Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing

Tuesday, 1 September 2026 – Thursday, 10 September 2026

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

Name of Registrant:	Benjamin Terkper
NMC PIN:	23F1055O
Part(s) of the register:	RNA Adult Nurse – 12 June 2023
Relevant Location:	Oxford
Type of case:	Misconduct
Panel members:	Dale Simon (Chair, lay member) Patricia Ford (Registrant member) Raj Chauhan (Lay member)
Legal Assessor:	John Bassett
Hearings Coordinator:	Yvonne Temah
Nursing and Midwifery Council:	Represented by Richard Webb, Case Presenter
Mr Terkper:	Present and represented by Tope Adeyemi, instructed by the Royal College of Nursing (RCN)
Fact proved by admission	2 (a), 3(a), 4(b), 5(a), 5(b), 6
Facts proved:	1(c), 2(b), 2(c), 7, 8(b), 9 (in respect of charges 1(c), 2(a), 2(b), 2(c), 3(a), 4b), 5(a), and 5(b))
Facts not proved:	1(a), 1(b), 3(b), 4(a), 8(a)
Fitness to practise:	Impaired

Sanction:	**Suspension order (12 month)**
Interim order:	**Interim suspension order (18 months)**

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

The panel heard a joint application made by Mr Webb, on behalf of the Nursing and Midwifery Council (NMC), and Ms Adeyemi, on your behalf, that your case be held partly in private on the basis that proper exploration of your case may involve reference to your [PRIVATE], as well as the [PRIVATE] of Colleague A. The application was made pursuant to Rule 19 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ('the Rules').

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 may be references to your [PRIVATE] as well as the [PRIVATE] of Colleague A, the panel determined to hold parts of the hearing in private as and when such matters are raised, in order to protect the privacy of those concerned whilst maintaining the principles of open justice.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Webb, on behalf of the Nursing and Midwifery Council, to amend the wording of charge 3(a), 4(b) and 7. The proposed amendment, as seen below would clarify the wording of the charges.

"That you, a registered nurse:

3. On unknown dates in 2024 and one or more occasions:

    a) Asked Colleague A if she was on her period **or words to that effect.**

4. On unknown dates in 2024, on one or more occasions:

    b) Told Colleague A that you wanted to find her an older sugar daddy to take care of her **or words to that effect.**

7. Your conduct at **any or all of** charges 1 to 4 was sexual in nature."

Ms Adeyemi, on your behalf, did not oppose the application.

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 determined that such an amendment, as applied for, was in the interests of justice. It was satisfied that the amendment would be consistent with the charges before it. The panel noted that Ms Adeyemi was content for the amendment to be made and 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.

The panel therefore allowed the amendment to Charge 3(a), 4(b) and 7, in line with the charges before it.

On day 2 after hearing evidence from Colleague A, the panel proposed the below amendment to charge 3(b). The panel concluded that the proposed amendment would better reflect the description given by Colleague A during her evidence.

"That you, a registered nurse:

3. On unknown dates in 2024 and one or more occasions:

    b) Grabbed **/ touched** Colleague A's lower stomach and started to shake her."

Ms Adeyemi, on your behalf, opposed the proposed amendment.

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 determined that such an amendment, as proposed, was in the interest of justice. It was satisfied that the amendment would better reflect the evidence before it. The panel noted that Ms Adeyemi opposed the amendment to be made. However, it was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment as the wording appeared in the original evidence before the panel.

The panel therefore made the amendment to Charge 3(b), in line with the oral evidence from Colleague A and the evidence before it.

Decision and reasons on application to redact

The panel heard an application made by Ms Adeyemi, on your behalf, with regards to paragraph 18 of the witness statement of Colleague A. She submitted that the first three lines of paragraph 18 on page 5, referred to the ward coordinator, Ms Carly Barwise, being on the floor and allegedly overhearing the events.

She submitted that a number of redactions had previously been agreed, but that this reference appeared to have been missed. As Ms Barwise was not being called as a witness, and the allegations attributed to her were contested, Ms Adeyemi submitted that it was inappropriate for the reference to remain in the statement and asked for it to be redacted.

Mr Webb did not object to the proposed redaction.

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

The panel confirmed that the matter would be put out of its mind and would not be taken into consideration.

Details of charge as amended

That you, a registered nurse:

1. On unknown dates in 2024 and one or more occasions:
    a) Grabbed Colleague A's waist **[NOT PROVED]**
    b) Grabbed Colleague A's shoulders. **[NOT PROVED]**
    c) Grabbed Colleague A by the throat. **[PROVED]**

2. On an unknown date in 2024:
    a) Asked Colleague A what dildos she used or words to that effect. **[PROVED by admission]**
    b) Asked Colleague A what penis size she likes or words to that effect. **[PROVED]**
    c) Asked Colleague A if she used vibrators or words to that effect. **[PROVED]**

3. On an unknown date in 2024:
    a) Asked Colleague A if she was on her period or words to that effect. **[PROVED by admission]**
    b) Grabbed / touched Colleague A's lower stomach and started to shake her. **[NOT PROVED]**

4. On unknown dates in 2024, on one or more occasions:
    a) Followed Colleague A whilst on shift together. **[NOT PROVED]**

b) Told Colleague A that you wanted to find her an older sugar daddy to take care of her or words to that effect. **[PROVED by admission]**

5. On an unknown date in 2024:
    a) Phoned Colleague A at 10pm whilst Colleague A was not on shift. **[PROVED by admission]**
    b) Whilst on shift with Colleague A, asked why she did not answer your call the previous night. **[PROVED by admission]**

6. On unknown dates in 2024 on one or more occasions, asked Colleague A for drinks and/or to do something together outside of work. **[PROVED by admission]**

7. Your conduct at any or all of charges 1 to 4 was sexual in nature. **[PROVED in respect of Charges 2(a), 2(b), 2(c) and 3(a)]**

8. Your conduct at any or all of charges 1 to 6 was sexually motivated in that you:
    a) Intended to pursue a future sexual relationship with Colleague A. **[NOT PROVED]**
    b) Intended to pursue sexual gratification from Colleague A. **[PROVED in respect of Charges 2(a), 2(b) and 2(c)]**

9. Your conduct at any or all of charges 1 to 6 amounted to harassment of Colleague A in that: [**PROVED in respect of Charges 1(c), 2(a), 2(b), 2(c), 3(a), 4(b), 5(a), 5(b)]**
    a) The conduct was unwanted.

b) It had the purpose and/or effect of violating Colleague A's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment.

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

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr Webb under Rule 31 to allow the four written statements contained in the NMC Hearsay Bundle into evidence. He accepted that the statements contained hearsay, including accounts of matters reported to Ms Beata Gorak by others, but submitted that the evidence remained relevant.

Mr Webb referred the panel to the guidance in the case of *Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin)* which pertains to the admissibility of hearsay evidence. He highlighted the following factors from the guidance:

(1) whether the statement was the sole or decisive evidence in support of the charge;

(2) the nature and extent of the challenges to the contents of the statement;

(3) whether there was any suggestion that the witness had reason to fabricate their allegations;

(4) the seriousness of the allegations, taking into account the impact that adverse findings might have on the Registrant's career;

(5) whether there was a good reason for the non-attendance of the witness;

Mr Webb submitted that the statements had been disclosed to you and referred to matters contained within the charges. He accepted that the four individuals were not being called as witnesses and submitted that this did not prevent the evidence from being admitted, provided the panel was satisfied that it was relevant and fair to do so.

Ms Adeyemi, on your behalf, opposed the application. She referred the panel to the case of *Nursing and Midwifery Council v Ogbonna [2010] EWCA Civ 1216*, and submitted that none of the witnesses were being called, meaning their evidence could not be tested through cross-examination.

Ms Adeyemi raised concerns that the statements contained hearsay and, in some cases, double hearsay, including information that had been overheard or passed on by others. She submitted that this created a risk of misunderstanding or misinterpretation and affected the reliability of the evidence.

Ms Adeyemi also submitted that there was no evidence that any attempts had been made to secure the witnesses' attendance. The statements did not contain statements of truth or indicate that the witnesses understood how their evidence might be used.

Ms Adeyemi submitted that given the seriousness of the allegations and the potential for a striking-off order, admitting untested hearsay evidence would cause significant unfairness and prejudice to you. She therefore invited the panel not to admit the statements.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application in regard to the four witness statements in the NMC Hearsay Bundle serious consideration. The panel noted that the NMC Hearsay Bundle had been prepared in anticipation of being used in these proceedings.

In relation to witness statement one, Ms Magdalena Piotrowska, the panel's primary concern was the relevance and reliability of the evidence. The statement referred to alleged sexual messages, but the panel noted that there was no corresponding allegation before it that you had sent sexual or sexually inappropriate messages.

The panel also considered that the evidence was double hearsay. Ms Piotrowska was not giving evidence of something personally witnessed; rather, the statement referred to information received from another person, who in turn had allegedly received the information from someone else. The panel considered that this significantly affected the reliability of the evidence and created the potential for misunderstanding or misinterpretation.

The panel also noted that no good reason had been given for Ms Piotrowska's non-attendance, nor was there evidence that reasonable steps had been taken to secure her attendance.

The panel considered whether you would be disadvantaged by the NMC's position of reliance upon Ms Piotrowska's written witness statement. It considered that the unfairness in this regard worked in two ways in that the panel was deprived of the opportunity to hear the live evidence of Ms Piotrowska and you were denied the opportunity of questioning and probing her statement.

In these circumstances the panel refused the application.

In relation to witness statement two, Ms Carly Barwise, the panel had concerns about the relevance and reliability of the evidence. It noted that the statement appeared to contain information that Ms Barwise had overheard or been told by others, rather than evidence of matters directly heard. This created concerns about the possibility of misunderstanding, miscommunication or the information being repeated or embellished.

The panel also considered the nature of the charges to which the evidence might relate. Although there could be some background relevance to the wider allegations, the panel did not consider that the evidence was sufficiently relevant to a specific allegation being considered by it.

The panel also noted that no good reason had been given for Ms Barwise's non-attendance, nor was there evidence that reasonable steps had been taken to secure her attendance.

The panel considered whether you would be disadvantaged by the NMC's position of reliance upon Ms Barwise's written witness statement. It considered that the unfairness in this regard worked in two ways in that the panel was deprived of the opportunity to hear the live evidence of Ms Barwise and you were denied the opportunity of questioning and probing her statement.

In these circumstances the panel refused the application.

In relation to witness statement three, Mr Hugo Garcia, the panel considered that the evidence was relevant to the charges before it, as Mr Garcia appeared to provide an eye-witness account of an incident which was directly connected to allegations the panel was required to consider.

The panel noted that the account of Mr Garcia was capable of providing evidence about the incident itself rather than simply repeating information received from another person. It further noted that Mr Garcia was the only independent account of the incident and could therefore be decisive in its consideration of the charges.

The panel reminded itself that Ms Adeyemi, on your behalf, disputed the account and had no opportunity to question Mr Garcia or challenge his evidence through cross-examination. The panel considered that, given the potential significance of the evidence, it was particularly important that you should have an opportunity to test it.

The panel also considered that no adequate attempts had been made by the NMC to secure Mr Garcia's attendance before the hearing. The panel considered that it was appropriate for the NMC to make enquiries to establish whether Mr Garcia could attend and give evidence.

The panel therefore did not consider it fair to admit Mr Garcia's written witness statement in its current form. Given its potential significance, the panel considered that further steps should be taken to try to secure Mr Garcia's attendance.

Accordingly, the panel refused the application at that stage and allowed the NMC an opportunity to make further attempts to secure Mr Garcia's attendance and obtain his evidence.

In relation to witness statement four, Ms Susana Roman Gomez, the panel considered that the evidence had some relevance, as it related to matters arising from the relationship and interactions between you and your colleagues. However, the panel had significant concerns about the nature and reliability of the evidence.

The panel was concerned that parts of the account in Ms Gomez's statement amounted to double hearsay, the statement appeared to contain information which Ms Gomez had either overheard or been told by others, with a risk of misunderstanding or misinterpretation.

The panel reminded itself that Ms Adeyemi, on your behalf, disputed the account and had no opportunity to question Ms Gomez about what had been personally witnessed, what had been reported to her, and the context in which the information was obtained.

The panel also noted that no good reason had been given for Ms Gomez's non-attendance, nor was there evidence that reasonable steps had been taken to secure her attendance.

The panel considered whether you would be disadvantaged by the NMC's position of reliance upon Ms Gomez's written statement. It considered that the unfairness in this regard worked in two ways in that the panel was deprived of the opportunity to hear the live evidence of Ms Gomez and you were denied the opportunity of questioning and probing her statement.

In these circumstances the panel refused the application.

Background

The charges arose whilst you were employed as a registered nurse by Nuffield Health working on the inpatient adult surgical ward between 30 October 2023 until 13 June 2024.

The allegations concerned a number of occasions where you allegedly communicated inappropriately and made inappropriate comments towards a fellow nurse, Colleague A. It was also alleged that you touched Colleague A inappropriately on a number of occasions and that some of this behaviour was sexually motivated and amounted to harassment.

You were suspended on 3 May 2024 by your employer and a disciplinary investigation into sexual harassment was undertaken on 29 May 2024 following concerns raised. You were subsequently dismissed for gross misconduct by your employer on 13 June 2024.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Adeyemi who informed the panel that you made full admissions to charges 2(a), 3(a), 4(b), 5(a), 5(b) and 6 in respect of one occasion.

The panel therefore finds charges 2(a), 3(a), 4(b), 5(a), 5(b) and 6 proved by way of your admissions.

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

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: Colleague A, Registered Nurse, at Nuffield Health at the time of the alleged allegations.
- Witness 2: Beata Gorak, Clinical Head of Department, at Nuffield Health.
- Witness 3: Hugo Garcia, Healthcare Assistant, at Nuffield Health

The panel also heard evidence from you under oath.

In considering your evidence the panel had at the forefront of its mind the fact that you were of previous good character. The panel recognised that this was relevant with regard to the credibility of your evidence and whether you had the propensity to act in the way alleged by the NMC.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. The legal assessor referred the panel to the NMC Code, the NMC guidance on sexual misconduct (FTP-2a, updated 31 July 2026) in advising the panel on sexual nature, sexual motivation and harassment. The panel also considered the witness and documentary evidence provided by both the NMC and Ms Adeyemi.

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

Charge 1(a)

That you, a registered nurse:

On unknown dates in 2024 and one or more occasions:
a) Grabbed Colleague A's waist

This charge is found NOT proved.

In reaching this decision, the panel took into account Colleague A's evidence and her witness statement. The panel considered Colleague A's evidence that you placed your hands around her waist. It noted that this was referenced in her witness statement but not in her local interview.

The panel also considered the distinction between touching and grabbing. It had regard to and accepted the definition of "grab", provided by Ms Adeyemi in her submission, as meaning to take hold of something quickly and roughly.

The panel found that Colleague A's description of the manner in which she was touched was not consistent with her being grabbed. Although she referred to being touched frequently and described the waist incident in her evidence, there was no independent evidence supporting the allegation. Accordingly, the panel was not satisfied, on the balance of probabilities, that the allegation was proved and found Charge 1(a) not proved.

Charge 1(b)

That you, a registered nurse:

On unknown dates in 2024 and one or more occasions:
b) Grabbed Colleague A's shoulders

This charge is found NOT proved.

In reaching this decision, the panel took into account Colleague A's oral evidence and had regard to the following extract from Colleague A's local statement:

'The first thing Benjamin began doing was he would find every excuse to touch/grab me, at first not anywhere too uncomfortable it would only be my arm or shoulders….'

And the following extract from Colleague A's witness statement:

'Benjamin then started to become more physical and would use any excuse to touch and grab my shoulders…'

The panel considered the distinction between touching and grabbing. It had regard to and accepted the definition of "grab", provided by Ms Adeyemi in her submission, as meaning to take hold of something quickly and roughly.

The panel also considered the manner in which Colleague A described and demonstrated the contact in her evidence. It further noted that in her local interview, Colleague A referred to being touched and grabbed by the shoulder, and her witness statement was consistent with this. However, it was not satisfied that Colleague A's description amounted to being grabbed by the shoulder.

The panel considered that there was a degree of contact beyond a simple touch, including the position of your hands and fingers. However, having considered Colleague A's oral description of the contact, the panel could not be satisfied that there was any force associated with the motion.

The panel therefore found Charge 1(b) not proved.

Charge 1(c)

That you, a registered nurse:

On unknown dates in 2024 and one or more occasions:
c) Grabbed Colleague A by the throat.

This charge is found proved.

In reaching this decision, the panel took into account Colleague A's statement and oral evidence and that of Mr Hugo Garcia.

The panel considered Colleague A's evidence that you placed your hands around her neck/throat area and shook her. It also considered Mr Garcia's evidence and your account of the incident. Although there were some differences in the witnesses' descriptions of the positioning of your hands, including whether there was direct contact with the neck, the panel found their accounts sufficiently consistent.

Both Colleague A and Mr Garcia described you approaching Colleague A from behind, placing both hands around her neck area and shaking her, causing her to move but without causing bruising. Having considered the evidence, the panel was satisfied that you placed both hands around Colleague A's neck and that there was a shaking motion. The panel considered that its finding should be described as you placing your hands around Colleague A's neck area and shaking her, rather than grabbing her by the throat.

On that evidence, the panel was satisfied on the balance of probability that you placed both hands around Colleague A's neck and shook her.

The panel therefore found charge 1(c) proved.

Charge 2(b) and 2(c)

> *That you, a registered nurse:*
>
> *2. On an unknown date in 2024:*
> *b) Asked Colleague A what penis size she likes or words to that effect.*
> *c) Asked Colleague A if she used vibrators or words to that effect.*

These charges are found proved.

In reaching this decision, the panel took into account your admission in relation to Charge 2(a) and the following extract from Ms Gorak's notes from the local investigation:

> *'BT – Have you asked Colleague A do you use vibrators?*
> *BG – I did not ask her directly we were charting (sic) about relationships I asked how long she had been single…'*

The panel considered this was not a complete denial and amounted to an implied acceptance that you had raised the subject of vibrators. The panel also noted from Colleague A's most contemporaneous account that she stated there had been two conversations when you had asked her whether she used sex aids. You maintained there had only been one such conversation. Colleague A described where the conversations had taken place and how the first one had been interrupted by a hospital porter telling her that her patient was ready for collection. Given you accepted that you had said to Colleague A that *'We need to continue our conversation from earlier'*, the panel

considered it more likely than not that there had been a second conversation. In the circumstances, the panel preferred the evidence of Colleague A in this regard and found that you did ask her if she used vibrators.

Having accepted the evidence of Colleague A regarding the allegation in charge 2(c), it considered there was no reason not to also accept her evidence that you asked her about what penis size she liked. Indeed, given the tenor of the questions you admit asking or it has found you asked, the panel found that it was effectively a progression for you to ask such a question. As such, the panel considered it more likely than not that you asked Colleague A further personal questions about penis size or words to that effect.

The panel therefore found Charges 2(b) and 2(c) proved.

Charge 3(b)

> *That you, a registered nurse:*
>
> *3. On unknown dates in 2024 and one or more occasions:*
> *b) Grabbed / touched Colleague A's lower stomach and started to shake her.*

This charge is found NOT proved.

In reaching this decision, the panel took into account following extracts from Colleague A's local statement:

> *'…at the nurses station and said I was tired he moved to sit nearer to me he grabbed my stomach and said are you on your period, and I said you can't do that, he said periods are natural, I said you cannot touch my stomach near my groin...'*

'…I yawned and said I felt tired to no one in particular and Benjamin who had also come to sit at the nursing station at that point came sat next to me lent over and grabbed my lower belly near my groin hard and…'

And the following extract from Colleague A's witness statement:

'…Benjamin and I were both sat at the nursing station, and I yawned and said I was tired. Benjamin then asked if I was on my period then proceeded to grab my lower stomach and started to shake me…'

The panel considered the three accounts provided by Colleague A and noted inconsistencies in her accounts of the incident. In her local interview and statement, she said that you grabbed and touched her lower stomach and then asked whether she was on her period. In her later witness statement, she described you asking whether she was on her period before grabbing her. The panel also noted that the incident was said to have occurred in an open area and that the allegation that you shook her was introduced in her later NMC witness statement.

The panel also considered your evidence and your consistent denial of the allegation. It found your account and explanations for your conduct to be more consistent and plausible in relation to this allegation.

In light of the inconsistencies in Colleague A's accounts, the panel was not satisfied that her evidence established the allegation on the balance of probabilities.

The NMC had therefore not satisfied the burden of proof and therefore found Charge 3(b) not proved.

Charge 4(a)

That you, a registered nurse:

4. On unknown dates in 2024 and one or more occasions:

a) Followed Colleague A whilst on shift together.

This charge is found NOT proved.

In reaching this decision, the panel took into account following extract from Colleague A's witness statement:

> *'Whenever Benjamin and I were on shift together he would follow me around and would say how he wanted to find me an older sugar daddy…'*

The panel considered Colleague A's evidence concerning the allegation that you followed her whilst on shift. It noted from your oral evidence that you and Colleague A worked together on a busy ward and that there were a number of occasions when you worked in separate areas on the same ward. The panel considered that the allegation itself was vague, as there was no clear explanation or specific evidence as to what was meant by you following Colleague A whilst on shift.

The panel considered Colleague A's evidence about the conversations that took place whilst you were working together. In particular, it noted paragraph 12 of Exhibit 1 which suggested any following appeared to be in the context of you speaking of finding her a "sugar daddy". As such, in the light of your admission to Charge 4(b), the panel did not consider the allegation of following Colleague A added anything to Charge 4(b) and/or warranted a separate charge.

In these circumstances, the panel determined it was appropriate to find Charge 4(a) not proved.

Charge 6

That you, a registered nurse:

6. *On one or more occasions, asked Colleague A for drinks and/or to do something together outside of work.*

The panel was aware that you had admitted this charge on the basis that there had been one occasion when you asked Colleague A for drinks and/or to do something together outside of work. However, in the light of Charges 8 and 9, it considered it appropriate to determine whether there had been more than one occasion when you made such a request.

Having reviewed the evidence, particularly the WhatsApp messages put before it, and bearing in mind that the charge refers to *'unknown dates in 2024',* the panel was satisfied that there is no evidence of your making more than one request. That request was made on 6 January 2024, and it was in the context of your agreeing to swap a shift with Colleague A as she was unwell.

Charge 7

That you, a registered nurse:

7. *Your conduct at any or all of charges 1 to 4 was sexual in nature.*

This charge is found proved in respect of Charges 2(a), 2(b), 2(c) and 3(a) and NOT proved in respect of Charge 4(b).

In reaching this decision, the panel took into account the definition of sexual from the Cambridge Dictionary as follows:

'Relating to sex, physical gender, sexual desire, or biological reproduction.'

The panel also took into account that Mr Garcia in his oral evidence in relation to Charge 1(c) stated the following:

"I thought it was a joke"

The panel considered whether the conduct found proved was sexual in nature, having regard to the nature and context of the conduct.

In relation to Charge 1(c), the panel considered the physical contact involving Colleague A's neck/throat area. Having already found that you approached Colleague A from behind, placed both hands around her neck and shook her, the panel was not satisfied that this conduct was sexual in nature.

In relation to Charges 2(a), 2(b) and 2(c), the panel considered the discussion about dildos and the subsequent question about vibrators and penis size. It considered these matters to be directly related to sexual activity and therefore sexual in nature.

In relation to Charge 3(a), the panel considered the question about Colleague A's period. It noted that menstruation is part of the female reproductive cycle and therefore considered the question to be connected to sexual reproduction and sexual in nature.

In relation to Charge 4(b), the panel considered the "sugar daddy" conversation. It was not satisfied that the reference to a sugar daddy, in itself, was necessarily sexual in nature, as the term does not necessarily involve sexual or intimate activity.

The panel therefore found Charge 7 proved in respect of Charges 2(a), 2(b), 2(c) and 3(a) and NOT proved in respect of Charge 4(b).

Charge 8(a)

That you, a registered nurse:

1. *Your conduct at any or all of charges 1 to 6 was sexually motivated in that you:*

a) Intended to pursue a future sexual relationship with Colleague A.

This charge is found NOT proved.

In reaching this decision, the panel considered whether the conduct found proved demonstrated an intention on your part to pursue a future sexual relationship with Colleague A.

In relation to Charge 1(c), although the panel found that you placed both hands around Colleague A's neck and shook her, it considered the evidence and the context of the incident and was not satisfied that this conduct demonstrated an intention to pursue a future sexual relationship with Colleague A. The panel has already found that this conduct was not sexual in nature, and it also took into account that Mr Garcia in his oral evidence in relation to Charge 1(c) stated the following:

"I thought it was a joke"

In relation to the conversations concerning sexual matters, namely Charges 2(a), 2(b), 2(c) and 3(a), the panel noted that you accepted asking the questions and subsequently acknowledged that you should not have done so and that you regretted it. However, the panel was not satisfied that the evidence established that the purpose of the conversations was to pursue a sexual relationship with Colleague A. The fact that the conversations were sexual in nature did not, of itself, establish an intention to pursue a future sexual relationship. On balance, the panel determined that your questions about her sexual behaviour arose from curiosity, including prurient curiosity, as evidenced by your comment in your evidence that *"we all have needs",* rather than with the intention of pursuing a future sexual relationship with Colleague A.

The panel also considered Charge 4(b) and the "sugar daddy" conversation. It noted that this conversation took place at the nurses' station with other colleagues present and considered that the reference to finding Colleague A sugar daddy did not, without more,

demonstrate an intention to pursue a sexual relationship with her, particularly given the evidence that you referred to finding Colleague A a sugar daddy from Ghana and the unsuccessful video call was intended to include your wife and cousin in Ghana.

Having considered the evidence in its entirety, the panel was not satisfied, on the balance of probabilities, that your conduct was intended to pursue a future sexual relationship with Colleague A. The panel therefore found Charge 8(a) not proved.

Charge 8(b)

That you, a registered nurse:

8. Your conduct at any or all of charges 1 to 6 was sexually motivated in that you:

a) Intended to pursue sexual gratification from Colleague A.

This charge is found proved in respect of Charges 2(a), 2(b) and 2(c).

In reaching this decision, the panel considered your explanation during your evidence in relation to Charge 2(b) and 2(c) that your questions about Colleague A's sexual behaviour were motivated by curiosity. However, the panel questioned why you would have such an interest in a colleague's sexual behaviour and noted that there was no work-related or other legitimate reason for the conversations.

The panel considered the nature and context of the sexual conversations, including your questions about dildos, vibrators and penis size. It noted that you accepted asking the questions and subsequently acknowledged that you should not have done so and regretted it. The panel considered that the conversations were initiated and pursued by you and were unrelated to the clinical work being undertaken.

In light of this, the panel was satisfied on the balance of probabilities that you intended to obtain sexual gratification from the conversations with Colleague A. It therefore found Charge 8(b) proved in respect of Charges 2(a), 2(b) and 2(c).

Charge 9

That you, a registered nurse:

9. *Your conduct at any or all of charges 1 to 6 amounted to harassment of Colleague A in that:*

a) *The conduct was unwanted.*

b) *It had the purpose and/or effect of violating Colleague A's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment.*

This charge is found proved in respect of Charges 1(c), 2(a), 2(b), 2(c), 3(a), 4(b), 5(a), and 5(b).

The panel first considered whether your proved conduct was unwanted by Colleague A.

In this respect, the panel considered it appropriate to first consider its finding in respect of Charge 6. As already noted, the interaction arose from you agreeing to swap shifts. Given this context, especially Colleague A saying '*Hi Benji, thank you sooooo much that's amazing I owe you big time',* the panel was not satisfied that your conduct could properly be described as unwanted.

In relation to the remaining proven charges, the panel recognises that, on Colleague A's own account, there was no occasion when she told you that your conduct was unwanted and she accepts that on some occasions, in response to your conduct, she, in her own words *'laughed uncomfortably'*. In considering this aspect of the evidence, the panel has borne in mind the section on Myths and Stereotypes in the *NMC's Guidance on Sexual*

Misconduct FTP-2a-ii. Having seen and heard the evidence of Colleague A in conjunction with the evidence of Mr Garcia (referred to below), the panel accepts that Colleague A wanted to avoid confrontation with or potentially causing offence to you and was concerned that, if she reported your conduct, she would not be believed as you were popular on the ward.

In these circumstances, the panel accepts the evidence of Colleague A that, with the exception of the conduct in Charge 6, your conduct was unwanted by her.

The panel then considered the second "limb" of Charge 9 as set out in sub-paragraph (b). In so doing, it had regard to the NMC's Guidance on Discrimination, bullying, harassment and victimisation *FtP-2a-iv* and, in particular, the section on Harassment (including sexual harassment).

At the outset, the panel should state that it cannot be satisfied on the balance of probabilities that your proven conduct in respect of Charges 1(c), 2(a), 2(b), 2(c), 3(a), 4(b), 5(a), and 5(b) was done with the purpose of violating Colleague A's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment. Given the lack of any direct complaint by Colleague A about your conduct, it cannot rule out the possibility that you regarded your conduct as "banter" that was acceptable to Colleague A.

Accordingly, the panel's considerations focused on whether your proven conduct in respect of Charges 1(c), 2(a), 2(b), 2(c), 3(a), 4(b), 5(a), and 5(b) was done with the effect of violating Colleague A's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment. In this respect, the panel is concerned with Colleague A's perception of your conduct.

Regarding Charge 1(c), in her near contemporaneous interview, Colleague A stated that your conduct made her feel quite *'distressed and confused'*. This is corroborated by the evidence of Mr Garcia who describes Colleague A as looking *'really confused and*

uncomfortable'. On this basis the panel is satisfied that your conduct violated Colleague A's dignity and created an intimidating, degrading and humiliating environment.

Regarding Charges 2(a), 2(b) and 2(c) and Charge 3(a), the panel had already found that your conduct was sexual in nature and that it was unwanted by Colleague A, in the circumstances, the only finding that the panel can make is that your conduct had the effect of violating Colleague A's dignity and created an intimidating, degrading, humiliating and offensive environment.

Regarding Charge 4(b), the panel has already found that your conduct was unwanted. It is further satisfied that, whatever your intention, the reason why it was unwanted was that it was connected to Colleague A's private life. In the circumstances, the panel is satisfied that your conduct had the effect of violating Colleague A's dignity and creating a degrading and humiliating environment.

Regarding Charges 5(a) and 5(b), the Panel considered that they should be considered together and in the context of your admitted conduct of telling Colleague A that you wanted to find her a sugar daddy. The call in question was when you sought to get Colleague A to join a video call with an unknown person. Because you attempted to get her to join such a call, Colleague A was concerned at your motive and did not join. The panel is satisfied that you asked her on the next shift why she had not joined the call only served to raise her concerns. In the circumstances, the panel is satisfied that your conduct did have the effect of creating an intimidating and humiliating environment.

The panel considered the effect of your conduct on Colleague A, including her perception of your behaviour and the circumstances in which the conduct occurred.

The panel considered Colleague A's evidence about the impact your behaviour had on her. She described feeling uncomfortable, anxious and intimidated on occasions. The panel also considered Mr Garcia's evidence and statement, in which he described

Colleague A as appearing confused and uncomfortable. His evidence supported Colleague A's account of how your behaviour had affected her.

The panel therefore found that the conduct found proved was unwanted and that it had the effect of violating Colleague A's dignity and/or creating an intimidating, degrading, humiliating or offensive environment.

The panel did not find evidence that you intended to cause this effect. It took into account your denial that you intended to make Colleague A uncomfortable. However, the panel noted that you acknowledged the effect of your behaviour and apologised for causing her stress in your witness statement.

The panel considered that it was not necessary to find that you intended to cause the effect experienced by Colleague A. It was satisfied, from Colleague A's evidence, the supporting evidence of Mr Garcia and the circumstances of the conduct, that your behaviour had the required effect.

The panel therefore found that, regardless of your intention, your conduct was unwanted and had the effect of violating Colleague A's dignity and/or creating an intimidating, degrading, humiliating or offensive environment. It therefore found Charge 9 proved in respect of Charges 1(c), 2(a), 2(b), 2(c), 3(a), 4(b), 5(a) and 5(b).

In reaching its decision, the panel has noted that in your witness statement you have stated:

> *'Although I deny charge 9, I do understand how my remarks can be taken as offensive, intimidating, humiliating or harassing. I had never intended to make Colleague A feel uncomfortable, I thought that we had a friendly relationship at work and as Colleague A texted me on WhatsApp, I thought our friendship extended outside of the workplace.*

Even though I deny charges 8 and 9, I am very sorry to Colleague A if I caused her any distress, humiliation, intimidated her or made the work environment offensive or hostile.'

While the panel has not treated this as an admission to Charge 9, it considers that it does reflect the reality of the situation.

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 safely and effectively without restriction.

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

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

Submissions on misconduct

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

Mr Webb referred the panel to his written submission in Exhibit 9 and invited the panel to take the view that the facts found proved amount to misconduct.

Mr Webb identified the specific, relevant standards where your actions amounted to misconduct. He referred the panel to the comment of *Lord Clyde* in the case of *Roylance v General Medical Council [1999] UKPC 16* provide some assistance when seeking to define misconduct:

> *'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily required to be followed by a* [nurse] *practitioner in the particular circumstances'.*

Mr Webb relied upon the following paragraphs of the 2015 NMC Code:

> *'1 Treat people as individuals and uphold their dignity*
> *To achieve this, you must:*
> *1.1 treat people with kindness, respect and compassion*
>
> *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, 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…'*

He submitted that your conduct included inappropriate touching of Colleague A, asking inappropriate sexual questions in pursuit of sexual gratification, attempting to contact and

meet Colleague A outside of work for matters unrelated to work, and repeated behaviour which amounted to harassment. He further submitted that your conduct fell seriously below the standards expected of a registered nurse.

Mr Webb submitted that, having found Charge 2 proved and the conduct to be sexual in nature, and having also found that the conduct amounted to harassment, it was open to the panel to find that the conduct amounted to sexual harassment. He relied on the definition in section 26 of the Equality Act 2010 and the NMC guidance on sexual harassment.

Mr Webb further submitted that your conduct occurred over a period of months and involved repeated breaches of professional and personal boundaries. It was harassing, persistent and sexually motivated in pursuit of sexual gratification, caused Colleague A distress and anxiety at work, and therefore amounted to sexual misconduct and sexual harassment.

Mr Webb therefore submitted that the repeated nature of your conduct, its sexual and harassing nature and the breach of professional boundaries fell significantly below the standards expected of a nurse, brought the profession into disrepute and amounted to misconduct.

Ms Adeyemi with reference to the definition of misconduct in *Roylance v General Medical Council,* submitted that it was not enough for conduct to fall short of what would be proper; the conduct must also be serious. She reminded the panel that whether the threshold for misconduct was met was a matter for the panel's judgment.

Ms Adeyemi invited the panel to find that Charge 5(a) and 5(b), relating to the telephone/video call, did not amount to misconduct. She submitted that the call involved you inviting Colleague A to join a conversation between your cousin, whom you regarded as a brother, and your wife. There was no evidence that the conversation was explicit, inappropriate or sexual.

Ms Adeyemi accepted that your conduct fell short in the circumstances but submitted that it was not sufficiently serious to amount to professional misconduct. She therefore invited the panel to find that the threshold for misconduct was not met in relation to Charge 5(a) and 5(b).

Submissions on impairment

The panel accepted Mr Webb's written submission on impairment (Exhibit 9). In it he 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).*

i. *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*

ii. *Has in the past brought and/or is liable in the future to bring the professions into disrepute; and/or*

iii. *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions …*

Mr Webb also referred the panel to the NMC's guidance on impairment (DMA-1) that states:

> *'A key focus of our fitness to practise process is deciding whether or not a professional's fitness to practise is currently impaired. We do this by assessing whether the professional would pose a risk to public safety, the public's confidence in their profession or professional standards if they were*

permitted to practise without restrictions. Being fit to practise is not defined in our legislation but for us it means that a professional on our register can practise as a nurse midwife or nursing associate safely and effectively without restriction.'

He submitted that your fitness to practise was currently impaired by reason of your misconduct and that all three limbs of Grant were engaged: risk to the public, bringing the profession into disrepute and breach of fundamental tenets of the profession.

Mr Webb submitted that the repeated sexual and harassing behaviour over a period of months demonstrated a deep-seated attitudinal issue and created a risk of repetition towards others, including patients and members of the public. He also submitted that your conduct was significantly below the standards expected of a nurse and breached fundamental professional standards relating to professionalism and trust.

Mr Webb acknowledged that you had apologised, reflected on your behaviour, engaged with the proceedings and completed relevant training. However, he submitted that your insight remained limited and that the pattern of behaviour, together with your lack of meaningful insight, meant that it could not be said that your conduct was highly unlikely to be repeated.

Mr Webb submitted that the concerns were not isolated but represented a pattern occurring over several months and were attitudinal in nature. He therefore considered that training or supervised practice was unlikely to address the concerns and that there was a high likelihood of repetition if you continued to practise without restriction.

In relation to public interest, Mr Webb submitted that a finding of impairment was necessary to uphold professional standards and maintain public confidence, particularly given the serious nature of the sexual misconduct. He therefore invited the panel to find that you are impaired on both public protection and public interest grounds.

Ms Adeyemi submitted that you have demonstrated insight and although you contested some of the allegations, you accepted the panel's findings. You did not seek to challenge or go behind those findings. She highlighted that you apologised to Colleague A in both your oral evidence and witness statement, acknowledged that your behaviour was wrong and demonstrated an understanding of both your behaviour and its impact on Colleague A.

Ms Adeyemi referred the panel to your reflective statement and the relevant training you have completed, including professional boundaries, sexual harassment and workplace professionalism. She submitted that the training directly addressed the concerns in your case and provided reassurance that the behaviour was unlikely to be repeated.

Ms Adeyemi disputed the NMC's suggestion that your conduct demonstrated a deep-seated attitudinal issue, referring the panel to your previous employment, positive references and absence of previous concerns. She submitted that your behaviour was a period of regrettable conduct rather than evidence of an entrenched pattern.

In relation to the public interest, Ms Adeyemi submitted that the public would expect you to be held accountable, but also that the regulatory response should be proportionate and take account of your learning, reflection, apology and remediation.

Ms Adeyemi invited the panel to find that there was no ongoing risk of repetition and that you are not impaired on either public protection or public interest grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311 and section 26 of the Equality Act 2010 in relation to sexual harassment.

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:

2015 NMC Code

*'**1 Treat people as individuals and uphold their dignity***

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

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, 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

20.6 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'

While the panel recognised that work colleagues are not expressly referred to in 20.6, it considered that they are also included by inference to the stem of Promote professionalism and trust.

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

At the outset, the panel should state that it did not consider that the proven conduct in Charge 6 amounted to misconduct. As has already been stated, it did not consider this conduct was unwanted and consequently it did not amount to harassment.

With regard to the remaining proven charges, the panel considered the conduct found proved and whether, taken individually and collectively, it was sufficiently serious to amount to misconduct. It had regard to the context in which the conduct occurred, including that the majority of the matters took place in the workplace and involved a colleague.

The panel noted that the conduct found proved included harassing behaviour and that Charges 2(a), 2(b), 2(c) and 3(a) had also been found to be sexual in nature and Charges 2(a), 2(b) and 2(c) were sexually motivated. It considered that these findings were relevant when assessing the seriousness of the conduct as a whole.

The panel considered the standards clearly set out the conduct expected of a registered nurse, including the importance of maintaining appropriate professional boundaries, behaving professionally and maintaining trust in relationships with colleagues. It considered that the conduct found proved represented a serious departure from those standards.

The panel also considered that the conduct found proved had an impact on Colleague A, was unwanted and amounted to harassment including sexual harassment.

The panel considered your conduct in the context of its findings rather than treating each matter in isolation. It was satisfied that the combination of your inappropriate and harassing conduct, together with the sexual nature and sexual motivation of some of your conduct, demonstrated actions which fell seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 28 January 2024, which states:

> *'Being fit to practise is not defined in our legislation but for us it means that a professional on our register can practise as a nurse midwife or nursing associate safely and effectively without restriction.'*

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 [2011] EWHC 927 (Admin)* in reaching its decision. In paragraph 74, she said:

> *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

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

> *‘Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:*
>
> *a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> *b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> *c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession*
>
> *d) …’*

The panel did not find that any patient had been directly harmed or placed at risk by your conduct. However, it considered that the nature of your conduct could negatively affect the working environment and, consequently, patient care. The panel considered that your conduct breached the fundamental tenets of the nursing profession and also brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to your conduct extremely serious.

The panel considered that although your misconduct included sexual harassment and as such serious, it nonetheless was capable of remediation.

Regarding insight, the panel was satisfied that you have developed sufficient insight into your behaviour. It took into account that you initially denied and disputed some of the allegations, but accepted that this did not, in itself, prevent the panel from finding insight. The panel accepted your explanation that, at the time, you did not understand the impact your behaviour was having on Colleague A and did not intend to cause her offence or distress.

The panel considered your apology and reflection to be significant. It found that you recognised what was wrong with your behaviour, why it was inappropriate and the impact it had on Colleague A and the nursing profession. In particular, the panel noted your understanding of the nature of the relationship with Colleague A, professional boundaries and the fact that conduct can be experienced differently by another person.

The panel also considered the steps you have taken to strengthen your practice. It noted that you have completed a number of relevant courses, including training on professional boundaries, sexual harassment and professionalism. The panel considered that you did not simply complete the training but reflected on what you learnt and identified what you would do differently in the future. It considered this to be meaningful remediation.

The panel considered whether your conduct demonstrated a deep-seated attitudinal issue. It did not consider that it did. It accepted that your conduct was serious and Charges 2(a), 2(b) and 2(c) were sexually motivated, but considered the circumstances in which it occurred, including the absence of an intention to cause harm and your previous lack of understanding of the impact of your behaviour. The panel considered that the concern arose due to a lack of understanding of the nature of your friendship with Colleague A at the time and the effect of your conduct on her. The panel therefore considered this can be addressed through learning and reflection.

The panel also considered the fact that your conduct occurred over a relatively short period and that there was no evidence of similar previous concerns. It took into account your previous work history and the references provided.

However, the panel noted that your learning and remediation has not yet been fully tested in practice. It noted from your evidence that you have only recently returned to a nursing environment and there was no independent evidence demonstrating how you have applied what you have learnt in practice. The panel therefore determined that it was unable to say that it was highly unlikely that there would be a repetition of your misconduct.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because of the seriousness of your conduct, including the findings of harassment and sexual harassment. It considered that the nature of your conduct was such that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The decision as to the appropriate sanction to impose, if any, is a matter for this panel exercising its own judgement. There is no burden or standard of proof at this stage. It recognises that every case will necessarily turn on its own facts.

The panel has borne in mind that in deciding what sanction to impose, it should consider all the sanctions available, starting with the least restrictive.

Submissions on sanction

Mr Webb referred the panel to his written submission in Exhibit 10 and submitted that the appropriate and proportionate sanction for your case was a striking-off order. He acknowledged the mitigating factors, including your apology, significant reflection, insight and meaningful remediation. However, he submitted that the seriousness and repeated nature of your misconduct meant that taking no action, a caution order or a conditions of practice order would not provide sufficient protection or maintain public confidence.

He submitted that suspension was also insufficient and that your misconduct was fundamentally incompatible with remaining on the register. He referred to the NMC Sanction Guidance (SG), which identifies sexual misconduct, particularly repeated sexual misconduct and harassment, as conduct that may warrant striking-off.

Mr Webb therefore submitted that a striking-off order was the only sanction sufficient to protect the public, maintain professional standards and uphold confidence in the profession.

Ms Adeyemi submitted that the purpose of sanction was not to punish, but to protect the public and uphold the wider public interest. She acknowledged the aggravating factors in your case, including the upset caused to Colleague A, the disreputable nature of your conduct and the potential impact on patient care. However, she highlighted to the panel your engagement with the proceedings, insight, reflection, apology and relevant

remediation. She also noted that you had no previous regulatory history and have subsequently worked in another hospital without further concerns.

Ms Adeyemi submitted that a striking-off order was not necessary or proportionate. She referred the panel to its finding that you have developed sufficient insight and that your conduct did not demonstrate a deep-seated attitudinal issue. She submitted that your conduct was capable of remediation and was not fundamentally incompatible with continued registration.

She invited the panel to impose a conditions of practice order or, alternatively, a short period of suspension. She submitted that conditions would allow your learning to be tested in practice through supervision and management reports, while addressing the residual risk and public interest concerns. If suspension was considered necessary to mark the seriousness of the conduct, she submitted that three months would be sufficient due to the significant period of your interim suspension.

Ms Adeyemi also asked the panel to take into account [PRIVATE] and your motivation to continue your nursing career. She therefore invited the panel to impose a conditions of practice order as the most proportionate outcome.

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.

Throughout its deliberations, the panel has been proportionate, balancing your interest with the public interest.

The panel has taken into account its earlier determinations on the facts and on impairment, the SG and the NMC Code, the submissions of Mr Webb on behalf of the NMC, and Ms Adeyemi on your behalf.

The panel first considered the following aggravating factors:

- Your failure to work collaboratively with colleagues which had the potential to impact negatively on patient care.
- The charges amounting to sexual misconduct including sexual harassment.
- The impact of your conduct on Colleague A.

The panel also took into account the following mitigating factors:

- Your apology to colleague A and expression of significant remorse.
- Your early admissions to some of the charges.
- Your targeted training and reflection.
- Your significant insight evidenced by your reflective statement and oral evidence.
- The steps you have taken to strengthen your practice and your action plan to prevent similar behaviour in future.

The panel considered each sanction in ascending order of seriousness starting with the least restrictive.

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

The panel then considered the imposition of a caution order. It had regard to the SG, in particular SAN-2b:

> *'A caution order is only appropriate if the Fitness to Practise Committee has decided there's no risk to the public or to patients requiring the nurse, midwife or nursing associate's practice to be restricted, meaning the case is at the lower end of the spectrum of impaired fitness to practise, however the Fitness to Practise committee wants to mark that the behaviour was unacceptable and must not happen again.*
>
> *Because a caution order doesn't affect a nurse, midwife or nursing associate's right to practise, the Committee will always need to ask itself if its decision about the nurse, midwife or nursing associate's fitness to practise indicated any risk to patient safety.'*

The panel determined that, due to the seriousness of your case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. It 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 issues identified. 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 is mindful that any conditions imposed must be relevant, proportionate, measurable and workable. It had regard to the SG, in particular SAN-2c:

'If there are no appropriate and workable conditions, the Committee should then consider whether suspension would be more appropriate'

The panel determined that no workable or measurable conditions could be formulated which would address the nature of your misconduct. The panel found that there were no areas of your clinical practice which were in need of remediation which would benefit from a conditions of practice order.

Further, the panel considered that the imposition of a conditions of practice order would not mark the seriousness of your misconduct and would be insufficient to maintain public confidence in the profession or to promote and maintain standards for members of the profession.

The panel then went on to consider whether a suspension on your registration would be an appropriate and proportionate sanction.

It acknowledged that suspension has a deterrent effect and can be used as a signal to the registrant, the profession, and to the public about what is regarded as unacceptable conduct.

The panel took account of the following paragraphs of the SG, in particular SAN-2d, which indicate circumstances in which it may be appropriate to impose a sanction of suspension:

- *'the impairment is very serious but not fundamentally incompatible with continuing to be a registered professional*
- *an outcome less severe than strike-off would still satisfy the over-arching objective.'*

The panel also had regard to the key considerations as set out in the SAN-2d to weigh up before imposing a suspension, and the following list of circumstances that may make a suspension order an appropriate sanction:

- *'the charges found proved are at the most serious end of the spectrum and call into question the professional's suitability to continue practising, either currently or at all*
- *while it is possible that the professional could be fit to practise in future, only a period out of practice would be sufficient to allow them to fully strengthen their practice through reflection, the development of their professional skills and / or development of insight and remediation.'*

The panel recognised that your conduct was serious and involved sexual misconduct and harassment, and that a sanction was required to mark the seriousness of your conduct, maintain public confidence and uphold the standards expected of the nursing profession. It was satisfied however, that in your case, your misconduct was not fundamentally incompatible with remaining on the register.

In reaching this conclusion, the panel placed considerable weight on its findings that you had developed significant insight, had reflected meaningfully on your behaviour and had undertaken relevant and targeted remediation. It had found that your conduct was not carried out with the purpose of harassing Colleague A. Furthermore, the panel found no evidence of a deep-seated or entrenched attitudinal behaviour. It therefore considered that the concerns were capable of being addressed. It also determined that there was a realistic prospect of you returning to unrestricted practice in the future.

The panel therefore considered that a suspension order was the appropriate and proportionate sanction. It would mark the seriousness of your conduct, maintain public confidence in the profession and provide public protection while giving you further opportunity to demonstrate that you have strengthened your practice and can apply your learning appropriately in the workplace.

Before determining whether suspension was the appropriate and proportionate sanction in your case, the panel considered whether this case should be met with the imposition of a striking-off order.

The panel had regard to the SG, in particular the SAN-3 regarding cases relating to striking-off:

> *'This sanction is likely to be appropriate if the professional's actions are fundamentally incompatible with being a registered professional. Before imposing this sanction, the Committee should consider:*
> […]
> - *Is there any amount of insight and reflection which could keep people receiving care and members of the public safe, maintain public confidence in the profession, and uphold professional standards?*
> - *Is there a realistic prospect that, after suspension, the professional will have gained insight and strengthened their practice such that the risk they pose will have reduced?'*

It recognised that the seriousness of the sexual misconduct and harassment required a significant sanction.

While the panel acknowledged that your remediation had not yet been fully tested in practice and that as such a risk of repetition remained, it considered that this did not justify your permanent removal from the register.

The panel concluded that, while the seriousness of your conduct needed to be marked and public confidence maintained, taking account of all the information before it, and of the mitigation provided, for the reasons stated above, a striking-off order would be

disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in your case.

The panel determined that a reasonable and fully informed member of the public, familiar with all the circumstances of your case, would regard imposing a suspension order on your registration for a period of 12 months (with review) as a sufficient and appropriate marker of the gravity and seriousness of your misconduct.

In determining the appropriate length of the order, the panel took into account the period of interim suspension you have already served. However, it determined that only a suspension order of the maximum period it is allowed to impose would mark the seriousness of your misconduct and be sufficient to maintain public confidence in the profession.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Evidence of further strengthening of your practice in the areas of concern.
- Up to date information regarding any employment paid or unpaid that you have undertaken since the imposition of this order.

- Written references and/or testimonials from any person or body that has employed you since the imposition of this order, in particular from any person or body that has employed you as a nurse outside of the United Kingdom and the Republic of Ireland and/or any person or body inside the United Kingdom and the Republic of Ireland that has employed you in a healthcare role. Such references and/or testimonials should indicate how you have put into practice your learning from the courses you have undertaken to strengthen your practice and how you have interacted with other employees especially those who are females.

This will be confirmed to you in writing.

Interim order

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

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

Submissions on interim order

The panel took account of the submissions made by Mr Webb. He submitted that an interim suspension order should remain in place during the 28-day appeal period and, if an appeal was lodged, until the appeal was concluded.

Mr Webb submitted that the order was necessary to protect the public and maintain public confidence in the profession during the appeal period. He further submitted that not

imposing an interim order would be inconsistent with the panel's decision to impose a 12 month suspension order.

The panel also took into account the submissions of Ms Adeyemi on your behalf. She invited the panel not to impose an interim order, submitting that it was not necessary in your circumstances and that there was no ongoing risk posed by you.

She submitted that the substantive suspension order would not take effect until the 28-day appeal period had expired and, if an appeal was lodged, until the appeal had been concluded. She therefore submitted that there was no need for an interim order during this period.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel accepted the application and therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.