

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

**Substantive Hearing
Monday 5 December 2022 – Tuesday 13 December 2022**

Virtual Hearing

Name of registrant: Munyaliwa Ramatshimbila

NMC PIN: 04H03920

Part(s) of the register: Registered Nurse –Sub Part 1 Adult Nursing-13
August 2004

Relevant area: Crewe

Type of case: Misconduct

Panel members: Christina McKenzie (Chair Registrant member)
Lorraine Shaw (Registrant member)
Keith Murray (Lay member)

Legal Assessor: James Holdsworth

Hearing Coordinator: Teige Gardner

Nursing and Midwifery Council: Represented by Unyime Davies, Case Presenter

Mr Ramatshimbila: Not present and unrepresented

Facts proved: **Charges 1, 3(a), 3(b), 3(c)(i), 3(c)(ii), 3(c)(iii),
3(d), 3(e)(i), 3(e)(ii), 3(f), 4(a)(i), 4(a)(ii), 4(a)(iii),
4(a)(iv), 5(a), 5(b)(i), 5(b)(ii), 5(b)(iii), 5(c),
5(d)(i), 5(d)(ii), 5(d)(iii) and 6.**

Facts not proved: Charge 2

Fitness to practise: Impaired

Sanction: Strike-off order

Interim order: Suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Ramatshimbila was not in attendance and that the Notice of Hearing letter had been sent to Mr Ramatshimbila's registered email address on 3 November 2022.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Ramatshimbila's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Ms Davies, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Ramatshimbila has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Ramatshimbila

The panel next considered whether it should proceed in the absence of Mr Ramatshimbila. It had regard to Rule 21 and heard the submissions of Ms Davies who invited the panel to continue in the absence of Mr Ramatshimbila. She referred the panel to a telephone note from Mr Ramatshimbila's wife, dated 15 November 2022, which reads:

'[PRIVATE]'

Ms Davies submitted that Mr Ramatshimbila is unable to attend today [PRIVATE]. She submitted there has been no application for these proceedings to be adjourned, nor is there any evidence that Mr Ramatshimbila could attend at a future date. She submitted that there are four witnesses listed to give evidence in this case, three of which are vulnerable and require special measures. She submitted that there is a strong public interest in the expeditious disposal of this case, as the allegations are serious. She invited the panel to proceed in the absence of this case.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a Mr Ramatshimbila under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)*_(No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Ramatshimbila. In reaching this decision, the panel has considered the submissions of Ms Davies, the telephone note from Mr Ramatshimbila's wife dated 15 November 2022, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Ramatshimbila or by his wife, on his behalf;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Four witnesses are due to attend these proceedings to give live evidence;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2015 and 2019;

- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Ramatshimbila in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, he has made no response to the allegations. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Ramatshimbila's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Ramatshimbila. The panel will draw no adverse inference from Mr Ramatshimbila's absence in its findings of fact.

Details of charge

'That you, a registered nurse, whilst employed at Cypress Court Care Home ('the Home');

- 1) *Between 1 September 2015 and 1 December 2015 touched colleague X in an inappropriate manner.*
- 2) *Your actions in charge 1 were sexually motivated, in that you sought sexual gratification from your conduct.*

- 3) *In or around May 2019;*
 - a) *Pressed/pushed Colleague C against a wall*
 - b) *Pressed your body into Colleague C's body*
 - c) *Touched Colleague C's;*
 - i) *Face*
 - ii) *Neck*
 - iii) *Shoulders*
 - d) *On one or more occasion, asked Colleague C for a kiss*
 - e) *Spoke to Colleague C using words to the effect;*
 - i) *'You are beautiful'*
 - ii) *'Will you be my boyfriend/girlfriend'*
 - f) *Attempted to kiss Colleague C's neck*

- 4) *On 17 April 2020;*
 - a) *Attempted to force/forced Resident A to take paracetamol in that you;*
 - i) *Pinned Resident A's left arm/hand down onto a chair*
 - ii) *Pressed a dispensing cup containing the paracetamol into/against Resident A's mouth*
 - iii) *Spoke to Resident A, on one or more occasions using words to the effect 'have your medicine'*
 - iv) *Shouted at Resident A*

- 5) *On the night shift of 31 May 2020:*
 - a) *Pressed your stomach on Colleague B's back*
 - b) *Stroked Colleague B's;*
 - i) *Shoulder/s*
 - ii) *Arm*
 - iii) *Right thigh/leg*
 - c) *Held Colleague B's arm tight*
 - d) *Spoke to Colleague B using words to the effect;*
 - i) *'I like the way you look'*

ii) *'You are giving me temptation'*

iii) *'See you on Tuesday night'*

6) *Your actions in one or more of charges 3 a), 3 b) i, 3 b) ii, 3 b) iii, 3 d), 3 e) i, 3 e) ii, 3 f), 5 a), 5 b) i, 5 b) ii), 5 b) iii 5 c), 5 d) i, 5 d) ii, 5 d) iii above, were sexually motivated in that you sought sexual gratification from such contact.*

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Davies, on behalf of the NMC, to amend the wording of charge 5(c).

The proposed amendment was to amend "arm" to "hands" to more accurately reflect the oral evidence of Colleague B. It was submitted by Ms Davies that the proposed amendment would provide clarity and more accurately reflect the evidence.

"That you, a registered nurse, whilst employed at Cypress Court Care Home ('the Home');

...

5) On the night shift of 31 May 2020:

...

c) Held Colleague B's ~~arm~~ hands tight"

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Ramatshimbila and

no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy, in light of Colleague B's oral evidence.

Decision and reasons on facts

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

The panel accepted the advice of the legal assessor.

The panel has drawn no adverse inference from the non-attendance of Mr Ramatshimbila.

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: Regional Support Manager at the Home, at the time of the incidents
- Colleague B: Health Care Assistant at the Home, at the time of the incidents
- Colleague C: Health Care Assistant at the Home, at the time of the incidents
- Resident A: Resident within the Home

Background

On 14 October 2020, the NMC received a referral from Four Seasons Health Care Group (“the Group”) in relation to Mr Ramatshimbila’s conduct. The main concerns raised in the NMC referral relate to shifts worked by Mr Ramatshimbila on 17 April 2020 and 31 May 2020 at the Cypress Court Care Home (“the Home”).

It is alleged that on 17 April 2020, Mr Ramatshimbila forced a resident to take paracetamol despite the resident refusing this medication. Furthermore, it is also alleged that whilst taking the resident’s blood pressure, Mr Ramatshimbila forcibly put the resident’s arm down, causing the arm to bruise.

It is alleged that on 31 May 2020, Mr Ramatshimbila had sexually assaulted a carer by touching her shoulder, arms and legs. Mr Ramatshimbila also allegedly made comments throughout the shift saying that he liked the way she looked and that she was giving him temptation.

There were also previous similar concerns involving inappropriate sexual conduct in 2015 when Mr Ramatshimbila received a final written warning from the Group.

Mr Ramatshimbila’s employment was terminated by the Group in July 2020.

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 the NMC.

Charge 1

“That you, a registered nurse, whilst employed at Cypress Court Care Home (‘the Home’);

- 1) *Between 1 September 2015 and 1 December 2015 touched colleague X in an inappropriate manner.”*

This charge is found proved.

Charge 1 relates to an incident that was discovered as a part of Witness 1’s investigation into Mr Ramatshimbila’s overall behaviour at the Home. Witness 1 had been appointed by the Group as an independent investigator of the allegations brought against Mr Ramatshimbila. During her review of Mr Ramatshimbila’s personal files, she was made aware of an incident in 2015 which she believed was linked to the allegations as set out in Charge 3 and 5, and she subsequently reported it to the NMC.

In reaching its decision on Charge 1, the panel took into account the original disciplinary report, dated 27 November 2015 and Mr Ramatshimbila’s written reflective statement, dated 8 January 2016. The panel noted the findings of the original disciplinary, dated 27 November 2015, which reads:

“The hearing had been arranged in order to discuss the following breaches of the company’s rules:

- *An allegation of sexual Inappropriateness that had been made against you.*

At the hearing, you were given every opportunity to explain and account for your actions.

Having now had the opportunity to hear and examine all the evidence, I have reached my decision. I took into account:

- *That the statements provided by the staff member making the allegation were compelling.*
- ...
- ...

- *The seriousness and severity of the issues.*
- *That you agreed your behaviour required review and revision.*

As a result, you will be issued with a First and Final written warning, which will remain on file will for a period of up to 12 months from the date of issue.”

The panel took into consideration this report and was of the opinion that it suggests that Mr Ramatshimbila did touch Colleague X in an inappropriate manner at some point between 1 September 2015 and 1 December 2015. The panel further took into consideration Mr Ramatshimbila’s subsequent written reflective piece, dated 8 January 2016. The panel noted that within his written reflective piece, it states:

“I was trying to joke with that female member of staff member and not realising I had over stepped the boundaries between me and her....

...I have noticed my behaviour was wrong as it is not supposed to be done in work...

...I have noticed that my behaviour was wrong toward that female staff member”

The panel was of the view that Mr Ramatshimbila had partially admitted to touching Colleague X. However, the panel determined that Mr Ramatshimbila did not take responsibility for his actions, rather he claimed that they were a ‘joke’ and he would not do it again.

The panel was confident that an investigation was conducted by the Home and found that Mr Ramatshimbila did inappropriately touch Colleague X. Therefore, on the basis of the Home’s disciplinary report and Mr Ramatshimbila’s written reflective piece, the panel determined that this charge is found proved on the balance of probabilities.

Despite finding this charge proved, the panel noted that there is no direct evidence from Colleague X regarding this incident, nor was Colleague X present at these proceedings to

give live evidence that could be tested and cross-examined. The basis of the panel's evidence is documentation from a local investigation conducted by the Home and noted that Mr Ramatshimbila was reprimanded.

Charge 2)

“Your actions in charge 1 were sexually motivated, in that you sought sexual gratification from your conduct.”

This charge is found not proved.

Having found Charge 1 proved, the panel considered whether Mr Ramatshimbila's actions were sexually motivated. The panel was not convinced that, looking at all the evidence before it, there is enough evidence to support that Mr Ramatshimbila's actions in Charge 1 were sexually motivated. The panel noted that it was not given any direct evidence from Colleague X, and the panel was unable to test and cross-examine any live evidence from her. The panel noted Mr Ramatshimbila's written reflective piece at the time of the incident, in which he describes the incident as a 'joke' and says he would not do it again, and he has learned about professional boundaries. The panel noted that there is no contextual information surrounding this charge, such as the culture within the home. In light of the lack of testable evidence, the panel determined that, on the balance of probabilities, this charge is not found proved.

Charge 3)

‘In or around May 2019;

a) Pressed/pushed Colleague C against a wall

b) Pressed your body into Colleague C's body

c) Touched Colleague C's;

i) Face

ii) Neck

- iii) *Shoulders*
- d) *On one or more occasion, asked Colleague C for a kiss*
- e) *Spoke to Colleague C using words to the effect;*
 - i) *'You are beautiful'*
 - ii) *'Will you be my boyfriend/girlfriend'*
- f) *Attempted to kiss Colleague C's neck'*

This charge is found proved in its entirety.

In reaching this decision, the panel took into account Colleague C's written and oral evidence, and the Home's internal investigation into these incidents, which included an interview with Colleague C. The panel noted that, during an interview dated 12 June 2020, it reads:

"Interview

I thanked colleague C for agreeing to come and talk to me and I asked her about her reason for leaving Cypress court. stated that, she had liked working at Cypress court... but she had received sexual advances towards her made by Rama and she did not like it. He had come behind her and put his hand on her shoulders and arms, pressed his body into her, tried to kiss her neck. he had asked her several times, to kiss her and to be her boyfriend. Even after she had told him she was Happily married. He had also said things like "will you be my boyfriend,"... She did not wish him to know why she left as he knew where she lived and she was scared of him."

The panel noted that this interview from around the time of the incident is consistent with Colleague C's oral evidence and written NMC statement. The panel gave further weight to this interview, as it was able to test Witness 1 (who conducted the interview). The panel noted that Witness 1 said she had conducted "*hundreds*" of similar interviews and was

very experienced. The panel accepted this evidence from Witness 1, as it was of the opinion she gave credible and reliable evidence in relation to this charge.

The panel was of the view that Colleague C gave compelling evidence, providing detailed oral and visual descriptions of Mr Ramatshimbila pushing her into a wall, pressing his body against her, and touching her face, shoulders and neck. Furthermore, the panel noted that in both Colleague C's written NMC statement, oral evidence and the interview dated 12 June 2020, she states that Mr Ramatshimbila asked if she had a boyfriend, called her beautiful and tried to kiss her neck. The panel was of the view that Colleague C's oral evidence was consistent with her contemporaneous interview record and her written witness statement.

The panel noted that Mr Ramatshimbila alleged that Colleague B and Colleague C colluded to fabricate a story. The panel explored this possibility and, following hearing live evidence from both Colleagues B and C, concluded that they did not collude their evidence. The panel noted that Colleague C had ceased her employment at the Home before Colleague B had made a complaint regarding Mr Ramatshimbila's behaviour.

In light of the above, the panel was of the view that, on the balance of probabilities, this charge in its entirety is found proved.

Charge 4(a) i, ii, iii, and iv

"On 17 April 2020;

a) Attempted to force/forced Resident A to take paracetamol in that you;

i) Pinned Resident A's left arm/hand down onto a chair

ii) Pressed a dispensing cup containing the paracetamol into/against Resident A's mouth

iii) Spoke to Resident A, on one or more occasions using words to the effect 'have your medicine'

iv) Shouted at Resident A"

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the written and oral evidence of Resident A. The panel was of the view that Resident A's oral evidence was consistent with his written evidence. [PRIVATE].

The panel noted that in an incident report from around the time of the incident, Resident A made a complaint to the Home, which reads:

“Res A [sic] alleges that MR attempted to give him some paracetamol and when Res A refused MR became very aggressive and tried to bully him into taking the medication despite resident a stating he did not want to have it. MR then allegedly grabbed resident a by the arm and put Res A's arm in an extended position onto the arm of the chair.”

“Res A alleges that MR's aggressive behaviour was due to the fact that resident a refused to take the tablets and did not want to do what MR had said he should... Res A states MR is a bully as he has heard the way MR speaks to the staff”

The panel noted that this is consistent with another incident report made immediately to Ramatshimbila's line manager at the time of the alleged incidents. This report reads:

“I was called to the residents bedroom as he had passed the message that he wanted to speak to me urgently. Upon entering his room he told me that last night there had been an incident where the night nurse had been aggressive towards him. He stated that the nurse had entered his bedroom with his paracetamol, he didnt want to take this as he is only prescribed it PRN. He had recently been unwell and [sic] it when he had a temperature. He stated that he didnt have a temperature so he did not need to take the paracetamol. He stated that the nurse was very

aggressive towards him telling him that he had to take the paracetamol. He then stated that the nurse 'grabbed' his arm."

The panel took into consideration both of these contemporaneously written incident reports, along with Resident A's oral evidence, and determined that Resident A gave consistent, reliable and credible evidence. The panel further noted that Resident A made subsequent corrections to his written NMC statement to ensure clarity and accuracy of this evidence. Some of Resident A's corrections would appear to be in Mr Ramatshimbila's favour. Therefore, the panel gave significant weight to Resident A's evidence.

In light of the above, the panel was satisfied that Mr Ramatshimbila did hold Resident A's arms down and attempt to forcefully administer paracetamol to him. The panel determined that, on the balance of probabilities, Mr Ramatshimbila did shout at Resident A saying words to the effect of 'take your medicine'. The panel concluded that this charge is found proved in its entirety.

Charge 5)

"On the night shift of 31 May 2020:

- a) Pressed your stomach on Colleague B's back*
- b) Stroked Colleague B's;*
 - i) Shoulder/s*
 - ii) Arm*
 - iii) Right thigh/leg*
- c) Held Colleague B's hands tight*
- d) Spoke to Colleague B using words to the effect;*
 - i) 'I like the way you look'*
 - ii) 'You are giving me temptation'*
 - iii) 'See you on Tuesday night'"*

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the written and oral evidence of Colleague B, and the Group's internal investigation, which included an interview between Witness 1 and Colleague B, a telephone note and Colleague B's written complaint to her manager following the incident. The panel first took into consideration the disciplinary report from the Home, dated 25 June 2020, which reads:

"... [Person 1] confirms [Person 2] called her with regard to colleague B and confirms that she was upset with the way MR had touched her last night. [Person1] then called colleague B and states that his stomach was pressed against her back and he was stroking her shoulder, he later stroked her leg and that throughout the night she felt uncomfortable..."

She confirms that colleague B said that he touched her shoulders and down to her hands and then touched her thigh. [Person 3] states that colleague B messaged her and asked her to meet downstairs where [Person 3] confirms that she was visibly upset."

The panel noted that, shortly after the incident occurred, Colleague B wrote a complaint to the management at the Home. This complaint reads:

'...Rama got very close to behind me from behind as soon as [Person1] went and started stroking my shoulders, then went down my arms and held my hands really tight... As I was leaving the resident's room Rama was stood near room number 11, stopped me and stroked my right thigh'

In addition, the panel took into consideration a note from a telephone call from Colleague B to a manager regarding this incident, dated 1 June 2020 at 10:40am, in which she says:

'I had my shorts on, [Person 1] went to the kitchen to get the tea trolley and I remained in the handover room with Rama whilst I got my bag, he got very close to

me, his stomach was pressing up against my back and he started to stroke my shoulder. He said I like the way you look. There was a call bell ringing (room 3) so I went in to answer it and I spoke to her and her son, when I came out of the room he was waiting for me. He then stroked my leg and said again that he likes the way I look and he asked me if I had put cream on my body. Through the whole night I felt uncomfortable as he was staring at me all night. In the morning he had finished handover and he was waiting to clock off in the lounge, he could see me in the dining room and he said 'you're giving me temptation' he then asked me if I was on shift tomorrow. I said yes and he looked at me whilst biting his lip and said good'

The panel was of the view that Colleague B gave compelling evidence, providing detailed oral and visual descriptions of Mr Ramatshimbila pressing his stomach against her, and touching her shoulders, hands and thigh. Furthermore, the panel noted that in both Colleague B's written NMC statement, oral evidence and the interview dated 25 June 2020, she states that Mr Ramatshimbila said she was giving him 'temptation' and he 'liked the way she looked'. In particular, the panel noted that Colleague B was very scared by Mr Ramatshimbila saying he would 'see her on Tuesday night', as she did not know what he meant by this comment and she "was so scared she froze". The panel was of the view that Colleague B's oral evidence was consistent with her written witness statement, her written complaint to her manager from the time of the incidents and her managers telephone note the day after the incidents.

The panel further noted that there are consistencies between the incidents relating to Colleagues B, C and X, in that Mr Ramatshimbila would wait for them to be alone before approaching them. Therefore, the panel was of the view that a pattern had emerged in Mr Ramatshimbila's behaviour throughout these charges.

The panel took into consideration an undated handwritten note headed "Re Rama 31. 05. 2020" made by Mr Ramatshimbila's immediate line manager. This note describes a contact made by Mr Ramatshimbila to the manager where he alleged that Colleague B had been drinking alcohol before coming on duty on the night of the alleged incident.

The panel noted that both Mr Ramatshimbila and his line manager were considered to be good friends by witnesses who described them as calling each other '*brothers*'. Further, the panel was concerned that if Mr Ramatshimbila smelled alcohol on Colleague B, he should have sent her home. The panel heard from Colleague B that the complaint about her had been made after she had raised concerns about Mr Ramatshimbila's behaviour towards her. The panel therefore put little weight on the content of the note and preferred the evidence of Colleague C given under oath who completely refuted that she had been drinking that day before coming on night duty.

The panel determined that, in light of the evidence above and on the balance of probabilities, this charge is found proved in its entirety.

Charge 6)

"Your actions in one or more of charges 3 a), 3 b) i, 3 b) ii, 3 b) iii, 3 d), 3 e) i, 3 e) ii, 3 f), 5 a), 5 b) i, 5 b) ii), 5 b) iii 5 c), 5 d) i, 5 d) ii, 5 d) iii above, were sexually motivated in that you sought sexual gratification from such contact."

This charge is found proved.

In reaching this decision, the panel took into account both the oral and written evidence from Colleagues B and C and the accompanying documentary evidence.

The panel took into consideration Mr Ramatshimbila's behaviour, as set out in Charges 3 and 5. The panel was of the view that Mr Ramatshimbila has a clear method of approach, in that he approached both Colleagues B and C when they were isolated and made advances toward them. The panel noted that both Colleagues B and C gave corroborative evidence that Mr Ramatshimbila would ensure that they were both alone before he approached them. The panel further noted that Mr Ramatshimbila, as a registered nurse in

charge of the shift and allocation of staff, was in a position of power at the Home, whereas Colleagues B and C were junior members of staff.

The panel was of the view that Mr Ramatshimbila's actions were sexual motivated in nature, as he said things such as *'you are giving me temptation'*, *'I like the way you look'*, *'do you have a boyfriend?'* and *'you are beautiful'*. The panel determined that the aforementioned comments are overtly sexual. In addition, the panel was of the view that Mr Ramatshimbila touched Colleagues B and C in a way that would indicate sexual motive. For example, he pushed his stomach against Colleague B, attempted to kiss Colleague C's neck and rubbed Colleague B's thigh. The panel determined that Mr Ramatshimbila's behaviour was consistent with a sexual advance and his actions, as set out in Charges 3 and 5, were carried out in pursuit of sexual gratification.

The panel noted that no alternative explanation for Mr Ramatshimbila's actions has been put before it. Furthermore, there is no evidence of an oversexualised working environment in the Home and no evidence that Colleague B and C consented to Mr Ramatshimbila's advances.

In light of the above, the panel was satisfied that Mr Ramatshimbila's actions, as set out in Charges 3 and 5, were sexually motivated and he did seek sexual gratification from his actions. Therefore, on the balance of probabilities, the panel finds this charge proved on all counts.

Fitness to practise

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

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

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

Submissions on misconduct and impairment

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

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

Ms Davies identified the specific, relevant standards where Mr Ramatshimbila's actions amounted to misconduct.

Ms Davies submitted that there are consistencies between Mr Ramatshimbila's actions in regard to Colleagues B, C and X and was of the view that there is a pattern in his behaviour, in that he would wait for them to be alone before approaching them. Further, she submitted that Mr Ramatshimbila was a senior member of staff, where as Colleagues B and C were junior members of staff. She submitted that Mr Ramatshimbila's actions, in

regard to Colleague B and C, fell seriously short of the standards expected from a registered nurse.

Ms Davies submitted that Mr Ramatshimbila's actions in regard to Resident A fell seriously short of the standards expected from a registered nurse. She submitted that Resident A was a very vulnerable resident who required special care. She submitted that Mr Ramatshimbila's actions toward Resident A, in putting his arms down and holding them there and forcing him to take paracetamol, fell seriously short of the actions expected from a registered nurse. She submitted that Mr Ramatshimbila's actions would be considered deplorable and did amount to misconduct. She invited the panel to find this.

Ms Davies 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).

Ms Davies submitted that Mr Ramatshimbila's actions, as set out in Charges 3, 5 and 6 were serious, in that he sexually assaulted Colleague B and C whilst they were at work in the Home. She submitted that a finding of impairment in regard to these charges was necessary on the grounds of both public protection and also in the wider public interest. She submitted Mr Ramatshimbila has shown very little remorse or insight into his actions, nor has he made attempts to strengthen his practice. Further, she submitted that Mr Ramatshimbila's actions were repeated, therefore there is a risk of repetition if he is allowed to practice without restriction. She submitted that a well-informed member of the public would be concerned to find that Mr Ramatshimbila is allowed to practice without restriction, considering the seriousness of the panel's findings in this case.

Ms Davies submitted that Mr Ramatshimbila's actions in Charge 4 were serious as he abused his position of power in regard to Resident A, as the panel has found that he

forced Resident A to take medication, did not ask him for consent and forcefully held his arms down. She submitted that Resident A was a particularly vulnerable resident in the Home, which adds to the seriousness of Mr Ramatshimbila's actions. She submitted that Mr Ramatshimbila has not shown any remorse or insight into his actions in respect of Charge 4. She submitted that Mr Ramatshimbila poses a real risk of significant harm to residents if he is allowed to practice without restriction. Therefore, a finding of impairment is necessary on the grounds of public protection. She submitted that a well-informed member of the public would be concerned to find that Mr Ramatshimbila is allowed to practice without restriction.

Ms Davies invited the panel to make a finding of impairment on both the ground of public protection and also in 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* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *Cohen v GMC* [2007] EWHC 581 (Admin), *CHRE v NMC & Grant* [2011] EWHC 927 (Admin) and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

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

'Prioritise people

You put the interests of people using or needing nursing or midwifery services first.

You make their care and safety your main concern and make sure that their dignity

is preserved and their needs are recognised, assessed and responded to. You make sure that those receiving care are treated with respect, that their rights are upheld and that any discriminatory attitudes and behaviours towards those receiving care are challenged.

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

...

1.5 respect and uphold people's human rights

...

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

...

2.2 recognise and respect the contribution that people can make to their own health and wellbeing

2.3 encourage and empower people to share in decisions about their treatment and care

2.4 respect the level to which people receiving care want to be involved in decisions about their own health, wellbeing and care

2.5 respect, support and document a person's right to accept or refuse care and treatment

...

4 Act in the best interests of people at all times

To achieve this, you must:

4.1 balance the need to act in the best interests of people at all times with the requirement to respect a person's right to accept or refuse treatment

4.2 make sure that you get properly informed consent and document it before carrying out any action

...

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

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'

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 Mr Ramatshimbila's actions were serious, and he continues to pose a risk. The panel noted that a pattern in Mr Ramatshimbila's behaviour is clear, in that he waited until Colleague B and C were alone before victimising them. Further, the panel noted that Mr Ramatshimbila was in a position of power, whereas Colleagues B and C were junior members of staff. Furthermore, the panel noted that Mr Ramatshimbila caused Resident A actual harm by forcing him to take paracetamol and restraining his arms.

The panel was of the view that Mr Ramatshimbila's actions against his colleagues occurred over a significant period of time. He was given a final warning by his employers in 2015, but he continued to repeat his actions into 2019 and into 2020. The panel was of the view Mr Ramatshimbila has not shown any evidence of insight, remorse or attempted to address his behaviour. The panel was of the opinion that Mr Ramatshimbila breached

fundamental tenets of the nursing profession and his actions would be considered deplorable by fellow professionals as well as by members of the public.

The panel found that Mr Ramatshimbila's actions fell far below the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or...’*

The panel finds that Resident A, Colleague B and Colleague C were put at risk and were caused physical and emotional harm as a result of Mr Ramatshimbila’s misconduct. The panel noted that Colleague C left her role in the Home as a result of Mr Ramatshimbila’s misconduct, as he knew where she lived and she felt uncomfortable at work. The panel noted that Colleague C said she loved her job at the Home, but felt like she had to leave due to Mr Ramatshimbila’s misconduct. Further, it noted that Colleague B was ‘frozen’ with fear as a result to Mr Ramatshimbila’s misconduct and she was terrified of him. In addition, the panel noted that Resident A was caused actual physical harm and emotional harm as a result of Mr Ramatshimbila’s misconduct. The panel was of the view that Mr Ramatshimbila’s misconduct was very serious and had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute

Regarding insight, the panel considered that Mr Ramatshimbila has shown little to no insight into his actions. The panel noted his reflective piece to his employer in 2016, which related to his behaviour with Colleague X. The panel considered he did not take any responsibility for his actions, rather he made light of them calling his actions a ‘joke’ and

saying he would not do this again in the future. However, the panel noted that Mr Ramatshimbila did repeat his actions again in 2019 and 2020 with two other junior members of staff. The panel was of the view that Mr Ramatshimbila has not shown any remorse for his actions nor addressed how his actions could have affected Resident A, Colleague X, Colleague B and Colleague C.

The panel was satisfied that the misconduct in this case would be difficult to remediate. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Ramatshimbila has taken steps to remedy his misconduct. The panel was of the view that Mr Ramatshimbila has shown no evidence of attempting to remediate his misconduct.

The panel is of the view that there is a significant risk of repetition based on Mr Ramatshimbila repeating his actions over a lengthy period of time, despite being given a final warning by the Group in 2015. The panel was of the view that Mr Ramatshimbila would be highly likely to repeat his actions. Furthermore, the panel noted that Mr Ramatshimbila has not provided any evidence to the panel of insight or remorse for his actions, nor has he attempted to remedy his 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 concluded that, given the seriousness of the misconduct and circumstances of this case, public confidence in the profession would be undermined if a finding of impairment were not made. The panel therefore finds Mr Ramatshimbila's fitness to practise is also impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Ramatshimbila's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Ramatshimbila off the register. The effect of this order is that the NMC register will show that Mr Ramatshimbila has been struck-off the register.

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

Submissions on sanction

Ms Davies informed the panel that in the Notice of Hearing, the NMC had advised Mr Ramatshimbila that it would seek the imposition of a strike-off order if it found Mr Ramatshimbila's fitness to practise currently impaired. She reminded the panel of its powers and responsibilities.

Ms Davies submitted that a conditions of practice order would not be workable nor appropriate in the circumstances of this case. She submitted that sexually inappropriate behaviour, repeated over a lengthy period of time and attitudinal issues are not compatible with a suspension order. She submitted that the only appropriate order that the panel could make, in light of its findings, is a strike-off order. She submitted that Mr Ramatshimbila's misconduct is serious and caused harm to Resident A, Colleague B and Colleague C. She submitted that a well-informed member of the public would be concerned if the panel did not strike-off a nurse who has sexually assaulted two of his colleagues and caused physical harm to a resident he was caring for. She invited the panel to impose a strike-off order.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Abuse of a position of trust.
- Lack of insight into failings.
- No remorse for misconduct.
- No evidence of attempting to remedy misconduct.
- A pattern of misconduct over a lengthy period of time.
- Conduct which put vulnerable people at a risk of suffering harm.
- Underlying attitudinal issues.

The panel was of the view that there are no mitigating features in this case.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of misconduct that relates to sexual assault, and the public protection issues identified, an order that does not restrict Mr Ramatshimbila's practice would not be

appropriate in the circumstances. The SG states that a caution order may be appropriate where *‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’*

The panel considered that Mr Ramatshimbila’s misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Ramatshimbila’s registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case and the underlying attitudinal issues present. The misconduct identified in this case was not something that can be addressed through retraining.

Furthermore, the panel concluded that the placing of conditions on Mr Ramatshimbila’s registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel found that Mr Ramatshimbila’s actions were not a single incidence of misconduct, rather there was a pattern of

inappropriate behaviour, carried out on junior members of staff that was repeated between 2015 into 2020. The panel also noted that Mr Ramatshimbila has shown no insight or remorse for his misconduct, nor has he provided evidence as to how he has attempted to address his misconduct. The panel found that Mr Ramatshimbila physically and emotionally abused a vulnerable resident at the Home, and in the panel's view this is very serious. The panel consider that the serious breach of the fundamental tenets of the nursing profession evidenced by Mr Ramatshimbila's actions are fundamentally incompatible with Mr Ramatshimbila remaining on the register.

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

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

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

Mr Ramatshimbila's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel took into consideration the SG, which states:

'Sexual misconduct will be particularly serious if the nurse, midwife or nursing associate has abused a special position of trust they hold as a registered caring professional...'

The panel was of the view that the findings in this particular case demonstrate that Mr Ramatshimbila's actions were serious, as they related to the physical and emotional abuse of a vulnerable patient and sexual abuse of junior members of staff. The panel determined that to allow Mr Ramatshimbila to continue practising would not protect the public and, in addition, would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order.

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

This will be confirmed to Mr Ramatshimbila in writing.

Interim order

As the strike-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Ramatshimbila's own interest 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 Ms Davies. She submitted that if Mr Ramatshimbila decides to appeal the outcome of this hearing, the order decided today cannot come into effect until the appeal process is over. She informed the panel that an

appeal process can take up to 18 months. She submitted that, if Mr Ramatshimbila does decide to appeal this order, the public would not be protected in the interim period. Therefore, Ms Davies submitted that an interim suspension order of 18 months is required to protect the public and uphold the public interest.

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, the public protection and public interest issues it identified and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel therefore imposed an interim suspension order for a period of 18 months to allow for an appeal process to be completed.

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

That concludes this determination.