Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Tuesday 6 January 2026 – Thursday 15 January 2026

Virtual Hearing

Name of Registrant:	**Jonathan Mark Nicholas**
NMC PIN:	93B0396E
Part(s) of the register:	Registered Nurse- Mental Health (26 February 1996) V300, Nurse Independent / Supplementary Prescriber 15 September 2006
Relevant Location:	Somerset
Type of case:	Misconduct
Panel members:	Paul Grant (Chair, lay member) Vickie Glass (Registrant member) Susan Laycock (Lay member)
Legal Assessor:	Neil Fielding
Hearings Coordinator:	Salima Begum
Nursing and Midwifery Council:	Represented by Giedrius Kabasinskas, Case Presenter
Mr Nicholas:	Present and represented by Silas Lee, instructed by the Royal College of Nursing (RCN)
Facts proved (by admission):	Charges 2 (in its entirety), 3 (in its entirety), and 7 in part
Facts proved:	Charges 5 & 7
Facts not proved:	Charges 1, 4 & 6

Fitness to practise:	**Impaired**
Sanction:	**Caution Order (2 years)**
Interim order:	**N/A**

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

At the outset of the hearing, Mr Lee on your behalf made an application for the case to be held partially in private on the basis that proper exploration of your case would involve matters relating to your private life and personal health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Kabasinskas on behalf of the Nursing and Midwifery Council (NMC) indicated that he supported the application.

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

Having heard that there will be reference to your health and private life, the panel determined to hold those parts of the hearing in private in order to protect your privacy and confidentiality.

Details of charge

That you, a Registered Nurse:

1. On or around April/May 2018, showed videos of pornographic material to Colleague A

2. On 17 September 2020:
    a. Showed pictures of women from a dating website to your junior colleagues and stated:
        i. 'She's a bit old for me' or words to that effect

ii. That you had a 25 year old girlfriend and that you 'liked them young' or words to that effect
iii. That you were 'into 50 Shades of Grey stuff' or words to that effect

b. In relation to Colleague B
i. showed them a picture of a latex hood
ii. Stated 'I'm not sure how I feel about latex hoods'

3. On 16 September 2022:
a. Upon Colleague C asking you to put the chocolate wrappers in the bin stated 'why have a dog if you can't get it to bark' or words to that effect
b. Stated to Colleague C 'I've not sacked anyone in years, but I might do with you', or words to that effect
c. Stated to Colleague C 'you look and smell like you smoke crack' or words to that effect

4. Your conduct at charge 1 amounted to sexual harassment in that it was:
a. Of a sexual nature;
b. Unwanted by Colleague A;
c. Intended to violate or had the effect of violating, Colleague A's dignity and/or created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

5. Your conduct at any or all of charge 2(a) amounted to unwelcome behaviour of a sexual nature

6. Your conduct at any or all of charge 2(b) amounted to sexual harassment in that it was:
a. Of a sexual nature;
b. Unwanted by Colleague B;

c. Intended to violate or had the effect of violating, Colleague B's dignity and/or created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B.

7. Your conduct at any or all of charge 3 amounted to harassment in that it was:
    a. Unwanted by Colleague C;
    b. Intended to violate or had the effect of violating, Colleague C's dignity and/or created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague C.

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

Background

In April 2008, you commenced employment at [PRIVATE]. In September 2018, a colleague raised concerns that you had allegedly shared pornographic video content while at work. At the time of the alleged event, you were employed as Deputy Clinical Lead. These matters were addressed through an internal disciplinary process.

Further concerns were raised in September 2020, when colleagues alleged that you used a dating application openly in the workplace, made comments about the appearance of individuals on the app, and allegedly expressed to colleagues that you preferred younger girls and were *'into 50 Shades of Grey type of stuff'*. At the time of the alleged events, you were employed as a Clinical Service Manager. These matters were addressed through an internal disciplinary process.

In September 2022, additional allegations were made regarding inappropriate comments and conduct towards colleagues. At the time of the alleged events, you were employed as a Clinical Manager for the [PRIVATE]. These concerns were considered at a further disciplinary hearing.

Decision and reasons on application to admit material included in exhibit bundle

Mr Kabasinskas submitted that the NMC bundle contains a range of material, including investigation documents, minutes of investigative meetings, disciplinary meeting records involving various witnesses, including you, and investigation reports relating to the incidents underlying the charges.

He further submitted that the panel must not rely on the conclusions or opinions of investigating officers, particularly any assessments of witness credibility or reliability. However, Mr Kabasinskas told the panel that this did not render the documents as a whole irrelevant or inadmissible. He said the reports also contain factual accounts, such as what witnesses said, what was reported at the time, and the chronology of events. He submitted that such material is relevant and may assist the panel in its consideration of the issues.

Mr Kabasinskas emphasised that the NMC does not seek to rely on any internal conclusions or opinions about credibility and invited the panel to set those aspects aside and to form its own independent conclusions. He submitted that the appropriate safeguard was not exclusion, but careful consideration of the weight to be attached to the material.

In relation to hearsay material, he reminded the panel that hearsay is not inadmissible merely because it is hearsay. Mr Kabasinskas submitted that the documents had been disclosed to you and no objections or requests for redaction had been raised. He further submitted that where witnesses have given live evidence and been cross-examined, this assists the panel in assessing the weight to be attached to related hearsay material.

He accepted that where investigation material refers to incidents not forming part of the charges, the panel should put that material out of its mind. Mr Kabasinskas submitted that the investigation documents are relevant for factual and contextual purposes, subject to the panel disregarding any opinions or conclusions expressed by investigators and exercising appropriate caution as to weight.

Mr Lee submitted that there was broad agreement between Mr Kabasinskas and himself. He accepted that where conclusions have been reached by previous bodies, the panel cannot place reliance on those findings or simply adopt them as determinative of the issues before it. He submitted that this was well understood and not a matter of concern.

He referred to an example within the investigation material which he considered helpful in illustrating the need for caution. He drew attention to quoted comments attributed to Ms 1, who has not provided a witness statement, which appear within the documents as contextual background explaining how the employer viewed the situation and why it was treated seriously.

Mr Lee submitted that some of those comments contain nuances or assertions which are not supported by the direct evidence, referring by way of example to a statement attributed to Colleague B by Witness 2 which was inconsistent with Colleague B's interview and statement to the NMC. He further submitted that this demonstrated the need for the panel to treat such hearsay material with appropriate caution.

He emphasised that you did not object to the material being in the bundle, but relied on the panel to assess reliability carefully, to distinguish between fact and untested assertion, and to give such material only such weight as it properly deserved when reaching its final conclusions.

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

The panel considered the inclusion of material arising from your previous employer's disciplinary processes and the inclusion of hearsay evidence within the NMC exhibits bundle, having regard to the NMC guidance and the legal advice received.

In relation to the findings and conclusions of the employer's disciplinary hearings and the investigation officers, the panel determined that these were not matters it could fairly take into account. While the totality of the material may provide background, the panel was

satisfied that it would be inappropriate to consider the findings, conclusions, or any assessments of the credibility or truthfulness of witnesses reached during those processes. Those proceedings were conducted by a non-judicial body and the panel directed itself that it must not adopt or be influenced by findings made elsewhere as a substitute for reaching its own independent conclusions on the evidence before it. Accordingly, the panel decided to put those findings and conclusions entirely out of its mind when determining the issues in your case.

The panel was also asked to consider whether material included within a witness statement in the bundle of evidence, statement of Witness 7 and paragraph 14 – 17 of Witness 4 should properly form part of the evidence in the case. It was accepted by both parties that this evidence is not relevant to these proceedings and therefore should not form part of the evidence. The panel agreed and decided therefore to exclude this material and put it out of mind during any evaluation of the evidence.

The panel next considered the hearsay material contained within the bundle, including material from individuals who have not given live evidence. Mr Lee raised no objection to the admission of this evidence as it provides context. However, Mr Lee submitted that this does not mean you accept the assertions of fact within those statements. The panel determined that the material was relevant and it would be fair to admit it. However, it recognised that hearsay evidence must be approached with caution. The panel will carefully assess the credibility and reliability of the material and will attach such weight to it as is fair and appropriate, bearing in mind the absence of live evidence or witness statements in some cases and the limitations therefore on your options to challenge the evidence.

In reaching its decisions, the panel was satisfied that it could properly reach its own conclusions based solely on the evidence properly before it, allowing you a full and fair opportunity to present your case, and ensuring that no unfair or undue reliance is placed on previous findings or untested material.

Decision and reasons on application of no case to answer in relation to charge 6

The panel considered an application from Mr Lee that there is no case to answer in respect of charge 6. This application was made under Rule 24(7).

In relation to this application, Mr Lee submitted that the NMC has failed to discharge both the evidential and persuasive burden. The application was made pursuant to Rule 24(7) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, and he referred the panel to case law of *R v Galbraith* [1981] 1 WLR 1039.

Mr Lee submitted that charge 6 is wholly dependent on charge 2b and stands or falls on whether charge 6c can be established.

In relation to intention, Mr Lee submitted there was no evidence capable of demonstrating that, when you showed an image of a latex hood and made the accompanying comment, it was a virtual certainty that Witness 3's dignity would be violated, or that you appreciated such an outcome. He relied on the surrounding circumstances, including the fact that the conversation took place in a group setting over a prolonged period, no objections were raised, no one asked you to stop, and no visible distress was observed. He further submitted that Witness 3 accepted she was a mutual participant in the conversation, engaged in conversation about your dating profile, and that the latex hood comment was not directed at her personally.

Mr Lee submitted that, at most, the evidence suggested misjudgement or recklessness, which could not be equated with an intention to violate dignity.

Mr Lee addressed material said to aggravate intention, in particular hearsay references to discussions about sex life or sexual positions. He submitted that this evidence was inconsistent, expressly denied by Witness 3 in both her contemporaneous and later accounts, and not reflected in the charge. He said that a properly directed panel could not rely on such material when assessing intention. He further relied on witness evidence

describing the conduct as inappropriate but not offensive, derogatory or harmful, and noted that no witness observed Witness 3 to be upset at the time. He submitted that this evidence was inconsistent with any finding of intention to violate dignity.

Turning to effect and environment, Mr Lee submitted that these alternatives required evidence that the conduct actually had the effect alleged or that such an environment genuinely came into existence. He submitted to the panel that the focus must be on Witness 3's own perception and experience. He relied on her contemporaneous email dated 1 October 2020 and her interview dated 13 October 2020, in which she described the situation as *'odd'* and *'weird'* and stated that the comments were not aimed at her, she confirmed that she did not feel vulnerable or offended, and said that while it might have felt awkward to see you again, she *'didn't really care'*. Mr Lee submitted that awkwardness or oddness fell well short of a violation of dignity or the creation of an '*intimidating, hostile, degrading, humiliating or offensive environment'* as defined by the *Equality Act 2010*.

He further submitted that there was no evidence of any ongoing or sustained environment coming into being, and that Witness 3 expressly denied concern about repercussions or lasting impact. He relied on the case law *Leonard Ren-Yi Yong* [2021] EWHC 52 (Admin) and *Harith Alsiwan Altemimi v GMC* [2024] EWHC 1731 (Admin), in support of the submission that the statutory threshold had not been met.

In conclusion, Mr Lee submitted that even taking the NMC's case at its highest, the evidence went no further than inappropriate workplace conduct. There was no evidential basis on which a properly directed panel could find intention, effect, or environment as required by charge 6c, and charge 6 should therefore be dismissed at the no case to answer stage.

Mr Kabasinskas opposed the application of no case to answer and submitted that charge 6 should proceed. He reminded the panel that the correct approach is the *Galbraith* test, adapted to regulatory proceedings, and that the panel is concerned at this stage only with the sufficiency of the evidence, not findings of fact. Where the strength or weakness of the

evidence depends on assessments of witness reliability or evaluative judgment, the matter falls within limb 2(b) of *Galbraith* and should proceed.

Mr Kabasinskas referred the panel to the case law of *Yong* and *Altemimi v GMC*. He submitted that the panel must apply *Section 26(4) of the Equality Act 2010* when assessing charge 6. He emphasised that harassment is not a binary assessment and requires consideration of multiple factors in the round, including the perception of the complainant, the other circumstances of the case, and whether it was reasonable for the conduct to have the alleged effect.

Mr Kabasinskas submitted that there was evidence capable of supporting limbs (a) and (b) of the charge, namely that the conduct was of a sexual nature and was unwanted and noted your concession that the conversation was inappropriate. He further submitted that this was sufficient evidence on which a properly directed panel could find an intention to violate Witness 3's dignity.

Mr Kabasinskas told the panel that the charge was expressly drafted to include conduct which '*had the effect of violating dignity or created an intimidating, hostile, degrading, humiliating or offensive environment'*, and each of these alternatives required assessment.

Mr Kabasinskas submitted that intention on your part was not determinative, as the Equality Act focuses on the impact on the victim. Even if there was no intention, the panel was required to assess whether the conduct had the requisite effect. He invited the panel to assess each of the descriptors in charge 6, and that proof of any one of them would be sufficient at this stage.

In response to submissions from Mr Lee that Witness 3 was a willing participant, Mr Kabasinskas submitted a caution against accepting that proposition at face value.

Referring to *Yong*, he submitted that apparent participation does not preclude harassment and that individuals may remain in conversations because they feel unable to disengage.

He invited the panel to consider the wider circumstances, including your seniority as a Manager, the age disparity, and the fact that Witness 3 was a junior member of staff in a workplace setting. These factors, he submitted, were relevant to assessing power imbalance and whether the conduct was truly uninvited and unwanted.

Mr Kabasinskas submitted that the panel should not focus exclusively on Witness 3's later characterisation of the incident. While her perception was an important factor under *section 26(4),* it was not determinative. He told the panel that it was required to consider the totality of the circumstances, including the preceding comments forming charge 2a, the cumulative effect of the conversation, and whether it was reasonable for the conduct to have the alleged effect.

When questioned by the panel, Mr Kabasinskas referred to Witness 3's oral evidence that she was taken aback, felt awkward, considered the conversation inappropriate, and noting her age at the time. He submitted that her experience of dealing with similar comments elsewhere did not negate the possibility that the conduct had the effect alleged but instead highlighted the need for a full assessment of credibility and context at the substantive stage.

In conclusion, Mr Kabasinskas submitted that the evidence was not so weak that no properly directed panel could find the charge proved. Rather, the issues raised went to evaluative judgment and witness assessment and therefore fell squarely within limb 2(b) of *Galbraith*. He submitted that charge 6 should proceed.

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, such that it could find the facts proved and whether you had a case to answer.

The panel considered the application of no case to answer in respect of charge 6 by carefully examining each element of the charge in turn.

Having considered each component of charge 6 carefully and applying the correct legal test, the panel concluded that there was sufficient evidence to support charge 6 in its entirety at this stage. The panel was of the view that it was not prepared, based on the evidence before it, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

The panel was of the view that there had been sufficient evidence to support charge 6 at this stage.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Lee, who informed the panel that you made admissions to charges 2 and 3 in their entirety and all of charge 7, with the exception of your intention, as set out in charge 7b.

The panel therefore finds charges 2, 3 and 7a proved in their entirety, by way of your admissions and 7b proved way of admissions and the panel's findings with regards to your intention.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Kabasinskas and by Mr Lee.

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: Recovery Worker at the time of the events;
- Witness 2: Recovery Worker at the time of the events;
- Witness 3: Recovery Worker at the time of the events;

The panel also heard evidence from you under affirmation.

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

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

Charge 1

"That you, a Registered Nurse:

1. On or around April/May 2018, showed videos of pornographic material to Colleague A"

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 1's written and oral evidence, and the NMC documentation containing the Grievance email dated 4 September 2018 and Investigation report dated 13 September 2018.

The panel was of the view that Witness 1 (Colleague A) initially suggested that at least one person in the videos was underage; however, his evidence became increasingly inconsistent over time. There were material inconsistencies between his oral evidence and the contemporaneous records, including whether one or two videos were shown, the content of the videos, the age of the individuals depicted, and how the videos were shown.

The panel also identified concerns regarding Witness 1's credibility. He stated to his employer that he had raised the matter with the police but later admitted that he had not done so. Under cross examination, Witness 1 accepted that he had lied to his employer about reporting this incident to the police. He explained that his reason for doing so was to ensure that his employer took his grievance seriously.

Witness 1's Grievance email dated 4 September 2018:

> '*I have concerns that some of the girls are under age and they are unaware that he is showing these videos to members of the public I feel I have a duty to pass this on to the police.'*

There were further issues with regard to Witness 1's willingness to provide the names of other colleagues who he said had been shown the videos, which significantly limited the ability to investigate and resulted in a lack of corroborative evidence. The panel noted that Witness 1 had initially told his employer that he was willing to provide the names of colleagues who he said had also been shown the videos. During the employer investigation, he refused to provide these names. Under cross examination Witness 1 explained his refusal to provide the names as an attempt to protect his colleagues in an environment where he said managers tended to stick together. However, he confirmed

that he did not speak to those colleagues who he said had seen the videos about whether they were happy for him to provide their names as part of the employer investigation.

The panel considered that as a staff member who reported feeling strongly enough to raise the concern, it was notable that no safeguarding referral was made by Witness 1 and that there was a delay of several months before the matter was reported. The panel found this lack of follow-up was inconsistent with the seriousness of the concerns being alleged, particularly where Witness 1 had suggested at the outset that at least one individual in the videos was probably underage. The panel also took account of your evidence in which you highlighted that you had raised a concern regarding Witness 1's workplace conduct a few weeks prior to Witness 1 raising the concerns set out in Charge 1. Witness 1 accepted that this concern about his conduct had been raised but denied that he knew that it was you who had reported him.

The panel did consider the issue of cross admissibility between charges 1 and 2 but did not find that the matters were of sufficient similarity to assist with the panel's findings in relation to these two charges.

In light of the internal inconsistencies within Witness 1's evidence, the significant discrepancies between his accounts over time and the absence of corroboration, the panel concluded Witness 1's evidence was not credible. Therefore, the panel was not satisfied that charge 1 was proved on the balance of probabilities. Accordingly, the panel found charge 1 not proved.

Charge 4a)

"That you, a Registered Nurse:

4. Your conduct at charge 1 amounted to sexual harassment in that it was:

a. Of a sexual nature;"

This charge is found NOT proved.

This charge automatically falls away as it is contingent on Charge 1 being found proved.

Charge 4b)

"That you, a Registered Nurse:

4. Your conduct at charge 1 amounted to sexual harassment in that it was:
   b. Unwanted by Colleague A;"

This charge is found NOT proved.

This charge automatically falls away as it is contingent on Charge 1 being found proved.

Charge 4c)

"That you, a Registered Nurse:

4. Your conduct at charge 1 amounted to sexual harassment in that it was:
   c. Intended to violate or had the effect of violating, Colleague A's dignity and/or created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A."

This charge is found NOT proved.

This charge automatically falls away as it is contingent on Charge 1 being found proved.

Charge 5

"That you, a Registered Nurse:

5. Your conduct at any or all of charge 2(a) amounted to unwelcome behaviour of a sexual nature"

This charge is found proved.

In reaching this decision, the panel took into account the NMC documentation and the written and oral evidence of Witness 2 and Witness 3.

The panel considered the context and nature of the conduct found proved under charge 2a, together with the evidence of Witness 2 and Witness 3. The panel accepted that, in isolation, inviting colleagues to view a dating profile could potentially be innocuous even if not appropriate for a workplace setting. However, the evidence demonstrated that the discussion went beyond this and included comments made by you about women's physical appearances on the dating app, which were judgemental in tone. The panel noted consistent evidence that you commented on female profiles in a way that assessed and criticised their appearance and age, which Witness 2 found inappropriate, undesirable and offensive.

The panel also took into account the wider context of the conversations, which included references to sexual material, such as Fifty Shades of Grey, and comments that moved the discussion into matters of a sexual nature. While not every part of the conversation may have been explicitly sexual, the panel was satisfied that, taken as a whole, the content and tone some of the discussions were of a sexual nature.

Witness 2 gave clear evidence that the behaviour was unwelcome, and Witness 3 confirmed in her oral evidence that this was not a typical or appropriate conversation to be having at work with someone she had not met before, particularly where it involved sexual topics.

Witness 2's written statement dated 24 May 2024:

> *'I thought Jon sounded quite pervy. [Witness 3] and [Ms 1] were 19 or 20 at the time and he was older than them and more senior in a professional sense. I felt that what Jon was discussing was not appropriate in the workplace. I would not talk to colleagues about the things he was discussing, especially in a workplace where those you are talking to are young people.'*

Minutes of investigation interview dated 13 October 2020, Witness 2 stated:

> *'[Mr 2] - What impact did this have on you?*
>
> *[Witness 2] - I'm 38. I have come across men like that before. He came across as seedy. In front of [Witness 3]. I thought "I don't know who you are but coming across really pervy." In front of 2 young girls. [Witness 3] had also never met him before.'*

Investigation interview minutes dated 13 October 2020, Written 3 stated:

> *[Mr 2] – Anything else that you would want me to know?*
>
> *[Witness 3] - What he said was inappropriate and I didn't realise that he was a senior manager. I didn't feel that uncomfortable but thought it was an odd thing. Because it wasn't aimed at me I didn't feel that offended by it. I just feel a bit odd about it. It would feel awkward if I saw him but I don't really care.*

On the basis of this evidence, the panel concluded that your conduct amounted to unwelcome behaviour of a sexual nature. Accordingly, the panel found charge 5 proved.

Charge 6a), 6b) & 6c)

"That you, a Registered Nurse:

6.Your conduct at any or all of charge 2(b) amounted to sexual harassment in that it was:

a. Of a sexual nature;
b. Unwanted by Colleague B;
c. Intended to violate or had the effect of violating, Colleague B's dignity and/or created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B."

This charge is found NOT proved.

In reaching this decision, the panel took into account the NMC documentation and the written and oral evidence of Witness 3.

Sexual nature

Firstly, the panel considered whether the conduct at charge 2b was of a sexual nature. The panel was satisfied that there was evidence supporting this element. It considered the conduct in its full context, including the conversation referring to *'Fifty Shades of Grey*', it noted that this is a book and film widely understood to have sexual themes, could reasonably be connected to the subsequent showing of an image of a latex mask to Witness 3. The panel noted that a latex mask may reasonably be associated with sexual practices, including BDSM, and that a reasonable member of the public could regard it, in this context, as a sexual item. When viewed together with the preceding conversation, the

panel concluded that there was sufficient evidence for the panel to find that the conduct was of a sexual nature.

Unwanted conduct

The panel then considered whether the conduct was unwanted by Witness 3. It noted Witness 3's evidence that the conversation was initiated by you, she said it was out of the blue and was inappropriate for the workplace. Witness 3 described being taken aback and stated that this was not a typical conversation, particularly given that she did not know you and was 21 years old at the time. The panel also noted her description of the interaction as *'weird' and 'odd'.* Although Witness 3 did not explicitly use the word *'unwanted'*, the panel was satisfied that her evidence supported the fact that the conduct was not welcomed by her and was unwanted.

Violation of dignity

In considering this element of the charge, the panel took into account the evidence of Witness 3, your oral evidence, and the relevant legal framework in *section 26(4) of the Equality Act 2010*. The panel considered each of the terms used in the charge in their ordinary meaning when assessing whether the conduct was *'intended to, or had the effect of, violating Colleague B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment'*.

The panel accepted your evidence as credible in relation to this element of the charge. It was of the view that you gave an honest account of your recollection and state of mind, sought to answer questions openly, and provided an explanation that was consistent with the surrounding evidence and [PRIVATE].

With regards to your intention the panel recognised, in the absence of explicit statements regarding your intention, that this had to be inferred from your conduct and the circumstances at the relevant time. Assessing the evidence in its totality the panel was not

satisfied that you intended to violate Witness 3's dignity. In reaching this conclusion the panel took account of the context for the events. The panel noted that you were speaking openly in a room with a number of other colleagues. The evidence suggested that you did not target Witness 3 or speak in hushed tones. You did not solicit any comments from Witness 3 with regards to the image of the latex mask but merely made a comment which related to you. Therefore, the panel was not satisfied that the NMC had discharged its burden to prove this part of the charge.

The panel concluded that the evidence in relation to effect, as derived, from the evidence of Witness 3 and others, was neither strong nor explicit, and that Witness 3's evidence included some mixed descriptions of how she felt. However, applying *Section 26(4) of the Equality Act 2010*, the panel took into account Witness 3's perception, the wider circumstances of the case, including the age disparity, the difference in seniority, the lack of any prior relationship, the workplace setting, and whether it was reasonable for the conduct to have that effect.

The panel took account of Witness 3's statements during the employer investigation, her NMC witness statement and her live evidence. In particular it noted the following:

Investigation interview minutes dated 13 October 2020, Witness 3 stated:

> '*[Witness 3] – The comments were not directed at me. I did not feel vulnerable. There were others in the room. [Mr 1] asked questions about it. I used to work in a pub. Creepy guys just talk to you all the time. I just went along with it.'*
>
> …
>
> *'[Witness 3] - What he said was inappropriate and I didn't realise that he was a senior manager. I didn't feel that uncomfortable but thought it was an odd thing. Because it wasn't aimed at me I didn't feel that offended by it. I just feel a bit odd about it. It would feel awkward if I saw him but I don't really care.'*

The panel placed significant weight on Witness 3's own evidence, which had remained consistent from the internal investigation in 2020 through to her oral evidence. She described the behaviour as '*inappropriate',' odd'* and '*weird*', and said she felt taken aback. However, she also stated clearly that she did not feel the behaviour was directed at her personally, nor did she describe feeling offended or that her dignity had been violated. While she referred to feeling awkward and uncomfortable afterwards, her evidence did not suggest that the conduct created an intimidating, hostile, degrading, humiliating or offensive environment.

Having considered Witness 3's perception, the surrounding circumstances, and whether it was reasonable for the conduct to have the alleged effect, the panel concluded that, although the behaviour was inappropriate, the evidence did not establish that it had the effect of violating Witness 3's dignity or creating the environment described in the charge. The panel therefore found that the NMC had not discharged the burden of proof in respect of charge 6c, which was found not proved. Therefore, charge 6 is not proved.

Charge 7

"That you, a Registered Nurse:

7. Your conduct at any or all of charge 3 amounted to harassment in that it was:

a. Unwanted by Colleague C;

b. Intended to violate…Colleague C's dignity and/or created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague C."

The panel took account of the context in which the conduct occurred and your role within the organisation at the relevant time. The panel noted that you were an experienced nurse, who had held management and leadership responsibilities for some time. The

panel concluded that you were likely to have been aware of the inherent power imbalance between yourself and Colleague C (Witness 4).

You have accepted that the conduct in charge 3 was unwanted, and the panel noted that Witness 4 had clearly pushed back and made it known that she did not welcome the comments being made to her by you, this included Witness 4 swearing, in response to some of your comments, in apparent frustration at you persisting in making unwelcome remarks.

Despite this, you continued with your behaviour, which encompassed three distinct incidents over a period of approximately one hour, including making remarks that implicitly referenced your seniority and authority, which the panel concluded demonstrated an awareness of your position of power.

The panel took into account your written submissions and oral evidence, in relation [PRIVATE] and your live evidence during which you stated that you were [PRIVATE] at the time. The panel noted that you denied that you intended to violate Witness 4's dignity.

In considering this charge, the panel took into account Witness 4's evidence with regard to her perceptions of your comments and how they made her feel.

Local investigation interview minutes dated 3 October 2022:

> *'[Witness 4] then came back downstairs and was shocked, offended, judged and humiliated as he thought it would be ok to speak to a staff member like that.'*
>
> …

'*I think this is what he is like as a person. Abusing his power and talk to people anyway he wants. Maybe he wants a reaction? I don't know why he said it. I don't smoke crack.*'

The panel concluded that is more likely than not that you did intend to violate Witness 4's dignity '*and/or created an intimidating, hostile, degrading, humiliating or offensive environment*' because of your likely knowledge in relation to your position of authority, together with the persistence and goading nature of the comments you directed towards Witness 4 despite her clear reaction.

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.

The panel heard evidence from you under affirmation.

Submissions on misconduct

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

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

Mr Kabasinskas referred the panel to the case law of *Holton v Nursing and Midwifery Council* [2017] EWHC 1565 (Admin), which confirmed that the test for deplorability is not necessarily the same as seriousness. He submitted that you were bound at all times by the Code and that the NMC contends you breached 1.1 of the Code, which he accepted was primarily patient-focused but still applicable to colleagues, together with 7.1, 7.3, 7.4, 8.2, 9.2, 20.1, 20.2, 20.3, 20.5, 20.6, 20.7 and 20.10, all of which concern respectful behaviour, effective and appropriate communication, professional boundaries, integrity, and avoiding distress, discrimination or harassment.

Mr Kabasinskas also referred the panel to the case laws of *Professional Standards Authority for Health and Social Care v General Medical Council & Anor* [2023] EWHC 2391 (Admin) and *Yepke* [2023] EWHC 2391 (Admin), highlighting the importance of considering vulnerability when assessing the seriousness of alleged misconduct. He acknowledged your evidence that there was no intention to cause distress but reminded the panel of the principle that one takes the victim as one finds them. Mr Kabasinskas directed the panel to the NMC guidance on misconduct (FTP-2A), emphasising that healthcare environments must be safe and free from harassment, including sexual harassment. In conclusion, Mr Kabasinskas submitted that, where the charges are found proved, your conduct fell seriously below the standards expected of a registered nurse and therefore amounts to misconduct.

Mr Lee submitted that you accept that the charges amount to misconduct and, as a result, there is no issue for the panel to determine in relation to misconduct. Mr Lee submitted that his submissions would therefore focus solely on the question of impairment.

Submissions on impairment

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

Mr Kabasinskas submitted that the key question for the panel on impairment is whether you can practise kindly, safely and professionally, assessed through both the personal and public interest limbs. He reminded the panel that impairment is a forward-looking exercise and referred the panel to the case law of *Grant v Nursing and Midwifery Council,* which confirms that the panel must consider not only the risk to the public in your current role but also the wider need to uphold professional standards. He submitted that, applying the Dame Janet Smith test in *Grant*, all three limbs are engaged. In relation to limb a, he submitted that your conduct created a risk of harm not only to affected colleagues but also to patients, as damaged working relationships and a serious departure from standards could amount to an abuse of position, authority and trust. Under limb b, he submitted that your misconduct has brought, and is liable in the future to bring, the profession into disrepute. Under limb c, he submitted that effective communication with colleagues and maintaining professional boundaries are fundamental tenets of the profession, relying on the case law of *Nicholas-Pillai v General Medical Council* [2009] EWHC 1048 (Admin).

Mr Kabasinskas applied the questions from the case of *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin). On irremediability, Mr Kabasinskas referred the panel to NMC guidance FTP-15A, submitting that harassment, including sexual

harassment, is identified as conduct that is particularly difficult to remediate through training or supervision. He submitted that your behaviour involved harassing conduct and inappropriate sexualised comments, raising concerns about attitudinal issues and professional boundaries. He also submitted that earlier matters, including a prior warning and a subsequent investigation, should have acted as a deterrent, yet further incidents occurred, which weighed against remediation. While acknowledging contextual factors such as [PRIVATE], he submitted that these did not fully explain or excuse the misconduct. On remediation, Mr Kabasinskas accepted that you have demonstrated insight, an understanding of seriousness, and awareness of the impact on the profession, and he acknowledged positive testimonials and evidence of good practice. However, on the question of repetition, Mr Kabasinskas submitted that, given the nature and seriousness of the concerns and the guidance that such behaviour is difficult to address, the NMC could not be satisfied that the risk of repetition is low, particularly in light of repeated incidents over time.

In conclusion, Mr Kabasinskas submitted that a finding of impairment is necessary on the grounds of public protection due to the ongoing risk of repetition, and also in the wider public interest, given the seriousness of the misconduct, the need to uphold professional standards, and to maintain public confidence in the nursing profession.

Mr Lee submitted that you are not currently impaired in your practice. He told the panel that the evidence demonstrates you are practising in a kind, safe and professional manner and that there is every reason to believe you will continue to do so in the future. He emphasised that your clinical practice has never been called into question and that the panel is concerned solely with conduct between colleagues; while acknowledging your acceptance of the potential knock-on impact such conduct can have on a service.

Mr Lee submitted that the context in which the misconduct occurred is relevant, noting the personal stresses you were experiencing at the time and that, although this does not excuse your behaviour, it is relevant to understanding its seriousness. He further submitted that seriousness exists on a sliding scale and, while all misconduct is serious,

this case does not sit at the level of sexual harassment, dishonesty, or deeply entrenched attitudinal concerns that are incapable of remediation. He submitted that the misconduct in this case falls a rung or two below such conduct.

In relation to insight, Mr Lee submitted that you fully understand what you did, are genuinely remorseful, and have offered sincere apologies to those affected. He told the panel that you accept in 2020 you did not develop the level of insight you later achieved but submitted that by 2022 you had a significant wake-up call. He outlined that you took time away from employment, rebuilt yourself, accessed appropriate support, and engaged in extensive coaching, training, and open dialogue with colleagues at all levels of seniority, including junior and female colleagues, to better understand how your behaviour may be perceived. He submitted that this demonstrates deep and meaningful insight, not superficial reflection, and that you have developed a professional workplace persona that allows you to build positive relationships while remaining appropriate and professional.

Mr Lee further submitted that you have identified why matters went wrong in the past and what safeguards are now in place to prevent any repetition. He told the panel that the strong references and testimonials before the panel, including from colleagues who cannot envisage you behaving in the way you did previously, provide compelling evidence of remediation and current safe practice. He drew particular attention to the reference from a colleague, whom you managed as a locum nurse, submitting that it is especially significant given issues of power imbalance, and highlights that you foster a safe working environment.

In conclusion, Mr Lee submitted that there is a very low risk of repetition and that you are not currently impaired. He further submitted that the misconduct is not so serious as to require a finding of impairment on public interest grounds alone, particularly where your clinical skills are not in issue, and that the strong evidence of your value as a nurse and asset to the health service is a relevant factor when considering the wider public interest.

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*, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

The panel was of the view that 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:

> *'**20 Uphold the reputation of your profession at all times***
> *To achieve this, you must:*
>
> ***20.1** keep to and uphold the standards and values set out in the Code*
> ***20.2** act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*
> ***20.3** be aware at all times of how your behaviour can affect and influence the behaviour of other people*
> ***20.5** treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*
> ***20.8** act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*
> ***20.10** use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the behaviour found proved under charges 2a and 5 involved unwanted behaviour of a sexual nature towards Witness 2 and Witness 3, which, while not found to amount to sexual harassment, was nonetheless inappropriate and represented a serious departure from the standards expected of a registered nurse. The panel also considered that charge 2b, whilst not amounting to sexual harassment, nonetheless represented inappropriate conduct in the workplace and when considered in conjunction with the behaviour set out in charge 2a amounted to misconduct.

The panel considered that such conduct undermined professional boundaries and public confidence in the profession. In relation to charge 3, read together with charge 7, the panel found that the behaviour amounted to harassment, having both the effect and the intention of causing distress. The panel concluded that harassment of any individual, whether a colleague or service user, is inherently serious and incompatible with the standards set out in the Code.

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

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the NMC Guidance on *'Impairment'* (Reference: DMA-1 Last Updated: 03/03/2025) in which the following is stated:

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

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

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

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *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) *…*

The panel considered the three limbs of the Dame Janet Smith *'test'.*

In terms of the first limb, the panel noted that there had been no concerns about your clinical practice. The panel recognised that your behaviour towards colleagues could have impacted on service delivery but had heard insufficient evidence to that effect. The panel concluded that there was insufficient evidence that your conduct had placed patients at an unwarranted risk of harm nor was there sufficient evidence to suggest that would be the case in the future. On the contrary, the information presented to the panel via numerous testimonials is very positive about your clinical practice. Therefore, the panel did not consider that this limb of the *'test'* was engaged.

The panel went on to consider the second limb of the test. The panel determined that because of the nature of the facts found proved, namely unwanted behaviour of a sexual nature and harassment, both in terms of intent and effect, members of the public and colleagues would find this conduct deplorable. The panel determined that by your actions you have in the past brought the profession into disrepute.

In considering the third limb of the test, the panel had determined that you had been in breach of fundamental tenets of the Code, particularly 20.1 and 20.2. As a consequence,

the panel determined that by your actions you had in the past breached fundamental tenets of the profession.

In considering whether you were likely to bring the profession into disrepute in the future and/or breach one of the fundamental tenets of the profession, the panel went on to consider the factors set out in *Cohen*.

The panel considered the factors set out in the case of *Ronald Jack Cohen v General Medical Council*. These factors are: is the conduct easily remediable, has it been remedied, and is the conduct highly unlikely to be repeated? In considering the first factor the panel was of the view that misconduct of this kind, which is attitudinal in nature, is generally difficult to remediate. However, the panel also concluded that your failings were not reflective of deep seated attitudinal concerns and determined that the misconduct is such that it can be addressed.

When considering whether you have actually remediated your misconduct, the panel had regard to the bundle of documents supplied by you, your oral evidence and the submissions made on your behalf.

The panel noted that you provided detailed written reflections, gave oral evidence, and submitted extensive documentary evidence in support of your case. Regarding insight, the panel considered that you demonstrated a well-developed understanding of the nature of your misconduct, its impact on those affected, and the wider implications for the profession. You showed genuine remorse and took responsibility for your actions, including apologising at an early stage to those involved. The panel was particularly assisted by the very positive and detailed testimonials and references provided, including:

Testimonial from [PRIVATE] dated 3 January 2026:

> *'In my professional opinion, I have no concern about Jon's ability to practice. He is a skilled nurse and despite his experience continues to work hard to develop both*

his clinical and communication skills which I believe demonstrates his professionalism. I think not only would the profession suffer a loss, but I know that I would should he be removed from the NMC register. In the relatively short time I have worked with Jon I feel my confidence in my ability as a nurse has grown massively. This is from both observing him working with others and his direct support in my development, support I haven't always received in my nursing training.'

Testimonial from a Senior Family Safeguarding Practitioner and Designated Safeguarding Lead dated 16 December 2025:

'He has good self-reflection and is always open to feedback to improve his practice and the service further. Jon is a valued part of the team and has been very open with the senior team regarding his history and the growth he has made. I feel proud to work alongside Jon and trust his decision making entirely.'

Testimonial from a Clinical Lead dated 15 December 2025:

'*I have never felt that his communication style was inappropriate or had reason to be concerned about any interaction with patients. He shows interest in acquiring new knowledge and continues to improve his clinical, management and leadership skills.'*

The panel was of the view that these spoke consistently to your professionalism, appropriate conduct, and respectful working relationships since the incidents. The panel noted that the testimonials came from a range of colleagues, both junior and senior to you, who had worked with you for a sufficient duration to be able to comment meaningfully on how you conduct yourself with patients and colleagues.

In applying the *test*, the panel acknowledged that the misconduct involved attitudinal elements and behaviour of a sexual nature, which can be more difficult to remediate.

However, the panel was satisfied that the attitudinal concerns identified were not deep-seated in nature. The panel noted that these concerns arose in part from adverse personal circumstances, including the particularly [PRIVATE]. The panel placed significant weight on the steps you have taken to address your conduct, including completion of relevant and substantial continuing professional development:

- Bullying and Harassment corporate dated 15 June 2023;
- Equality, Diversity and Inclusion dated 15 June 2023;
- Sexual Harassment dated 12 June 2023 and;
- in particular a three-day '*Maintaining Professional Boundaries'* course date completed 7 November 2024, aimed at clinicians who faced concerns of a similar nature, supported by thoughtful and reflective learning.

The panel also noted the contents of your reflective statements which it considered to be impressive, demonstrating in depth insight, remorse and learning. Even more importantly the panel was mindful of the evidence of sustained safe, kind, and professional practice in your current employment since March 2023.

The panel further took into account [PRIVATE] you have been working with dated 12 August 2025:

> *'In the time Jon and I have been working together he has put in place many strategies to help best mitigate these challenges and his insight, learning and* [PRIVATE] *has been incredibly helpful to him.'*

The panel also considered your explanation of the steps you have taken to address your [PRIVATE] effectively without any repetition of concerning behaviour. The panel was satisfied that patients were not put at risk and were not caused physical or emotional harm as a result of your misconduct. While your conduct breached the fundamental tenets of the nursing profession and brought its reputation into disrepute, the panel concluded that, you were highly unlikely to repeat such misconduct. Although your fitness to practise was

impaired at the time of the incidents, given all of the above, the panel determined that your fitness to practise is not currently impaired 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 wellbeing of the public, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing profession and upholding proper professional standards. In doing so, the panel had regard to the guidance which makes clear that the Code requires registrants to uphold the reputation of their profession, demonstrating a personal and professional commitment to core values such as integrity and kindness, and to protect others from harm and abuse. The panel noted that sexual misconduct can have a profound and long-lasting impact on those affected, including physical, emotional and psychological harm, and that such behaviour directly conflicts with the standards and values set out in the Code. The panel further recognised that sexual misconduct, whether occurring within or outside professional practice, can seriously undermine public trust and confidence in the profession.

Whilst the panel did not find your conduct at charge 2b amounted sexual harassment, it considered that misconduct which encompasses unwanted behaviour of a sexual nature as well as harassment is serious and needs to be marked. The panel determined that a finding of impairment on public interest grounds is required due to the seriousness of the misconduct, which occurred on more than one occasion over a period of time, involved younger and junior female colleagues, and included behaviour found to amount to intentional harassment. The panel considered that such conduct represents a serious departure from the standards expected of a registered nurse.

The panel concluded that public confidence in the profession and in the regulatory process would be undermined if a finding of impairment were not made in this case. A finding of impairment is therefore necessary to mark the seriousness of the misconduct and to maintain proper professional standards. Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on the grounds of public interest.

Sanction

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

Submissions on sanction

Mr Kabasinskas submitted that the aggravating features include a pattern of misconduct over a period of time and an abuse of a position of authority when dealing with junior colleagues. In mitigation, Mr Kabasinskas acknowledged your early admissions to the charges, expressions of remorse and that you apologised to those affected, and that you had demonstrated insight. He also noted personal and contextual circumstances. However, he emphasised that in regulatory proceedings the purpose of sanction is public protection rather than punishment, and that personal mitigation carries less weight than it would in criminal proceedings. He therefore invited the panel to exercise caution and not to place undue reliance on your personal circumstances, but to approach the matter in line with guidance and case law.

Mr Kabasinskas submitted that taking no action or imposing a caution order would be inappropriate given the seriousness of the misconduct and would fail to uphold proper professional standards. A conditions of practice order was also said to be unsuitable, as the concerns were not clinical in nature, conditions would not address issues of harassment and sexual misconduct, would not maintain public confidence, and would not be practicable. Mr Kabasinskas submitted that the case falls within the Sanctions Guidance (SG) relating to sexual misconduct and serious concerns affecting public confidence, albeit towards the lower end of the spectrum. While the misconduct was serious, it was not fundamentally incompatible with continued registration. Mr Kabasinskas submitted that a suspension order is the most appropriate sanction, as a lesser sanction would be insufficient but striking off would be disproportionate. The length of suspension is

left to the panel's discretion. He further submitted that a review was not necessary, as the sanction would primarily serve the public interest rather than address ongoing risk.

The panel also bore in mind Mr Lee's submissions, which were that this was an exceptional or rare case in which no further action would be appropriate. Mr Lee submitted that, notwithstanding the seriousness inherent in any finding of misconduct and impairment, a finding of impairment alone was sufficient to mark the seriousness of the behaviour and to uphold professional standards. He emphasised that you had accepted from the outset that your conduct was deplorable, had shown genuine remorse and insight, and had undertaken extensive voluntary remediation before coming before your regulator. He told the panel that the publication of the finding and its presence on your fitness to practise record already carried significant professional consequences and that you would not *"walk away"* without impact.

Mr Lee submitted that the case fell within the rare category envisaged by the sanctions guidance where no further action may be appropriate, identifying three exceptional features: first, that you had actively promoted good professional standards by openly using your misconduct as a learning example for colleagues. This included engaging in frequent conversations with your colleagues regarding your past misconduct. Secondly, that you had gone beyond remediation to reparation by becoming a positive advocate for equality in the workplace, including being nominated for an ambassadorial role as part of the White Ribbon Initiative which seeks to combat violence against women and girls by men and boys. Thirdly, the absence of any deep-seated attitudinal concerns, which Mr Lee submitted was unusual in cases involving harassment or sexual misconduct. He told the panel that these factors were highly relevant to public confidence and that your restorative actions already met the public interest.

Mr Lee submitted if the panel did not accept that the case was exceptional, then a caution order would be the appropriate and proportionate outcome and that conditions of practice, a suspension order or strike off would be unnecessary and disproportionate.

Mr Lee challenged the issues which the NMC identified as aggravating factors, submitting that two isolated incidents did not amount to a meaningful pattern of behaviour and that, while you were in a senior role, your conduct did not amount to an abuse of position. He relied on mitigating factors including no previous findings, the passage of time without recurrence, early admissions, early apologies, genuine remorse and a high level of insight. He concluded that a suspension order was not required, particularly given that the misconduct lay at the lower end of cases with a sexual element, and that there was a strong public interest in allowing an experienced professional to continue in practice.

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

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Misconduct involving two separate incidents with some similarities, demonstrating that you did not fully learn from the first incident despite a significant interval between them.
- A disparity in age and seniority between you and the female colleagues who were the subject of your conduct, which increased the seriousness of the behaviour.
- An abuse of position and seniority, in particular in relation to at least one comment made to Witness 4, where you implicitly exercised power by making a comment that could reasonably be understood as jeopardising Witness 4’s employment.

- The misconduct involved unwanted conduct directed towards junior female colleagues, one of a sexual nature and one amounting to harassment, both occurring while you were in a managerial role.

The panel also took into account the following mitigating features:

- Early admissions to the charges and early apologies to the female colleagues involved.
- Genuine remorse and a high level of deep insight into the seriousness and impact of your misconduct.
- Extensive and sustained efforts to remediate and strengthen your professional practice following the incidents.
- Evidence that you have shared your experiences with colleagues at all levels as a learning tool, demonstrating reflection and a commitment to promoting appropriate workplace behaviour.
- Nomination by your employer as an Ambassador for the White Ribbon Initiative, which aims to prevent violence and harassment against women and girls by men and boys.
- The passage of significant time since the last incident, being over three years, with no repetition of misconduct.
- Evidence that you have worked safely and effectively with the same employer since March 2023 and are regarded by colleagues as a positive role model.
- Relevant and difficult personal circumstances at the time of the misconduct, [PRIVATE].

Before turning to sanction, the panel was of the view that sexual misconduct is inherently serious and that all forms of harassment are serious. Having taken account of the nature, context and duration of the comments and behaviour, the panel considered that there was no evidence of cruelty, grooming or predatory behaviour. The panel therefore concluded that, while serious, the misconduct lay at the lower end of the spectrum of sexual misconduct and harassment.

The panel first considered whether to take no action but concluded that this would be inappropriate in the circumstances. The panel carefully considered the submissions of Mr Kabasinskas and Mr Lee. While it did not accept that a finding that you did not demonstrate deep seated attitudinal concerns represented an exceptional feature of this case, the panel accepted the first two factors highlighted by Mr Lee and recognised and commended your extensive efforts not only to remediate your misconduct but to go beyond remediation to making a positive difference in your workplace culture with regards to equality. In particular, the panel acknowledged your openness in sharing your experiences with colleagues as a learning tool, the very positive testimonials provided, and your nomination by your employer for an ambassadorial role with the White Ribbon Initiative. These steps were to your credit and demonstrated deep insight, comprehensive reflection and a genuine commitment to improving professional standards.

However, the panel concluded that, despite these noteworthy factors, given the repetition of the misconduct, its sexual and harassing elements, and the disparity in age, seniority and power between you and the junior female colleagues who were the subject of your conduct, taking no further action would not be sufficient to mark the seriousness of the behaviour. The panel considered that such an outcome would fail to adequately uphold the public interest, maintain public confidence in the profession, and declare and uphold proper professional standards. Accordingly, the panel decided that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*

The panel noted that you have demonstrated a high level of insight into your conduct and its impact. The panel took into account that you made early admissions to the allegations and offered early and sincere apologies to those affected, which it considered to be evidence of genuine remorse. The panel also noted that you have engaged openly and

constructively with the NMC throughout the regulatory process and that there have been no adverse findings in relation to your practice either before or since the incidents.

While the panel was not persuaded that the mitigation submitted by Mr Lee was sufficiently exceptional to justify making no order, it did accept that you have gone well beyond merely satisfactory remediation. In particular, the panel recognised that you have used your own learning and experiences to support and educate colleagues, with the aim of preventing similar misconduct. The panel also took into account the very positive views expressed by your colleagues, both junior and senior to you, and your nomination for an ambassadorial role connected with an initiative seeking to eradicate violence against women and girls by men and boys. In summary the panel concluded that you had undertaken a profound journey of reflection and learning from your misconduct.

The panel reiterated that sexual misconduct and intentional harassment are always viewed seriously by regulatory panels. Nevertheless, the panel considered that the circumstances of this case placed the misconduct towards the lower end of the spectrum for such behaviour. The panel found that there were specific and difficult personal circumstances at the relevant time, which were likely to have contributed to your behaviour. Whilst the panel noted that personal mitigation may be less relevant in regulatory proceedings such as these, it nevertheless considered [PRIVATE] which falls under the remit of the Equality Act must be given some weight. Although there were two incidents over a period of two years with some similar features, the panel concluded that the conduct was neither persistent nor predatory, and noted that each occurred within a relatively short time span on a single day and has not been repeated since.

The panel noted that you are highly regarded by your colleagues as a valued, highly skilled professional and accepted that, given its findings that you do not present an ongoing risk, there is a strong public interest in allowing a highly experienced and competent nurse such as yourself to continue to practise. In light of all these factors, the panel considered that a sanction was required to mark professional disapproval and public concern regarding this type of misconduct and to emphasise that such behaviour must not

be repeated, given the circumstances of this case, the panel concluded that a caution order was an appropriate and proportionate sanction.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel noted that conditions of practice orders are generally used to address identifiable and remediable clinical concerns, or deficiencies in professional performance that can be managed through supervision, training or restrictions on practice. In this case, the misconduct did not relate to clinical competence, you have fully remediated the concerns, present no ongoing risk to the public and therefore a conditions of practice order would serve no useful purpose.

Turning to a suspension order, the panel considered the checklist provided in SAN-3d as a guide to determine whether such an order would be appropriate. The panel noted that this case did not relate to a single instance of misconduct, but in earlier deliberations had concluded that there was no evidence of harmful deep-seated personality or attitudinal problems, it had found evidence of a high level of insight and, finally, the panel considered that not only was there was no significant risk to patient safety, the conduct was highly unlikely to be repeated. The panel was fully aware that a suspension order may be appropriate in cases of sexual misconduct but recognised that each case must be considered on its own merits.

In this case, the panel further considered that a suspension order would be disproportionate, given that the sexual misconduct fell at the lower end of the scale for matters of this nature, the absence of ongoing risk arising from the strategies you have put in place to manage [PRIVATE], your deep level of insight and remorse, and the significant evidence that you have been practising safely and effectively without restriction since 2023. Furthermore, you have been open with colleagues at all levels about your past conduct, have used your experience to help others to learn more about both neurodiversity and violence against women and girls by men and boys. Whilst the panel recognised that the unintended consequence of some sanctions can be punitive, in this case it considered that a suspension order would be unduly punitive and disproportionate

and that it is possible to maintain public confidence in the profession by marking the misconduct with the lesser sanction of a caution order.

In making this decision, the panel carefully considered the submissions of Mr Kabasinskas in relation to the sanction that the NMC was seeking in this case. The panel accepted that, on the face of it, the nature of the misconduct was such that it could potentially fall within the category of cases where a suspension order might be considered appropriate.

However, the panel concluded that a suspension order was not justified in the particular circumstances of this case for the reasons set out above.

In light of these factors, the panel determined that imposing a suspension order would be disproportionate and punitive and was not necessary to protect the public or to maintain public confidence in the profession. The panel also noted that the NMC had not sought a striking-off order and agreed that such a sanction would, in any event, be wholly disproportionate given the circumstances of this case.

The panel has decided that a caution order would adequately protect the public.

For the next two years, your employer, or any prospective employer, will be on notice that your fitness to practise has been found to be impaired and that your practice is subject to this sanction. Having considered the general principles and the totality of the evidence, the panel determined that a caution order for a period of two years is the appropriate and proportionate response. This sanction sufficiently marks the seriousness of the misconduct, maintains public confidence in the profession, and sends a clear message to both the public and the profession about the standards expected of a registered nurse.

In deciding on the duration, the panel took into account the significant passage of time since the misconduct including that you have been working safely and effectively since March 2023. The panel was mindful that by the end of the caution period more than five years will have elapsed since the last incident. The panel considered that a two-year

caution is sufficient to meet the public interest and reflect the seriousness of the findings, while recognising the extensive remediation undertaken. The panel was satisfied that this period is more than sufficient to reinforce that the positive changes made by you are embedded and permanent.

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

This decision will be confirmed to you in writing.

That concludes this determination.

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