

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

**Substantive Hearing
Wednesday, 15 January 2025 – Friday, 17 January 2025,
Monday, 20 January 2025 – Friday, 24 January 2025,
Monday, 1 September 2025 – Friday, 5 September 2025
Monday, 8 September 2025- Wednesday, 10 September 2025**

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

Name of Registrant:	David Andrew Gowing
NMC PIN	13A0594E
Part(s) of the register:	Nurses part of the register Sub part 1 RNMH: Mental health nurse, level 1
Relevant Location:	Hertfordshire
Type of case:	Misconduct
Panel members:	Louise Guss (Chair, lay member) Carolyn Tetlow (Lay member) Melanie Lumbers (Registrant member)
Legal Assessor:	Gillian Hawken (15 January 2025 – 24 January 2025) Charles Apthorp (1 September 2025 – 10 September 2025)
Hearings Coordinator:	Daisy Sims (15 – 21 January 2025) (2-5 September 2025) Yewande Oluwalana (22-25 January 2025) Angela Nkansa-Dwamena (1 September 2025) Hanifah Choudhury (8-10 September 2025)
Nursing and Midwifery Council:	Represented by Elizabeth Hartley, Case Presenter
Mr Gowing:	Present and represented by Sophie Walmsley, instructed by Paris Smith solicitors

Facts proved by admission:	Charges 1(b), 2 and 7.
No case to answer:	Charge 6
Facts proved:	Charges 1a, 3, 4a, 4b, 5 and 8
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

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

At the outset of the hearing, Ms Walmsley, on your behalf, made a request that this case be held partly in private on the basis that proper exploration of your case involves reference to [PRIVATE]. She further submitted that she had concerns that it might be difficult to move in and out of private session and that, with this in mind, from a logistical perspective all of the hearing might be required to be heard in private. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Hartley, on behalf of the Nursing and Midwifery Council (NMC), indicated that she had no objection to this application.

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

The panel determined to go into private session in connection with [PRIVATE] as and when such issues are raised in order to maintain your privacy. The panel was of the view that there is a strong public interest in allegations concerning a breach of professional boundaries with vulnerable patients being heard in public session as far as possible.

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Hartley to amend the wording of charge 1(a) under Rule 28 of the Rules.

The proposed amendment was to add the words '*or words to that effect*' to the end of charge 1(a). Ms Hartley informed the panel that the wording of the charge was used in Person's A's witness statement and that there is no documentary record of the message.

It was submitted by Ms Hartley that the proposed amendment would allow for some scope for the understandable uncertainty as to the precise words used in the Facebook message. She submitted that the proposed amendment would not materially change the charge.

The proposed amendment is as follows:

That you, a registered mental health nurse:

1) On or around June 2021:

- a) sent Person A a message on Facebook stating “*Hey I saw you on Bumble so thought I’d see how you are*” **or words to that effect.**

[...]

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

The panel heard submissions from Ms Walmsley who objected to this application. Ms Walmsley stated that you had responded to the Case Management Form (CMF) stating you did not dispute contacting Person A on Facebook but you did dispute the wording of the message. Ms Walmsley informed the panel that you state that in this message you apologised for ‘*unmatching*’ with Person A on Bumble. Ms Walmsley submitted that the proposed amendment would materially change the charge as it would be significantly broader in scope. She submitted that the proposed amendment would make the charge more unclear and be prejudicial against you.

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

The panel was of the view that allowing this amendment would not broaden the charge significantly. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to better reflect the evidence.

Details of charge (as amended)

That you, a registered mental health nurse:

- 1) On or around June 2021:
 - a) sent Person A a message on Facebook stating “*Hey I saw you on Bumble so thought I’d see how you are*” or words to that effect.
 - b) on more than one occasions exchanged text messages with Person A.
[PROVED BY ADMISSION]
- 2) Between June 2021 and August 2021 on one or more occasions attended Person A’s home address without clinical justification. **[PROVED BY ADMISSION]**
- 3) On an unknown date encouraged Person A to drink alcohol.
- 4) On an unknown date telephoned Person A and said:
 - a) “can I come over and spoon you” or words to that effect.
 - b) “oh come on, lets cuddle in bed and have some fun” or words to that effect.
- 5) On an unknown date, on one or more occasions facetimes Person A topless.

- 6) On an unknown date, on one or more occasions, whilst at Person A's home, made a phone call to a patient. **[NO CASE TO ANSWER]**
- 7) Did not disclose that you had attended Person A's home to your employer. **[PROVED BY ADMISSION]**
- 8) Your conduct at charges 1-5 was sexually motivated in that you were seeking sexual gratification.

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

Background

The NMC received a referral from Person A on 27 January 2023 in relation to you, whilst you were working as a Band 6 Community Mental Health Nurse in [PRIVATE] in the Crisis Assessment Team ('the Crisis Team') of the Hertfordshire Partnership NHS Foundation Trust ('the Trust').

Your employment at the Trust commenced in 2008 when you worked as a Healthcare Assistant and you started your role as a Community Mental Health Nurse on 16 October 2016 having qualified as a nurse in 2013.

Person A has been under the care of the Trust since 2013. Person A has been under the care of the Crisis Team on several occasions and had known you since 2016 when you first met her on the Adult Day Treatment Unit ('ADTU') and subsequently you had supported her through one crisis episode.

On 31 March 2022, Person A was referred to the Crisis Team and had received a visit from two Crisis team members, one being you. Following this visit, you continued to work with Person A until Person A reported the alleged incidents on 23 May 2022.

Decision and reasons for participants attending virtually

On the first day of the hearing, the panel was made aware that there had been an agreement for you and Ms Walmsley to appear virtually after Day 1. The panel had not had sight of this decision and were not made aware of this prior to the hearing commencing. At the end of Day 1 of the hearing, the panel requested for Ms Walmsley and Ms Hartley to make formal submissions on any requests for parties to attend this physical hearing virtually. In the interim, the panel agreed that you could attend the hearing virtually on Day 2 due to personal commitments.

On Day 2 of the hearing, Ms Hartley informed the panel that the NMC had followed its usual approach in requesting Witness 2 to attend the hearing virtually, which you were informed of in the Case Management Form (CMF) dated 26 September 2024. Ms Hartley applied for Witness 2 to attend the hearing via video link. Ms Hartley submitted that this application was in line with the NMC Guidance in supporting witnesses to give evidence in hearings. She stated that Witness 2 is a working professional and to provide evidence via video link is the most convenient way for Witness 2 to balance professional responsibilities with attending the hearing.

In relation to you and Ms Walmsley attending the hearing via video link, Ms Hartley stated that the NMC approach is similar to that of witnesses in that it is content for parties to attend a hearing via video link as they choose.

Ms Walmsley stated that both you and herself were told by the NMC that it was agreed that you and Ms Walmsley would attend the hearing physically whilst Person A was giving their evidence and once this had concluded, both you and Ms Walmsley would attend virtually thereafter. Ms Walmsley submitted that it is in your interest and in the interest of running the hearing smoothly to allow for both you and Ms Walmsley to attend via video link after Person A's evidence. She informed the panel that you intend to give your evidence via video link when the time arises. Additionally, Ms Walmsley informed the

panel that you intend to call witnesses. She submitted that these witnesses are working professionals and it would be fair to allow them to attend the hearing via video link.

Ms Walmsley spoke about [PRIVATE]. She informed the panel that [PRIVATE]. She informed the panel that [PRIVATE]. She informed the panel that for this reason to [PRIVATE] she requested that she also attends the hearing virtually at the conclusion of Person A's evidence.

Following panel questions, Ms Walmsley informed the panel that she would be able to ensure [PRIVATE] during the hearing. Additionally, Ms Walmsley provided the panel with email communication between herself and the NMC dated 10 January 2025 to evidence the agreement that had been reached.

The panel heard and accepted the advice of the legal assessor. The legal assessor's advice made reference to the following cases: *KBC Aldini Capital Ltd v. Baazov & Ors* [2017] DIFC CFI 002, *Polanski v. Conde Nast Publications Ltd* [2005] UKHL 10, and *McGlinn v. Waltham Contractors Ltd & Ors (No. 2)* [2006] EWHC 233.

The panel considered the applications in the following order:

- Witness 2 attending the hearing virtually;
- You attending the hearing virtually;
- Your witnesses attending virtually;
- Ms Walmsley attending the hearing virtually.

Regarding Witness 2, the panel determined that it is fair to allow Witness 2 to provide evidence to the panel via video link as Witness 2 is a working professional who had been warned to attend this hearing virtually.

Regarding you attending virtually, the panel noted your personal circumstances and Ms Walmsley's submission that your evidence will be as good as it would be physically. The

panel concluded that it is your decision as to whether you attend the hearing at all given that you are represented, and if you do, whether that be physically or virtually.

In relation to your witnesses attending the hearing virtually, the panel accepted that your witnesses have professional roles and it would be practicable for these witnesses to attend the hearing virtually.

The panel considered the submissions made by Ms Walmsley that [PRIVATE]. The panel determined that this would be fair to you to allow Ms Walmsley to attend virtually.

Decision and reasons on application of no case to answer

The panel considered an application from Ms Walmsley that there is no case to answer in respect of all of the remaining charges that have not been proved by admission, namely charges 1(a), 3, 4(a), 4(b), 5, 6 and 8. This application was made under Rule 24(7).

Ms Walmsley provided the panel with written submissions:

1. *This matter concerns David Gowing (“DG”), charges 1(b), 2 and 7 have been found proved by way of admission.*
2. *The outstanding charges are as follows:*

“1. On or around June 2021:

(a) Sent Person A a message on Facebook saying “Hey I thought I saw you on Bumble so thought I’d see how you are” or words to that effect.

3. On an unknown date encouraged Person A to drink alcohol.

4. On an unknown date telephoned Person A and said:

(a). “Can I come over and spoon you” or words to that effect

(b). “Oh come on, lets cuddle in bed and have some fun” or words to that effect

5. *On an unknown date, on one or more occasions Facetimed Person A topless.*
6. *On an unknown date, on one or more occasions, whilst at Person A's home made a phone call to a patient.*
8. *Your conduct at charges 1-5 was sexually motivated in that you were seeking sexual gratification.*
3. *These submissions are made at the end of the NMC's case in accordance with Rule 24(7) of the NMC Rules 2004 which states:*

"except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and – (i) either upon the application of the registrant, or (ii) of its own volition the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer."

4. *For the avoidance of doubt this application pertains to **all** of the outstanding charges set out herein at paragraph 2.*
5. *The salient test as set out in the case of R v Galbraith [1981] 73 Cr App R 124 is as follows:*
 - a. *If there is no evidence against the registrant to support a particular charge then the case must be stopped in respect of that particular charge.*
 - b. *If there is tenuous evidence in that it is inherently weak or vague or inconsistent with other evidence and if the panel considers taking the NMC evidence at its highest that it could not properly find the particular charge to be proved on the balance of probabilities, then the case must be stopped as far as that particular charge is concerned.*
6. *The following passage should also be considered from the case of Galbraith:*

“Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.”

7. *Unless expressly stated otherwise, the registrant brings this application under the second limb of the Galbraith test which is set out at paragraph 5(b) above.*
8. *The panel has heard evidence from Person A and [Witness 2] as part of the Council’s case. The panel is respectfully reminded that the question of whether there is a case to answer turns entirely on the Council’s evidence at this stage and evidence which forms part of the Registrant’s case shall not be considered.*

OVERARCHING SUBMISSION AS TO THE EVIDENCE

9. *It is submitted, on behalf of the registrant, that the evidence presented by the Council to support the remaining charges when taken at its highest could not properly result in a fact being found proved.*
10. *The evidence presented is, respectfully submitted, to be weak and tenuous i.e. inherently weak and/or inconsistent with other evidence. For the avoidance of doubt, issues highlighted with the evidence given in these submissions are in relation to the strength of the evidence and not, at this time, in relation to credibility of either Person A and/or [Witness 2].*
11. *The panel is asked to consider all of the evidence presented by the Council which includes oral, written and documentary evidence when considering this application when assessing the strength of the evidence as it pertains to the outstanding charges.*

CHARGE 1(A)

12. *The panel will no doubt be aware that the burden of proving the facts, or the charge, rests solely with the Council. In respect of charge 1(a), it is the Council who must prove the following:*
- a. The date with which any Facebook message was sent; and*
 - b. The content of such message*
13. *It is not sufficient for the Council to merely establish that DG messaged Person A on Facebook, as that is not the charge presented before the panel.*
14. *Person A is, for all intents and purposes, the only witness who can provide evidence (at this stage) as to the purported message. It should be noted that Person A has given varying accounts of the message which she received notably her evidence included her referral to the NMC (during the course of cross-examination), what was reported as part of the local investigation, in her witness statement and in her oral evidence.*
15. *It should be noted that at various times during the giving of her evidence Person A was unable to recall arguably salient details and referred to having “blocked out” certain memories and had found it difficult to the smaller details.*
16. *As it pertains to any Facebook messaging, she was unable to recall in cross-examination, the whole of the message or indeed what discussions followed. The evidence which she was able to provide to support this charge was tenuous, inherently vague and weak in many respects.*
17. *Taken chronologically, in the Trust’s local investigation [p11 of the NMC exhibit bundle] Person A said the message was, “hey how are you, I saw you on the dating site and wanted to see how you are.” There are profound inconsistencies with the*

account given in this interview as compared to her later evidence, notably she stated the message was sent in December 2021.

18. It is submitted she was unable to offer any sufficient or credible explanation for this inconsistency regarding the dates in her evidence. Further, she fails to explain, how, by the time of preparing and signing her witness statement in February 2024 her recollection was seemingly much clearer in terms of the dates and contents of the message.

19. The panel may also wish to note that this evidence (the account given in the Trust investigation) was the closest in time to the alleged events which pertains to the detail of the message (October 2022).

20. Yet, some months later, in her referral to the NMC, Person A gives an entirely different account of the dates and context of the message she received. This account is at p40 [registrant's document bundle] and states, "whilst I was [PRIVATE] after my friend died of suicide, David reached out to me on Facebook and asked how I was.

21. This referral was received in January 2023 [p37, registrant's bundle], a mere 2-3 months since the earlier account given to the Trust and yet has provided a second profoundly different account. On the same document she states the date of incident was "around 7 months ago" (i.e. this would be some time around June/July 2022).

22. When asked to clarify this, again, Person A was unable to give any credible account or reason as to this inconsistency. She has further provided two different dates in her evidence concerning when her friend passed, in her witness statement this is said to be August 2021, in her evidence to the Trust, she said this was February 2022 and in her oral evidence this was said to be February 2022. Again, this calls into significant doubt the date when Person A says she received the Facebook message from DG, but also the context and content of it.

23. The panel should also consider Person A's witness statement at paragraph 10. Once more, the date Person A purports to have received this message is different to those

initially presented to the Trust and to the NMC. The wording provided within the statement are unequivocal, Patient A does not say in her written evidence that it was “along the lines of...” or “something to the effect of”. Notwithstanding this, in her evidence in chief, Person A was less certain of the words used and stated it was “not those exact words but it was along the same lines of him making contact with me and saying hello”.

24. In cross-examination her evidence was that the message was “definitely” the wording as contained in her statement, but she said she could not recall the rest of the message. Person A was then adamant she could recall this clearly, which is plainly at odds with the other evidence.

25. Finally, the panel will no doubt consider that there is no objective, credible or supporting evidence of the message and/or its contents. The Council have not been able to provide a screenshot of the message, or indeed any evidence of the message that was, as a matter of fact, sent. It is notable this message was likewise not available at the time the Trust undertook its investigation.

26. For the reasons set out above, due to the inherently weak, vague and inconsistent nature of the evidence is presented this charge could not properly be found proved on the available evidence, and on the balance of probabilities.

CHARGE 3

27. The registrant also submits the evidence in support of charge 3 is likewise vague, weak and inconsistent. The following matters are drawn to the panel’s attention:

- a. Person A gave inconsistent evidence as to the times with which DG reportedly visited her having previously said this was 5-6 occasions [p12, NMC exhibit bundle], in her witness statement said this was 4-5 occasions [para 12], and in her oral evidence she said it was 3-4 occasions.*

- b. *Person A has given inconsistent evidence as to whether she alleges DG brought alcohol into her home, in her witness statement she states that DG “brought [sic] some beer around to my flat” [para 17] however she was less certain in her oral evidence in which she was unclear whether he had brought alcohol to her flat or if it was in his car.*
- c. *In her evidence Person A says she confided “everything” to the Trust (albeit on her evidence not to those she initially discussed her concerns with), yet in the hearsay evidence of [Ms 3] there is no reference to Person A having relayed that DG had encouraged her to drink or had ever brought alcohol to her home.*
- d. *Again, there is no objective or supporting evidence to show that DG had encouraged Person A to drink at any time.*

28. It is submitted the evidence supporting this charge is therefore weak and vague and at its highest the charge could not properly be found proved.

CHARGES 4 (A) AND (B)

29. The registrant again respectfully submits the evidence is tenuous, vague and weak on these charges.

30. The Council have not provided any evidence which could reasonably support the assertion that DG telephoned Person A much less the content of the charge. Person A has failed to obtain phone records, perhaps surprisingly given her evidence was she had emailed Facebook and o2 to retrieve the messages but did not know she could request her phone records.

31. Person A did not refer or allege that DG had said ““Oh come on, lets cuddle in bed and have some fun” or words to that effect” in her trust interview [p11, NMC exhibit

bundle], nor to [Ms 3] who she spoke with on 26th May 2022. It is only later in her witness statement some 2.5 years where this account and wording materialises.

32. The registrant again refers to the overall nature of Person A's evidence which was tenuous, inconsistent and weak, whereby she was unable to recall matters, where she had conceded she had found it difficult to remember details and where at times there were further changes to her evidence.

CHARGE 5

33. Person A gave conflicting accounts in her evidence. Indeed, in her oral evidence Person A gave conflicting accounts of how often she says DG was topless on any such calls (which are disputed). In her witness statement she states this was every time (paragraph 20), in cross-examination she said this was $\frac{3}{4}$ of the time or 75% of the time but then changed her answer again to state this was all the time.

34. In Person A's referral to the NMC there is no reference to DG being allegedly shirtless on any Facetime calls [p40, Registrant's bundle].

35. However, the statement of [Ms 3] refers to Person A alleging that "on a separate occasion", seemingly referring to a singular occasion, DG was topless. The evidence of Person A is therefore inconsistent.

*36. The evidence to support that there were **any** Facetime calls is distinctly lacking, again due to the absence of any contemporaneous records of any such calls.*

CHARGE 6

*37. NMC required to prove charge which is that DG whilst at Person A's house made a call to a **patient** (emphasis added).*

38. Taking the evidence chronologically, Person A fails to mention this or allege this within interview with the Trust in October 2022, arguably when these events would have been fresh in her mind. Furthermore, there are no references to this within the

Trust's report (notwithstanding Person A's evidence being that she later told the Trust "everything").

39. In her witness statement she says at paragraph 22 that DG asked to make a work call at her house, however, she said she did not listen as "she knew it was a patient's private information" (para 22 of Person A's statement). In cross-examination, Person A confirmed that DG had left the room and that she went for a cigarette.

40. In the circumstances and on the evidence, Person A did not and could not have known who DG was speaking to, what he spoke about or indeed whether it was indeed a patient. Despite her insistence to the contrary, even taking her evidence at its highest, this is an assumption which she has made, as she did not hear any alleged conversation.

*41. At its highest, when considering the evidence, this charge could not properly be found proved i.e. that DG did in fact make a work call, much less that a work call was to a **patient** as stated in the charge.*

CHARGE 8

42. The evidence as to whether DG's conduct was sexually motivated and/or that he was seeking sexual gratification is similarly tenuous, weak and inconsistent. At various points in Person A's evidence, she stated she had believed, at least to a point, that DG had cared for her and was checking on her she was doing. It is seemingly accepted that by Person A that DG never engaged in any sexual contact with her.

43. The panel should again consider with care the evidence of Person A, notably the weak and vague nature of the same. For example, she alleges in her statement she believed DG may have been touching his penis – however, in her evidence she also conceded she could not be sure of this and did not know.

44. *In [Ms 3]'s statement it states, "she was clear to say that this was not a romantic meet up but just as friends". In [Ms 3]'s interview notes it repeats "yes, she did say friendship".*
45. *In cross-examination Person A was asked whether she had ever said that her contact with DG was inappropriate. It should be noted this was asked in the context of Person A stating to another staff member ([Witness 4]) that nothing had happened of an inappropriate nature.*
46. *When asked in re-examination about what inappropriate means to her she said, "Inappropriate to me means not making someone feel uncomfortable in their own home or about their past or using their professional to their advantage does not just mean to me sexual, not just having sex, the actual inappropriateness of initiating or cuddle would be inappropriate".*
47. *The evidence as to DG's motivations, or seeking sexual gratification are purely speculative and anecdotal, seemingly based entirely off Persons A's own altered narrative throughout time, there being no objective evidence to support this charge. In light of the weak nature of Person A's evidence (and the NMC's evidence more generally) as to the nature and extent of any contact with DG.*
48. *It should be noted the NMC's evidence matrix provided to the panel does not list any evidence which it says supports this charge. On one view, it could be said that this is because there is no, or no sufficient, evidence which directly supports this charge.*
49. *It is submitted once more that the Council's evidence, taken at its highest, could not properly result in this charge being found proved.*
50. *Further submissions shall be made during the hearing of this application on Monday 20th January 2025.'*

Ms Walmsley supplemented these written submissions with oral submissions to the panel. She stated that she had not addressed witness credibility in her written submissions. She

submitted that the majority of the charges are framed around and supported by the evidence of Person A. She set out the inconsistencies in Person A's evidence. She submitted that Person A's evidence had changed, in some circumstances dramatically.

One of these inconsistencies was the context around you reaching out to Person A on Facebook and another was the dates provided by Person A. She submitted that the inconsistencies in Person A's evidence surrounding the dates of the Facebook message is significantly inconsistent as in Person A's NMC witness statement it is stated that the message was sent in June/July 2021 with others stating it was December 2021 but in her Trust investigation meeting she stated it was in December 2021 and in her NMC referral that it was '*after my friend died [...]*'. Ms Walmsley acknowledged the traumatising events that had occurred in Person A's life on or around the time of Person A's allegations to the Trust.

Another of the inconsistencies submitted by Ms Walmsley was Person A's evidence surrounding the amount of times you allegedly visited Person A in their home. She accepted that the charge in relation to the home visits states 'on one or more occasions' however she submitted that this is a fundamental part of Person A's evidence and the significant lack of clarity about these matters is concerning.

An additional inconsistency put forward by Ms Walmsley was from Person A's evidence regarding the alleged Bumble interaction. Ms Walmsley submitted that Person A was adamant in the written evidence before the panel that Person A did not 'match' with you on Bumble, however Person A was less sure on this in her oral evidence to the panel.

Ms Walmsley submitted that at its lowest, the memory and reliability of Person A is called into significant doubt. Ms Walmsley further submitted that just because some of the charges have been admitted by you, this does not mean that the evidence given by Person A is true in relation to all outstanding charges. Ms Walmsley further submitted that the issues of credibility that she has outlined are best left to the conclusion of the evidence.

Ms Hartley provided the panel with written submissions:

Introduction

1. *This is the NMC's response to the submissions made by the Registrant that there is no case to answer in relation to charges 1(a), 3, 4(a) and (b), 5, 6 and 8. The remainder of the charges (1(b), 2 and 7) have been proved by admission.*
2. *The crux of this response is that there is a case to answer on each charge in issue.*

The law

3. *The relevant test is in Rule 24(7) of the NMC Rules 2004; this Panel must determine "whether sufficient evidence has been presented to find the facts proved". The burden of proof is on the NMC (Rule 30) and the standard of proof is on the balance of probabilities. Therefore, the question to determine is whether there is sufficient evidence presented to find that the facts more likely than not occurred as alleged.*
4. *The NMC accepts that the primary authority is R v Galbraith [1981] 1 WLR 1039, as set out in §§3-6 of the Registrant's submission.*

Evidence in sexual misconduct cases

5. *Essentially, the Registrant's submission is that Person A is not an adequately reliable witness for her evidence to be sufficient to find the facts in the remaining charges proved. Primarily, the Registrant says that this is because of inconsistencies*

in Person A's evidence, especially as regards her recollection of dates within the timeline of events; the use of specific words; the manner in which she reported the allegations to members of staff at the Trust; and the absence of "objective and independent" evidence to corroborate her allegations.

6. *In response, the NMC directs the Panel to its guidance on "Making decisions on sexual misconduct", which reminds the Panel to be mindful of the myths and stereotypes surrounding sexual misconduct, and directs the Panel to take account of the CPS guidance in this area. The NMC draws the Panel's attention to the points made in that guidance, especially as regards delayed reporting and inconsistent accounts, especially:*

- a. "A delayed allegation is not equivalent to a false allegation".*
- b. "Inconsistencies in accounts can happen where a person is telling the truth or not".*
- c. "[Sexual misconduct] can be very traumatic and memory can be affected in a number of ways. Understanding the effects of fear and the psychological mechanisms that may occur during [sexual misconduct] is vital when considering recall and memory. Some, understandably, may try to avoid thinking about [the occurrence] or try to avoid recalling it all – this can impact upon recall."*

7. *The NMC also draws the Panel's attention to the decision in Mubarak v GMC [2008] EWHC 2830 (Admin). In that case, the appellant asserted that it was not open to the Fitness Practise Panel of the GMC to find facts alleging sexual misconduct by the appellant proved, on the basis that there were inconsistencies in the evidence of the complainant. In rejecting that submission, the High Court said (at §20):*

“There are other circumstances in which fact finders have to determine whether they are sure that an account of a sexual assault is true in the face of a flat denial from the other person concerned and with little or no independent evidence. In such circumstances the task is to consider whether the core allegations are true. It is a commonplace for there to be inconsistency and confusion about details of varying importance.”

8. *As this dictum highlights, it is usual in cases involving sexual misconduct for there to be “little or no independent evidence” and “inconsistency and confusion about details of varying confusion”. In themselves, these are not reasons to reject a complainant’s account, but factors to be weighed in the balance.*

9. *The NMC submits that the Panel should therefore have focus on the “core allegations” in this case and, while inconsistencies are relevant to the reliability of any witness, bear in mind the guidance on assessing evidence in sexual misconduct cases when it assesses the weight to be given to those inconsistencies.*

Submissions

10. *In short, the NMC’s submission is that there is sufficient evidence on each charge to find the facts proved.*

Charge 1(a)

11. *The Registrant submits that the evidence on charge 1(a) is insufficient because Person A has at different times provided slightly different descriptions of the timing and content of the Facebook message.*

12. Regarding the timing of the message, the NMC notes that the existence of an initial Facebook message has never been contested by the Registrant. His position is that it took place in July (and not June) 2021. This uncertainty is covered by the wording of the charge “on or around June 2021”.

13. Person A accepts in her witness statement [Exhibit 3, page 3, para 9] (and she accepted in cross-examination) that she has previously got the dates wrong about when the message was sent. Her explanation was that at the time of reporting, she was [PRIVATE], having been referred back to the Crisis Team following the death of a close friend by suicide, followed by the involvement of the Registrant in her care. In this regard, the NMC submits that Person A was a reasonable and open witness, who accepted her confusion regarding dates, and gave an adequate and understandable reason for that confusion.

14. Moreover, this confusion is not fatal to Person A’s evidence, and the Panel does not have to rely solely on Person A’s testimony to be satisfied that the message was sent on or around June 2021. The bank statement exhibited by Person A [Exhibit 4, page 7] provides independent and uncontested evidence that money was transferred by the Registrant to Person A between 20 June and 19 July 2021. The Facebook message necessarily preceded this transfer and this is sufficient to demonstrate that the message was sent in June or July 2021.

15. Regarding the wording of the message, in cross-examination, it was put to Person A that the words “Hey I thought I saw you on Bumble so thought I’d see how you are” and “Hey how are you – I saw you on the dating site and wanted to see how you are” were inconsistent (the former being taken from Person A’s witness

statement [Exhibit 3, page 3, para 10] and the latter from Person A's Trust interview [Exhibit 4, page 11]). Person A's response was that those wordings, to her, seemed the same; the nature of the message was that he had seen her on Bumble and was seeing how she was.

16. Moreover, the NMC submits that this variation in wording is captured by the amended charge including "or words to that effect" and therefore the minor difference in wording is not material. Rather, the NMC submits that Person A has been consistent throughout the Trust investigation and her evidence to the NMC, that this was the nature of the opening message, and therefore there is sufficient evidence to find this charge proved.

Charge 3

17. The NMC submits that Person A provided sufficient evidence in relation to charge 3 to find the facts proved.

18. In Person A's witness statement and oral evidence to the Panel, she describes how the Registrant "bought some beer around to my flat" [Exhibit 3, page 4, para 17]. The NMC submits that this phrasing can reasonably cover both scenarios acknowledged by Person A, that the beer was brought into the flat, or remained in the Registrant's car.

19. It is incorrect to say that Person A has not previously reported this allegation prior to her witness statement to the NMC. In her interview with the Trust [Exhibit 4, p.12] she describes the Registrant saying "You're no fun anymore. You can drink with me I'm safe. [...] Can you remember that time you were running around the garden drunk."

20. The NMC submits that Person A's account was consistent in her evidence to the Panel that: (a) alcohol was brought to her flat (whether inside or outside); (b) the Registrant commented on her previous alcohol use and how it made her "fun"; (c) the Registrant reminded her of a time when she was running around drunk (when the Registrant says [PRIVATE]); and (d) that the Registrant repeatedly told her that she could drink with him because he was "safe", on at least three occasions during the course of a visit to her home.

21. The NMC submits that this evidence is sufficient to prove that the Registrant encouraged Person A to drink alcohol.

Charges 4(a) and (b)

22. The NMC submits that there is sufficient evidence that the Registrant phoned Person A and used the words alleged in charges 4(a) and (b).

23. The Registrant accepted in his Trust interview that he had phoned Person A [Exhibit 4, page 110], when he says that "We spoke over the phone".

24. Person A has been consistent about the existence and nature of the phone calls.

a. In her witness statement, Person A describes the calls and words used [Exhibit 3, page 22].

b. In her oral evidence, Person A said that she was sure that the Registrant had used those words.

c. In the statement of [Ms 3], she recalls Person A reporting that the Registrant had "called her late one evening whilst under the influence of alcohol and asked to 'spoon' with her" [Exhibit 8, page 1].

d. In her Trust interview, Person A says: “He rang on 2 occasions drunk. He said that he was around the corner and asked if he could come and stay – could he come and spoon” [Exhibit 4, page 12].

e. In her referral to the NMC, Person A says that “on two occasions he asked to sleep with me” [Exhibit 6, page 40].

25. The NMC submits that there is fundamental consistency between Person A’s account in evidence, and her reporting over time. Minor inconsistency regarding the precise words used is covered by the wording of the charge “or words to that effect”. Therefore, there is sufficient evidence for the Panel to find these charges proved.

Charge 5

26. The NMC submits that there is sufficient evidence to find charge 5 proved. In particular, in order to find this charge proved, the Panel would only need to conclude that the conduct occurred on one occasion (given the wording of the charge as “on one or more occasion”).

27. The evidence is as follows:

a. Person A describes the Registrant Facetiming her while topless in her witness statement [Exhibit 3, page 5, §20].

b. Person A gave further detail in her oral evidence, in particular regarding how much of the Registrant’s body she could see (to the bottom of his ribcage); where he was (in a living room, on a sofa, or sometimes before a wall); how the Registrant commented on the lights around her bed and about her pyjamas; that Person A was not sure whether or not the Registrant was touching his penis.

i. On this point, the NMC submits that Person A again demonstrated herself to be a reasonable and careful witness with regards to her evidence. Person A accepted that she could not be sure whether the Registrant was touching his penis; that she did not see his penis; but that he went red in the face in the way someone does when they have been exercising.

c. Person A reported this conduct to [Ms 3] [Exhibit 8, page 1].

d. Person A reported this conduct in her Trust interview [Exhibit 4, page 12].

28. The NMC therefore submits that there is sufficient evidence to find this charge proved.

Charge 6

29. The NMC submits that there is sufficient evidence to support this charge, in particular:

a. Person A describes the Registrant taking a work call from her home in her witness statement [Exhibit 3, page 5, para 22].

b. Person A explained in evidence that there was an occasion on which Person A finished work early and she thought that this was the occasion on which he the work call. This is also recorded in her witness statement [Exhibit 3, page 4, para 13].

c. In oral evidence, Person A elaborated that the Registrant took the call for approximately five to six minutes; that she went outside for a cigarette when he took the call; and that he stayed after it was completed.

d. The NMC accepts that by the nature of her evidence, Person A cannot have heard who the Registrant was speaking to on the phone, because she left the room. However, Person A's account is that the Registrant told her it was a call to a patient,

and this was her evidence to the Panel. She gave no reason why she would have disbelieved the Registrant when he told her this.

30. The NMC submits that Person A's testimony is sufficient evidence on which to find this charge proved.

Charge 8

31. The NMC submits that there is sufficient evidence to find the facts of this allegation proved, namely that the Registrant's conduct under charges 1 to 5 were sexually motivated, in that he was seeking sexual gratification.

32. The NMC's case is that charge 8 is proved by the sum of the Registrant's behaviour in charges 1 to 5 taken together, as well as the Registrant's behaviour in some of those charges individually. This is supported by Person A's interpretation of the Registrant's behaviour.

33. Evidently, the substantiation of this charge in full depends on whether charges 1 to 5 are themselves proved, however the NMC will proceed to set out the evidence on the basis that charges 1 to 5 may all be proved.

34. It is plain that the NMC does not have to prove sexual contact for charge 8 to be proved: the question is one of sexual motivation. The NMC says that it is proved by the following evidence:

- a. The commencement of the relationship between Person A and the Registrant on Bumble, which is a dating site.*
- b. Reference in the initial message by the Registrant to having seen Person A on Bumble.*

- c. Person A's evidence that, on reflection, the initial contact was for the purposes of pursuing "sexual interests or a relationship" and not simply to see how she was.*
- d. Person A's evidence that she informed the Registrant the first time he visited her house that she was not looking for a relationship, in response to the Registrant asking if she was seeing someone.*
- e. Person A's evidence that she was uncomfortable on the first visit when the Registrant sat very close to her on the sofa.*
- f. Person A's evidence that the Registrant referred to Person A's previous behaviour when she [PRIVATE].*
- g. The facts of charge 4 are inherently sexual: namely, references to spooning, cuddling in bed and having fun, are obvious requests for sexual activity to take place.*
- h. The facts of charge 5 are inherently sexual: namely, the Registrant appearing on Facetime topless, while Person A was in bed and commenting on Person A's pyjamas.*
- i. The ending of the relationship once Person A rejected the Registrant's most explicit sexual advances.*
- j. The sexual nature of the Registrant's behaviour was clearly reported to [Ms 3] [Exhibit 8], to the Trust [Exhibit 4, page 11-12], and in Person A's referral to the NMC [Exhibit 6, page 40].*

35. The NMC submits that this evidence is sufficient for the Panel to find that the Registrant's behaviour in charges 1 to 5 was sexually motivated.

General points on Person A's credibility

36. The NMC notes that the Registrant has not at this stage made submissions on Person A's credibility and does not yet invite the Panel to find that Person A is not a credible witness [Registrant's submissions, para 10].

37. The NMC considers that it is difficult in a case such as this to address the strength of Person A's evidence without addressing her credibility, because the nature of her evidence is such that its strength or weakness rests in large part (although not solely) on her credibility.

38. Although the Panel may not wish to make a final determination on credibility at this stage, the NMC will make the following general points regarding Person A's credibility, to the extent that they are relevant to the strength of the evidence on each charge.

- a. It is included above where Person A's written and oral evidence mirrors that which is described in the statement of [Ms 3] [Exhibit 8]. The NMC says that this comparison is helpful: Person A does not know the content of [Ms 3]'s statement, and therefore the significant coincidence in the reporting to [Ms 3] and testimony before this Panel demonstrates Person A's overall consistency over time.
- b. Person A also explained why she did not immediately report the events in the same level of detail as she has now given to the Panel. Namely, it took time and trust for her to feel able to tell members of staff everything that had happened. The Panel may find that this is a reasonable explanation and
- c. Person A says that she has no reason to lie.
- d. [Witness 2] have evidence that there are were no recorded alerts on the Trust's electronic patient records system (Paris) indicating that Person A had a history of

making false allegations. [Witness 2] indicated that staff were proactive about putting alerts on the system, because they are risk averse regarding their own professional safety. In response to a direct question from the Panel asking whether in his experience as a manager he has ever come across an example of an alert not being put on Paris when there are concerns about false allegations he said “No”.

e. Person A’s evidence must be taken in the context of the proven admissions and other known facts, in particular that the Registrant visited Person A at her home on at least three occasions; that the Registrant transferred her money for pizza they ate together on one of those visits; that the Registrant had previously and was subsequently involved in Person A’s care under the Crisis Team; and that the Registrant did not report any information relating to his relationship with Person A to his employer.

f. These accepted facts demonstrate that Person A is not an inherently unreliable witness, and the Registrant’s case is not that she is entirely fabricating her account. The Panel should therefore weigh in the balance, and in favour of Person A, that a large proportion of her evidence has already been accepted as true.

Conclusion

39. In conclusion, the NMC submits that there is sufficient evidence to find each of charges 1(b), 3, 4, 5, 6 and 8 proved, and therefore there is a case to answer on all.

40. The NMC reserves the right to raise any additional matters in oral submissions once the application is made by the Registrant.

Ms Hartley informed the panel that there was an error in her written statement at paragraph 14. She stated that the precise date of the transfer of money was 19 July 2021

as demonstrated by an unredacted copy of a bank statement that she had seen, the redacted version being found within the evidence bundle.

Ms Hartley stated that it was raised by Ms Walmsley that on a number of occasions there was little independent or objective evidence about what happened between you and Person A. She submitted that the panel ought to consider the nature of this case and the nature of the evidence. She submitted that what occurs between two people with little involvement from others in the privacy of someone's home is likely to not be supported by independent objective evidence.

In relation to the credibility of Person A, Ms Hartley submitted that the panel has heard clear and consistent evidence from Person A. Ms Hartley submitted that Person A admitted in her NMC statement and oral evidence that she had made mistakes about dates and why. She reminded the panel that Witness 2, a professional, had also struggled to recall dates of certain events. She submitted that there is a good reason that Person A may have got some dates wrong. She reminded the panel that at the time Person A reported your conduct, Person A was [PRIVATE] which is shown by Person A being referred back to the Crisis Team. She submitted that this makes Person A's mistakes as to dates understandable. She reminded the panel that Person A was open in her oral evidence that she is '*not good with dates*'.

Ms Hartley submitted that the panel does not need to rely solely on Person A's evidence as to the timings of events. There is documentary evidence before the panel to show the transfer of money for the pizza for example. She submitted that it is logical to assume that there was previous communication between you and Person A before this time. Additionally, she reminded the panel that Person A was referred to the Crisis Team on 31 March 2022, which assists the panel as to dates.

Ms Hartley submitted that it is honest and understandable for Person A to have stated to the panel that she does not recall certain dates given the traumatic events and that this

occurred over three and a half years ago. Ms Hartley submitted that the panel has heard clear and sufficient evidence to find a case to answer in relation to all outstanding charges.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented within the meaning of Galbraith, such that it could find the facts proved and whether you had a case to answer.

Charge 1(a)

1) *On or around June 2021:*

a) *sent Person A a message on Facebook stating “Hey I saw you on Bumble so thought I’d see how you are” or words to that effect.*

The panel determined that there is a case to answer in relation to this charge.

The panel considered the stem of the charge ‘*on or around June 2021*’ and the sub charge in relation to the contents of the message separately.

In relation to the stem of the charge the panel noted your admission to charge 2; ‘*Between June 2021 and August 2021 on one or more occasions attended Person A’s home address without clinical justification.*’ It was of the view that this admission gives an indication as to the timing of these interactions. Additionally, the panel noted the submissions of Ms Hartley, specifically her amendment to her written submissions with the date of the bank transfer for the purchase of pizza being 19 July 2021. Whilst it did not make any findings of fact, the panel noted that if you did send Person A a message on Facebook to the effect of the words outlined in charge 1(a), this would have been prior to

your attendance at Person A's home on the first occasion, so the date in or around June 2021 makes sense.

The panel was satisfied that the NMC has provided some relevant evidence upon which the panel could find this element of the charge proved. It was further satisfied that Person A's evidence on this point was not so unsatisfactory in nature or that Person A was so unreliable or discredited, that this element of the Allegation is not capable of being proved.

In relation to the wording of the Facebook message, the panel accepted that no documentary evidence of this actual message has been provided to the panel by you or the NMC. It noted that all of the evidence before it is therefore based on memory.

The panel considered Person A's evidence in the local investigation, their NMC statement and in oral evidence to the panel. The panel noted that Person A's account of this message does slightly change within these pieces of evidence. However, the panel was of the view that the meaning behind the phrases used by Person A remains the same. Additionally, the panel accepted that memory can be affected by the passage of time or by traumatising events.

The panel was satisfied that the NMC has provided some relevant evidence upon which the panel could find this element of the charge proved. It was further satisfied that Person A's evidence on this point was not so unsatisfactory in nature or that Person A was so unreliable or discredited, that this element of the allegation is not capable of being proved.

The panel therefore determined that there is a case to answer in relation to charge 1(a).

Charge 3

3) *On an unknown date encouraged Person A to drink alcohol.*

The panel determined that there is a case to answer in relation to this charge.

The panel considered paragraph 17 of Person A's written NMC statement together with Person A's oral evidence to the panel.

Person A's written statement at paragraph 17 states:

'On one occasion Mr Gowing bought some beer around to my flat, and I told Mr Gowing that I would not be drinking. Mr Gowing continuously said I could drink with him because he was safe'

The panel noted that in cross examination Person A stated that the alcohol was *'either in the boot or in the flat [...] I am sure he brought beer around to my flat [...] The more important point is that he was saying it was safe to drink with him'*.

The panel noted the wording of the charge and determined that for this charge to be found proved, the panel does not need to find that alcohol was brought into Person A's house, merely that you *'encouraged'* Person A to drink alcohol.

The panel accepted Ms Hartley's submissions at paragraphs 17-21 of her no case to answer submissions.

The panel was satisfied that the NMC has provided some relevant evidence upon which the panel could find the charge proved. It was further satisfied that Person A's evidence on this point was not so unsatisfactory in nature or that Person A was so unreliable or discredited, that this element of the Allegation is not capable of being proved.

Charge 4

4) *On an unknown date telephoned Person A and said:*

a. *"can I come over and spoon you" or words to that effect.*

b. *“oh come on, lets cuddle in bed and have some fun” or words to that effect.*

The panel determined that there is a case to answer in relation to these charges.

The panel noted the evidence in relation to this charge being from Person A's written NMC statement, Person A's oral evidence and the Trust investigation.

The panel first considered charge 4(a). The panel noted that you have admitted to charge 1(b) and so it is admitted that you had Person A's phone number. Additionally it noted that you accepted that you spoke to Person A *‘over the phone’* in your Trust interview dated 2 December 2022. The panel noted that Person A also stated that you spoke over the phone regularly in both Person A's written statement and in oral evidence.

In Person A's written statement Person A stated *‘Mr Gowing said they were out nearby and he asked if he could come over and spoon me’*. Person A stated the same in their oral evidence to the panel. Additionally, Person A stated similar in the Trust interview dated 11 October 2022.

The panel noted that Person A reported this to Ms 3 which Ms 3 recalled in her hearsay statement.

The panel was satisfied that the NMC has provided some relevant evidence upon which the panel could find this element of the charge proved. It was further satisfied that the evidence on this point was not so unsatisfactory in nature that this element of the Allegation is not capable of being proved.

In relation to charge 4(b), the panel viewed the evidence before it which suggests that there were two phone calls between you and Person A on the same night with the allegation of you asking to *‘spoon’* Person A allegedly occurring in the first call and the allegation of you stating *‘oh come on, lets cuddle in bed and have some fun’* or words to that effect allegedly occurring in the second.

The panel considered paragraph 21 of Person A's written NMC statement to provide the most detailed recollection of this alleged event. In that it stated *'Mr Gowing said they were out nearby and he asked if he could come over and 'spoon' me. I said no and to leave me alone because he was drunk. Mr Gowing then called back and said 'oh come on, let's cuddle in bed and have some fun'*. It noted the NMC referral by Person A which states *'on two occasions he asked to sleep with me'*.

The panel was of the view that there is some evidence before it in relation to charge 4(b). Whilst it noted that there may be some inconsistencies in how this was reported by Person A to the Trust, it accepted Person A's evidence that some of the information regarding these events came out gradually to the Trust over several different contacts with representatives of the Trust. The panel therefore determined that the evidence before it is not so tenuous that it is inherently weak or vague or inconsistent with other evidence, such that this element of the Allegation is not capable of being proved. The panel therefore determined that there is a case to answer.

Charge 5

5) *On an unknown date, on one or more occasions facetimes Person A topless.*

The panel determined that there is a case to answer in relation to this charge.

The panel noted the evidence in relation to this charge being from Person A's written NMC statement and oral evidence, the Trust local investigation interview dated 11 October 2022 and the hearsay statement of Ms 3.

The panel considered the evidence and considered that Person A's account that you were topless on one or more occasion on Facetime was consistent throughout this evidence. The panel noted that in Person A's oral evidence under cross examination, Person A stated that you were topless *'in about three quarters or 75% of the time'*. Person A had also previously stated that you were topless on all occasions talking on Facetime.

The panel was of the view that there is unlikely to be independent corroborative evidence in relation to this charge given that it is regarding a Facetime between two individuals.

The panel was satisfied that the NMC has provided some relevant evidence upon which the panel could find the charge proved. It was further satisfied that Person A's evidence on this point was not so unsatisfactory in nature or that Person A was so unreliable or discredited, that this element of the Allegation is not capable of being proved.

Charge 6

- 6) *On an unknown date, on one or more occasions, whilst at Person A's home, made a phone call to a patient.*

The panel determined that there is NO case to answer in relation to this charge.

The panel noted the evidence before it in Person A's written statement and oral evidence.

The panel noted Person A's written statement which states that '*he asked to make a work call in my bedroom.*' Additionally, Person A stated in their oral evidence that you told Person A that you wanted to make a call to the Crisis Team about a patient and that Person A left the room and went into the garden to have a cigarette because Person A did not want to jeopardise a patient's privacy.

The panel was of the view that Person A's evidence is consistent in that Person A stepped out of the room and so did not hear whether you did in fact take or make a call, whether that was to a patient or to the Crisis Team or to another individual, or what was discussed on this alleged phone call.

The panel noted the wording of the charge, specifically '*made a phone call to a patient*'. It noted that even if the panel were to take a broader view of the meaning of this charge, the

mischievous of the charge is in relation to you speaking to or about a patient, with related concerns around breaching confidentiality. As Person A did not hear the conversation, there is no evidence of its content.

The panel determined that the evidence in relation to this particular was inherently weak and inconsistent, such that the second limb of the Galbraith test was met. In the circumstances, the panel determined that there was insufficient evidence which could enable a properly directed panel to find that you acted as alleged.

Charge 8

8) Your conduct at charges 1-5 was sexually motivated in that you were seeking sexual gratification.

The panel determined that there is a case to answer in relation to this charge.

The panel noted the advice of the legal assessor in relation the definition of 'sexual' contained within Section 78 of the Sexual Offences Act 2003:

'touching or any other activity is sexual if a reasonable person would consider that –

a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or

b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.'

In light of the panel being satisfied that there is a case to answer in respect of particulars 1(a), 3, 4(a), 4(b) and 5, the panel was also satisfied that, at this stage, there is a case to answer in relation to sexual motivation. The panel is mindful of Person A's interpretation of the alleged behaviour. The panel was satisfied that the NMC has provided some relevant evidence upon which the panel could find the charge proved. It was further satisfied that Person A's evidence on this point was not so unsatisfactory in nature or that Person A was

so unreliable or discredited, that the element of the allegation is not capable of being proved.

The panel wishes to emphasise that, at this stage, all that it has decided is that the NMC's evidence at this stage of the proceedings, in relation to each of the particulars 1(a), 3, 4(a), 4(b), 5 and 8, is sufficient for it to be properly open to the panel to find those particulars proved and, as such, the panel should proceed to hear the defence case, receiving evidence from you and any supporting evidence. The panel has formed no view about what findings it may or may not make at the end of the factual stage of the hearing until your evidence is concluded.

Decision and reasons on further privacy application

On Day 5 of the hearing, Tuesday 21 January 2025, Ms Walmsley addressed the panel as follows:

- Ms Walmsley revisited her application in relation to the extent to which your evidence should be heard in private. She submitted that it would be logistically difficult to separate the private matters from the public matters in your evidence and risked the disclosure of private matters in the hearing. As such, she invited the panel to hear all of your evidence in private.
- Ms Walmsley requested clarity on how [PRIVATE] pertaining to Person A are to be dealt with going forward, specifically in your evidence and the evidence of your witnesses. She split this clarification request in asking the panel firstly whether any reference to the evidence provided by Person A should be in private, and secondly whether any evidence given by you or your witnesses that relates to Person A's [PRIVATE] should be heard in private.
- She requested that any external parties who are not a part of this hearing are referred to by their initials rather than their full names.

- She stated that you had concerns that when virtual witnesses were shown documents on a shared screen, this might inadvertently reveal matters related to your private information.

Ms Hartley stated she was sympathetic to the first point outlined by Ms Walmsley. She submitted that the panel have already decided on this and the only thing that has changed since the original decision on privacy is that Person A has requested to join the hearing as an observer, and has been attending the hearing in this capacity. Ms Hartley submitted that she strongly opposed an application that could, in effect, exclude Person A from the proceedings as an observer. She also submitted that Person A's privacy is protected by her anonymity.

Ms Hartley accepted that the preliminary decision prior to the start of this substantive hearing to hear Person A's evidence in private was not clear about what should happen at the conclusion of Person A's evidence and what should happen when Person A's [PRIVATE] is subsequently referenced in the hearing.

Ms Hartley accepted that it is common practice for external parties referenced during the course of a hearing to be anonymised.

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

In terms of your privacy, the panel noted that the charges do not relate to [PRIVATE]. The panel was of the view that Ms Walmsley, Ms Hartley and the panel are professionals who will be able to anticipate whether an answer to their question could result in private matters arising. Additionally the panel noted that you will be able to alert the hearing when you wish to go into private session in your answers. The panel therefore adopted its previous decision on privacy in that your evidence will be heard partly in private when matters of [PRIVATE]. All parties will be alert to the risk of inadvertent disclosures and the panel will keep the practicality of switching between public and private under review.

In relation to the clarification requested, the panel determined that Person A is now attending the hearing as a public observer having concluded her evidence as a witness, and so if the hearing does go into private for [PRIVATE], or her own, Person A would not be allowed to remain in the hearing. The panel was mindful of the vulnerability of Person A and the potential distress that might be caused to her by hearing evidence relating to herself. The panel was mindful that Person A has chosen to observe the hearing. The panel determined that it was in the interest of fairness for Person A to be able to observe the hearing and that this outweighs any potential distress. The panel noted that Person A is able to leave the hearing whenever she wishes.

Regarding the third point, the panel agreed that any third party who is not involved in the proceedings should be anonymised and referring to them by their initials would be satisfactory.

Regarding the fourth point, the panel agreed that no private information should be shared with witnesses on the shared screen.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Walmsley, who informed the panel that you made admissions to charges 1(b), 2 and 7.

The panel therefore finds charges 1(b), 2 and 7 proved in their entirety, by way of your admissions.

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/Person A: The referrer/ A service user;
- Witness 2: Service Line Lead for the Crisis Team

The panel heard evidence from you under affirmation. The panel also heard live evidence from the following witnesses called on your behalf:

- Witness 4: Registered Mental Health Nurse at the Trust;
- Witness 5: Occupational Therapist in the Crisis Team.
- Witness 6: Senior Social Worker in the Crisis Team.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor who referred the panel to the case of *Dyer v GMC* [2021] EWHC 2237 (Admin), *Basson v GMC* [2018] EWHC 505 (Admin) and *Khan v GMC* [2021] EWHC 374 (Admin).

It considered the witness and documentary evidence provided by both the NMC and you.

The panel noted the objective documentary evidence before it, namely:

- A bank transfer from you to Person A evidencing a pizza purchase dated 19 July 2021;
- An email from a neighbour about your attendance at Person A's home dated 20 October 2022;

- Your telephone records in July 2021 showing your contact with the NMC;
- A screenshot showing your Facebook account and demonstrating that you and Person A were connected on Facebook;
- Hertfordshire Partnership NHS Trust Professional and Personal Boundaries Policy Version 4, in place at the time of the contacts between you and Person A in 2021;
- An Investigation Report into allegations of misconduct against you by Hertfordshire Partnership NHS Trust which commenced on 30 August 2022. It included notes of an investigation meeting with you, Person A, Witness 4, Witness 6 and two other employees, and the statement you gave for the investigation.

The panel considered the agreed facts in this case are as follows:

- Prior to the incidents in question you and Person A knew each other in a professional to patient capacity, this connection was periodic and extended from some years prior to the alleged incidents. The panel noted your statement in relation to this that you had first met Person A on the Adult Day Treatment Unit ('ADTU') in 2016, although you were not directly involved in her care at that time and that later:

'I had supported Patient A as a service user after 2016 during one crisis episode that Patient A had experienced, and this had included providing telephone support to her together with visiting and providing support to her at her home. I can't remember exactly when this was, but I think it was in approximately 2018/2019. After 2018/2019 I did not have any further involvement in Patient A's care until March 2022.'

- You and Person A matched on Bumble in or around June or July 2021, although there is some dispute as to how this match occurred.
- You subsequently unmatched Person A when you realised who she was.
- After you unmatched Person A on Bumble you found Person A on Facebook and messaged Person A on Facebook messenger. Additionally, thereafter it is agreed that you and Person A exchanged text messages.

- Between July and August 2021 you visited Person A's home address on three occasions (there is disagreement on the number of visits, but the lowest agreed number was three).
- You became professionally involved in Person A's care again in March 2022 at a time of crisis for her.
- You did not disclose to your employer, either at the time of the alleged incidents or subsequently from March 2022 onwards when Person A was re-referred to the Crisis Team where she became an active patient, that you had contacted Person A on social media, by text message and had visited Person A's home.

Before considering the charges, the panel noted the evidence before it which included some hearsay evidence. In addition to the witnesses who provided oral evidence, the panel was also provided with a range of documents from both the NMC and you which included unsigned statements, local investigation documents and transcripts of local interviews. The panel considered whether each of these documents were contemporaneous or made shortly after the incidents, whether they were signed and, in regard to the statements, it considered whether it had heard oral evidence from the maker of the statement.

The panel gave more weight to the contemporaneous statements that were signed and dated and where the authors attended the hearing, allowing the evidence to be tested. The panel gave less weight to the unsigned and undated statements. The panel also considered whether there were any explanations for witness non-attendance.

Additionally, there were a number of documents provided by you that were in the form of testimonials which go to your character. It noted Ms Walmsley's submission that the witnesses other than Witnesses 4, 5 and 6 may be called at the impairment stage of the proceedings. The panel agreed that these statements were best fully considered at later stages of the hearing.

Bumble

The panel considered the evidence before it in relation to Bumble. The evidence the panel heard was that Bumble is an app that has three sections: 'dating', 'friendship' and 'business'. Your evidence is that you were signed up to the friendship setting. Person A's evidence was that she was on the dating setting and she was very clear that she was only on the app for '*dating*' stating in oral evidence '*I want to eventually meet someone, start going on dates and fall in love*'. The panel heard evidence that you would not be able to 'match' if you were signed up to different sections of the app. The panel noted that it is accepted that you and Person A matched on Bumble and so concluded that you must have been on the same section of the Bumble app, which was 'dating'.

You stated that you were not seeking a romantic relationship, but friendship.

The panel consider that, taking all of the evidence into account, that both yourself and Person A were registered on the 'dating' section of the app to enable the match to occur. It therefore determined that you were on Bumble looking for 'dating' relationships rather than simply friendship.

Person A's credibility

The panel noted that there were submissions on Person A's credibility. The panel were referred to and took into account the NMC Guidance DMA-7 *Making decisions on sexual misconduct*, which in turn references *CPS Guidance: Rape and sexual offences – Annex 8 Tackling rape myths and stereotypes* dated 21 May 2021. The panel also took into account the *Council for Healthcare Regulatory Excellence Guidance: Clear Sexual Boundaries between Healthcare Professionals and Patients: Guidance for Fitness to Practice panels* dated August 2008. The panel considered the weight it would attach to the evidence of Person A before making individual findings on each of the charges.

The panel acknowledged that there is inconsistency in Person A's evidence on dates in relation to some of the allegations, in particular between her early statements and her

evidence before the panel. This inconsistency was accepted by Person A during her oral evidence. Person A explained that she struggles with remembering dates however has clear recollection on other matters. The panel is of the view that Person A's evidence is broadly consistent with contemporaneous evidence consisting of interview notes with staff to whom she made disclosures on 23 May and 26 May 2022 and to the Trust Investigator in her interview in October 2022. It is also consistent with Person A's evidence to the panel about how the disclosures came about. Much of this is also consistent with the agreed facts in that you accept that you did match with Person A on Bumble, unmatched her, messaged Person A on Facebook, and purchased a pizza with Person A on 19 July 2021 (which is then corroborated through documentary evidence). The panel therefore did not find that Person A's inconsistency with dates reduced the reliability and quality of her other evidence. The panel's view is that Person A's evidence was balanced, consistent and that she made appropriate concessions when unsure.

The panel heard that you allege that Person A had previously made false allegations regarding other mental health professionals. These included:

- 1) Person A being part of a WhatsApp group in 2016, whilst an inpatient on the ADTU ward, along with other patients, with the intention of trying to manipulate staff;
- 2) Two members of staff having visited Person A at her home, and Person A subsequently complaining about them for discussing her case outside her home within earshot of others;
- 3) You claimed that Person A's Care Coordinator advised you, in 2019, that Person A had alleged that a friend of hers had made unwanted advances towards her.

The panel considered that there was no verifiable evidence before it to support whether any of these incidents had occurred, or whether they were false allegations i.e. allegations made by her that were knowingly false. You accepted that you had no first-hand information about the allegations made, whether formally reported to the Trust, if so, how they had been dealt with by the Trust or whether any investigations took place in regard to them and, if they had, what the outcomes were.

The panel heard evidence from Witness 2 about the difference between a patient's right to lodge a corporate complaint about the services they receive and false accusations by patients regarding professionals. You confirmed that Person A had never complained about you prior to May 2022 and there was no evidence before the panel that Person A had complained about other professionals acting inappropriately towards her.

While there was a system in the Crisis Team to alert staff on the Paris Patient Record System ('Paris') which contained records of patient contact and care, there was inconsistent evidence given to the panel as to whether or not there was an alert '*banner*' on the front page of Person A's Paris account to warn professionals of any risk that this patient had made false allegations or presented any other risk. The panel determined to attach little weight to the allegations that Person A had previously made false allegations against professionals involved in her care.

The panel also heard evidence that even when there was no formal alert banner on the Paris System, professionals might share patient information verbally about what they perceived to be risks. Witness 5 in her oral evidence confirmed that until something was proven it would not be entered as an alert on the Paris System. As a consequence the panel concluded that there was no evidence before it of any proven false allegations having previously been made by Person A.

The panel heard evidence that almost a year after Person A had made her disclosures regarding you, she sat outside of the Team's Office in a vehicle for a few days in around April 2023. The panel heard evidence from Witness 2 confirming that he had witnessed Person A waiting outside the office. This led to Witness 2 stating that, as a result, you were asked to work from home for a short period. The panel noted that Person A had told the panel that her behaviour was borne out of frustration given that she felt that her disclosures were not being dealt with promptly by the Trust and Person A was aware that you were still working within the Team. The panel noted this evidence, however it attached little weight to this given that this occurred after the allegations in question.

The panel then considered the submissions of Ms Walmsley who submitted that Person A was fabricating those allegations which you have denied. The panel determined that it could not identify any motive for Person A fabricating allegations against you or anyone. It noted that Person A did not disclose the relationship with you until Person A was re-referred to the Crisis Team on 31 March 2022 and you were working on her team some months later. She then waited several weeks before making her disclosures, which she said was to give you an opportunity to disclose the personal contacts between you.

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

Charge 1(a)

That you, a registered mental health nurse:

- 1) On or around June 2021:
 - a) sent Person A a message on Facebook stating *“Hey I saw you on Bumble so thought I’d see how you are”* or words to that effect.

This charge is found proved.

In reaching its decision the panel noted all of the evidence before it, the written and oral evidence of Person A and your written and oral evidence to the panel.

The panel noted that there was general agreement between the parties that a message was sent by you to Person A using Facebook around late June or early July 2021. Only the contents of the message were disputed.

The panel was aware that the Trust had in place at the time of the incidents, a Professional and Personal Boundaries Policy dated 17 January 2018. You advised the panel that you had not read this policy at any time before or during your personal contacts with Person A. However, you told the panel that on previous occasions where you came

across service users in a professional capacity that you had known or met socially or through family members, you had immediately recused yourself from being involved in their care – you were very clear about the importance of this.

You stated that you sought out Person A on Facebook and contacted her to apologise for unmatching her on Bumble. You told the panel that you had contacted the NMC to check whether you would be permitted to contact her for this purpose. You say that the NMC advised you that you could do so and told you that there was ‘*no concern*’ about this.

The panel had sight of documentary evidence of two phone calls made by you to the NMC on 14 July 2021. The first call lasted 2 minutes and 4 seconds and the second call lasted 12 seconds. There was a third call evidenced on the copy of your phone call record dated 16 July 2021 which lasted for 13 minutes 42 seconds. You stated that you spoke to the NMC and got clear advice on 14 July 2021 that you could contact Person A. You stated that you could not recall the call on 16 July 2021. In your statement you stated that you would have sent this Facebook message around 14 July 2021 because this is the date that you called the NMC to obtain advice on the situation. However, you stated in oral evidence that the message was likely to have been sent by yourself around 15 July 2021.

In Witness 2’s witness statement, he said:

‘Mr Gowing told me that they had contacted the NMC anonymously, to ask general questions about contacting patients.’

The panel considered the evidence before it and determined that your explanation is extremely unlikely given that the longest call on 14 July 2021 to the NMC lasted 2 minutes and 4 seconds. The panel was of the view that it would not have been possible for you to get through to someone at the NMC, explain the situation at hand and receive advice from the NMC in the 2 minutes and 4 second phone call particularly as you added that the person you spoke to sought advice from a colleague about your question before answering it. The panel therefore determined that, it is more likely than not that a

Facebook message was sent from you to Person A on or around June 2021, and most likely on 15 July 2021. In the panel's view, it is more likely that the conversation with the NMC discussing this was the telephone call on 16 July 2021 which had a duration of 13 minutes and 42 seconds and took place after the Facebook message had been sent. The panel concluded that, it is likely that by contacting the NMC you were seeking to justify the message you had already sent, in order to protect your position and deflect responsibility.

Moving on to consider the contents of the message, the panel noted that there is no dispute between the parties that you searched for Person A on Facebook and then messaged her. You, however, dispute that the message stated *'Hey I saw you on Bumble so thought I'd see how you are'* or words to that effect. You stated in your written statement that the message said *'something along the lines of: hello, I wanted to apologise for unmatching you on the Bumble friendship app. I didn't mean any upset and I'm sorry if I did'*. In Person A's initial interview with the Trust on 11 October 2021, Person A stated that the message said *'hey how are you – I saw you on the dating site and wanted to see how you are'*.

The panel considered your explanation of your reasoning for messaging Person A on Facebook, which is that you wanted to apologise for matching with her and that you were concerned about [PRIVATE] and you only wanted to apologise. The panel was of the view that your behaviour in your continued contact on Facebook and by text, and the subsequent in person meetings, was not consistent with your position that your concern was solely related to Person A's [PRIVATE]. The panel therefore did not accept your evidence in this regard.

The panel noted that you agree that you sent a message on Facebook to Person A after the contact on Bumble. It is the panel's view that the different suggested versions of this message are substantially similar in that they both refer to Bumble and a concern for her welfare. They only differ on whether your message contained a clear apology. On balance, whilst you state that the wording of your message to Person A contained an apology for

unmatching Person A on Bumble, the panel preferred the evidence of Person A who stated that the message did not contain an apology.

The panel therefore determined that it is more likely than not that on or around June 2021 you sent Person A a message on Facebook stating '*Hey I saw you on Bumble so thought I'd see how you are*' or words to that effect.

Charge 1(b) and 2 (admitted)

The panel noted that charges 1b and 2 are admitted. Bearing in mind those admissions, the panel gave consideration to its view of your reasons for continuing to contact Person A by text message and visiting her home.

You told the panel that your intention in contacting Person A initially on Facebook was to apologise due to your concern for her welfare following your unmatching her on Bumble. You stated that you knew she could be '*easily triggered*' by rejection and you were concerned about [PRIVATE]. You said that you continued to contact Person A [PRIVATE] and stated that Person A had asked you to visit her and you wanted to check that she was okay.

The panel was of the view that, if your intention was to apologise, there would have been no need to continue any contact through Facebook messages or texts as you stated she was '*doing well*' and was not receiving [PRIVATE] at the time. However, you have accepted that you continued to exchange text messages with Person A and that between June and August 2021 attended Person A's home address without clinical justification. It is the panel's view therefore that there was no legitimate reason for your contact to continue and consequently that your motivation was not simply to apologise, but you were seeking social contact with Person A, which gradually escalated to a course of conduct with a sexual intention.

Charge 3

That you, a registered mental health nurse:

- 3) On an unknown date encouraged Person A to drink alcohol.

This charge is found proved.

In reaching its decision the panel noted all of the evidence before it.

It noted that Person A, in her initial disclosure in May 2022, did not disclose the allegation of your encouragement to her to drink alcohol. However, Person A did raise this in her Trust interview as part of the local investigation dated 11 October 2022 and repeated the allegation in her referral to the NMC in January 2023. Person A maintained this account in her witness statement to the NMC, in her oral evidence before the panel and maintained her position under cross examination.

Person A stated that your knowledge of [PRIVATE] led to you encouraging her to drink. She said in oral evidence that you said to her that *'you are safe to drink with [him]'*. In her statement she said:

'When I [PRIVATE]. Mr Gowing made continuous comments about how fun I used to be and how funny one occasion was. There was an instance when I [PRIVATE] where I was drunk and had taken off my clothes and ran around naked in the garden of the hostel I was living. Mr Gowing kept saying how funny this was.'

You denied this ever happened and said that you had never visited her in a non-clinical setting or seen her drunk. However, you had also stated that you did home visits (which was a non-clinical setting) to Person A in 2018-2019.

The panel noted your evidence that you do not drink due to [PRIVATE]. However, the panel considered that the charge was specifically that you '*encouraged Person A to drink*' and does not allege that you were drinking alcohol yourself.

The panel noted that you previously had full access to Person A's [PRIVATE] as you had been involved in Person A's care, most particularly in 2018 to 2019, and therefore would have been aware of Person A's [PRIVATE]. The panel bore in mind your denials in relation to this charge.

The panel, taking all the evidence into account, concluded on the balance of probabilities that you encouraged Person A to drink alcohol.

Charge 4

That you, a registered mental health nurse:

4) On an unknown date telephoned Person A and said:

- a) "can I come over and spoon you" or words to that effect.
- b) "oh come on, lets cuddle in bed and have some fun" or words to that effect.

This charge is found proved.

In reaching its decision the panel noted all of the evidence before it.

The panel noted that Person A mentioned you asking to '*spoon*' her to Ms 3 within Person A's initial disclosures in May 2022. The panel noted that Person A did not mention you saying '*lets cuddle in bed and have some fun*' during these initial disclosures in May 2022, but that this was mentioned on 11 October 2022 as part of the Trust interview with Person A, in her referral to the NMC, in her NMC witness statement and in her oral evidence.

The panel noted that Person A's disclosures spread over more than one meeting with staff and that at first she was reticent because, she said, she was trying to protect you. As the process continued she provided more detail.

The panel noted that Person A stated that there were two phone calls from you late one evening. She stated that in the first phone call you asked to '*spoon*' her and in the second phone call you said words along the lines of '*oh come on, lets cuddle in bed and have some fun*'.

The panel heard evidence from Person A that it was following the telephone calls referenced in this charge that she became concerned as to your intentions and so contacted her former Care Coordinator to discuss your contact with her. This Care Coordinator subsequently contacted you in order to discuss Person A – which you accept. There were no more personal contacts between you and Person A after that conversation. You stated that your contact with Person A ended because both you and she were busy. The panel determined that the timing of the ending of your contact with Person A and of her previous Care Coordinator contacting you, are a more plausible reason for the ending of the contact with Person A and make her version of events more plausible. In the panel's view, the phone calls were sexual in nature given the references to '*spooning*' and '*lets cuddle in bed and have some fun*', particularly as they were made between midnight and 1:00AM, and represent an escalation in your behaviour.

The panel determined that it is more likely than not that you telephoned Person A and said words to the effect of '*can I come over and spoon you*' and '*oh come on, lets cuddle in bed and have some fun*'.

Charge 5

That you, a registered mental health nurse:

- 5) On an unknown date, on one or more occasions facetimes Person A topless.

This charge is found proved.

In reaching its decision the panel noted all of the evidence before it.

The panel noted that Person A did not mention you facetimeing her topless during her initial disclosures in May 2022 but this was mentioned during the Trust interview on 11 October 2022; *‘There was Facetime contact every other day – he was always topless on all of the Facetimes’*. During cross examination, Person A conceded that the frequency of the topless facetimes may have been *‘around 75% of the time’*.

The panel also noted Person A’s NMC statement in which she stated:

‘Every FaceTime I had with Mr Gowing, he was topless. I thought this was strange and asked if Mr Gowing’s flat was very hot. Mr Gowing kept making comments about my pyjamas’

In oral evidence, Person A stated that for a period in July and August 2021 you facetimeed once or twice a day, stating that you were usually topless and she was usually in bed. She stated that these calls were mainly in the evening and that you commented on her pyjamas and her colour changing lights around her bed.

The panel noted your evidence that you never phoned Person A and never facetimeed her.

The panel considered that Person A’s account is very detailed and consistent throughout her evidence from October 2022. The panel noted that the charge states *‘on one or more occasion’* and determined that, on the balance of probabilities, one or more facetimes occurred. The panel also relied on its previous assessment of your motivation for your ongoing personal contact with Person A.

The panel determined that it is more likely than not that on an unknown date, on one or more occasions, you facetimes Person A topless.

Charge 8

That you, a registered mental health nurse:

- 8) Your conduct at charges 1-5 was sexually motivated in that you were seeking sexual gratification.

This charge is found proved.

The panel noted that charges 1-5 have either been admitted or found proved and so all of these charges need to be considered in relation to this charge.

The panel took into account the NMC Guidance DMA-7 *Making decision on sexual misconduct* which references *CPS Guidance: Rape and sexual offences – Annex 8 Tackling rape myths and stereotypes* dated 21 May 2021.

In relation to this charge, the panel took into account its previous findings which included:

- The first non-professional contact between you and Person A was via Bumble, a dating app, where you matched;
- You sought out Person A on Facebook and messaged her via this app;
- You continued to message Person A using text;
- You visited Person A at her home for non-clinical reasons, once ordering pizza together, chatting and watching TV. Those visits lasted up to three hours;
- Knowing Person A's [PRIVATE], you encouraged her to drink alcohol;
- You contacted Person A by telephone and invited her to engage in 'spooning' and 'cuddling in bed and having fun';
- On one or more occasions FaceTimed Person A topless.

The panel was of the view that if your intention in contacting Person A on Facebook originally was to apologise for unmatching her on Bumble then you would have done this and terminated the contact. As you had continued to message and indeed visited Person A at her home on more than one occasion, the panel believe that this is evidence of intentions that were other than platonic and that the motivation for the ongoing and escalating contact was sexual.

The panel also considered the attempts to encourage Person A to drink alcohol, given her history, and to '*spoon*' and '*cuddle in bed and have fun*' were explicitly sexual in nature, particularly as the calls happened at nighttime between midnight and 1:00AM.

Given these findings, the panel determined that it is more likely than not that your actions as set out in charges 1-5 were sexually motivated in that you were seeking sexual gratification.

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.

Your oral evidence

You provided the panel with some oral evidence under affirmation.

You told the panel that you appreciated its findings on the facts in this case. You said that these proceedings have been incredibly tough on you. You also said that you recognised the hurt you had caused to Person A, their family and the impact your actions have had on the nursing profession.

You told the panel that you have spent the last four years thinking about your actions, have reflected on it and have spoken to a number of professionals about this. You said that this has been extremely difficult for you.

You spoke to the panel about the importance of trust being maintained in nursing professionals. You said that it is important to be open and transparent at all times, being aware of boundaries and working within them at all times and involving colleagues when you have difficulties in doing so.

You told the panel that you have wanted to complete training on professional boundaries but have been unable to do so due to [PRIVATE].

Decisions and reasons on proceeding with the hearing in your absence

Whilst you were giving evidence you [PRIVATE] and required a short break. During this break, Ms Walmsley informed the panel that she had not received a response to her phone calls and messages to you for [PRIVATE]. This break became extended for some time.

Having lost much of the previous day of the hearing trying to contact you when you absented yourself after the decision on facts was handed down, and being mindful of the time left to conclude the hearing, the panel invited submissions from Ms Hartley and Ms Walmsley on proceeding in your absence.

Ms Hartley submitted that the Notice of Hearing informed you that the hearing could go ahead in your absence. She submitted that the panel has to have in mind fairness to you and fairness to the public interest in the expeditious conclusion of this case.

Ms Walmsley informed the panel that she did not have any instructions from you on proceeding in your absence and that this will limit any submissions she puts forward to the panel.

Ms Walmsley submitted that you have engaged in this hearing and were giving evidence to the panel before you absented yourself.

Ms Walmsley submitted that these are serious issues and that the facts found proved by the panel could have a devastating impact on your nursing career. She also submitted that a balance has to be struck between the expeditious disposal of this case and fairness to you.

The panel accepted the advice of the legal assessor which included reference to *General Medical Council v Hayat* [2018] EWCA Civ 2796.

During the legal assessor's advice, Ms Walmsley received a phone call from you. She told the panel that you wanted to continue giving evidence although you said you were unable to do so at present and it was unclear when you would be able to resume your evidence. You also said you were happy for the hearing to proceed in your absence. You did not rejoin the link to the hearing.

The panel took into account your absence on day 13 of the hearing and the efforts Ms Walmsley had made in attempting to contact you to join the hearing that day and earlier today.

The panel noted that, throughout the hearing, you have [PRIVATE] and that these proceedings have [PRIVATE]. It also noted that you have provided statements, have given oral evidence at length, and are represented by solicitors and counsel.

The panel bore in mind that this is a resuming case that went part heard in January 2025 and determined that it is in the best interests of all concerned to dispose of this case within the present listed days. It noted that there is no [PRIVATE] to support any application to adjourn and that Ms Walmsley has not made such an application.

The panel determined that it would not be in your best interests to delay this case from concluding. The panel considered that the stress these proceedings may be causing to you is unlikely to abate until these matters are concluded. There is also a public interest in the efficient disposal of this case which relates to incidents that took place in 2021.

Taking all of this into consideration, the panel determined that there was no evidence before it to justify a further adjournment. The panel therefore decided to proceed in your absence.

Submissions on misconduct and impairment

Ms Hartley invited the panel to take the view that the facts found proved amount to misconduct.

Ms Hartley submitted that the misconduct in this case fell into four types; pursuing a non-professional relationship with Person A, the sexual motivation behind this relationship, your involvement in Person A's care when she was re-referred into the Crisis Team, and your failure to declare this conflict of interest.

Ms Hartley identified the specific, relevant standards in the NMC Code of Conduct where your actions amounted to misconduct.

Ms Hartley 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.

Ms Hartley submitted that your misconduct represented serious breaches of professional boundaries. She submitted that, at the time, you were working in the Crisis Team, working with individuals experiencing a heightened mental crisis, including Person A. She submitted that, from your oral evidence, you were aware of Person A's [PRIVATE] and that she had previously received care from the Crisis Team and may do so again in the future.

Ms Hartley submitted that the sexual elements in this case are serious. Your actions involved contact with Person A, using social media platforms and in person, were repeated and were escalating in seriousness.

Ms Hartley submitted that you took an unreasonable risk in pursuing a relationship with Person A. She reminded the panel of the severity of harm caused to Person A following your involvement in her care when she was re-referred in March 2022. She also submitted that your actions give rise to attitudinal concerns.

Ms Hartley submitted that you allowed your poor relationships with management to override patient safety and proper practice. She submitted that, although you have said you now understand the appropriate course of action to take in the future, there is always a risk you may have professional encounters with people you know in the future and may have difficult relationships with managers and it is not known how you will deal with these risks. Consequently, there is therefore a risk of repetition of your misconduct.

Referring to your testimonials, Ms Hartley submitted that it does not appear that the individuals providing the testimonials were fully aware of the allegations that have now been found proved. She submitted that these can only carry limited weight.

Ms Hartley submitted that you have fallen short of the professional standards expected of a nurse and invited the panel to find your fitness to practise impaired on grounds of public interest, in order to uphold proper professional standards and conduct and to maintain public confidence in the profession. She submitted that your breaches of professional boundaries is damaging to both Person A and to the public.

Ms Walmsley submitted that it is a matter for the panel to determine whether the facts found proved amount to misconduct.

Ms Walmsley submitted that you have had a longstanding career in healthcare prior to the allegations. She submitted that, prior to and since the allegations, there is no evidence to suggest that you have acted in a way that brings the profession into disrepute.

Ms Walmsley submitted that you have been placed under [PRIVATE] which has greatly impacted [PRIVATE]. She submitted that you have sought help from professionals for your behaviour and [PRIVATE], which reduces the risk of repetition.

Ms Walmsley submitted that your actions took place over a short period of time in a lengthy career and were not prolonged.

Ms Walmsley submitted that you have expressed remorse for your actions and the harm that has been caused. She submitted that you have taken time to develop your insight and intend to go on training on professional boundaries.

Ms Walmsley submitted that you have received a number of testimonials, commenting on your nursing. She submitted that these testimonials emphasise that your actions were an isolated incident and there are no outstanding issues on your ability to practise. She also

submitted that there is no evidence of attitudinal issues and that you have participated in this hearing, even when it was difficult to do so.

Ms Walmsley submitted that your fitness to practise is currently not impaired as you have shown significant understanding of your failures, have taken time to reflect, and have taken steps to ensure your actions are not repeated. She submitted that you are capable of practicing safely, kindly and professionally.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *Sawati v General Medical Council* [2022] EWHC 283 and *Ahmedsowida v General Medical Council* [2021] EWHC 3466 (admin).

Decision and reasons 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.*’

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:

‘1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

8 Work co-operatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

8.5 work with colleagues to preserve the safety of those receiving care

8.6 share information to identify and reduce risk

**16 Act without delay if you believe that there is a risk to patient safety
or public protection**

To achieve this, you must:

*16.3 tell someone in authority at the first reasonable opportunity if you
experience problems that may prevent you working within the Code or
other national standards, taking prompt action to tackle the causes of
concern if you can*

**17 Raise concerns immediately if you believe a person is vulnerable or
at risk and needs extra support and protection**

To achieve this, you must:

*17.1 take all reasonable steps to protect people who are vulnerable or at risk
from harm, neglect or abuse*

**19 Be aware of, and reduce as far as possible, any potential for harm
associated with your practice**

To achieve this, you must:

*19.1 take measures to reduce as far as possible, the likelihood of mistakes,
near misses, harm and the effect of harm if it takes place*

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 *act with...integrity at all times,...*

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel took into account Ms Walmsley's submissions that your actions took place over a short period of time. The panel disagreed with this. In the panel's view, although the first incident took place around June or July 2021 and your contact with Person A at the time was limited to four or five weeks, the impact of it was up until May 2022 and continued for a considerable amount of time afterwards, including [PRIVATE] as a consequence of these incidents. Person A made the disclosures to the Crisis Team in May 2022, rather than you declaring it yourself. The panel also found that your behaviour with Person A had been escalating.

The panel found that your behaviour, which included pursuing a relationship with Person A where you sought sexual gratification, your involvement in her care after the relationship had ended, and your failure to declare this conflict of interest, altogether amounted to misconduct.

The panel concluded that your actions were extremely serious and unprofessional to the extent that they would be seen as deplorable by other members of the profession.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the NMC guidance including DMA-1a *'Impairment'*, updated on 3 March 2025, which states:

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

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

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

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

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

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper

professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) [not relevant]'*

In relation to limb a, the panel found that the harm caused to Person A by you was very serious. The panel noted that you were aware of [PRIVATE] yet still pursued a relationship with her. The panel also took into account what Person A said was the effects of your behaviour which had significantly impacted [PRIVATE] and had a detrimental impact on her trust in the Crisis Team.

The panel noted that, throughout the periods of contact with Person A, which commenced with the initial social contact with Person A and the period between Person A's re-referral

to the Crisis Team until the disclosure of her concerns at the end of May 2022, you failed to disclose to anyone your previous personal contact with Person A nor the conflict of interest in your involvement in her care from March to May 2022. The panel also noted that, following Person A's re-referral on 31 March 2022, you visited her in a professional capacity on five occasions (on one occasion remaining in the car whilst a colleague delivered medication) accompanied either by Ms 3, Witness 4 or Witness 6. Despite multiple opportunities to admit your previous social contact with Person A, including to people you acknowledged as colleagues and friends, you did not do so. The panel noted that your explanation for this was '*embarrassment*'.

The panel determined that your misconduct constituted serious breaches of fundamental tenets of the nursing profession as you failed to uphold the standards and values of the nursing profession, thereby bringing the nursing profession into disrepute.

The panel therefore concluded that limbs a, b, and c of the Grant test were engaged in the past and, if repeated, would be engaged in the future.

The panel next considered whether the misconduct in this case was capable of being remediated. It took into account the NMC guidance on *Can the concern be addressed?* (FtP-15a) which states:

'Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:

- ...
- *inappropriate personal or sexual relationships with people receiving care or other vulnerable people or abusing their position as a registered nurse, midwife or nursing associate or other position of power to exploit, coerce or obtain a benefit*
- ...

- *incidents of harassment, including sexual harassment, and other forms of sexual misconduct, whether it occurs inside or outside professional practice'*

In light of this the panel determined that the misconduct in this case is not easily remediable.

The panel then went on to consider whether the concerns had been addressed by you.

The panel noted your evidence and Ms Walmsley's submissions that you have addressed the concerns raised. The panel found that it had no evidence before it of training or reflective pieces to suggest this. The panel considered that, whilst you have expressed some remorse for your actions, the absence of any training undertaken and reflective pieces demonstrates limited insight. The panel considered that much of your written and oral evidence focused upon your own personal context as opposed to the impact your behaviour has had on others, including the nursing profession. You have not been able to adequately explain why you failed to disclose your conflict of interests after March 2022. The panel determined that there is a risk of repetition of your misconduct.

The panel took into account the submissions made by you and Ms Walmsley that you have engaged with [PRIVATE]. The panel had no evidence before it from [PRIVATE] or any coping strategies you have in place in the event of deterioration in [PRIVATE] to ensure your misconduct is not repeated. The panel had no information before it regarding any work you have done since October 2023 (either paid or voluntary) or how you would handle a similar situation which included difficult working relationships with managers and/or [PRIVATE].

The panel took into account the various testimonials you have received from both professionals and non-professionals. However, the panel noted that these individuals did not appear to know the details of all of the charges and covered different times in your career that were not necessarily at the time of the incidents. It also noted that many of the testimonials focus on your clinical practice.

In these circumstances the panel determined that a finding of impairment is necessary on the grounds of public protection.

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

The panel had regard to the serious nature of your misconduct and determined that public confidence in the profession would be undermined if a finding of impairment were not made in this case, particularly as this misconduct involved breaching professional boundaries with a vulnerable patient and failing to disclose this. It was of the view that a fully informed member of the public, aware of the proven charges in this case, would be very concerned if you were permitted to practise as a registered nurse without restrictions. For this reason, the panel determined that a finding of current impairment on public interest grounds is also required. It determined that this finding is necessary to mark the seriousness of the misconduct, the importance of maintaining public confidence in the nursing profession, and to uphold the proper professional standards for members of the nursing profession.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on both public protection and public interest grounds.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. The effect of this order is that the NMC register will show that you have been struck-off the register.

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

Your oral evidence

You gave evidence under affirmation.

You told the panel that you have been unable to attend training and courses due to [PRIVATE]. You said that you hope to enrol in some courses in the near future and that you are committed to undertaking more learning and development in the areas of concern. You also said that you have been accessing websites, books, podcasts and discussions with friends and colleagues to help you learn.

You told the panel that you have been reflecting on your actions for the past four years and that you have taken accountability for them. You said that, by attending this hearing, you have shown that you have been taking these matters seriously. You apologised to the panel for your actions and the harm that had been caused to others as a result.

[PRIVATE].

You told the panel that you are currently working for Hertsmere Council via an agency in a non-healthcare role. You said that you would love to return to nursing as you have a love and passion for it and for the NHS.

You told the panel of the impact a striking-off order would have on you. You said that it would have a profound personal and financial impact on you if you were unable to work as a nurse as you have built your life around being a nurse, and it means everything to you.

Submissions on sanction

Ms Hartley took the panel through the sanctions that were available for the panel to consider. She submitted that a striking-off order is the only appropriate and proportionate sanction to protect the public and address the public interest in this case. She also provided the panel with aggravating and mitigating features for it to consider when reaching its decision on sanction.

Ms Hartley stated that the aggravating factors in this case could be broken down into four main parts:

- Abuse of a position of trust in that you breached the professional/patient relationship
- A pattern of conduct over a lengthy period
- Your conduct put Person A at risk of harm and indeed actual harm occurred
- Lack of insight into the regulatory concerns
- Your defence placing reliance on unproven false allegations made by Person A

Ms Hartley added that mitigating factors are:

- Early admissions to some of the charges
- Personal mitigation

Ms Walmsley reminded the panel that any sanction imposed must be proportionate and must not be unduly punitive.

Ms Walmsley submitted that, throughout your evidence, you have accepted your shortcomings and have recognised the seriousness of the concerns. She submitted that you have sought to reflect on the impact your actions had on others.

Ms Walmsley drew the panel's attention to the various testimonials you have received, highlighting your good clinical practice and good character.

Ms Walmsley submitted that there is oral and documentary evidence of [PRIVATE] and difficult working relationships with your managers.

Ms Walmsley submitted that the most appropriate sanction in this case is a conditions of practice order. She submitted that you have previously worked under an interim conditions of practice order and adhered to it. She further submitted that the misconduct in this case is capable of being remediated and that you have taken steps to do so. She provided the panel with a number of conditions for the panel to consider imposing.

Ms Walmsley submitted that if the panel was not minded to impose a conditions of practice order, then a suspension order for a period of six to twelve months would be sufficient in protecting the public and addressing the public interest. She also submitted that a striking-off order would be wholly disproportionate and that the risks in this case can be met with a lesser sanction.

The panel accepted the advice of the legal assessor concerning its powers and the approach it should take in determining sanction.

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 first considered the circumstances of this case. At the time of the incidents you were a Band 6 nurse working in the Crisis Team and had been in this position for a number of years. You had also worked at the Trust for a significant period of time, initially working as a Healthcare Assistant and then working as a nurse, and therefore should

have been aware of the policies in place, one of those being professional boundaries. The panel heard evidence from you that you did not know about this policy and consequently did not apply it. You relied on the advice you claimed you received in a phone call to the NMC, but the panel has found that this explanation is not credible because the phone call is likely to have taken place after your first contact with Person A. In the panel's view, an experienced nurse should be aware of what professional boundaries require.

The panel took into account the [PRIVATE] of Person A and the seriousness of [PRIVATE]. The panel noted that you were aware of the specific nature of Person A's [PRIVATE] and yet still chose to contact her through social media. Your behaviour escalated over a period of time, including visiting her at her house. During or after personal contact with Person A stopped in August 2021 you had a responsibility to disclose this to your employer but failed to do so. Even after Person A's re-referral to the Crisis Team in March 2022 you continued to fail to disclose your previous contact with Person A and continued to be involved in her care, visiting her at her home in a professional capacity five times.

Whilst the panel took into account [PRIVATE] you were going through at the time of the incidents, it did not consider that this reduced your culpability in these circumstances. The responsibility remained with you, as a nurse, to manage professional boundaries, particularly where the patient (or former patient) is very vulnerable.

The panel took into account the following aggravating features:

- You were a senior nurse at the time of the incidents and knew the details of Person A's [PRIVATE], yet continued to pursue a relationship with her.
- You initiated the contact with Person A.
- Your misconduct was repeated over a prolonged period of time, taking place for a period of around 11 months, before it was disclosed by Person A.
- Your actions placed Person A at serious risk of harm and harm was caused. The panel heard directly from Person A of the impact your actions had on her.

- You had demonstrated limited insight into your misconduct and the impact it had on Person A and the wider public.

The panel took into account NMC guidance *Insight and strengthened practice* (FtP 15) (last updated 14 April 2021) and *Has the concern been addressed* (FtP-15b) (last updated 29 November 2021). The panel carefully evaluated the quality and nature of your insight and took into account your evidence regarding the reasons for the contact with Person A, in particular the visits to her home, and the reasons for your non-disclosure.

You told the panel that you contacted Person A via social media and in visits because:

- a) You wanted to check on [PRIVATE]
- b) She invited you
- c) [PRIVATE]
- d) As a result of your phone call with the NMC you thought you were '*not breaching any rules*'

You told the panel that you did not disclose your personal contact with Person A to your employer because:

- a) You could not articulate this due to [PRIVATE]
- b) You had a difficult relationship with one of the members of staff you visited Person A with
- c) You had a difficult relationship with both of your immediate managers
- d) You did not want to attend the visits but they were allocated to you
- e) You were embarrassed to discuss [PRIVATE] with colleagues
- f) Person A did not appear to be uncomfortable with you visiting

The panel considered that these explanations do not demonstrate sufficient insight into the concerns in that:

- You have not sufficiently explained to the panel why you continued to visit Person A, and, in particular, why you failed to disclose your conflict of interests. In the

panel's view, none of the reasons you provided are sufficient to outweigh your professional responsibilities towards Person A.

- You do not fully accept your role and professional responsibilities and how they are relevant to what happened

While you told the panel that you had undertaken learning activity, you could not identify any specifics regarding what you have learned from your reflections and research and therefore how and why your actions placed patients at risk, what you could and should have done differently or how you would act differently in the future to avoid similar problems from happening.

The panel also took into account the following mitigating features:

- You made admissions to the non-sexual allegations at an early stage.
- You have engaged in these proceedings, providing oral evidence to the panel at each stage.

The panel acknowledged the information you provided to it of the various [PRIVATE] you have had during this period of time. However, the panel noted that the none of the charges brought by the NMC were related to [PRIVATE]. It further noted that NMC guidance SAN-1 states that personal mitigation is of limited relevance in regulatory proceedings where the purpose of sanctions is to protect the public.

The panel took into account NMC guidance SAN-2 'Sanctions for particularly serious cases' (last updated 6 May 2025). It considered that the facts proved in this case involved sexual misconduct, in particular that the circumstances involved an abuse of a position of trust and therefore fell to be considered as a serious case.

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

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

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response.

The panel noted Ms Walmsley's submissions on imposing a conditions of practice order. It noted that you have not worked as a nurse since your dismissal from the Trust in October 2023. The panel had no independent information before it about your compliance with your interim conditions of practice order but accepts your evidence that you did so.

The panel also took into consideration that the concerns in this case did not relate to your clinical practice as a personal relationship was initiated and developed outside of clinical practice albeit with a known patient. The panel therefore determined that it could not formulate workable conditions that would address the risk in this case. The issues in this case cannot be satisfactorily addressed by supervision or training. Further, the panel determined that imposing a conditions of practice of order would not address the seriousness of this case and sufficiently mark the misconduct.

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

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

The panel took into account that your behaviour was not an isolated incident and was repeated over a number of months and had escalated. The panel considered that your failure to disclose your previous relationship with Person A demonstrated attitudinal issues. The panel also found that you had limited insight into your actions and behaviour and there was therefore a risk of repetition.

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

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

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

You chose to pursue a relationship with Person A despite knowing her [PRIVATE]. Your motivation for pursuing this relationship was sexual and you sought sexual gratification. After the relationship had been terminated you failed to disclose this to your employer and continued to treat Person A in a professional capacity whilst she was [PRIVATE]. After Person A's re-referral to the Crisis Team you continued to be involved in her care despite

the conflict of interest. Person A disclosed this information rather than you. In the panel's judgement your actions reflected not simply a series of occasional errors or shortcomings but rather an entirely unsatisfactory attitude towards the importance of maintaining professional boundaries, in particular with vulnerable patients, and to the fundamental tenets of the nursing profession, including the importance of maintaining trust in nurses.

Your actions were serious departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

In reaching its decision the panel bore in mind the serious impact that its order will have on you. However, balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to you in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of

this case until the striking-off sanction takes effect. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or is in your own interests.

Submissions on interim order

The panel took account of the submissions made by Ms Hartley. She submitted that an interim suspension order for a period of 18 months is necessary on the grounds of public protection and is otherwise in the public interest. She also submitted that the length of the interim suspension order should cover any potential period of appeal.

Ms Walmsley reminded the panel that it should be mindful of the NMC guidance on *Interim orders after a sanction is imposed* (SAN-5). She submitted that the length of the interim order cannot be more than 18 months.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order.

The panel therefore imposed an interim suspension order for a period of 18 months. The panel was satisfied that this was necessary in order to protect the public and that it was otherwise in the public interest. It was of the view that the length of the order is necessary

to cover any possible delays during the appeal process. The panel determined that not to impose an interim suspension order would be inconsistent with its earlier decisions.

The panel had regard to the impact that an interim order will have on you. It was satisfied that this order, for this period, was proportionate and fairly balanced the need to protect the public and the public interest with the effect on you.

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

That concludes this determination.