Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Meeting
Monday, 3 March 2025 – Tuesday 4 March 2025

Virtual Meeting

Name of Registrant:	**Karl Fennell**
NMC PIN	87I0187E
Part(s) of the register:	RN1, Registered Nurse - Adult (5 December 1990) P100, General Intensive Care Nursing (6 April 1998)
Relevant Location:	Birmingham
Type of case:	Misconduct
Panel members:	Museji Ahmed Takolia (Chair, Lay member) Asmita Naik (Lay member) Karen Shubert (Registrant member)
Legal Assessor:	Suzanne Palmer
Hearings Coordinator:	John Kennedy
Facts proved:	Charges 1ai, 1aii,1b, 1c, 1diii, 1dv, 1ei, 1eii, and 2 (in relation to charges 1b and 1c only)
Facts not proved:	Charges 1di, 1dii, 1div, 3, and 4
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Fennell's registered email address by secure email on 24 January 2025.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and the fact that this meeting was heard virtually.

In the light of all of the information available, the panel was satisfied that Mr Fennell has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse:

1) Harassed, bullied and/or acted aggressively towards one or more colleagues in that you:
    a) Between 27 November 2020 and December 2020, sent one or more Facebook message to Colleague A in which you;
        i) encouraged them to break the covid rules by visiting you at your address;
        ii) suggested they should come to your address in their nightwear;

    b) In or around September 2022, when Colleague A offered to help you, responded with words to the effect of "*you can suck my dick, I'd like that*";

    c) In or around September 2022, when asked by Colleague A to swap a shift, said words to the effect of "*I would do if you sucked my dick*";

    d) On 5 October 2022:

i) shouted in Colleague A's face, words to the effect of *"what the fuck is this";*

ii) shouted more than once, words to the effect of *"who is in charge"*;

iii) during handover, shouted at Colleague B words to the effect of, *"I want a handover":*

iv) intentionally tore the handover sheet and/or threw it across the room;

v) shouted at Colleague C words to the effect of, "*you fucking lot wanted a handover, you fuckers are having it";*

e) On 28 October 2022, shouted at Colleague D words to the effect of:

i) "I could not give a fuck if it was your last day";

ii) "get out";

2) Your actions at charge 1(a)(ii) and/or 1(b) and/or 1(c) were sexually motivated in that you sought to pursue a sexual relationship with Colleague A.

3) Displayed discriminating behaviour towards Patient A in that you said words to the effect of, *"why don't you just fuck off back where you came from?"*

4) Your conduct at Charge 3 was racist in nature.

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

Background

The charges arose whilst Mr Fennell was employed as a registered nurse by University Hospitals Birmingham NHS Foundation Trust (the Trust) from 1991. In May 2009 Mr Fennell became a Band 7 Senior Charge Nurse working within the Critical Care Area B (the Unit) at Queen Elizabeth Hospital Birmingham. As part of this role he acted as shift lead and line manager to a team and was responsible for mentoring a number of new colleagues.

The allegations arose around July 2022 when a healthcare assistant (HCA) who had been in Mr Fennell's mentor group reported to the matron that his behaviour and actions made

them uncomfortable and harassed. Further allegations were made by several members of staff in around October 2022. The Trust carried out an investigation and reported the allegations to the NMC.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC. There were no representations from Mr Fennell, who's last communication with the NMC was in August 2023. At that time he stated that he had now retired from nursing and would not respond to any further emails from the NMC. Where possible, the panel had regard to any responses Mr Fennell gave during the local investigation.

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 had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Matron at Queen Elizabeth Hospital Birmingham
- Witness 2: HCA who was in Mr Fennell's mentor group (Colleague A)
- Witness 3: Investigating Officer at the Trust who investigated the concerns
- Witness 4: Band 6 Nurse at the Unit
- Witness 5: Band 8 Nurse at the Unit
- Witness 6: Band 7 Charge Nurse at the Unit

- Witness 7: Band 7 Nurse at the Unit (Colleague C)

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

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

Charge 1a

'That you, a registered nurse:

1) Harassed, bullied and/or acted aggressively towards one or more colleagues in that you:
    a) Between 27 November 2020 and December 2020, sent one or more Facebook message to Colleague A in which you;
        i) encouraged them to break the covid rules by visiting you at your address;
        ii) suggested they should come to your address in their nightwear;'

This charge is found proved.

The panel considered both subcharges together in 1a as they related to the same incident of Mr Fennell sending messages to Colleague A.

The panel had sight of the text messages sent by Mr Fennell to Colleague A on the dates in questions where he stated:

'Bring the bottle over we can share it [laughing face emoticon]'

'And some fags'

'[winking face emoticon]'

Later in the text conversation Colleague A replied:

'We are in lockdown remember!'

This was in reference to the 'The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020' which were in force at the time and had the effect of restricting people in England from meeting up at another person's residence. Despite this Mr Fennell continued to message Colleague A stating:

'Yeah right who will know'

Colleague A later stated:

'im absoloutly fucked from last night, I think im just going to stay in my bed with all 3 bottles of wine and hopefully fall asleep again [laughing face emoticon]
Somt think id be the best company haha' [sic]

To which Mr Fennell replied:

'Arrh okay I'll let ya fall asleep on the sofa
Your sure wine fags and a laugh?
Only ten minutes away
Come in ya PJ's if ya wanna' [sic]

The panel considered that these messages were a clear invitation from Mr Fennell for Colleague A to break the covid rules and come round to his house while wearing nightwear.

The panel had regards to the stem of the charge. It considered that the invitation to Colleague A was unsolicited and placed unreasonable pressure on them to break covid rules in order to socialise with Mr Fennell. The panel considered that this could be regarded as harassment and therefore found the charge proved.

Charge 1b

‘That you, a registered nurse:

1) Harassed, bullied and/or acted aggressively towards one or more colleagues in that you:

b) In or around September 2022, when Colleague A offered to help you, responded with words to the effect of “*you can suck my dick, I’d like that*”;’

This charge is found proved.

The panel considered the witness statement of Colleague A to the NMC and their statement given as part of the local investigation. It noted that these were entirely consistent and provided direct evidence of what was said. There was no evidence to undermine Colleague A’s account.

The panel further noted that Colleague A’s account was consistent with behaviour described by a number of other witnesses. Other witnesses said that there were times when Mr Fennell was a good nurse and colleague; however, he was unpredictable, particularly when he was stressed. At times he was liable to aggressive outbursts and foul language in the workplace.

On the balance of probabilities, the panel considered it likely that the words were said as described by Colleague A. It found that using this explicit and demeaning language in a workplace is likely to create an environment that is harassing towards colleagues.

The panel therefore found this charge proved on the balance of probabilities.

Charge 1c

‘That you, a registered nurse:

1) Harassed, bullied and/or acted aggressively towards one or more colleagues in that you:

c) In or around September 2022, when asked by Colleague A to swap a shift, said words to the effect of "*I would do if you sucked my dick*";'

This charge is found proved

The panel noted that Colleague A is a direct witness and that their statement to the NMC is consistent with their statement provided to the local investigation.

The panel found that while this is a separate incident that happened on a different occasion to the events in charge 1b there are a number of similarities between the two incidents. The panel found that this is indicative of a pattern of inappropriate behaviour and is therefore likely to have happened.

The panel noted that this behaviour created a hostile and intimidating work environment for Colleague A, particularly as Mr Fennell was in a senior managerial position at the time.

Therefore on the balance of probabilities the panel found this charge proved.

Charge 1di and 1dii

'That you, a registered nurse:

1) Harassed, bullied and/or acted aggressively towards one or more colleagues in that you:

d) On 5 October 2022:

i) shouted in Colleague A's face, words to the effect of *"what the fuck is this";*

ii) shouted more than once, words to the effect of *"who is in charge"*;'

This charge is found not proved

The panel considered subcharges 1di and 1dii together as they relate to the same incident, while the other subcharges relate to other incidents on the same date.

The panel considered that the only evidence for this comes from the NMC witness statement of Colleague A. However, as part of their local statement which was made more contemporaneously there was no reference to this incident, and there was no explanation for Colleague A not mentioning this incident during the local investigation. The panel noted that there was no other direct evidence from the other witnesses.

Therefore the panel considered that the burden of proof has not been met in regards these charges and found them not proved.

Charge 1diii

'That you, a registered nurse:

1) Harassed, bullied and/or acted aggressively towards one or more colleagues in that you:

    d) On 5 October 2022:

        iii) during handover, shouted at Colleague B words to the effect of, *"I want a handover":'*

This charge is found proved

The panel considered the evidence from multiple witnesses' local statements given at the time as part of the local investigation. It noted that these statements all confirmed that Mr Fennell used words to this effect directed at Colleague B and that he was using a raised voice towards them.

The panel concluded that shouting at a junior colleague, especially by a manager, is likely to create a hostile environment and is acting aggressively towards a colleague.

Therefore the panel found this charge proved.

Charge 1div

‘That you, a registered nurse:

1) Harassed, bullied and/or acted aggressively towards one or more colleagues in that you:

    d) On 5 October 2022:
        iv) intentionally tore the handover sheet and/or threw it across the room;’

This charge is found not proved

The panel considered that the evidence for this comes from Witness 7’s NMC statement. However, they state that they did not directly see this happen and were reporting what was told to them. The panel therefore considered this to be hearsay evidence and placed less weight on it.

The panel therefore concluded that with no other supportive or corroborative evidence speaking directly to this incident, that the burden of proof is not met and therefore found this charge not proved.

Charge 1dv

‘That you, a registered nurse:

1) Harassed, bullied and/or acted aggressively towards one or more colleagues in that you:

    d) On 5 October 2022:
        v) shouted at Colleague C words to the effect of, “*you fucking lot wanted a handover, you fuckers are having it”;’*

This charge is found proved

The panel considered both the NMC statements and the local statements of Witness 7 and Witness 8 which state that Mr Fennell shouted the statement at Colleague C. The panel again identified this to be consistent with the pattern of behaviour Mr Fennell had displayed with other colleagues at various times, and therefore accepted that this was likely to have been said.

The panel considered that shouting and using profanities directed towards a colleague are aggressive acts that are likely to be used to harass or bully someone.

The panel therefore found this charge proved.

Charge 1e

'That you, a registered nurse:

1) Harassed, bullied and/or acted aggressively towards one or more colleagues in that you:

    e) On 28 October 2022, shouted at Colleague D words to the effect of:
        i) "I could not give a fuck if it was your last day";
        ii) "get out";'

This charge is found proved

The panel considered these subcharges together as they relate to the same incident.

The panel noted the witness statement of Witness 4 who was the direct witness to the events, and their local statement as part of the investigation. The panel considered that their account is consistent.

The panel had regard to Mr Fennell's account of this incident given during the local investigation. In effect, he said that he was simply trying to enforce infection control

procedures in place at the time of the COVID-19 pandemic by telling Colleague D to go straight to their place of work. He believed that Colleague D was inappropriately trying to socialise and celebrate with colleagues. He believed that he was entitled to express his views firmly but denied swearing.

The panel noted that the language used is similar to other language Mr Fennell used and is indicative of a similar pattern of behaviour. It noted that the use of the alleged words was corroborated by several witnesses and found on the balance of probabilities that those words were used, in an aggressive and inappropriate manner. The panel considered that shouting and using profane language towards a junior colleague is an aggressive act and is likely to make the colleague feel harassed or bullied.

The panel therefore found this charge proved.

Charge 2

That you, a registered nurse:

2) Your actions at charge 1(a)(ii) and/or 1(b) and/or 1(c) were sexually motivated in that you sought to pursue a sexual relationship with Colleague A.

This charge is found proved in relation to charge 1b and 1c only

The panel considered that Mr Fennell's actions at 1aii were not sexually motivated. The panel noted that there was no direct evidence as to Mr Fennell's state of mind at the time of writing the messages. It therefore carefully considered the messages themselves to see what inferences it could draw. The panel further bore in mind that it needed to consider this from an objective perspective, looking at what was likely to be in Mr Fennell's mind and not how it may have been perceived by others.

The panel considered sexual motivation solely on the basis of the words and emoticons used. The panel considered that the messages were exchanged in a friendly manner, and that it was not solely one sided by Mr Fennell and that in some responses Colleague A also used emoticons and presented in a joking manner that could be interpreted as a

reciprocal friendship. The panel noted that there was no explicit reference to a sexual act or a desire to have a sexual relationship. Both Mr Fennell and Colleague A were using swear words and chatting in an informal and friendly way.

The panel considered that suggesting Colleague A come round in their nightwear was not necessarily sexual as in the context Colleague A had already indicated they were in bed, so it was not Mr Fennell asking them to change into nightwear, but arguably merely suggesting that they could come as they were. The panel also noted Mr Fennell had sent a message suggesting that Colleague A sleep on his couch, not his bed. The conversation was arguably just as consistent with one colleague seeking the company of another during the COVID-19 pandemic.

Therefore the panel did not consider that there was sufficient evidence for it to be able to infer that Mr Fennell's actions in charge 1aii were sexually motivated.

The panel considered that Mr Fennell's actions in charge 1b and 1 c were sexually motivated.

The panel noted that in both these statements Mr Fennell makes explicit reference to his '*dick*' and a desire for Colleague A to '*suck it*'. This was an obvious reference to a sexual act. The panel considered that the use of an aggressive and sexually explicit suggestion provided sufficient evidence that it could infer on the balance of probabilities that this conduct was sexually motivated by a desire of Mr Fennell to have a sexual relationship.

Therefore having found charges 1b and 1c to be sexually motivated the panel found this charge proved.

Charge 3

'That you, a registered nurse:

3) Displayed discriminating behaviour towards Patient A in that you said words to the effect of, *"why don't you just fuck off back where you came from?"'*

This charge is found not proved

The panel noted the witness statements of Witness 5 and Witness 6 both make reference to this incident. However, the panel noted that there were significant discrepancies between these accounts, with one saying that Mr Fennell did not use these words while the other says he did. Furthermore, the witness who heard Mr Fennell say the words could not interpret what they meant and noted that Mr Fennell had never displayed racist behaviour previously. This matter was not investigated at the local investigation and there is no other witness who describes this conversation. There was no way for the panel to test the competing accounts from two direct witnesses and no other corroborating evidence.

Therefore on the balance of probabilities the panel concluded that there is not sufficient evidence in support of this charge and found it not proved.

Charge 4

'That you, a registered nurse:

4) Your conduct at Charge 3 was racist in nature.'

This charge is found not proved

Since charge 3 was found not proved this charge falls away.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Fennell's 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, Mr Fennell's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

In coming to its decision, the panel had regard to the case of *Roylance v GMC (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.'

The NMC 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.

The NMC identified the specific, relevant standards where it alleges that Mr Fennell's actions amounted to misconduct and was a significant departure from the Code and the expected standards of a registered nurse.

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Mr Fennell's fitness to practise impaired on the grounds of public protection and otherwise in the public interest. The NMC submitted that the first

three limbs of the *Grant* test are engaged and that there was actual harm caused to colleagues by Mr Fennell's actions.

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

Decision and reasons on misconduct

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

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

> ***'1 Treat people as individuals and uphold their dignity***
> *To achieve this, you must:*
> *1.1 treat people with kindness, respect and compassion*
>
> ***8 Work cooperatively***
> *To achieve this, you must:*
> *8.2 maintain effective communication with colleagues*
>
> ***9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues***
> *To achieve this, you must:*
> *9.3 deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times*
>
> ***20 Uphold the reputation of your profession at all times***
> *To achieve this, you must:*

20.1 keep to and uphold the standards and values set out in the Code
20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment
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 found that charges 1a, 1b, 1c, 1diii, 1dv, and 2 all represented sufficiently serious departures from required standards to amount to misconduct. The panel considered that Mr Fennell's actions in these charges was something that a fellow registered nurse would find wholly deplorable and unacceptable and was a significant departure from the expected standard.

In charge 1a, the panel considered that harassment of a colleague was a serious departure from standards which breached the fundamental tenet of treating people kindly and compassionately. This was compounded by the panel's finding, at charge 2, that this behaviour was sexually motivated in pursuit of a sexual relationship.

In charge 1b and 1c, the panel considered that the use of offensive, demeaning and sexually explicit language to a colleague, particularly a junior one, would be regarded as deplorable by fellow practitioners.

In charge 1(d) (iii) and (v), the panel considered that by using this language in an aggressive manner in front of other staff members and patients, Mr Fennell departed significantly from what would be proper in the circumstances. His actions were unprofessional, creating a scene when he should have been acting as a role model. He was not in charge of the shift, and his actions undermined the person who was.

The panel considered that Mr Fennell's actions in charge 1e did not amount to misconduct. It noted that he was in charge of the shift and that he was trying to enforce appropriate infection control standards at the time of the COVID-19 pandemic. To some extent, he was entitled to take a firm approach. Whilst the panel considered that his actions were still not justified, and that he was unprofessional and aggressive in the way he dealt with the situation, it concluded that in isolation, this incident did not represent a sufficiently serious departure from standards to cross the threshold of misconduct.

Decision and reasons on impairment

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

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.'*

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, deficient professional performance, adverse health, conviction, caution or determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:

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 found that the first three limbs of this test are met in this case.

The panel finds that colleagues were put at risk and were caused emotional harm as a result of Mr Fennell's misconduct. Furthermore, Mr Fennell's misconduct had breached the fundamental tenets of the nursing profession to act kindly and compassionately and therefore brought its reputation into disrepute.

The panel had no information from Mr Fennell regard insight, remediation or any strengthening of practice.

The panel is of the view that there is a risk of repetition as Mr Fennell repeated his conduct over a period of time and towards a number of different colleagues. Further there has been no insight demonstrating that Mr Fennell would act in a different way should he be presented with a similar situation in the future. As Mr Fennell has said that he has now retired from the nursing profession, he appears unlikely to take steps to remedy his failings in future. The panel noted that Mr Fennell has not engaged with the NMC and said that he will not respond to any emails from the NMC.

The panel saw evidence suggesting that Mr Fennell's behaviour, and his liability to have aggressive outbursts, were [PRIVATE]. However, Mr Fennell himself did not raise this as a contributary factor in the local investigation. In addition there was [PRIVATE]

The panel therefore decided that Mr Fennell was liable to repeat behaviour of a similar kind in future, and therefore 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 a finding of impairment on public interest grounds is required because a reasonable member of the public in full possession of the facts would be shocked at a registered nurse acting this way towards junior colleagues. It 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 Mr Fennell's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Fennell's 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 Mr Fennell off the register. The effect of this order is that the NMC register will show that Mr Fennell has 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.

Representations on sanction

The panel noted that in the Notice of Meeting the NMC had advised Mr Fennell that it would seek the imposition of a striking-off order if it found Mr Fennell's fitness to practise currently impaired.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Deep-seated behavioural/attitudinal concerns
- Sexual harassment and bullying/aggressive behaviour towards junior members of staff;
- Several incidents over a period of time;
- No insight;
- No reflection or remorse demonstrated;
- Abuse of position of trust

The panel also took into account the following mitigating features:

- [PRIVATE]
- The matter was not connected to clinical practice

The panel had regard to the fact that there were no clinical concerns in relation to Mr Fennell's practice, that his manager described him as someone who could be a *'good nurse'* and that he had no issues of regulatory concern over a long career prior to these matters. However, all that had to be weighed against the seriousness of the misconduct found proved and the risk of repetition identified.

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

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

The panel next considered whether placing conditions of practice on Mr Fennell's registration would be a sufficient and appropriate response. 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. The misconduct identified in this case appeared to be behavioural or attitudinal and was therefore not something that can be easily addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Fennell's registration would not adequately address the seriousness of this case and would not protect the public. Moreover, Mr Fennell has chosen not to engage with these proceedings

and there was therefore no evidence that he would be willing or able to reflect on and remedy his behaviour.

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;*

The panel considered that none of these issues were present in this case. The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel considered that the serious breach of the fundamental tenets of the profession evidenced by Mr Fennell's actions is fundamentally incompatible with Mr Fennell remaining on the register. The panel further considered that little would be gained by a suspension order in this case, even though it would protect the public, because of the absence of any evidence of insight or willingness to address and remedy the concerns identified. Mr Fennell did not engage fully in the local disciplinary process or at all in the NMC hearing and considers himself to have retired from nursing. He has said in terms that he has *'… no further interest in any nursing roles… if you want to remove me from the register that's fine by me.'*

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

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

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*

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

Mr Fennell's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel considered that the repeated nature of the concerns are evidence of a deep-seated attitudinal concern and a pattern of erratic, unpredictable, and aggressive behaviour. The panel was of the view that the findings in this particular case demonstrate that Mr Fennell's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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 matters it identified, in particular the effect of Mr Fennell's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to maintain 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 Mr Fennell in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Fennell's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC that an interim suspension order of 18 months is necessary on the grounds of public protect and public interest in cover any appeal period.

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 on the grounds of public protection and public interest to cover any appeal period.

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

That concludes this determination.