Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 22 September - Wednesday, 8 October 2025

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

Name of Registrant:	**Philip Toomer-Smith**
NMC PIN:	09B0134E
Part(s) of the register:	Registered Nurse - Sub part 1 Adult Nurse, Level 1 – 23 March 2009
Relevant Location:	Walsall
Type of case:	Misconduct
Panel members:	Patricia Richardson (Chair, lay member) Juliana Thompson (Registrant member) Robin Barber (Lay member)
Legal Assessor:	William Hoskins
Hearings Coordinator:	Ifeoma Okere (22 September – 7 October 2025) Ekaette Uwa (8 October 2025)
Nursing and Midwifery Council:	Represented by Sophie Stannard, Case Presenter
Mr Toomer-Smith:	Present and represented by Laura Bayley of Stephensons Solicitors LLP
Offer no evidence:	Charges 1(a) to (f), 2(a) and (b), 3, 4(a) and (b), 5 and 8
Facts proved:	Charges 6d, 9a, b, 9c, 9d, 10(i) and 10(ii) but not in relation to Charge 9 a
Facts not proved:	Charges 6a, 6b, 6c, 7(i), and 7(ii)

Fitness to practise:	Impaired
Sanction:	**Caution order (12 months)**
Interim order :	**N/A**

Details of charge

‘That you a registered nurse;

1. Behaved in an inappropriate and/or unprofessional manner towards Colleague A in that you;

    a. On one or more occasions smacked Colleague A’s bottom.
    b. Rubbed Colleague A’s thigh.
    c. On one or more occasions hugged Colleague A.
    d. Stated to Colleague A words to the effect of, *‘come here and give me some love’*.
    e. On an unknown date in October 2021 stated to Colleague A, *‘give us a hug’*.
    f. Stated to Colleague A that they were a *‘hypochondriac’*.

2. Your conduct in any or all of the sub-charges set out in charge 1 amounted to harassment of Colleague A in that:
    a. It was unwanted.
    b. It had the purpose or effect of:
        i. Violating Colleague A’s dignity, and/or
        ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

3. Your conduct in charge 1a and/or charge 1b were sexual in nature.

4. Your conduct in charges 1a and/or 1b and/or 1c and/or 1d and/or to 1e were sexually motivated in that it was for:

    a. The pursuit of a sexual relationship with Colleague A, or
    b. Sexual gratification.

5. On an unknown date in October 2021 inappropriately and/or unprofessionally suggested to Colleague A that they could take some Oxycodone from the Home's controlled drugs cupboard to provide pain relief.

6. Behaved in an inappropriate and/or unprofessional manner by;

    a. Stating to Colleague B words to the effect of, *'nurses should be drove over by tractors'*.
    b. Referring to Colleague B as a *'cunt'*.
    c. Stating words to the effect of, *'nurses are a nightmare to work with'*.
    d. Shouting at Colleague B words to the effect of, *'where are you'*.

7. Your conduct in charge 6a and/or 6b and/or 6c and/or 6d had the purpose or effect of:
    i. Violating Colleague B's dignity, and/or
    ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B.

8. Behaved in an inappropriate and/or unprofessional manner by;

    a. Shouting at Colleague C.
    b. Stating to Colleague C, in reference to nurses, words to the effect of,
        i. *'That you hate them'*.
        ii. *'I would drive over them and reverse over them'*.

9. Behaved in an inappropriate and/or unprofessional manner by;

    a. Commenting on Colleague D's sexuality on one or more occasions.
    b. Referring to females as *'carpet munchers'* or words to that effect.
    c. Stating to Colleague D words to the effect of, *'women smell fishy'*.

d. Stating to Colleague D about a patient's parts, words to the effect of, *'they look horrible and smells fishy'*.

10. Your conduct in charge 9a and/or 9b and/or 9c and/or 9d had the purpose or effect of:
    i. Violating Colleague D's dignity, and/or
    ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague D.

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

Background

Ms Stannard, on behalf of the Nursing and Midwifery Council (NMC), provided the panel with a background to the case and referred it to the relevant parts of the NMC bundles.

The charges in this case arise from your employment as a registered nurse and manager at the Care Home, where you were responsible for the day-to-day management of the Care Home and overseeing the care of elderly residents. The concerns relate to a series of incidents reported to have occurred between approximately May 2021 and October 2021, during which it is alleged that you behaved in a manner that was inappropriate, unprofessional, and, in some instances, sexually motivated towards colleagues. The allegations also concern the creation of a hostile and degrading workplace culture at the Care Home.

These matters came to light following complaints made by several staff members, including Colleague A, Colleague B, Colleague C, and Colleague D, each of whom has provided witness statements describing their experiences. The allegations are set out in charges 1 to 10 of the charge sheet.

Colleague A was employed as a nurse at the Care Home. It is alleged that, on multiple occasions, you smacked Colleague A's bottom and on one occasion rubbed their thigh.

You are further alleged to have hugged Colleague A without consent and to have made inappropriate remarks.

In October 2021, when Colleague A was experiencing significant pain, you allegedly suggested that they could take oxycodone from the Care Home's controlled drugs cupboard to manage their pain.

Colleague B was also employed as a nurse at the Care Home. It is alleged that you made derogatory comments about nurses, including stating that "nurses should be driven over by tractors." You are alleged to have referred to Colleague B using an offensive and explicit term and to have stated that "nurses are a nightmare to work with." On one occasion, you allegedly shouted at Colleague B, demanding, "Where are you?" Colleague B described feeling humiliated by this conduct.

In relation to Colleague C, it is alleged that you shouted at them and stated that you hated nurses. You went on to say that you would "drive over them and reverse over them."

Colleague D was on placement at the Care Home for a six-month period. It is alleged that you made inappropriate comments about Colleague D's sexuality on one or more occasions. You are also alleged to have used offensive terms to refer to females, including crude and degrading language, and to have stated to Colleague D that "women smell like fish" or words to that effect. On another occasion, you are alleged to have made a remark about a patient's appearance, stating that "they look horrible and smell fishy."

Accordingly, the matter has been referred to this Fitness to Practise panel for determination.

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

Ms Stannard made an application under Rule 31 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 to admit the written statement and accompanying exhibits of Colleague A into evidence.

Ms Stannard explained that Colleague A was employed as a registered nurse at [PRIVATE] between September 2021 and 7 November 2021, during which time you were his manager. On 7 November 2021, Colleague A raised concerns about your behaviour towards staff. These concerns were reported both internally and externally to safeguarding authorities, and he subsequently made direct referrals to the NMC. These are contained in documentation before the panel.

Colleague A provided a detailed signed statement dated 5 July 2022 and a supplementary statement later that year. Both statements contain a declaration of truth. His statement is supported by contemporaneous emails and other exhibits which record the concerns he raised at the time.

Ms Stannard told the panel that Colleague A's evidence is highly relevant to Charges 1 to 5, which include the most serious allegations in this case: inappropriate and sexualised touching of Colleague A, sexually motivated behaviour, and the inappropriate suggestion that controlled drugs be taken from the Care Home's drugs cupboard. Colleague A was a direct witness to these events.

Ms Stannard informed the panel that, sadly, [PRIVATE] and is therefore unable to attend to give live evidence. She also told the panel that the NMC had taken all reasonable steps to secure his attendance before [PRIVATE], but his evidence can now only be presented through his statements and exhibits.

Ms Stannard submitted that, under Rule 31, the panel has the discretion to admit hearsay evidence if it considers it both fair and relevant to do so. She explained that the test requires the panel to balance these factors carefully, weighing the reasons for the witness's absence against the significance of the evidence and the extent to which its admission might disadvantage you.

Ms Stannard referred the panel to the case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin*). She stated that the High Court confirmed that panels are entitled to admit

hearsay evidence where it is fair and relevant, and that there is a strong public interest in ensuring that relevant evidence is placed before a panel, particularly in circumstances where the absence of that evidence would leave serious allegations unaddressed. She submitted that Colleague A's evidence meets that test: it is directly relevant to the most serious charges, it is consistent with other material in the bundle, and it was prepared specifically for these proceedings and signed with a declaration of truth.

While acknowledging that Colleague A cannot be cross-examined, Ms Stannard submitted that the panel could still assess the reliability of his account by comparing it with the live evidence of other witnesses, including Witness 1 who provide circumstantial evidence of the general culture of the Care Home and your behaviour. She stated the public interest in the panel having the fullest possible picture of events at the Care Home and mentioned that excluding Colleague A's evidence would deprive the panel of critical information.

Ms Stannard invited the panel to admit Colleague A's statement and exhibits into evidence.

Ms Bayley opposed the application. She accepted that the panel has the power under Rule 31 to admit hearsay evidence but submitted that doing so in this case would be fundamentally unfair.

Ms Bayley stated that Colleague A's evidence is sole and decisive in relation to Charges 1 to 5. There is no other direct evidence supporting these allegations. Without Colleague A's statement, there would be no basis on which the panel could make findings on these charges.

Ms Bayley submitted that where hearsay evidence is sole and decisive, the panel must exercise particular caution before admitting it. She referred to the decision in *R v Ogbonna [2010] EWCA Crim 1420*, later approved in *Thorneycroft*, which established that where you face serious allegations that could have significant consequences for your career and

reputation, fairness requires that you should normally be able to challenge your accuser through cross-examination.

Ms Bayley stated that Colleague A [PRIVATE] and cannot be cross-examined. This means there is no way to test the reliability of his account, and the panel would be left with no means of establishing how much, if any, weight to attach to it.

Ms Bayley submitted that Colleague A's credibility was in question, referring the panel to an email sent by him a week after his initial referrals. In that email, Colleague A stated that he would be willing to withdraw his allegations if money he believed had been unlawfully withheld following his dismissal was repaid to him. Ms Bayley stated that this casts serious doubt on Colleague A's motives and the reliability of his evidence. Without cross-examination, the panel cannot properly explore these issues.

Ms Bayley further submitted that although there are several emails from Colleague A that he sent to both you and your Director, merely repeating an allegation does not amount to corroboration. She stated that the panel should not assume that a statement is accurate simply because it appears in multiple documents. Ms Bayley told the panel that genuine corroboration requires independent verification, which is not present in this case.

Ms Bayley reminded the panel that the seriousness of these allegations means that the procedural safeguards for you must be especially strong. She stated that there is no public interest in admitting untested evidence which might lead to an incorrect outcome, citing the principle in the case of *Bonhoeffer v GMC [2011] EWHC 1585 (Admin)* that "*there is no public interest in a wrong result.*"

Ms Bayley invited the panel to refuse the application and not to admit Colleague A's statement.

The panel accepted the legal advice of the legal assessor. This included that Rule 31 provides that a panel may admit evidence, whether or not it would be admissible in civil

proceedings, so far as it is fair and relevant to do so. The panel was reminded that the test of fairness is an overriding one. In deciding whether it would be fair to admit hearsay evidence, the panel must take into account all relevant factors, including:

- The relevance of the evidence to the charges faced by you,
- The seriousness of the allegations and the potential consequences for you,
- The reasons for the witness's absence,
- Whether there is any means by which the reliability of the evidence can be tested, and
- The nature of the challenge to the evidence and the extent to which you would be disadvantaged by the inability to cross-examine the witness.

The panel also had regard to the case law referred to in the legal assessor's advice, including Thorneycroft v NMC *[2014] EWHC 1565 (Admin) and* R v Ogbonna *[2010] EWCA Crim 1420*. These cases confirm that where evidence is sole and decisive and there is no means of testing it, a panel must exercise particular caution before admitting it.

The panel first considered whether Colleague A's evidence was relevant. It concluded that it is directly relevant to Charges 1 to 5, which concern allegations of inappropriate physical contact, sexually motivated behaviour, and an inappropriate suggestion regarding controlled drugs. These are serious charges and go to the heart of the case.

The panel next considered the reason for Colleague A's absence. It accepted the evidence before it that Colleague A [PRIVATE]. His absence is therefore for reasons entirely beyond the control of either party.

The panel then considered whether there was any way to test the reliability of Colleague A's evidence. It noted that his statements were signed and contained the required declaration of truth. However, the panel also noted there was information in the evidence bundle raising questions about Colleague A's motive and credibility. Without live evidence, there would be no opportunity for these matters to be explored or for his account to be tested through cross-examination. The panel considered whether there was any corroboration of Colleague A's account in other evidence but found that, while there were

some supporting documents, these did not independently confirm the most serious allegations, which rest solely on his testimony. The panel noted that the evidence of Colleague A in relation to your alleged conduct goes far beyond, and is different in kind to that which is alleged by other witnesses. Colleague A alleged direct touching for sexual motives and encouragement to misappropriate controlled medication.

The panel went on to consider the seriousness of the allegations and the potential consequences for you if the charges were found proved. The allegations are very serious and, if proven, could result in the most serious sanction, including removal from the register. The panel noted that Colleague A's evidence is pivotal to these charges and that you would be significantly disadvantaged if it were admitted without the opportunity for you to challenge it.

The panel also considered the wider public interest in the case. It acknowledged that there is a public interest in serious allegations being fully explored. However, the panel balanced this against the fundamental importance of fairness to both parties. It concluded that there is no public interest in admitting evidence that cannot be tested and which could lead to an unfair or inaccurate outcome.

Having considered all of these factors, the panel determined that Colleague A's evidence is solely decisive in relation to Charges 1 to 5 and cannot be tested in any meaningful way. Admitting it would deprive you of the fundamental safeguard of being able to challenge your accuser through cross-examination.

The panel therefore determined that it would not be fair or appropriate to admit Colleague A's evidence. The application to admit the written statement and exhibits of Colleague A was refused.

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

Ms Stannard also made an application under Rule 31 for the admission of the signed statement of Colleague C. She explained that Colleague C was employed at the Care

Home during the relevant period and provided a statement about her experiences working under your management.

Colleague C's evidence relates primarily to Charge 8, which concerns allegations that you shouted at and made disparaging remarks about Colleague C. Her statement also provides valuable contextual evidence about the overall culture at the Care Home, describing it as intimidating and difficult, consistent with the accounts of other witnesses.

Ms Stannard explained that Colleague C was willing to provide a written account but had been clear from the outset, including in email correspondence dated May 2024, that she would not attend a hearing to give evidence.

The exhibit bundle contains a letter from Colleague C's doctor confirming that [PRIVATE]. Ms Stannard submitted that this constitutes good reason for her non-attendance and demonstrates that the NMC has taken reasonable steps to support her.

Ms Stannard submitted that Colleague C's evidence is relevant and consistent with other evidence. While the panel cannot hear from her directly, it can give appropriate weight to her statement after considering all the evidence in the case. She argued that admitting Colleague C's statement would assist the panel in gaining a complete understanding of the working environment at the Care Home during the relevant period.

Ms Stannard invited the panel to admit Colleague C's statement into evidence.

Ms Bayley opposed the application. She acknowledged that Colleague C had provided a signed statement but submitted that her evidence is decisive in relation to Charge 8 and that fairness requires it to be tested through cross-examination.

Ms Bayley submitted that the [PRIVATE] provided does not demonstrate why Colleague C cannot attend remotely using special measures. She noted that the [PRIVATE] refers only to difficulties with face-to-face attendance. There is no clear evidence that the NMC discussed virtual arrangements with Colleague C or considered alternatives that might have enabled her to give live evidence.

Ms Bayley submitted that the NMC had therefore not demonstrated that it took all reasonable steps to secure Colleague C's attendance, either in person or remotely. Without this, the panel cannot be satisfied that there is a good reason for her absence.

Ms Bayley also raised concerns about the reliability of Colleague C's evidence. She pointed out that her allegations relate to events that took place in 2021, yet her statement was produced a significant time later. This delay raises questions about the accuracy of her recollection.

Ms Bayley referred the panel to Colleague C's resignation letter, which thanked you for your support and gave personal reasons for leaving. There was no mention of the allegations now raised. Ms Bayley also highlighted that Colleague C maintains close friendships with other individuals who have complained about you, including Witness 1. This, she submitted, raises concerns about bias or collusion.

Ms Bayley submitted that the inability to cross-examine Colleague C prevents you from challenging her credibility on these important points. She stated that without cross-examination, there is no fair way to admit her evidence.

Finally, she reminded the panel of the case law referred to earlier in relation to Colleague A. Where evidence is decisive to the outcome of a charge and cannot be tested, the threshold for admitting it is very high. In her submission, that threshold has not been met in this case.

Ms Bayley invited the panel to refuse the application to admit Colleague C's statement.

The panel accepted the legal advice of the legal assessor, which was the same as set out earlier in this determination. Rule 31 provides that a panel may admit evidence, whether or not it would be admissible in civil proceedings, so far as it is fair and relevant to do so. The panel was reminded that the test of fairness is an overriding one.

In deciding whether it would be fair to admit hearsay evidence, the panel was advised that it must take into account all relevant factors, including:

- The relevance of the evidence to the charges faced by you,
- The seriousness of the allegations and the potential consequences for you,
- The reasons for the witness's absence,
- Whether there is any means by which the reliability of the evidence can be tested, and
- The nature of the challenge to the evidence and the extent to which you would be disadvantaged by the inability to cross-examine the witness.

The panel also had regard to the case law referred to in the legal assessor's advice, including *Thorneycroft v NMC [2014] EWHC 1565 (Admin) and R v Ogbonna [2010] EWCA Crim 1420*. These cases confirm that where evidence is sole and decisive and there is no means of testing it, a panel must exercise particular caution before admitting it.

The panel first considered whether Colleague C's evidence was relevant. It concluded that her statement was directly relevant to Charge 8, which alleges that you shouted at and made inappropriate remarks to Colleague C. The panel also noted that parts of her statement contained broader observations about the working environment and the culture within the Care Home.

The panel was mindful that Charge 8 is a serious allegation. If proven, it could adversely impact your professional reputation and could ultimately contribute to a finding of impairment and a sanction up to and including removal from the register.

The panel next considered the reasons for Colleague C's non-attendance. It had sight of a letter from Colleague C's doctor dated 15 September 2025, which stated that providing face-to-face evidence at a hearing [PRIVATE].

The panel accepted that Colleague C has [PRIVATE]. However, it noted that [PRIVATE].

The panel further noted that there was no clear evidence before it that the NMC had fully explored all possible special measures with Colleague C, such as:

- Giving evidence remotely without having to see you,

- Use of screens or breaks,
- [PRIVATE].

The panel was also aware that Colleague C is currently in employment. This raised further questions as to why she would be completely unable to engage in the hearing process in any format.

In light of this, the panel was not satisfied that there was a good reason for Colleague C's non-attendance.

The panel considered whether there was any means by which the reliability of Colleague C's account could be tested. It noted that her evidence was crucial to Charge 8 and that there was no independent corroborative evidence for the specific allegation that you shouted at and made inappropriate remarks to Colleague C.

Although parts of Colleague C's statement spoke to the general culture of the workplace, those sections did not go to the heart of Charge 8. The panel determined that her account of the alleged incident was sole and decisive, meaning that without her live evidence, there was no meaningful way to test her credibility or to allow you to challenge her version of events through cross-examination.

The panel carefully balanced the public interest in hearing Colleague C's evidence against the fundamental importance of ensuring a fair hearing. It acknowledged that there is a public interest in serious allegations being fully explored. However, it considered that there is no public interest in admitting evidence that cannot be properly tested, particularly where the allegation is serious and could have a significant impact on your career.

Having weighed all of these factors, the panel determined that:

- Colleague C's evidence is sole and decisive in relation to Charge 8.
- There was insufficient evidence that she was genuinely unable to give evidence remotely with special measures in place.

- The NMC had not demonstrated that all reasonable steps had been taken to facilitate her attendance.
- Admitting her evidence would deny you the fundamental safeguard of being able to challenge it through cross-examination.

The panel therefore determined that it would not be fair or appropriate to admit Colleague C's evidence.

The application to admit the written statement and exhibits of Colleague C was refused.

Decision and reasons on the application to find no evidence in Charge 1 - 5

The panel heard an application made by Ms Stannard to offer no evidence in respect of Charges 1(a) to (f), 2(a) and (b), 3, 4(a) and (b), and 5.

Ms Stannard submitted that these charges relied entirely on the testimony of Colleague A, who had provided a detailed witness statement during the investigation. She informed the panel that Colleague A had [PRIVATE] and was no longer able to attend the hearing to give evidence.

Ms Stannard submitted that without Colleague A's testimony there was no realistic prospect of proving these charges.

Ms Stannard referred the panel to DMA 3 of the Fitness to Practise Library, which permits the NMC to offer no evidence where there is insufficient evidence to support the allegations.

The panel accepted the advice of the Legal Assessor.

The panel carefully considered Ms Stannard's submissions and the guidance at DMA 3. It noted that Colleague A's evidence was central to proving the factual allegations of the charges and that, in his absence, there was no prospects of these charges found proved.

The panel determined that there was no realistic prospect of proving Charges 1(a) to (f), 2(a) and (b), 3, 4(a) and (b), and 5. It concluded that it was fair and proportionate to grant the application.

Accordingly, the panel grants the NMC's application. No evidence is offered on these charges, which are therefore found not proved.

Decision and Reasons on another Application to Admit Hearsay Evidence of Colleague C

Ms Stannard made a further application under Rule 31 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ("the Rules") to admit into evidence the written statement of Colleague C and an accompanying telephone note dated 19 September 2024.

Ms Stannard explained that Colleague C is the sole and decisive witness in relation to Charge 8. She stated that Colleague C has been repeatedly contacted by the NMC in an effort to secure her attendance. [PRIVATE] were offered to facilitate her giving evidence, including:

- Giving evidence via video link,
- Use of screens and other privacy measures,
- Support throughout the hearing process.

Despite these offers which were very recently made to her, Colleague C has today maintained that she is unwilling to give evidence, either remotely or in person. Ms Stannard referred the panel to the telephone note from 24 September 2025, in which Colleague C was apparently told that "the panel have advised that she needs to give evidence via video."

Ms Stannard submitted that the NMC has now taken all reasonable steps to secure Colleague C's attendance, and these efforts demonstrate that her refusal is a matter of unwillingness rather than inability. She reminded the panel that during the earlier

application, there had been insufficient evidence of the NMC's steps, but the additional evidence now provided showed a sustained and comprehensive attempt to secure her attendance.

Ms Stannard invited the panel to reconsider its earlier refusal and admit Colleague C's evidence as hearsay. She stated that without this evidence, the panel would be deprived of material that is essential to Charge 8.

Ms Stannard also addressed Rule 22(5). She stated that while the panel may issue a direction requiring a witness to attend, this is not enforceable. The only mechanism to compel attendance is through an application by the NMC to the High Court for a witness summons. She confirmed that this step had not been taken in this case.

Ms Bayley opposed the application. She reminded the panel of its earlier determination, which identified four key concerns, including:

1. The sole and decisive nature of Colleague C's evidence in relation to Charge 8,
2. The fundamental safeguard of cross-examination being denied to you ,
3. Insufficient evidence previously provided to show the witness was genuinely unable to attend,
4. The need for all reasonable steps to be taken by the NMC to secure attendance.

Ms Bayley submitted that only one factor had changed since the previous ruling: further attempts by the NMC to engage the witness. She accepted that more steps had been taken but argued that these remained inadequate.

Ms Bayley stated that Colleague C has never indicated that she cannot attend for [PRIVATE]; rather, she has simply refused to do so. The witness's clear and consistent position throughout the proceedings has been, *"I am not willing to give evidence."*

Ms Bayley submitted that this refusal raises serious concerns about the reliability of any evidence given by Colleague C. She stated there is a real risk that Colleague C may be unwilling to give evidence because her account would not withstand cross-examination

and she does not wish to perjure herself. In these circumstances, it is even more important for the panel to hear directly from the witness and for the evidence to be tested.

Ms Bayley further submitted that if the NMC considered Colleague C's evidence critical, they could and should have applied to the High Court for a witness summons. The fact that they had chosen not to do so meant that the panel should not take the "extraordinary step" of admitting untested evidence that is decisive to the case.

Ms Bayley also addressed Rule 22(5). She stated that this rule was never intended to replace the process of applying for a witness summons. While the panel could technically issue a direction for attendance, it would have no coercive power. The responsibility for compelling attendance lies entirely with the NMC as the regulator.

For these reasons, Ms Bayley invited the panel to refuse the application, submitting that admitting the statement would cause significant unfairness to you .

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

The panel first considered whether the NMC had taken all reasonable steps to secure Colleague C's attendance. It noted that Colleague C had been contacted on multiple occasions and that special measures were fully explained and offered to her. These included giving evidence remotely, the use of privacy measures such as screens, and additional support to assist her in giving evidence.

The panel took into account that two detailed conversations were documented, including a phone call on 24 September 2025, during which Colleague C was reminded of the arrangements in place and reassured about the process. Despite these efforts, Colleague C has now made it unequivocally clear that she was unwillingly to attend, either virtually or in person.

The panel was satisfied that the NMC had now demonstrated that all reasonable steps had been taken to facilitate Colleague C's attendance. However, the panel also noted that

no application had been made to the High Court for a witness summons, which is the only mechanism available to compel a witness to attend.

The panel next considered its powers under Rule 22(2) and Rule 22(5). Rule 22(2) sets out the general procedure for witnesses, including giving evidence under oath or affirmation and the order of questioning, such as examination-in-chief, cross-examination, and questioning by the panel. Rule 22(5) allows the panel to issue a direction requiring a witness to attend or to produce documents. However, the panel accepted the legal assessor's advice that such a direction does not compel a witness to attend.

The panel therefore concluded that, while it technically had the power to issue a direction, doing so would serve no practical purpose given Colleague C's clear and sustained refusal to engage with the process despite apparently being incorrectly told by the NMC that the panel required her to give evidence via the video link.

The panel then went on to consider whether it would be fair to admit Colleague C's statement and telephone note as hearsay evidence. In doing so, it weighed the following factors:

- Colleague C's evidence is sole and decisive in relation to Charge 8,
- There is no [PRIVATE] or practical reason preventing her from attending to give evidence via video link; she is simply unwilling,
- Admitting the statement would deny you the fundamental safeguard of challenging the evidence through cross-examination,
- The NMC had alternative steps available, such as applying for a witness summons, which were not pursued.

The panel concluded that the prejudice to you would be significant and would undermine the overall fairness of the proceedings.

Having considered all of the circumstances, the panel determined that, although the NMC had now made considerable efforts to secure Colleague C's attendance, admitting her statement and telephone note as hearsay evidence would be fundamentally unfair to you.

The panel therefore refuses the application to admit the hearsay evidence of Colleague C.

Decision and reasons on the application to find no evidence in Charge 8

The panel heard an application made by Ms Stannard to offer no evidence in respect of Charge 8. She submitted that, since the panel had refused the application to admit the hearsay evidence of Colleague C, the NMC no longer has any admissible evidence upon which it can rely in relation to Charge 8.

Ms Stannard reminded the panel that the NMC had applied to admit Colleague C's statement and supporting telephone note under Rule 31 as hearsay evidence. In light of this ruling, there is now no evidence available to support Charge 8.

Accordingly, Ms Stannard invited the panel to accept the NMC's formal offer of no evidence in relation to Charge 8.

The panel accepted the advice of the legal assessor.

The panel accepted the application made by Ms Stannard. It took into account that Colleague C is the sole and decisive witness in relation to Charge 8 and that her evidence cannot be admitted following the panel's earlier refusal of the hearsay application.

The panel determined that, without any admissible evidence, the NMC cannot prove this charge to the required standard. It was therefore appropriate to allow the application.

This charge is found not proved.

Details of the Charges Proceeding (with no offer of no evidence in relation to Charges 1 to 5 and 8)

'That you a registered nurse;

~~1. Behaved in an inappropriate and/or unprofessional manner towards Colleague A in that you;~~

a. On one or more occasions smacked Colleague A's bottom.

b. Rubbed Colleague A's thigh.

c. On one or more occasions hugged Colleague A.

d. Stated to Colleague A words to the effect of, 'come here and give me some love'.

e. On an unknown date in October 2021 stated to Colleague A, 'give us a hug'.

f. Stated to Colleague A that they were a 'hypochondriac'.

2. Your conduct in any or all of the sub-charges set out in charge 1 amounted to harassment of Colleague A in that:

a. It was unwanted.

b. It had the purpose or effect of:

i. Violating Colleague A's dignity, and/or

ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

3. Your conduct in charge 1a and/or charge 1b were sexual in nature.

4. Your conduct in charges 1a and/or 1b and/or 1c and/or 1d and/or to 1e were sexually motivated in that it was for:

a. The pursuit of a sexual relationship with Colleague A, or

b. Sexual gratification.

~~5. On an unknown date in October 2021 inappropriately and/or unprofessionally suggested to Colleague A that they could take some Oxycodone from the Home's controlled drugs cupboard to provide pain relief.~~

6. Behaved in an inappropriate and/or unprofessional manner by;

   a. Stating to Colleague B words to the effect of, 'nurses should be drove over by tractors'.

   b. Referring to Colleague B as a 'cunt'.

   c. Stating words to the effect of, 'nurses are a nightmare to work with'.

   d. Shouting at Colleague B words to the effect of, 'where are you'.

7. Your conduct in charge 6a and/or 6b and/or 6c and/or 6d had the purpose or effect of:

   i. Violating Colleague B's dignity, and/or

   ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B.

~~8. Behaved in an inappropriate and/or unprofessional manner by;~~

   ~~a. Shouting at Colleague C.~~

   ~~b. Stating to Colleague C, in reference to nurses, words to the effect of,~~

      ~~i. 'That you hate them'.~~

      ~~ii. 'I would drive over them and reverse over them'.~~

9. Behaved in an inappropriate and/or unprofessional manner by;

   a. Commenting on Colleague D's sexuality on one or more occasions.

b. Referring to females as ‘carpet munchers’ or words to that effect.

c. Stating to Colleague D words to the effect of, ‘women smell fishy’.

d. Stating to Colleague D about a patient’s parts, words to the effect of, ‘they look horrible and smells fishy’.

10. Your conduct in charge 9a and/or 9b and/or 9c and/or 9d had the purpose or effect of:

i. Violating Colleague D’s dignity, and/or

ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague D.

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

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Stannard on behalf of the NMC, Ms Bayley on your behalf.

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

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

- Witness 1: Senior Lecturer; Adult Nursing

- Witness 2: Staff Nurse

- Witness 3: Student Nurse

The panel also heard evidence from you under oath.

You also called the following character witnesses, on your behalf:

- Witness 4: Director and Owner of the Care Home
- Witness 5: Carer
- Witness 6: Senior Care Assistant
- Witness 7: Carer

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

The panel also noted the character evidence provided on your behalf. It took into account the references given by carers and colleagues still employed by the company, as well as the oral testimony of Witness 4, the Director and three long serving members of the care staff of the Care Home with whom you had worked previously. These witnesses spoke highly of your professionalism as perceived from their perspectives.

The panel also noted that no character references were provided by nursing staff who had worked alongside you. It did not draw an adverse inference from this but considered it as part of the overall evidential picture. The panel determined that while the character evidence was positive, it did not directly address the specific allegations before it.

Accordingly, the panel took this evidence into account but reminded itself that it must decide the charges on the basis of all the evidence in the case.

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

Charge 6a)

"Behaved in an inappropriate and/or unprofessional manner by;

a) Stating to Colleague B words to the effect of, 'nurses should be drove over by tractors."

This charge is found NOT proved.

In reaching this decision, the panel took into account Colleague B's written statement and oral evidence, your evidence, and the contemporaneous and near-contemporaneous documents. The panel noted that this allegation was first raised in a statement made in February 2024, approximately three years after the period in question, with no contemporaneous record of the remark and no reference to it in earlier documents. The panel noted that there was no corroboration from other staff despite the unusual and striking nature of the phrase said to have been used.

The panel considered credibility and possible motive. It took into account that, at the time of her 2024 statement, Colleague B accepted she was angry with you in relation to unpaid wages, an unfavourable reference, small claims court proceedings which the company took out against her, and the NMC referral you made about her. The panel considered that this context increased the risk of exaggeration or misremembering.

Colleague B also stated in her oral evidence that the allegation was said during handovers which would make it more likely that other staff members would have heard the remark.

While the panel acknowledged that the phrase alleged was “a strange thing to say,” it determined that this, without more, was not in itself sufficient to make it more probable than not that the comment was made. The panel was not satisfied on the balance of probabilities, that you made the comment.

Charge 6b)

> “Behaved in an inappropriate and/or unprofessional manner by:
>
> b) Referring to Colleague B as a ‘cunt’.”

This charge is found NOT proved.

In reaching this decision, the panel took into account Colleague B’s evidence alongside two contemporaneous documents; a text message exchange on 4 June 2021 in which Colleague B complained that you had shouted at her, an allegation which did not appear to be denied by you, and a document recording a telephone conversation between Colleague B and Colleague C dated 16 September 2021 compiled after Colleague B had left employment in the Care Home.

The panel also noted that the document dated 16 September 2021, referred in general terms to “swearing at nurses” and included ambiguous notations of the word. The panel determined that the document did not clearly attribute the term used as being directed at Colleague B, and its wording could be read as a broader complaint about language in the workplace rather than a specific personal slur. The panel therefore attached limited weight to it for the purpose of proving this charge.

The panel also took into account that, within weeks of the alleged incident, Colleague B’s resignation letter and other communications contained positive comments about your support, which the panel regarded as difficult to reconcile with the allegation now advanced.

The panel considered wider contextual evidence, including a number of witnesses who gave evidence of Colleague B as a strong, vocal personality. The panel was of the view that it was more likely than not that Colleague B would have made an immediate complaint had such words been used on her.

In light of the above and your denial, the panel was not satisfied on the balance of probabilities that you used this word towards Colleague B.

Charge 6c)

"Behaved in an inappropriate and/or unprofessional manner by:

c) Stating words to the effect of, 'nurses are a nightmare to work with'."

This charge is found NOT proved.

In reaching this decision, the panel considered Colleague B's assertion that you made this comment, along with your denial. The panel noted that 6c was not tied to a specific, well-anchored event and was not supported by contemporaneous documentation. The panel also noted the limited detail in the account about when, where, and in what context the words were said, and whether others heard them.

The panel took into account your oral evidence that, while you accepted that registered nurses can sometimes be "difficult" in a general sense, you maintained you would not use the formulation alleged, and you professed respect for nurses.

Weighing all the evidence, and in the context that the first detailed allegation arose years later without supporting records, the panel determined that it could not be satisfied on the balance of probabilities that you said the words alleged.

Charge 6d)

"Behaved in an inappropriate and/or unprofessional manner by:

d) Shouting at Colleague B words to the effect of, 'where are you'"

This charge is found proved.

In reaching this decision, the panel considered Colleague B's account of a specific telephone call when you telephoned her and shouted at her because she had not attended for a shift. In your account, you said you did telephone her because you were concerned for her wellbeing as she had not turned out for work. The panel attached weight to a text message you sent in which you wrote words to the effect of:

"When did I shout at you on Tuesday? … I was trying to help… I understand that was Tuesday… What's wrong with you this morning?"

The panel considered the language and timing of this message as evidence that you were aware of the incident mentioned in the text message. This indicated that you were capable of shouting despite your assertion in oral evidence that you never shouted.

The panel also took into account your acceptance that you offered a bottle to Colleague B if she came in to work, which the panel found was more likely than not an attempt to apologise for your behaviour after the incident.

The panel was of the view that if you had not shouted at Colleague B and she was simply coming in to work to fulfil a prebooked shift, it was unlikely that a bottle would have been offered to her.

The panel further noted that, unlike the broader, free-floating allegations in Charges 6a to 6c, this incident was tethered to a specific date and context that both you and Colleague B broadly recalled, which gave it a more solid evidential foundation. On that basis, the panel determined that the NMC had discharged the burden of proof for Charge 6d.

Having found the factual allegation proved, the panel went on to consider whether the conduct amounted to inappropriate and/or unprofessional behaviour. The panel determined that, in the circumstances of a manager speaking to a colleague, shouting "where are you" was inappropriate and unprofessional.

Charge 7(i)

> "Your conduct in charge 6a and/or 6b and/or 6c and/or 6d had the purpose or effect of:
>
> i) Violating Colleague B's dignity, and/or."

This charge is found NOT proved.

In reaching this decision, the panel reminded itself of its findings on Charge 6. It found that Charge 6d (shouting "where are you") was proved, while 6a to 6c were not proved. The panel therefore focused on whether the proved conduct amounted to a violation of Colleague B's dignity.

The panel considered Colleague B's oral evidence. She stated that you shouted at her during a phone call, but also accepted that once she agreed to come into work you calmed down, and later offered a bottle. She did not describe the incident as having an ongoing impact on her dignity.

The panel also considered the text message exchange, in which you asked, *"When did I shout at you on Tuesday? … I was trying to help… I understand that was Tuesday."* The panel found that this showed you were aware of having raised your voice. However, the message also indicated that you regarded the matter as a minor disagreement and were seeking to move past it.

The panel determined that while being shouted at by a manager was unprofessional and unpleasant, it did not rise to the threshold of violating Colleague B's dignity. Colleague B's own evidence did not suggest that she experienced the incident in those terms.

Charge 7(ii)

> "Your conduct in charge 6a and/or 6b and/or 6c and/or 6d had the purpose or effect of:
>
> ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B."

This charge is found NOT proved.

In reaching this decision, the panel again focused on Charge 6d, the only element of Charge 6 found proved. It considered whether the shouting incident created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B.

The panel noted that Colleague B herself did not describe the incident as creating such an environment. She explained that once she told you she would come into work, you calmed down, and you subsequently offered her a bottle as a conciliatory gesture. The panel considered that this suggested the incident was short lived rather than part of a continuing environment.

The panel also took into account Colleague B's description by other witnesses as a strong and vocal personality. This suggested that while she may have found the incident unpleasant, she was unlikely to have experienced it as creating a hostile or intimidating environment.

The panel accepted that being shouted at by a manager is unprofessional behaviour, but it was not satisfied, on the balance of probabilities, that this single incident created the sort of intimidating or hostile environment contemplated by this charge.

Charge 9a)

"Behaved in an inappropriate and/or unprofessional manner by;

a) Commenting on Colleague D's sexuality on one or more occasions."

This charge is found proved.

In reaching this decision, the panel considered the written statement and oral evidence of Colleague D, a student nurse on placement. She described you asking questions and making comments about her sexuality during her time at the Care Home. She stated that these were general comments, sometimes made when your office door was open and others could hear, though she accepted that such general comments did not make her feel uncomfortable at the time.

Although it was suggested to Colleague D that she had fabricated her allegations out of a wish to support Colleague B and Colleague C, the panel did not find this suggestion convincing. Colleague D told the panel that she had no reason to make up serious allegations of this kind which inevitably involved discussions of her sexuality. Ms Bayley on your behalf emphasised that the University had found no record of a complaint made by Colleague D about the matters now alleged and submitted that this omission undermined Colleague D's evidence.

The panel did not find it surprising that no complaints were made by Colleague D either to you or the Director, or to the University. Colleague D told the panel that she had told her mentor but did not wish to take matters further because she did not regard your comments as amounting to sexual harassment and valued her placement. The panel considered this to be a plausible explanation.

The panel noted that you denied making inappropriate comments and emphasised your own sexuality as a reason you would not have made such remarks. However, the panel found Colleague D's account consistent and plausible. She described a pattern of

comments and conversations which she also mentioned to her mentor and deputy manager at the time. The panel considered her explanation credible, that she did not formally escalate matters because she received support from her mentor and did not want to disrupt her placement.

The panel determined that it was more likely than not that you did make comments on Colleague D's sexuality, as alleged. Whilst she stated they did not always make her uncomfortable, the panel considered that making such personal comments in a professional environment was inappropriate and unprofessional.

Charge 9b)

"Behaved in an inappropriate and/or unprofessional manner by;

b) Referring to females as 'carpet munchers' or words to that effect."

This charge is found proved.

In reaching this decision, the panel considered Colleague D's account on a particular Friday "fish and chip day," when she told you that she did not eat fish and that you replied *"how can you not eat fish when you are a carpet muncher"* in reference to females in same sex relationships. She found it derogatory and reported it to her mentor.

The panel considered your denial. However, the panel found Colleague D's evidence on this point to be specific and consistent. She recalled the context clearly, including that she did not eat fish and that you linked this to the derogatory remark. The panel accepted her explanation that although she did not formally escalate the matter beyond her mentor, she nonetheless considered it inappropriate.

The panel considered that the term used is a derogatory reference to women in same sex relationships , and that using it in a workplace setting, particularly to a student nurse, was

degrading and unprofessional. The panel found on the balance of probabilities that this remark was made by you.

Charge 9c)

"Behaved in an inappropriate and/or unprofessional manner by;

c) Stating to Colleague D words to the effect of, 'women smell fishy'."

This charge is found proved.

In reaching this decision, the panel considered the evidence of Colleague D, who described a conversation about her competencies, during which you said words to the effect that *"women in general smell fishy."* She recalled responding *"not all women smell fishy,"* and described the exchange as banter but also as derogatory.

The panel carefully examined whether this comment was distinct from the allegation at Charge 9d. Having reviewed her statement and oral evidence, the panel determined that while the remarks may have been made in the same discussion, they were separate comments: one general about women, and one about a patient's private parts.

The panel noted that you denied making either remark. However, it found Colleague D's account to be consistent, balanced, and credible. She accepted in evidence that some of your comments did not upset her but was clear that this particular remark was derogatory. The panel considered her candour enhanced her reliability.

The panel concluded that, on the balance of probabilities, you did state words to the effect of *"women smell fishy"* to Colleague D. Such a comment was inappropriate and unprofessional.

Charge 9d)

"Behaved in an inappropriate and/or unprofessional manner by;

d) Stating to Colleague D about a patient's parts, words to the effect of, 'they look horrible and smells fishy'."

This charge is found proved.

In reaching this decision, the panel considered Colleague D's evidence that during a discussion about competencies, you referred to your experience of performing catheter care and stated, in relation to a patient's genitals, that *"they look horrible and smell fishy."* She recalled this occurring in the office with an administrative colleague and her mentor present. Colleague D referred to the remark as being both offensive and derogatory and that it made her feel uncomfortable.

The panel noted her evidence was consistent with her written statement and oral testimony. While there was some conflation in her accounts between Charge 9c and 9d, the panel was satisfied that she described two separate comments: one about women in general, and one about a patient.

The panel considered your denial, but found Colleague D's evidence credible. She explained why she did not escalate the matter formally, citing reliance on her mentor's support and a wish not to disrupt her placement. The panel accepted this as a plausible explanation.

The panel determined that the comment alleged was made, and that it was both inappropriate and unprofessional. The panel considered that making a sexualised and derogatory remark about patients' intimate parts to a student nurse was wholly unacceptable in a professional context.

Charge 10 (i)

"Your conduct in charge 9a and/or 9b and/or 9c and/or 9d had the purpose or effect of:

i) Violating Colleague D's dignity, and/or "

This charge is found NOT proved in relation to 9a but proved in relation to 9 b, 9 c and 9d.

In reaching this decision that in relation to charge 9 a, the panel acknowledged the evidence of Colleague D that she did not find it awkward to discuss her sexuality.

In relation to charges 9 b, 9 c and 9d, the panel has determined that you made a series of inappropriate comments to Colleague D: referring to her as a "carpet muncher," stating "women smell fishy," and saying of a patient's private parts that they "look horrible and smell fishy."

The panel carefully assessed whether these comments violated Colleague D's dignity. It noted her evidence that some general comments about her sexuality did not make her feel uncomfortable, as she was open about her personal life. However, she was clear that derogatory terms such as "carpet muncher" and remarks about women's bodies and patients' intimate parts were offensive and degrading. She described them as derogatory comments which she did not accept as jokes.

The panel considered the context that Colleague D was a student nurse on placement, in a subordinate position, and dependent on you as a senior colleague in the workplace. In those circumstances, such remarks were liable to undermine her dignity, irrespective of whether she always reacted outwardly.

The panel accepted that she confided in Colleague C, her mentor and deputy manager at the time, which supported her account that she did not simply accept the behaviour. It also noted her candid evidence that while she was content to discuss her sexuality, she nevertheless found some comments offensive and inappropriate. The panel considered this candour enhanced her credibility.

The panel determined that the use of derogatory and sexualised language towards a student nurse, in relation both to her personal sexuality and to women and patients in general, amounted to a violation of her dignity.

Charge 10 (ii)

> "Your conduct in charge 9a and/or 9b and/or 9c and/or 9d had the purpose or effect of:
>
> ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague D."

This charge is found NOT proved in relation to 9a but proved in relation to 9b, 9c and 9d.

In reaching this decision in relation to charge 9a, the panel acknowledged the evidence of Colleague D that she did not find it awkward to discuss her sexuality.

In relation to charges 9b, 9c and 9d, the panel has determined that you made a series of inappropriate comments to Colleague D: referring to her as "carpet munchers," stating "women smell fishy," and saying of a patient's private parts that they "look horrible and smell fishy."

The panel considered whether the cumulative effect of your conduct created an environment that was intimidating, hostile, degrading, humiliating or offensive for Colleague D.

The panel had regard to her evidence that she was a student nurse reliant on you as a senior colleague, and that your comments were made both privately and in front of others. She described feeling uncomfortable when derogatory terms were used, particularly "carpet muncher," and explained that she raised her concerns with her mentor and deputy manager at the time.

The panel also had regard to her evidence that due to the comment you made she no longer felt comfortable approaching you for support with her competencies and placement.

The panel noted that Colleague D did not always describe every comment as making her uncomfortable. However, she was clear that the derogatory sexualised remarks went beyond banter and made her feel degraded. The panel considered her evidence to be consistent and credible.

The panel accepted that while she may not have escalated matters formally, her evidence that she relied on her mentor for support was plausible. The panel considered that the context of a placement student, coupled with repeated derogatory remarks of a sexual nature, would reasonably have created an environment that was offensive and humiliating, even if not every incident individually had that effect.

The panel concluded that your repeated use of derogatory and sexualised language towards Colleague D created an offensive and degrading environment, contrary to the professional standards expected of a registered nurse.

Fitness to practise

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

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

Ms Stannard reminded the panel that "misconduct" is a word of general effect, involving an act or omission falling short of what would be proper in the circumstances *(Roylance v General Medical Council (No 2) [2000] 1 AC 311).* She also referred to *Nandi v General Medical Council [2004] EWHC 2317 (Admin)* where the court held that misconduct must be serious and would be regarded as "deplorable" by fellow professionals.

Ms Stannard identified the specific, relevant standards where your actions amounted to misconduct. She invited the panel to find that the proven facts represented serious departures from the standards expected of a registered nurse and that they breached several provisions of The Code (2015), namely:

> ***'1 Treat people as individuals and uphold their dignity***
> *1.1 Treat people with kindness, respect and compassion.*
> *1.3 Avoid making assumptions and recognise diversity and individual choice*
> *1.5 Respect people's right to privacy and confidentiality.*

8 Work co-operatively

8.2 Communicate effectively with colleagues and share your knowledge, skills and experience for the benefit of people receiving care and your colleagues.

20 Promote professionalism and trust

20.2 Uphold the reputation of your profession at all times.

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

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

20.6 Stay objective and have clear professional boundaries at all times with everyone you encounter in your professional role.

20.7 Make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way.

20.8 Act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates.'

Ms Stannard submitted that your conduct particularly the use of derogatory and sexualised language about women in the presence of a student nurse, constituted a serious departure from these standards. Such behaviour, she stated, particularly someone in a managerial position suggested fundamental attitudinal concerns and would be viewed as deplorable by fellow practitioners and undermined professionalism, trust, and equality in the workplace.

Ms Stannard stated that these actions breached the duty to treat people with kindness, respect and compassion (1.1), to support students to develop confidence (8.4) and to act as a role model (20.8). Your remarks, she said, created an intimidating and degrading environment for a junior colleague and demonstrated a lack of self-control, judgment and respect expected of a registered nurse in a position of authority.

In respect of charge 6d (shouting at Colleague B), Ms Stannard submitted that this behaviour reflected a failure to communicate effectively (8.2) and to maintain appropriate

professional boundaries (20.6). While not of the same gravity as the sexually derogatory comments, she contended it still represented unprofessional behaviour that fell short of the Code.

Ms Stannard invited the panel to find that all of the proven conduct taken together amounted to serious professional misconduct, involving breaches of the fundamental tenets of the profession, namely the duty to uphold professionalism and trust, treat others with respect and dignity, and avoid behaviour that could reasonably cause distress or offence.

Ms Bayley accepted on your behalf that misconduct was properly found in relation to charges 9 and 10 (save for 9a) but submitted that charge 6d did not meet the threshold of seriousness required for regulatory misconduct. She stated that while shouting at Colleague B was unprofessional, it was a brief and isolated lapse that occurred in a [PRIVATE], and Colleague B did not describe any [PRIVATE] or intimidation.

Ms Bayley referred to *Schodlok v GMC [2015] EWCA Civ 769 and Sowida v GMC [2021] EWHC 3466 (Admin*), noting that non-serious matters cannot be aggregated to form serious professional misconduct.

On the remaining charges, Ms Bayley accepted that the language used was ill-judged and unprofessional but submitted that the incidents were isolated, took place in a workplace context described by the witness as “banter”, and were not repeated. She emphasised that you are a homosexual man who has consistently championed equality and inclusion in your professional life.

Ms Bayley directed the panel to your two reflective statements and extensive remediation, which addressed breaches of the following provisions of The Code:

1.1 (Treat people with kindness, respect and compassion) – you now recognise that your tone and language must reflect empathy and courtesy at all times.

8.2 (Communicate effectively with colleagues) – you have completed communication-skills training and improved how you respond to staff concerns.

8.4 (Support students and colleagues) – you acknowledged the importance of fostering a safe learning environment for junior staff.

20.2 - 20.8 (Promote professionalism and trust) – you have undertaken equality and diversity, dignity-in-care and leadership training to ensure you act as a positive role model.

Submissions on impairment

Ms Stannard 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) and any other cases referred to.

Ms Stannard referred the panel to paragraph 74 of the judgment in Grant, in which Mrs Justice Cox stated that panels should consider not only whether the practitioner presents a current risk to patients, but also whether the need to uphold proper professional standards and maintain public confidence in the profession would be undermined if a finding of impairment were not made. She also drew attention to paragraph 76 of that judgment, which adopts Dame Janet Smith's "test", asking whether the findings show that the practitioner:

> 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 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 profession.

Ms Stannard submitted that although your actions did not endanger patient's physical safety, your behaviour towards Colleague D , a student nurse had the effect of her having no confidence to seek your guidance in relation to her competencies in nursing practice. She submitted that this may have had a negative impact on the care environment and could adversely affected the quality of care provided for female residents.

Ms Stannard stated that your actions also breached the fundamental tenets of the profession and brought the nursing profession into disrepute. The conduct involved sexualised and derogatory language in a professional setting and created a hostile environment for a junior colleague. Such behaviour, she stated, fundamentally undermined equality, dignity, and professionalism as values at the heart of The Code.

Ms Stannard referred the panel to the Fitness to Practise Library (March 2025) which provides that:

"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."

Ms Stannard submitted that although you have engaged with the process and undertaken training, the seriousness of the misconduct, combined with your seniority and responsibility as home manager, means that a finding of impairment remains necessary to uphold public confidence in the profession and the NMC as its regulator.

Ms Stannard reminded the panel of the NMC's Impairment Guidance (March 2025) which lists examples of conduct likely to require a finding of impairment even where no current risk to patients exists, including discriminatory behaviour and sexual misconduct. She submitted that your language was discriminatory, degrading and gender-based, and that such behaviour inevitably undermines trust in the profession.

Ms Stannard accepted that there is evidence of reflection and that there has been no repetition, but stated that full remediation cannot erase the need to mark the seriousness of the conduct. The public, if fully informed of the facts, would expect a finding of impairment in order to maintain confidence in the standards of the profession.

Accordingly, she invited the panel to find your fitness to practise currently impaired on both public protection and public interest grounds.

Ms Bayley in her written and oral submissions stated that a finding of current impairment is not required. She relied on the same authorities particularly *CHRE v NMC and Grant [2011] EWHC 927 (Admin), Cohen v GMC [2008] EWHC 581 (Admin), Zygmunt v GMC [2008] EWHC 2643 (Admin),* and the NMC Fitness to Practise Library (March 2025) to emphasise that the assessment of impairment is forward-looking and focuses on current fitness rather than punishment for past events.

Ms Bayley submitted that you have demonstrated full insight and remediation, have taken extensive steps to strengthen your practice, and have shown sustained safe and effective performance over several years since the events occurred. You have undertaken equality and diversity, communication-skills, and dignity-in-care training, completed detailed reflective statements, and implemented these lessons in your managerial role.

Ms Bayley reminded the panel that the purpose of fitness-to-practise proceedings is not to punish, but to protect the public. She referred to *Cohen v GMC*, where it was stated that where misconduct is capable of remediation, has been remedied, and is highly unlikely to be repeated, a finding of impairment is not required.

Ms Bayley further relied on *Professional Standards Authority v NMC [2017] CSIH 29 and Uppal [2015] EWHC 1304 (Admin),* in which the courts held that professional standards and public confidence may be upheld by the regulatory process itself without the need for an ongoing finding of impairment.

In support of her submission, Ms Bayley referred the panel to a wealth of positive testimonials from colleagues, residents and families describing you as compassionate, respectful, and professional. She noted that you have led the Care Home to a CQC "Good" rating and that no further concerns have arisen during four years of regulatory investigation.

Ms Bayley submitted that the misconduct was isolated, out of character, [PRIVATE]. You have since reflected on how your tone and language could impact others and have taken measurable steps to prevent recurrence.

Ms Bayley reminded the panel of paragraph 74 of Grant, noting that the focus must be on whether the need to uphold professional standards would be undermined if no finding of impairment were made. In this case, she submitted, the rigorous four-year investigation, the panel's findings of misconduct, and your demonstrable remediation have already upheld those standards.

Ms Bayley therefore invited the panel to conclude that you can now practise kindly, safely and professionally and that your fitness to practise is not currently impaired on either public protection or public interest grounds.

The panel accepted the advice of the legal assessor, who referred to the principles contained in the cases of *Roylance v General Medical Council (No 2) [2000] 1 A.C. 311, and* in relation to the definition of misconduct, and to the case of *Council for Healthcare Regulatory Excellence v NMC and Grant [2011] EWHC 927 (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 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***
> *9.4 Support students and colleagues to develop their professional competence and confidence.*
>
> ***20 Promote professionalism and trust***
> *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.*
> *20.7 Make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way.*
> *20.8 Act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates.'*

The panel acknowledged that a breach of the Code does not automatically amount to misconduct.

In relation to Charge 6d, the panel noted that the incident occurred during a busy shift, that you apologised shortly afterwards, and that Colleague B did not [PRIVATE]. While the panel considered your behaviour to have been inappropriate and unprofessional, amounting to a lapse in professional judgment, it also took into account that the incident was isolated, not premeditated, and did not involve any abuse of power or malice. The

panel therefore determined that it did not cross the threshold of seriousness required to amount to misconduct for the purposes of these proceedings.

In relation to charge 9a, the panel found your conduct while inappropriate and unprofessional did not violate Colleague D's dignity or create an inappropriate or degrading environment. The panel considered Colleague D's evidence that your comment about her sexuality did not make her feel uncomfortable. It therefore determined that it did not cross the threshold of seriousness required to amount to misconduct for the purposes of these proceedings.

In relation to charges 9b, 9c, 9d and 10, the panel found that your conduct amounted to a serious departure from the standards expected of a registered nurse. The language you used towards a student nurse was explicitly sexualised and derogatory and had the potential to violate her dignity and create an intimidating or degrading environment.

The panel noted that, as the registered manager of the care home, you occupied a position of seniority and responsibility. Colleague D was a student nurse under your supervision, and she was entitled to expect professional conduct and respect in your behaviour and communications with her. The panel considered that the use of language such as "carpet munchers" and "women smell fishy" in a professional environment was wholly unacceptable and incompatible with the values set out in The Code (2015).

The panel took into account your reflection and your evidence that you did not intend to offend, that you have since undertaken trainings relevant to the charges, and that no similar conduct has occurred in the four years since these events.

The panel concluded that this behaviour breached multiple provisions of the Code, specifically paragraphs 9.4, 20.2, 20.3, 20.5, 20.7, and 20.8. The panel determined that the conduct demonstrated a failure to act as a professional role model and amounted to behaviour that fellow practitioners would regard as deplorable.

Accordingly, the panel found that your actions identified in charges 9b,9c and 9d and 10(i) and 10(ii) fell seriously short of the conduct and standards expected of a registered 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.

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. 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 *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Grant [2011] EWHC 927 (Admin).* in reaching its decision. In paragraph 74, she said:

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

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

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

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

a) *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*

The panel determined that there was no evidence that your misconduct placed any patient at a direct risk of physical harm.

The panel was satisfied that your behaviour brought the profession into disrepute and breached several fundamental tenets of nursing practice including the duty to treat people with kindness, respect and compassion, and to uphold professionalism and trust.
The panel therefore considered that parts (b) and (c) of the Grant test were engaged.

Regarding insight, the panel considered whether your misconduct is remediable, whether it has been remedied, and whether it is likely to be repeated.

The panel took into account your reflective statements, the documentary evidence of equality and diversity, communication skills, and dignity-in-care training, as well as your oral evidence and testimonials. The panel considered that whilst you denied the charges found proved, you have accepted the panel's findings and that you have shown insight into your behaviour. You have acknowledged that such language would have been inappropriate and unprofessional, it is likely to have caused offence and embarrassment, and that it would have been inconsistent with your role as a senior nurse and manager.

The panel also noted that in the submissions made by Ms Bayley, she stated that you were remorseful for the situation that you have found yourself in. Whilst this remorse was not clearly expressed within your reflection statement, the panel took into account your statements that, *"this fitness to practice experience has been humbling and has reinforced my appreciation of the standards and expectations of the profession."* It acknowledged that it is difficult to express remorse for actions which you deny.

The panel was satisfied that you have demonstrated an understanding of how your actions could undermine public confidence in the nursing profession and how they were inconsistent with the Code.

The panel was satisfied that your misconduct is capable of remediation and that you have taken meaningful steps to address it. It noted that there has been no repetition of similar conduct since 2021 and that you have continued to practise safely and competently as a registered nurse.

The panel took into account your detailed reflective statements, your evidence at the hearing, and the substantial remediation you have undertaken. You have completed equality and diversity training, communication skills development, and dignity-in-care workshops. You have also produced reflective accounts demonstrating an understanding

of the impact of your conduct on others and on the wider perception of the nursing profession.

The panel accepted that your misconduct is capable of remediation and that you have taken meaningful steps to address it. It noted that there has been no repetition of similar behaviour in the four years since these events and that you continue to work safely and effectively as a nurse and manager.

The panel considered that your level of insight is genuine, and that you have learned from these events. It therefore concluded that the risk of repetition is low.

Accordingly, the panel determined that a finding of impairment on public protection grounds is not required, as there is no current risk to patients, colleagues, or the wider public arising from your practice.

The panel then turned to consider whether a finding of impairment was necessary on public interest grounds.

It 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 proper professional standards for members of those professions.

The panel considered that the public would expect a finding of impairment where a senior nurse and manager used sexually explicit and derogatory language towards a junior colleague. Such conduct undermines confidence in the profession and fails to uphold its core values of dignity, respect and equality.

While the panel accepted that you have learned from these events and have demonstrated significant remediation, it concluded that a finding of no impairment would

fail to properly mark the seriousness of your misconduct and would risk undermining public confidence in the profession and in the NMC as its regulator.

The panel therefore determined that your fitness to practise is currently impaired on public interest grounds.

Having regard to all of the above, the panel determined that your misconduct, while remediated and isolated, was of such seriousness that a finding of impairment is necessary in order to uphold proper professional standards and maintain public confidence in the nursing profession.

Accordingly, the panel finds your fitness to practise currently impaired on public interest grounds only.

Sanction

The panel considered this case very carefully and decided to make a caution order for a period of 12 months. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

Submissions on sanction

Ms Stannard submitted that the panel should make a suspension order for a period of 12 months. She submitted that this is a serious case where you made unprofessional comments directed at a student nurse in her formative years and that a suspension order is the only appropriate sanction in this case.

Ms Stannard submitted that the key aggravating factors in this case include:

- You made inappropriate comments to a student nurse, at a formative time, at the beginning of her career
- The charges represent separate occasions in which you used derogatory words in reference to lesbians and females, albeit they do appear to be isolated specific incidents.

Ms Stannard submitted that the mitigating features in this case include:

- You have shown insight in your reflections and have attempted to address the concerns via courses undertaken
- There have been no previous findings against you
- There has been no repetition of the behaviour referred to in the charges

Ms Stannard submitted that a suspension order for a period of 12 months would be appropriate to mark the seriousness of the concerns identified in this case. She concluded that the parameters for its review would be a matter for the panel to determine.

Ms Bayley urged the panel to consider the least restrictive sanctions first and reminded the panel that sanctions should be proportionate, paying particular regard to the panel's determination on public interest grounds only. She submitted that the panel may be satisfied that you have participated and engaged with these proceedings, taken responsibility and given evidence before your regulator in relation to this case. She suggested that taking no further action, although rare, was an option available to the panel, as the rigorous regulatory processes over the last four years including monitoring of your practise by the NMC would satisfy the public interest. She reminded the panel of the impact this process may have had on you. She submitted that the panel may be satisfied that there has been a full and frank investigation into this matter thereby marking the seriousness of the case.

Ms Bayley submitted that a caution order is the appropriate order in the case. She submitted that it is designed for these kinds of cases where a registrant has shown insight and no public protection issues have been identified.

Ms Bayley submitted that the main objective of sanctions must be protection of patients and in this case no patients were harmed or put at risk of harm. She submitted that temporary removal from the register is the second most restrictive order and that to impose one in circumstances where no patients were harmed would be disproportionate and the public would be shocked if this was the response to the kind of misconduct identified in this case. Ms Bayley submitted that removal from the register would have an impact on not only you but on others including, the Care Home, residents and colleagues, resulting in more serious consequences for the Care Home.

She submitted that a caution order is the most proportionate order and marks the seriousness of the misconduct. She submitted that this determination would remain in the public domain for the lifetime of the order and would impact you significantly.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Your misconduct was directed at a student nurse at a formative time in her career and made by a person in a position of authority over her, resulting in her not feeling able to go to you for guidance on her competencies and professional development

The panel also took into account the following mitigating features:

- You have reflected and shown insight into your behaviour
- Whilst you have denied the allegation, you acknowledged that if the witnesses were giving a correct account of the incident your behaviour would have negatively impacted the student nurse
- You have undertaken training to develop in the areas of your previous failings
- There have been no previous incidents and no repetition of the behaviour

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 noted that you have shown insight into your conduct. The panel noted the positive testimonials made on your behalf and considered that whilst your conduct was unprofessional, it was at the lower end of the spectrum. The panel took into account your professional record, the absence of any adverse findings in relation to your practice either before or since these incidents and the length of time which this matter was investigated. It was satisfied that the misconduct and impairment found proved in this case would be sufficient to mark the seriousness of your conduct and satisfy the public interest in this case.

The panel considered whether it would be proportionate to impose a more restrictive sanction. The panel noted there was no benefit to temporarily removing a competent nurse from the register given its earlier findings.

The panel concluded that no useful purpose would be served by a conditions of practice order. It is not necessary to protect the public and would not assist your return to nursing practice. The panel further considered that a suspension order would be wholly disproportionate in this case.

The panel has decided that a caution order would adequately protect the public. For the next 12 months, your employer - or any prospective employer - will be on notice that your fitness to practise had been found to be impaired and that your practice is subject to this sanction. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for a period of 12 months would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession but also send the public and the profession a clear message about the standards required of a registered nurse.

At the end of this period the note on your entry in the register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is impaired, the record of this panel's finding and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.

Decision and reasons on application for parts of the determination to be in private

Ms Bayley made a request that parts of the determination in this case specifically the charges relating to the hearsay application and the hearsay application itself be in private and not published on the NMC website. This application was made on the basis that there is no public interest in the details of those charges being in the public domain. She

submitted that those allegations are serious and did not form part of this case albeit it was read into the record, part of the notice of hearing and the hearsay application. Ms Bayley submitted that there have been no findings in relation to those charges as the NMC gave no evidence and as a result you have not defended yourself against them. She submitted that should these form part of the determination in the public domain, the stigma would impact you negatively. The application was made pursuant to Rule 19(3) of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Stannard opposed this application. She submitted that this was a publication issue and should be raised with the adjudication department of the NMC. She submitted that at a starting point hearings are open to the public and must be transparent. She submitted that there were parties who would be interested in the outcome of this hearing and not publishing the determination in its entirety would not be transparent.

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. He reminded the panel that Rule 19 is expressly directed towards the conduct of the hearing rather than to what may or may not be subsequently published as part of a publicly available determination. He referred the panel to *the NMC guidance on publication of fitness to practise and registration appeal outcomes* which sets out the approach of the NMC towards the publication of decisions and determinations.

The panel first considered if this application was a matter that was within the remit of the panel. Rule 19(3) enables the panel to decide whether some or all of the hearing should be in private. In the present case, the hearing has been in public and the determination handed down reflects that. The panel considered that a decision as to whether some parts of the determination should not be published is a matter for the NMC, applying its policy in relation to publication and taking into account, no doubt, the matters urged by Ms Bayley.

The panel concluded that Rule 19 was not intended to address the particular concerns raised by Ms Bayley.

Accordingly, it rejected the application to direct that parts of the determination be marked as private.