown dates in 2018, repeatedly sent messages via text and/or WhatsApp that were inappropriate and/or sexualised as set out in Schedule 1. **[Proved]**
- c) In January 2019, said that you had seen someone walking in front of you with *"sexy long legs"*, or words to that effect, and that you realised that this was them. **[Proved]**
- d) On 3 February 2019 sent a text message stating *"need a pic x"*. **[Proved]**
- e) On unknown dates between 2016 and 2019,
 - i) placed your hand on their thigh under a table during a staff meeting; **[Not proved]**
 - ii) touched their thighs when moving around an office space; **[Proved]**
 - iii) touched their buttocks during an external training session. **[Proved]**

2) In relation to Colleague A:

- a) On various dates between January 2019 and July 2020 sent text messages, as set out in Schedule 2 below. **[Proved]**
- b) Following a Christmas party, in January 2020:

- i) told them that you had missed them when they had not been present at the party; **[Proved]**
- ii) told them that you wanted a cuddle; **[Proved]**
- iii) said to them words to the effect that *"you can still look at the menu if you have had your dinner."* **[Proved]**

3) Your conduct in Charges 1) and/or 2) constituted harassment. **[Proved]**

4) Your conduct in Charges 1) and/or 2) was sexually motivated in that you were seeking sexual gratification and/or were in pursuit of a future sexual relationship. **[Proved]**

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

Schedule 1

- a) Words similar to *"I don't know why you are single"*. **[Proved]**
- b) Words similar to *"I don't know how you could go so long without sex"*. **[Proved]**
- c) Words similar to *"I don't know why no-one has snapped you up"*. **[Proved]**
- d) Words that proposed you have an affair with her. **[Proved]**

Schedule 2

- a) *"OK... so every chance of taking advantage of a slightly gassed colleague?! Lol"* **[Proved]**
- b) *"What do I find your most compelling attractive quality?"* **[Proved]**
- c) *"I would rather be your real friend than pissy Facebook friend.xx"* **[Proved]**
- d) *"can't a bloke be a bloke"* **[Proved]**
- e) *"tell me what you want what you really really want"* **[Proved]**
- f) Requests to send a picture of themselves to you. **[Proved]**
- g) Requests to see them outside of work. **[Proved]**
- h) Sent a picture of yourself with a teddy bear. **[Proved]**

- i) Requests for a video call(s). **[Proved]**

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

During the course of the hearing, when it came to light that there is likely to be reference to [PRIVATE], Mr Malik made an application for these parts of the hearing to be held in private. This application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You supported the application.

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

Having heard that there will be reference to [PRIVATE], the panel decided to hold these parts of the hearing in private. It determined that a public interest in these parts of the hearing being held in public was outweighed by yours and the witnesses right to privacy.

Background

The charges arose whilst you were employed by UK Health Enterprises as a Lead Nurse Trainer at UK Health Enterprises from 2015 until 2020.

UK Health is a holding company based in Glasgow which is made up of two organisations: Stewart First Aid Training and Emcare. Both organisations provide training to individuals and organisations; Stewart First Aid Training provides first aid at work training courses to workplaces and Emcare provides a range of health and safety and health and social care training, such as moving and handling training, crisis intervention training, and dementia training.

In February 2019, Colleague B, who was the same rank as you, raised a grievance against you and a formal investigation was carried out and completed. A disciplinary

hearing took place on 1 March 2019. Following this hearing, you attended an Equal Opportunities refresher session on 5 April 2019.

In August 2020, Colleague A, who was in a junior position to you and a mentee, made a complaint about you and a formal investigation commenced. Prior to the investigation completing, you resigned from your post on 26 August 2020.

The regulatory concerns involved allegations of inappropriate texts or WhatsApp messages sent to both Colleague A and Colleague B which are alleged to have crossed professional boundaries and in the case of one of the colleagues, involves allegations of actual touching.

Decision and reasons on facts

At the outset of the hearing you indicated that you would be making some partial admissions to the charges which you would be setting out in your submissions. The panel decided to proceed to hear all of the evidence alongside your submissions on all of the charges. No charges were therefore formally announced as proved by way of admission.

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case, together with the submissions made by Mr Malik on behalf of the NMC and those made by you. It disregarded any evidence relating to the decision made by your former employers, what the decision maker made of your demeanour, and the suggestion that there were other complaints. As a professional panel it concentrated solely on the evidence relating to the charges.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

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

- Colleague A: Colleague at UK Health Enterprises
- Colleague B: Colleague at UK Health Enterprises
- Ms 1: Disciplinary Officer at UK Health Enterprises

The panel accepted the advice of the legal assessor in which he referred them to Section 26 of the Equality Act 2010, and to the cases of *R Dutta v General Medical Council [2020] EWHC 1974 (Admin)*, *Hindle v Nursing and Midwifery Council EWHC 373 (Admin)* and *Basson v Nursing and Midwifery Council [2018] EWHC 505*.

Before considering the charges, the panel gave consideration to your submission relating to concerns about the length of time that has elapsed since the allegations arose. Whilst the panel acknowledged that it is over five years since the first charge arose, it was of the view that you can still receive a fair hearing. The panel carefully assessed all of the evidence before it, having particular regard to any corroborative and contemporaneous evidence.

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

Charge 1)a)

1) In relation to Colleague B:

- a) Between October and December 2016,
 - i) approached them at a Christmas Party and asked them to go with you to a kitchen and be alone with you;
 - ii) said to them words to the effect that you could "*have some fun*".

This charge is found not proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Colleague B. It also had regard to your documentary evidence and submissions.

The panel had sight of Colleague B's NMC witness statement dated 11 October 2022 in which she stated the following:

'Shortly after I started at UK Health Enterprises, I attended the office Christmas party. I do not recall the date of the party but it was in December 2016. I had joined in around October 2016 and had only met the Nurse a few times prior to the Christmas party. At the party, the Nurse propositioned me; he asked me to come with him to the kitchen so that we could be alone to have some fun. I refused as the Nurse was drunk and I was aware that he was married. I am a Christian and I do not agree with adultery.'

In your submissions, you told the panel that you have no recollection of what is alleged in this charge.

The panel had regard to the documentary evidence which contained information about the disciplinary investigation after Colleague B raised a grievance. The panel noted that there was no record of this incident being raised in 2019 or earlier, and the first time it is recorded is in the NMC witness statement which is over five years after the incident is alleged to have occurred. The panel found Colleague B's oral evidence to be broadly consistent with her witness statement and found her to be a generally credible witness. However, in the absence of any supporting or contemporaneous evidence, it considered that it would be unsafe to find the charge proved. You would only have been made aware of this allegation several years after the alleged incident. Colleague B accepted that, due to the passage of time, her memory was not as good as it would have been had she given evidence earlier. The NMC has not produced evidence from anyone at

the party or anyone that Colleague B spoke to at the time of the party. In light of the case of *Dutta* the panel was not confident that it would be safe to make a finding and was of the view that the NMC has failed to discharge its evidential burden. Accordingly, the panel found this charge not proved in its entirety.

Charge 1)b)

1) In relation to Colleague B:

- b) On unknown dates in 2018, repeatedly sent messages via text and/or WhatsApp that were inappropriate and/or sexualised as set out in Schedule 1.

Schedule 1

- a) Words similar to “*I don’t know why you are single*”. **[Proved]**
- b) Words similar to “*I don’t know how you could go so long without sex*”. **[Proved]**
- c) Words similar to “*I don’t know why no-one has snapped you up*”. **[Proved]**
- d) Words that proposed you have an affair with her. **[Proved]**

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Colleague B. The panel also had regard to your submissions.

The panel first considered whether you had sent the messages via text and/or WhatsApp as set out in Schedule 1. The panel had no screenshots of this conversation. Colleague B explained she had deleted them at the time because she *‘regularly deleted old messages off her phone and did not like having the nurse messages on my phone, the messages made me feel uncomfortable’*.

Before considering whether you had sent the messages, it had regard to the circumstances leading up to them. In your submissions, you told the panel that at the relevant time, you understood that Colleague B had split up with her partner. During cross examination, when this was put to her, Colleague B said that this was not the case and that she had split up with her partner during the COVID-19 pandemic. In your submissions you told the panel that you have a clear recollection of Colleague B being with a partner prior to these allegations. You said that Colleague B told you how she and her partner had attended an event and that they were seated near the Managing Director of the company. You said that soon after, this relationship came to an end and is what led you to making the comments you have made admissions to as set out below.

Schedule 1

a) Words similar to “*I don’t know why you are single*”.

In her NMC witness statement, Colleague B stated the following:

‘The Nurse would start the conversation saying something like ‘how are you’ and would then sometimes say something about work (for example, asking me about an upcoming training) and then quickly moved onto sexualised messages. The Nurse messaged saying things such as ‘I don’t know why you are single’.

Colleague B’s oral evidence was consistent with her documentary evidence.

In your submissions, you accepted that you said words to the effect of “*I don’t know why you are single*”.

The panel accepted the evidence of Colleague B as well as your submission. The panel therefore found that it was more likely than not that you said words to the effect of “*I don’t know why you are single*” to Colleague B.

Schedule 1

b) Words similar to “*I don’t know how you could go so long without sex*”.

The panel had regard to the NMC witness statement of Colleague B in which she stated that you messaged saying that you ‘*did not understand how [she] could go so long without sex.*’ During a meeting on 8 February 2019, Colleague B also reported that you had sent a text saying this. The panel also heard oral evidence from Colleague B which was consistent with the documentary evidence.

In your submissions you refuted this allegation. You said that you said that you did not know how she could go that long without the comfort of a relationship. You said that you remember saying this because he clearly remembers Colleague B’s response which was that she had “*Jesus for that*”.

The panel found that Colleague B’s evidence was consistent with her NMC witness statement and the near contemporaneous meeting notes, to which the panel afforded significant weight. The panel therefore found her to be a credible and reliable witness and preferred her evidence in respect of this point.

Schedule 1

c) Words similar to “*I don’t know why no-one has snapped you up*”.

The panel had regard to the NMC witness statement of Colleague B in which she stated that you messaged saying that you ‘*did not understand how ... no one had snapped me up..*’ During a meeting on 8 February 2019, Colleague B also reported that you had sent a text saying this. The panel also heard oral evidence from Colleague B which was consistent with the documentary evidence.

In your submissions, you told the panel that you accepted that you had said this to Colleague B.

The panel accepted the evidence of Colleague B as well as your submission. The panel therefore found that it was more likely than not that you said words similar to “*I don’t know why no-one has snapped you up*”.

Schedule 1

d) Words that proposed you have an affair with her.

The panel had regard to Colleague B’s NMC witness statement in which she stated the following:

‘On one occasion (I do not recall when), the Nurse explicitly asked me to have an affair with him. Given the passage of time, I do not recall the specific words used when he asked me to get involved with him. In response to his message, I recall that I told him that his messages were inappropriate and that his wife would not like it. I told him that, as a Christian, I do not believe in adultery and I had no intention of doing that with him. I also told the Nurse that I was not attracted to him. I told the Nurse to stop texting me. I do not recall how the Nurse responded immediately after my rejection (for example, if he messaged or what the message said).’

The panel also had regard to Colleague B’s responses during the meeting on 8 February 2019 in which she stated the following:

‘I remember I have responded to one of Alan’s messages saying, I’m a Christian and would never consider having an affair with a married man and he needed to stop. I texted him saying he was crossing a line and that I was not comfortable with this.’

In your submissions you told the panel that you denied propositioning Colleague B with an affair.

The panel found that Colleague B's evidence was consistent with her NMC witness statement and the near contemporaneous meeting notes. The panel therefore found her to be a credible and reliable witness and preferred her evidence in respect of this point.

1) In relation to Colleague B:

b) On unknown dates in 2018, repeatedly sent messages via text and/or WhatsApp that were inappropriate and/or sexualised as set out in Schedule 1.

Having found schedule 1 proved in its entirety, the panel went on to consider whether the messages were sent repeatedly, inappropriate and/or sexualised.

The panel was satisfied that the number of messages sent by you was sufficient to satisfy the requirement in the stem of the charge that the messages were sent repeatedly.

In your submissions you told the panel that in saying that you did not know why Colleague B was single and that she would be '*snapped up*', you were trying to show concern for her by being empathetic after her recent break up and that your intentions were not sexual.

Having regard to the nature of the messages you sent to Colleague B, the panel determined that these did cross professional boundaries and were therefore inappropriate. The panel could not disregard the fact that your messages were sent late at night often as the weekend approached and sent to a woman you believed to be single. It found that the messages you sent to Colleague B went beyond what is acceptable between colleagues and was therefore inappropriate. The panel also found that in messaging Colleague B about her sex life and proposing having an affair was clearly sexual in nature. Taking the other comments you made about not knowing why she was single, and that she would be "*snapped up*" together with suggesting an affair with Colleague B and talking about her sex life, the panel found that these were also sexualised. The panel therefore found this charge proved.

Charge 1)c)

1) In relation to Colleague B:

- c) In January 2019, said that you had seen someone walking in front of you with "sexy long legs", or words to that effect, and that you realised that this was them.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Colleague B. It also had regard to your submissions.

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

'In January 2019 (I do not recall the date), the Nurse approached me at work and told me he needed to tell me something embarrassing. I did not know what the Nurse wanted to tell me but I agreed to speak with him. The Nurse took me to the kitchen (where we were alone) and then told me that he had seen a gorgeous lady with 'sexy long legs' earlier walking in front of him and realised that it was me. I laughed and then left the kitchen.'

The panel also had sight of your responses in the minutes of the disciplinary meeting on 1 March 2019, in particular, the following:

'In my defence I am surprised as she laughed out loud. I hadn't seen her since Christmas. I said I need to tell you this, its funny and I made light of it. How I said, I caught myself being a real bloke. I said 'I saw these legs in the black stilettos and it was you.'

In your submissions, you said that you remember it was the last day of training and that on your way into the office you saw someone walking in front of you with long legs and wearing high heels. You told the panel that you did say words to the effect of what is alleged in this charge to Colleague B, but that you don't recall saying the word "sexy". You asserted that it was in some way self-deprecating. You also said that you had not appreciated how saying this could make Colleague B feel.

Having regard to all of the above, the panel found that it was more likely than not that in January 2019, you said to Colleague B that you had seen someone walking in front of you with "*sexy long legs*", or words to that effect, and that you realised that this was them. The panel therefore found this charge proved.

Charge 1)d)

1) In relation to Colleague B:

d) On 3 February 2019 sent a text message stating "*need a pic x*".

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Colleague B. The panel also had regard to your submissions.

The panel had sight of a screenshot of a text from you to Colleague B in which you wrote '*need a pic x*' at 22:26 on 3 February 2019.

In your submissions you told the panel that you did send the message. In the (undated) messages some links to guitars had been sent, and you said that you were asking for a picture of a guitar that Colleague B had recently purchased.

Colleague B agreed there had been a previous discussion regarding guitars however stated there had been a passage of time, therefore she received a request out of the

blue for a 'pic' she told the panel was distressing and she interpreted this as asking for a naked picture. You denied this, asserting there was one continuous conversation and that you were referring to a guitar throughout.

Colleague B did not accept that this request was made in the context of discussions about guitars. The panel preferred her version of events based on the fact that although there was a discussion about guitars it predates the request for a 'pic'.

Having regard to all of the above, the panel found that it was more likely than not that on 3 February 2019, you sent a message to Colleague B saying 'need a pic x'.

Charge 1)e)i)

1) In relation to Colleague B:

- e) On unknown dates between 2016 and 2019,
 - i) placed your hand on their thigh under a table during a staff meeting;

This charge is found not proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Colleague B. The panel also had regard to your submissions.

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

'I recall on one occasion that, during a staff meeting, he laid his hand (I do not recall which hand) on my right thigh under the table and began to speak to me. He did not remove his hand until I crossed my legs under the desk, which I did quickly after he placed his hand on my leg (so his hand was only on my leg for a short moment). I would never chose to place my hand on a

colleagues' thigh, under a table, to get their attention and the Nurse did not need to put his hand on my thigh to get my attention.'

In your submissions you denied placing your hand on Colleague B's thigh under the table during a staff meeting.

The panel had regard to the documentary evidence which contained information about the disciplinary investigation after Colleague B raised a grievance. The panel noted that there was no record of this incident being raised in 2019 or earlier, and the first time it is recorded is in the NMC witness statement which is over five years after the incident is alleged to have occurred. The NMC has not produced evidence from any other witnesses who would have been at the staff meeting or to whom Colleague B may have spoken to afterwards. Whilst the panel found Colleague B's oral evidence to be consistent with her witness statement and found her to be a credible witness, in the absence of any supporting or contemporaneous evidence, on the balance of probabilities, it considered that the NMC has failed to discharge its evidential burden. Accordingly, the panel found this charge not proved.

Charge 1)e)ii)

1) In relation to Colleague B:

- e) On unknown dates between 2016 and 2019,
- ii) touched their thighs when moving around an office space;

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Colleague B and Ms 1. The panel also had regard to your submissions.

The panel had regard to Colleague B's NMC witness statement in which she stated the following:

'The other instances where he touched my thigh was when we were moving around the office space; on these occasions, it was a light touch here and there. I do not recall whether any colleagues saw the Nurse touch my thigh during the meeting or as we moved around the office.'

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

'UK Health Enterprises' office is split over two floors, with the first floor containing classrooms and a breakout room, and the second floor having an office and lunchroom. UK Health Enterprises is quite small.'

The panel heard evidence that the office space is small, comprising five desks which were close together.

In your submissions you told the panel that the kitchen and office space at the office was small and it was therefore not unusual for colleagues to brush past each other. The panel had regard to the note of the meeting with Colleague B in February 2019 in which she stated:

'I remember one time he touched the side of my hip to let me go first through the door, I don't want to say that he did that intentionally.'

The panel determined that this was capable of supporting her evidence, that there was touching of the thigh, but that did not necessarily mean that it was intentional on your part. Colleague B did not mention any other episode where you had touched her thigh.

Having heard evidence that the office space was small, the panel considered that it was more likely than not that you did touch Colleague B's thighs when brushing past.

Whether this was intentional is a matter to be considered at a later stage. The panel found this charge proved.

Charge 1)e)iii)

2) In relation to Colleague B:

f) On unknown dates between 2016 and 2019,

i) touched their buttocks during an external training session.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Colleague B. The panel also had regard to your submissions.

The panel gave consideration to the wording of this charge refers to *'buttocks'* which is plural and the allegation relates to buttock singularly. The application of *'buttock'* and *'buttocks'*, in the panel's view is not materially different. Whilst there is a slight discrepancy in the meaning, the panel decided that this charge should not fall as a consequence.

The panel had regard to Colleague B's NMC witness statement in which she stated the following:

'I facilitated a training session with the Nurse at an organisation office (instead of at UK Health Enterprises offices). During the training session, the Nurse and I were demonstrating how to complete the 'sit to-stand' move to the class; I was in the role of the service user and the Nurse was in the role of the support worker. While demonstrating the move, the Nurse grabbed my bottom. The Nurse's hand should have been on my hip and not my

bottom when completing this move. I did not say anything to the Nurse, as we were in the middle of a training session.'

The panel had regard to all of the documentary evidence and noted that this allegation was not supported by any contemporaneous record. It also noted that, in live evidence Colleague B provided a far more vivid description of what she is said to have experienced. She described a grab between the cheeks of her buttocks.

In your submissions you disputed that you performed a demonstration of the '*sit to-stand*' move when it is alleged. You did however accept that on a different occasion in a different venue, whilst delivering training with Colleague B you did.

During a demonstration of the '*sit to-stand*' manoeuvre, the panel observed that one hand needed to be placed on the back of the low hip down to the buttocks. Having regard to all of the above, and having witnessed a demonstration of the '*sit to-stand*' manoeuvre, the panel concluded that it was more likely that not that Colleague B did feel your hand on her buttock area albeit at the side and near the hip.

Having regard to all of the above, the panel found this charge proved.

Charge 2)a)

2) In relation to Colleague A:

- a) On various dates between January 2019 and July 2020 sent text messages, as set out in Schedule 2 below.

Schedule 2

- a) *"OK... so every chance of taking advantage of a slightly gassed colleague?! Lol"*
- b) *"What do I find your most compelling attractive quality?"*
- c) *"I would rather be your real friend than pissy Facebook friend.xx"*
- d) *"can't a bloke be a bloke"*

- e) *"tell me what you want what you really really want"*
- f) Requests to send a picture of themselves to you.
- g) Requests to see them outside of work.
- h) Sent a picture of yourself with a teddy bear.
- i) Requests for a video call(s).

This charge is found proved.

In reaching this decision, the panel had regard to the evidence of Colleague A. The panel also had regard to your submissions.

With the exception of Schedule 2h), the panel had sight of screenshots of the text messages sent by you to Colleague A. In your submissions, you told the panel that you accepted that you had sent these messages.

In respect of Schedule 2a), you made it clear that you were referring to yourself and not Colleague A. The panel noted that the message in a) does continue to say *'not of you... I meant me'* followed by a laughing emoji.

When asking about what you thought Colleague A's most compelling quality is at Schedule 2b), you said that this was because she had mentioned her physical appearance in the past and you were asking this question as a friend out of concern that she was being unduly harsh about herself.

In respect of Schedule 2c), you said that you did want to be *"proper"* friends with Colleague A, rather than just being friends through social media.

You said that you were being self-deprecating when you wrote *"can't a bloke be a bloke"* as set out in Schedule 2d).

In respect of Schedule 2e), you said that you wanted Colleague A to tell you what she wanted from the friendship and nothing more.

You said that at the relevant time, there was a social media trend where people were sending “now” photographs and that’s what you were asking for at Schedule 2f).

In respect of Schedule 2g) you said that you did want to see her outside of work when lock down restrictions were lifted, but this was said to her as a friend. You said that when you asked to have a video call, it was during the COVID-19 pandemic as set out in Schedule 2i) and that this was how the whole planet was communicating with each other at the time, so you did not think it was inappropriate.

In respect of Schedule 2h), the panel had regard to the NMC witness statement of Colleague A dated 21 April 2025 in which she stated the following:

‘the Nurse sent a picture of himself in bed with a teddy bear in a late-night message.’

In her oral evidence, Colleague A told the panel that you sent her a photograph of you in bed, under the bedding holding a teddy bear.

In your submissions, you told the panel that you did send a photograph of yourself to Colleague A, but that you were not holding the teddy bear, it was sat on the headboard above you and you were on the bed rather than under the covers.

The panel noted that it is not disputed that you sent a photograph of yourself to Colleague A and that a teddy bear was also included in it.

Having regard to all of the above, the panel found this charge proved in respect of all points set out in Schedule 2.

Charge 2)b)

b) Following a Christmas party, in January 2020:

- i) told them that you had missed them when they had not been present at the party;

- ii) told them that you wanted a cuddle;
- iii) said to them words to the effect that *"you can still look at the menu if you have had your dinner."*

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Colleague A. It also had regard to your submissions.

In her NMC witness statement, Colleague A stated the following:

'Another example is from December 2019, when I did not attend UK Health Enterprises' Christmas dinner as I had childcare responsibilities. In the days leading up to the dinner, the Nurse repeatedly approached me and queried why I was not going to the dinner and that I should attend the event. I told the Nurse the reasons why I could not attend but he did not stop approaching me in the office, as the Nurse would still approach me in a corridor or in an empty classroom and he would come into close proximity to me and try and start a conversation in a cajoling or accusatory way asking if I'd managed to sort out childcare and why wasn't I coming to the 'do' etc. I would stop the conversation and say that it was not going to happen and to stop asking me. I felt uncomfortable with the Nurse's repeated comments as I did not owe him any sort of explanation, but he did not stop approaching me.'

In your submissions you told the panel that you accepted saying to Colleague A that you had missed her at the Christmas party. You also accepted that you said that you would have wanted to give her a hug for Christmas. You told the panel that you recall saying words to the effect that *"you can still look at the menu if you have had your dinner."* You said that you had heard this term being used and that you repeated it.

Having regard to the above, the panel decided that it was more likely than not that you said the words alleged. The panel therefore found this charge proved.

Charge 3

3) Your conduct in Charges 1) and/or 2) constituted harassment.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Colleague A and Colleague B. The panel also had regard to your submissions. For the avoidance of doubt, for the reasons set out above, the panel did not consider that charges 1)e)ii) and 1)e)iii constituted harassment.

The panel had regard to the definition of *'harassment'* as set out in section 26 of the Equality Act (2010). The panel noted that the general definition of harassment is when a person harasses another if they engage in unwanted conduct related to a relevant protected characteristic which has the purpose or effect or either:

- Violating another's dignity, or
- Creating an intimidating, hostile, degrading or offensive environment.

The panel heard evidence from Colleague A and Colleague B that your conduct towards them was unwanted. They both described feeling *"dirty"* and intimidated as a result of your conduct and messages. The panel accepted evidence from Colleague B that she was offended by your behaviour and messages which resulted in her raising a grievance against you. It noted in particular that you were mentor to Colleague A who was also employed in a more junior role than you. In this respect, your seniority placed you in a position of authority and trust. The panel found that your behaviour made her feel uncomfortable and intimidated in what should have been a supportive and safe work environment for her. Colleague A also raised a complaint about your conduct.

In your submissions, you said that it was not your intention to harass Colleague A and Colleague B. However, the panel noted during your submission your assertion your actions might understandably leave someone feeling harassed.

Having regard to all of the above, your conduct at Charges 1 (except Charge 1)e)ii) and 1)e)iii)) and 2 constituted harassment. Accordingly, the panel found this charge proved.

Charge 4

- 4) Your conduct in Charges 1) and/or 2) was sexually motivated in that you were seeking sexual gratification and/or were in pursuit of a future sexual relationship.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Colleague A and Colleague B. The panel also had regard to your submissions. For the avoidance of doubt, for the reasons set out above, the panel did not consider that charges 1)e)ii) and 1)e)iii constituted sexual motivation.

In your submissions you told the panel that your intentions with Colleague A and Colleague B were not sexual in nature and that you only sought a friendship. You said that you believed that your conduct and messages was just *“banter”* and/or *“in-depth conversations”* between friends.

The panel was mindful of its earlier findings at Charge 1)a) in which it was found that your messages to Colleague B were inappropriate and sexualised. The panel noted that there was a pattern of conduct towards Colleague B that was sexual in nature. In respect of Colleague A and Charge 2, the panel found that whilst your conduct was not overtly sexual, it was more suggestive but still sexual in nature.

In determining your state of mind, the panel noted so far as you were aware, neither Colleague A nor Colleague B were in a relationship at the relevant time, and that there

was a pattern of you contacting them late in the evening and sending messages that crossed professional boundaries repeatedly. In sending these messages, and in your conduct towards your colleagues, the panel determined that an inference could be drawn and that it was more likely than not that your conduct was sexually motivated in that you were seeking sexual gratification when behaving in the manner that you did, and you were also acting in pursuit of a future sexual relationship. The panel therefore found this charge proved in respect of Charge 1 (except Charge 1)e)ii) and 1)e)iii)) and Charge 2.

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 ability to practise kindly, safely and professionally.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

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

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a 'word of

general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

Mr Malik invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision. Namely: 20, 20.1, 20.3, 20.4, 20.5, and 20.8.

Mr Malik submitted that it is a registrant's professional duty to act in the appropriate manner expected of a registered nurse at all times. Sending colleagues inappropriate and sexualised messages, and sexually motivated physical touching, is totally unacceptable and is not the behaviour expected of a registered nurse. Further, he submitted that this is indicative of your deep seated attitudinal issues, and your actions undermined public confidence and trust in the nursing profession.

Mr Malik directed the panel to the NMC guidance FTP-2a '*Misconduct*', last updated on 6 May 2025. He submitted that your behaviour in regards to Colleague A and Colleague B was contrary to the guidance surrounding bullying and harassment, and that you continued your inappropriate behaviour towards both colleagues after they asked you to stop.

Mr Malik submitted that you abused your position of trust in your workplace. Referencing the Code, he submitted that it is a registrant's duty to maintain effective communication and to act with integrity at all times. Further, the presence of bullying and harassment has an extremely negative effect on a workplace environment, staff performance, staff attendance, and the safe delivery of care.

Mr Malik submitted that the inappropriate messages sent by you to Colleague A and Colleague B occurred in the workplace and outside of the workplace. Colleague A and Colleague B described how the messages sent by you made them feel '*uncomfortable, embarrassed, humiliated, vulnerable and dirty*' and both colleagues confirmed the messages were '*unwanted, uninvited, and unwelcomed*'.

In conclusion, Mr Malik submitted that harassment and sexual misconduct speak to the seriousness of your actions, and must amount to misconduct.

You were invited to make your submissions on misconduct and impairment and initially stated you did not have a response to Mr Malik's submissions. You then went on to respond to panel questions mainly directed towards impairment.

Submissions on impairment

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

Mr Malik submitted that you have previously been subject to NMC regulatory proceedings which resulted in a caution order in 2013. The facts found proved in 2013 involved inappropriate messages sent to colleagues which were of a similar nature to the facts found proved in this case. You reassured the panel in 2013 that your behaviour would not be repeated; *'in the future you will ensure that you live up to the standards expected of a Registered Nurse'*. Mr Malik submitted that you failed to do so.

Mr Malik submitted that your practice is currently impaired. He directed the panel to the case law of *Grant* and in particular the following test:

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

- a) *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) ...'

He submitted that the first three limbs of *Grant* are engaged in this case and that there is no suggestion of dishonesty ('d' above). Further, he submitted that a finding of impairment is required to mark your unacceptable behaviour and breach of the fundamental tenets of the nursing profession, and to reaffirm proper standards of behaviour of nurses.

Mr Malik submitted that you put colleagues at an unwarranted risk of emotional and psychological harm. You have not demonstrated remediation or insight into the matters found proved and therefore a risk of repetition remains.

Mr Malik submitted that your conduct, and fundamental concerns regarding your attitude, are directly linked to your workplace. You abused your position of authority and trust as a mentor and senior staff member and have brought the nursing profession into disrepute by acting in such an inappropriate manner.

Mr Malik directed the panel to the case of *Yeong v General Medical Council [2009] EWHC 1923 (Admin)*; *[2009] WLR (D) 268* and *Cohen v General Medical Council EWHC 581 (Admin)*.

He further submitted that your failings may not be clinical in nature but they are attitudinal, and this can be more difficult to remediate. Mr Malik directed the panel to the NMC guidance FTP-15 '*Insight and strengthened practice*', last updated on 14 April 2021. Mr Malik invited the panel to consider what steps you have taken to reflect and remediate your behaviour in respect of the facts found proved. He submitted that you have provided your revalidation evidence and current workplace references, but you have not provided a reflection or stated what you would do differently in the future. Further, he submitted that you have not addressed the risks or concerns identified and therefore, your previous behaviour is highly likely to be repeated.

In conclusion, Mr Malik submitted that due to the seriousness of the incidents which include sexually motivated harassment of colleagues in your place of work, a risk of unwarranted harm to the public remains. It is the NMC's position that your practice is currently impaired on both public protection and public interest grounds.

You were invited to make your submissions on impairment and initially stated you did not have a response to Mr Malik's submissions.

In response to panel questions regarding what assurance you could give to this panel that your behaviour would not be repeated in the future, you stated that considerable time has passed and that you have reflected on this situation. You told the panel that this situation has been on your mind every day since the time of the incidents and how your actions caused hurt to your colleagues. You stated that it has been a constant in your mind that you need to change and that due to this, your attitude has changed. You told the panel that you do not socialise or communicate with colleagues outside of work and you try your best to be respectful and professional at all times. You directed the panel to your references and stated that this is evidenced by professional opinions.

You told the panel that you have completed a gender based violence course which you completed online through your workplace. This course focussed on physical and emotional violence and you submitted that it highlighted to you the various types of behaviour which can cause harm to others. You also told the panel that you completed

a course on equality, diversity and rights which allowed you to consolidate a change in your thinking as to how you approach people and proceeding in the correct way.

In response to further questions you told the panel that you have learned a lot about yourself over the last few years and you have become very self-aware and conscious of how you behave, what you say, and the content of conversations. You told the panel you do not get involved in '*banter*' in your workplace and you steer away from it. You submitted that your demeanour has changed and you have '*gone into yourself*' and that you have become more reserved. You told the panel that you see this as a positive thing in terms of being much more self-aware regarding how you are around others.

The panel asked that since you did not provide a written reflective piece for this hearing regarding harassment and it asked you if you have taken time to undertake an in depth reflection in respect of the matters found proved both in 2013 and at this hearing. You told the panel that you have not completed a reflection specifically related to this case, but in terms of interactions during appraisals and [PRIVATE] sessions, you have spoken about how important your attitude is, the need to be aware of how other people are feeling, and how your actions affect others. You told the panel you have not spoken to any colleagues in depth about this situation and that it is part of your personality to 'think things through yourself'. You told the panel you were not aware that you were required to produce any documents regarding reflection and insight in respect of the hearing.

You told the panel in terms of the future, of which you are fearful, you have demonstrated remorse and have acknowledged that you understand the stress you caused to others. You stated that you accept this without question.

In response to panel questions, you told the panel that in the last five years you have shown that you have changed your attitude. You submitted that your colleagues and students all say that you work in a professional manner and are helpful and supportive, as evidenced by positive references from two of your managers.

You directed the panel to your references from your current line manager and colleagues. You told the panel that the references confirm that you work in a

professional manner, no concerns have been raised, and that you have received positive feedback from families and patients in respect of your communication and the care and you provide.

You told the panel that in the last six months you have started reflection sessions with a colleague at work [PRIVATE]. The sessions allow you to reflect on your case load and the challenges of your role. You submitted that you have found the sessions useful to reflect on your current practice and this is an ongoing process.

In conclusion, you submitted that the references and evidence contained in documents that accompany recent revalidations are contained in your second registrant response bundle. They are genuine and reflect your approach to your professional work.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, and *Cohen*.

Decision and reasons on misconduct

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

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

***‘9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues
To achieve this, you must:***

9.4 support students’ and colleagues’ learning to help them develop their professional competence and confidence

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel took into account the facts found proved when considering misconduct.

The panel was of the view that in respect of charges 1)e)ii) and 1)e)iii), although these charges were found proved, the panel had already determined that your actions were not inappropriate as they involved accidental touching and contact during a demonstration. They did not involve a breach of the code, let alone misconduct.

However, the panel was of the view that repeatedly sending uninvited inappropriate and sexualised messages to colleagues represents a serious breach of professional boundaries and is well below the standards expected of a registered nurse. The panel also considered that your actions amounted to harassment and were sexually motivated

with a view to obtaining sexual gratification and a future sexual relationship. The panel determined that your actions represent a breach of the fundamental tenets of the nursing profession, brought the profession into disrepute, and amounted to serious professional misconduct in respect of charges 1)b), 1)c), 1)d), 2)a), 2)b)i), 2)b)ii), 2)b)iii), 3 and 4.

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

At this stage the panel took into consideration the documents provided by the NMC related to previous regulatory concerns in 2013 in addition to the documents supplied by you.

Following the handing down of its determination on facts, the NMC disclosed the outcome letter of previous regulatory proceedings against you. These proceedings resulted in a caution order in 2013. The charges pertaining to the previous regulatory proceedings were of a similar nature to the charges of this case, involving sending inappropriate messages to colleagues. It had regard to the 2013 determination and noted that the previous panel determined that the risk of repetition was '*low*' given the assurances that you made at the time that you would not repeat matters of the kind found proved. It also noted that the previous panel did not find this behaviour to be sexually motivated. This material would only become relevant at the stage of the panel determining impairment.

The panel also received an on table bundle which you submitted containing positive references from your current managers and your revalidation documentation. The panel noted that, despite being aware of the nature of the charges your referees spoke highly of your professionalism. This material was also only relevant for the impairment stage.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

‘The question that will help decide whether a professional’s fitness to practise is impaired is:

“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”

If the answer to this question is yes, then the likelihood is that the professional’s fitness to practise is not impaired.’

In this regard the panel considered the test approved by Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 76, she said:

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

- a) 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) ...’*

The panel determined that only limbs b) and c) are engaged in this case.

Although it was submitted on behalf of the NMC that limb a) was engaged, the panel found that there was no evidence to suggest that patients were placed at risk of harm as a result of your misconduct. Your misconduct breached the fundamental tenets of the nursing profession, in particular the requirement to promote professionalism and trust and to prioritise people, and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to sexual misconduct and harassment extremely serious.

The panel then considered the on table bundle which you submitted which included positive testimonials from your current line manager and team manager, 6 and 12 months appraisal documentation, and positive feedback from both student nurses and patient families. The panel also took into account the training courses which you completed in respect of gender based violence and equality and diversity. However, the panel noted that you have not submitted a written reflection. It was not necessary for you to submit a formal written reflection. You could demonstrate insight, remorse and strengthened practice by oral submission and submitting supporting documentary evidence.

The panel determined that the misconduct in this case can be very difficult to address as the concerns are attitudinal in nature. However, it carefully considered the evidence before it in determining whether you have taken the appropriate steps to strengthen your practice.

The panel considered your oral submission as to what have you done to address the 2013 concerns, where you stated that you have changed as a person and have changed your thinking. Further, the panel noted that you stated you have been comforted by the references of your current line manager and colleagues, and you have taken learning from two courses pertaining to gender based violence and human rights, and that you now '*understand how things people could say could do harm*'. The panel took account of your oral submission where you stated you are more self-aware, more cautious in what you say and how you interact with others at work, and that you do not get involved in '*banter*'. Further, you stated that your demeanour has changed, and you have '*gone into yourself*'.

The panel determined however, taking everything into account, that there is evidence of limited insight into your misconduct, and that it is not fully developed. In particular you have not addressed how your actions specifically impacted on Colleague A and Colleague B, or the wider nursing profession. The panel was concerned by your response to its questions pertaining to structured reflection on the incidents where you told the panel that you '*prefer to think things through yourself*'. The panel was of the view that this was not reflective practice which is a fundamental element of nursing practice.

In light of this, it determined that you have not demonstrated full insight into the matters found proved. It also determined that you have not demonstrated how you will assure the panel that your misconduct will not be repeated again in the future, given the regulatory proceedings which resulted in a caution order in 2013 relating to matters of a similar nature. The panel was concerned that your behaviour in 2013 has escalated to sexually motivated misconduct. Furthermore, you continued to contact Colleague A despite being involved in disciplinary proceedings for similar matters with Colleague B only a matter of months earlier. The panel determined that there is evidence of a pattern of behaviour over a considerable amount of time and it was not satisfied that this will not be repeated.

The panel concluded that you did place Colleagues A and B at risk of harm including harassment, abusing your position as a senior nurse, and sexual harassment for your own personal gratification. The panel also considered the NMC guidance FTP15 '*insight and strengthened practice*'. The panel determined that there is an evident lack of developed insight and remediation on your part.

The panel was of the view that your misconduct is demonstrative of a pattern of behaviour and attitudinal issues which have not been addressed for over a decade. The panel was not reassured that you do not present a risk to your colleagues. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that an informed member of the public would be concerned about your misconduct and that public confidence in the profession, and also the confidence of colleagues, would be undermined if a finding of impairment were not made. The panel therefore finds your fitness to practise also to be impaired on public interest grounds.

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. The effect of this order is that the NMC register will show that you have been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

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

Mr Malik submitted that the aggravating factors in this case included prolonged misconduct over an extended period of time which continued despite requests for you to

cease contact that in words of your colleagues crossed professional boundaries. He further submitted that there were multiple complainants, a lack of insight into how your behaviour affected both Colleague A and B, abuse of position, and limited remediation, insight and remorse. He submitted that the mitigating factors were that you have worked elsewhere without similar concerns being raised, there are no concerns regarding your clinical practice, and your limited admissions regarding sending the inappropriate messages to colleagues.

Mr Malik directed the panel to the NMC sanctions guidance. He submitted that to take no further action was not sufficient to protect the public and maintain standards expected of nurses. He submitted that a caution order would only be appropriate in cases that posed no risk to patients and the public, and were at the lower end of the spectrum. He further submitted that there is no evidence to suggest that you have sufficiently remedied the concerns and that there is a risk of harm to colleagues in the future.

Mr Malik submitted that a conditions of practice order is not appropriate in this case as the concerns are not easily remediated and workable conditions cannot be formulated to adequately protect the public and satisfy the public interest. He submitted that this sanction is more suited to addressing clinical concerns in identified areas of clinical practice which can be addressed through training. It is not suitable to address evidence of deep-seated personality or attitudinal problems.

Mr Malik submitted that a suspension may be appropriate in cases where the misconduct is not incompatible with a registrant remaining on the register. He submitted that your actions amounted to sexual misconduct and indicate deep seated attitudinal issues. He submitted that a period of suspension would not be sufficient to uphold public confidence and meet the public interest in this case as you have not demonstrated sufficient insight and there is a real risk of repetition. Mr Malik submitted that your misconduct was incompatible with continued registration.

Mr Malik addressed the panel on the guidance for a striking-off order and submitted that a strike off was the only appropriate and proportionate order in this case given the

circumstances. He told the panel that this was a prolonged course of conduct and your actions were a serious departure from that expected of a registered nurse. He submitted that your conduct is fundamentally incompatible with you remaining on the register.

Mr Malik directed the panel to the NMC guidance SAN-2 regarding sexual misconduct. He submitted that your repeated conduct and abuse of position of trust represented risk of harm to colleagues. He further submitted that you have not strengthened your practice or demonstrated insight, and finally that there are fundamental concerns regarding your professionalism which are difficult to remediate.

In conclusion, Mr Malik submitted that your actions were serious and to allow you to continue practicing would undermine confidence in the nursing profession and in the NMC as its governing body. Therefore, a striking-off order is the only appropriate sanction.

In response, you told the panel that you have worked without concern over the last 5 years and have evidenced positive testimonials from current colleagues who speak to your professionalism. You stated that you have found it difficult to find the words to fully express your remorse and insight. You told the panel *'I brought this all on myself, I know that, by my actions'*.

You submitted that you have shown that you can practise kindly, safely and professionally over the last five years and there is no impairment to your clinical abilities in terms of providing patient care and working with families.

You submitted that you do not know how a conditions of practice order would work in your current workplace and whether they could facilitate this as an option, and that you *'understand why Mr Malik says strike-off'*. You told the panel that a 5 year caution order would see you to the end of your career, which is when you intend to retire.

You submitted that a strike-off would have a negative impact on you and [PRIVATE] and you wished to be able to continue to work as a registered nurse.

In conclusion, you spoke of your current role and the work that you do supporting a case load of dementia patients with post diagnostic support in the community.

Recently the service was chosen by Health Improvement Scotland as part of a research project studying process and delivery of services for dementia patients in Scotland. You submitted that to lose your expertise through a striking off order would prevent you helping families to the best of your abilities.

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. It had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Previous regulatory proceedings
- Abuse of a position of power, particularly in regard to Colleague A
- Limited insight into failings
- A pattern of misconduct that was repeated, despite a disciplinary hearing, all of which happened over a prolonged period of time
- Conduct which caused emotional harm to two colleagues

The panel also took into account the following mitigating features:

- Sincere remorse expressed in oral submissions at the sanctions stage
- Safe clinical practice
- Worked as a nurse without concern in the intervening period
- Some admission to charges

The panel noted that although these two factors are not regarded as mitigation in terms of the SG, it took into account;

- In your current role you are a valued nurse operating in the community with a caseload of 64 patients and families
- You have produced glowing references from your managers who are aware of the regulatory concerns and have made positive comments as to your conduct:

‘Alan has great working relationships with patients and their significant others on his caseload. They have submitted wonderful praise and feedback detailing his knowledge, care and compassion shown throughout the patients’ journeys.

Alan is a quiet gentleman who is kind, thoughtful, empathetic and understanding. He is a supportive colleague valued by each and every member of our team’

‘His commitment to patient care is unwavering and he always prioritises the wellbeing and dignity of his patients’

However, the panel had regard to the SG relative to cases involving sexual misconduct. It noted that the recommendation was for a severe sanction. The panel considered that whilst all cases of misconduct involving sexual elements are serious, this was at the lower end of the scale. What made your misconduct more serious was the repetition and aggravation of behaviour that led to your caution in 2013. This panel noted that the 2013 panel imposed a caution order on the basis that:

‘The panel accepted your assertions that your misconduct would not be repeated and therefore considered the risk of repetition to be low.

The panel has taken into account your positive testimonial which attests to you being “an exceptional attribute to the organisation...exemplary professional and employee who is well

respected by his staff team, his colleagues and Senior Management both internally and externally within the health and social care arena.” The panel has also had regard to the fact that you have expressed regret for these incidents, have insight into your misconduct and have engaged with these NMC proceedings.’

The panel considered that this was the most aggravating feature. This behaviour occurred again despite you having ‘*reassured the [2013] panel that your behaviour would not be repeated and in the future you will ensure that you live up to the standards expected of a Registered Nurse.*’

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action. Such a decision would not mark the seriousness arising from the regulatory concerns or from the misconduct. It would also fail to address adequately its concerns to protect women from future risks and in particular, would fail to maintain the reputation of the nursing profession and in the NMC.

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. It therefore 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. It paused at this point to consider, despite the fact there is no criticism of your clinical practice, whether conditions might be formulated which could address the underlying attitudinal issues raised by the

regulatory concerns, through retraining and supervision. However, the panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case which relates to sexual misconduct and attitudinal issues over an extended period of time. The misconduct identified in this case was not something that can be addressed through retraining or supervision, particularly as many of the messages were sent outside of the clinical setting, late at night and at weekends. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *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;*

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction. It considered that none of the relevant factors for imposing a suspension order were engaged. This was not a single incidence of misconduct but a series of incidents involving two work colleagues. The panel had already identified deep seated attitudinal problems. The behaviour was repeated after disciplinary proceedings were raised in respect of Patient B. The panel considered that there was limited insight and, standing the fact that this behaviour occurred after the findings of the 2013 panel, there was a significant risk of repetition.

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 determined that your actions were fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious, compounded by the previous regulatory findings of 2013, and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. A reasonably informed member of the public would be alarmed to discover that a professional nurse was behaving in this manner towards colleagues and may be less likely to feel confident in seeking medical assistance. Other nurses would be concerned if a nurse with two regulatory findings of similar misconduct was permitted to remain in the profession. It determined that striking off was the only sanction sufficient to protect members of the public, including work colleagues, or maintain professional standards.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions on your colleagues, and on the nursing profession as a whole, in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Malik. He submitted that given the panel's decision on sanction, a suspension order for a period of 18 months is necessary in order to protect the public and otherwise in the public interest, to cover the 28-day appeal period before the substantive order becomes effective.

You made no comment.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate, 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 any appeal to be resolved. Not to impose an interim suspension order would be inconsistent with the panel's earlier decision.

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

That concludes this determination.