

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

**Substantive Meeting
Thursday 5 – Monday 9 May 2022**

Virtual Meeting

Name of registrant:	Mr John Noel Davies
NMC PIN:	89B0400E
Part(s) of the register:	Registered Nurse Adult Nursing – May 1991
Relevant location:	Liverpool City
Type of case:	Misconduct
Panel members:	Nicola Jackson (Chair, Lay member) Jennifer Childs (Registrant member) Paul Leighton (Lay member)
Legal Assessor:	Ian Ashford-Thom
Hearings Coordinator:	Graeme King
Facts proved:	All charges
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The legal assessor drew the panel's attention to the Notice of Meeting bundle.

The legal assessor advised the panel that the Notice of Meeting was sent by the Nursing and Midwifery Council (NMC) to the email address held for Mr Davies on the NMC register on 1 March 2022, which the panel noted was more than 28 days before this meeting. The legal assessor advised the panel that the Notice of Meeting had also been sent by recorded delivery to the last known address for Mr Davies on 2 March 2022. The panel was therefore satisfied that Mr Davies had been served with notice of this meeting in accordance with Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004.

The panel noted that Mr Davies had been sent the evidence relating to this matter and was informed that this meeting would take place on or after 6 April 2022. It also noted that Mr Davies was asked to provide comment no later than 28 March 2022, by using the response form attached to the Notice of Meeting, if there was any information that he wished to be placed before the panel. Mr Davies did not return the response form or provide any information for the panel to consider.

The legal assessor then referred the panel to the NMC's Guidance on Dealing with Cases at Meetings and Hearings.

The panel noted that Mr Davies has not engaged with the NMC at all in relation to these regulatory proceedings, nor has he sought to provide any sort of defence to the allegations. Consequently, it considered that referring this matter to a substantive hearing would be unlikely to secure Mr Davies' engagement and would not serve any useful purpose. The panel noted that the majority of the evidence in this case comes from one witness, albeit given in a number of statements over a four-year period, however considered that this is not unusual when considering charges of this nature. It also noted comments from a colleague in a further witness statement which raised broadly similar concerns. Further, in view of Mr Davies' lack of engagement, the panel determined that there was no compelling reason for Colleague A to be called as a witness. The panel had

regard to the documentary evidence before it and determined that it had all the information necessary before it to reach a decision on this matter at a meeting.

Details of charges

That you, a registered nurse, between 7 July 2017 and 12 December 2017, whilst employed as the Home Manager of Finch Manor Care Home:

1. On one or more occasion when talking to Colleague A, used words to the effect:

- a) *'Do you like to be used and abused?'*. **(Proved)**
- b) *'I want your t-shirt lifted and you into that room to look at your tits'*. **(Proved)**
- c) *'I'm feeling horny today'*. **(Proved)**
- d) *'I've just undressed you with my eyes'*. **(Proved)**

2. On or around November 2017 in Room 52:

- a) Pushed Colleague A up against a wall/door. **(Proved)**
- b) Attempted to grope/grab Colleague A's chest/breasts. **(Proved)**
- c) Attempted to grope/grab Colleague A. **(Proved)**
- d) Attempted to Kiss Colleague A. **(Proved)**

3. Following the incident in Room 52 told Colleague A words to the effect:

- a) *'That Colleague X, The Registered Manager would shove [the incident/allegation] under the carpet as you were best friends with her'*. **(Proved)**
- b) *'That Colleague A would lose their job'*. **(Proved)**

4. Your actions at charge 3, showed a lack of integrity in that you sought to pressure a more junior colleague into silence about your conduct. **(Proved)**

5. On Unit 1 during a task where you were dressing an unknown Patient's leg:

- a) Looked down Colleague A's top, and; **(Proved)**
- b) Used words to the effect '*Oooh, what have you got down there*'. **(Proved)**

6. In Unit 2/Room 43:

- a) Grabbed Colleague A from behind/on her hips. **(Proved)**
- b) Pulled Colleague A into your waist area. **(Proved)**
- c) Gyrate against Colleague A's body. **(Proved)**
- d) In response to being asked by Colleague A, '*are you ok?*' Used words to the effect '*I am now*'. **(Proved)**

7. In Room 24:

- a) Attempted to grope/grab/feel Colleague A's breasts. **(Proved)**
- b) Attempted to grope/grab/feel Colleague A's bottom. **(Proved)**

8. In the lounge in front of one more Residents/Colleagues shouted, '*I've got a big dick!*'. **(Proved)**

9. Your actions in one or more of charges, 1a), 1b), 1c), 1d), 2a), 2b), 2c), 2d), 5a), 5b), 6a), 6b), 6c), 7a) & 7b) were sexually motivated, in that you sought sexual gratification from such contact. **(Proved)**

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

Background

Mr Davies was referred to the Nursing and Midwifery Council (NMC) by Finch Manor Care Home (the Home) on 13 December 2017. Mr Davies was employed at the Home from 7 June 2017 until his dismissal on 12 December 2017.

The referral alleged that Mr Davies engaged in inappropriate sexual behaviour towards a colleague [Colleague A] and made inappropriate comments in the presence of colleagues and residents. It is further alleged that Mr Davies threatened Colleague A that she would lose her job if she reported his behaviour to the Home's manager.

The Home investigated these allegations and dismissed Mr Davies on 12 December 2017. Colleague A was interviewed by the police about the allegations; however, the panel had no further information before it regarding the outcome of that interview.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took account of all the documentary evidence adduced in this case. It accepted the advice of the legal assessor.

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 noted that Mr Davies has not responded to any of the charges against him. It therefore considered each of the charges and made the following findings:

Charge 1a

1. On one or more occasion when talking to Colleague A, used words to the effect:

a) *'Do you like to be used and abused?'*

This charge is found proved.

In considering this charge, the panel had regard to Colleague A's written statement dated 17 August 2019, Colleague A's supplementary written statement dated 19 January 2022 and the Home's internal investigation notes dated 8 January 2018.

The panel noted that Colleague A's statement dated 17 August 2019 stated:

'When you go to work in a nursing environment, you don't expect to get hounded, but over time I was very taken aback by the incidents. John [Mr Davies] used to make comments like 'do you like to be used and abused?.'

The panel also noted that Colleague A's statement dated 19 January 2022 stated:

'At the top of page two of the written statement [Colleague A's statement dated 17 August 2019] it then goes on to state that John [Mr Davies] said to me 'do you like to be used and abused'. John did say this to me and I speak about this in both my previous statements to the NMC. I cannot recall the context of John saying this to me. However, when he said this to me, I responded with 'who do you think I am?.'

The panel had no reason to doubt either of Colleague A's statements and considered that her recollection of this incident has been consistent across a period of years and when asked to recollect it at local and regulatory level. The panel therefore considered Colleague A to have provided credible evidence in relation to this charge.

The panel also noted that the Home's internal investigation notes dated 8 January 2018, in which Colleague A stated:

'Said something else- disgusting don't want to say - like to be used and abused'.

The panel put limited weight on the Home's internal investigation notes as its author is not clear, nor is it clear who else was involved in this meeting. However, it did consider this to

add to Colleague A's credibility as a witness as these notes demonstrated her having presented a consistent version of events at local level.

The panel was satisfied, on the balance of probabilities, that Mr Davies did use words to the effect of those detailed in the charge. It therefore found charge 1a proved.

Charge 1b

1. On one or more occasion when talking to Colleague A, used words to the effect:

b) *'I want your t-shirt lifted and you into that room to look at your tits'.*

This charge is found proved.

In considering this charge, the panel had regard to Colleague A's written statement dated 17 August 2019, her supplementary written statement dated 19 January 2022 and the Home's internal investigation notes dated 8 January 2018.

The panel noted that Colleague A's statement dated 17 August 2019 stated:

'Once I had a green shirt on and he said 'I want your t-shirt lifted and you into that room to look at your tits'. I was quite horrified.

The panel also noted that Colleague A's statement dated 19 January 2022 stated:

'The statement [Colleague A's statement dated 17 August 2019] then writes about a sixth incident when I was wearing a green T shirt. I recall this incident and it happened as it is written in the local statement. I have also previously spoken about this incident in both my previous statements to the NMC. John [Mr Davies] had said 'I want your top from there to there' and gestured to illustrate what he meant. John made the comment, but he did not do anything. When he made this comment, I did not do anything but sigh and walk away. I just felt defeated.'

The panel had no reason to doubt either of Colleague A's statements and considered that her recollection of this incident has been consistent across a period of years and when asked to recollect it at local and regulatory level. The panel therefore considered Colleague A to have provided credible evidence in relation to this charge. It noted that Colleague A was able to recall how this incident made her feel some years after it took place.

The panel also noted that the Home's internal investigation notes dated 8 January 2018, in which Colleague A stated:

'Had green t-shirt on - said. I want that up there after...'

The panel put limited weight on the Home's internal investigation notes as its author is not clear, nor is it clear who else was involved in this meeting. However, it did consider this to add to Colleague A's credibility as a witness as these notes demonstrated her having presented a consistent version of events at local level.

The panel was satisfied, on the balance of probabilities, that Mr Davies did use words to the effect of those detailed in the charge. It therefore found charge 1b proved.

Charge 1c

1. On one or more occasion when talking to Colleague A, used words to the effect:

c) *'I'm feeling horny today'*.

This charge is found proved.

In considering this charge, the panel had regard to Colleague A's written statement dated 17 August 2019.

The panel noted that Colleague A's statement dated 17 August 2019 stated:

'He [Mr Davies] used to make jokes about his manhood saying things like 'I'm feeling horny today.'

While the panel noted that this incident was not mentioned in any of Colleague A's other statements, it had no reason to doubt her evidence in relation to this charge. The panel had regard to its earlier findings that Mr Davies had made inappropriate sexual comments at work to Colleague A and did not consider it manifestly incredible that he also would have used the words detailed in this charge.

The panel was satisfied, on the balance of probabilities, that Mr Davies did use words to the effect of those detailed in the charge. It therefore found charge 1c proved.

Charge 1d

1. On one or more occasion when talking to Colleague A, used words to the effect:

d) *'I've just undressed you with my eyes'*

This charge is found proved.

In considering this charge, the panel had regard to Colleague A's supplementary written statement dated 19 January 2022 and to her local statement dated 1 December 2017.

The panel noted Colleague A's local statement dated 1 December 2017 stated:

'He [Mr Davies] would look me up and down saying 'I've just undressed you with my eyes'

The panel also noted that Colleague A's written statement dated 19 January 2022 stated:

'The first alleged incident in the statement [Colleague A's local statement dated 1 December 2017] makes reference to is when John [Mr Davies] said 'let me look at you at your eyes' and 'I've just undressed you going down the corridor'. I do not remember this incident in those words. I do not recall John saying this to me.'

While the panel noted that Colleague A's recall in her January 2022 statement had diminished since her local statement in December 2017, it considered this only natural given that over four had passed since the incident. Further, it considered that Colleague A's acknowledgement of when she could not recall conversations only served to add to her credibility as a witness.

The panel considered that Colleague A was clear in her local statement in 2017 and had regard to its earlier findings that Mr Davies had made inappropriate sexual comments at work to Colleague A and did not consider it manifestly incredible that he also would have used the words detailed in this charge.

The panel was satisfied, on the balance of probabilities, that Mr Davies used words to the effect of those detailed in the charge. It therefore found charge 1d proved.

Charge 2

2. On or around November 2017 in Room 52:

- a) Pushed Colleague A up against a wall/door.
- b) Attempted to grope/grab Colleague A's chest/breasts
- c) Attempted to grope/grab Colleague A.
- d) Attempted to kiss Colleague A.

This charge is found proved in its entirety.

In considering this charge, the panel had regard to Colleague A's written statement dated 17 August 2019, Colleague A's supplementary written statements dated 18 March 2021 and 19 January 2022 respectively and Colleague A's local statement dated 1 December 2017.

The panel noted that Colleague A's local statement dated 1 December 2017 stated:

'On another occasion I was waiting for a resident to finish using the toilet. John [Mr Davies] was with me, he pushed me up against the door and tried to kiss me and grabbed my breast. I told him no, another carer tried to enter the room and he let me go.'

The panel also noted that Colleague A's statement dated 17 August 2019 stated:

'I remember once, I was assisting a resident one day in Room 52 in the afternoon, the patient needed her leg dressed. John [Mr Davies] came in the room and asked, 'what's the problem?'. The resident was on the toilet, and I went to go outside but John shut the door and got me up against the wall, he tried to grope me. He was trying to grab my chest. I put my arms in front of me so he couldn't touch me. John knew I don't want him to touch me. I never gave him any inkling that I wanted him to touch me. One of the carers tried to open the door but she couldn't get in.'

The panel also noted that Colleague A's written statement dated 18 March 2021 stated:

'At paragraph 5 of my first statement I recalled an incident with a resident's leg that needed dressing and John [Mr Davies] came in and pushed me up against the wall and tried to grab me.

[...]

I did not give John permission to put his hands on me which I push away, and I told him to get off...'

The panel also noted that Colleague A's written statement dated 19 January 2022 stated:

'... pulled me in the room tried to kiss me. Said no. This incident did happen as described and I speak about this incident in my previous statements to the NMC. However, I cannot remember exactly when exactly it happened, but it was in the same time period as the other incidents. He [Mr Davies] grabbed me and tried to pull me towards him. I told to John 'no', but he leaned forward as if to kiss me. I was not there for that, and I was trying to do my job. The incident made me feel uneasy around John.

The panel had no reason to doubt any of Colleague A's statements and considered that her recollection of this incident has been consistent across a period of over four years and when asked to recollect it at local and regulatory level. The panel therefore considered Colleague A to have provided credible evidence in relation to these charges. It noted that Colleague A could recall how Mr Davies' actions at charge 2d made her feel.

The panel was satisfied, on the balance of probabilities, that Mr Davies did act in the way detailed in charges 2a-2d. It therefore found charge 2 proved in its entirety.

Charge 3

3. Following the incident in Room 52 told Colleague A words to the effect:

- a) That *'Colleague X, [the Registered Manager] would shove [the incident/allegation] under the carpet as you were best friends with her'.*
- b) That *'Colleague A would lose their job'.*

This charge is found proved in its entirety.

In considering this charge, the panel had regard to Colleague A's written statement dated 17 August 2019, Colleague A's supplementary written statement dated 19 January 2022,

Colleagues A's local statement dated 1 December 2017 and a transcript of Colleague A's interview with the police (undated).

The panel noted that Colleagues A's local statement dated 1 December 2017 stated:

'I tried to dismiss his [Mr Davies'] actions and ignore him as he would say [Colleague X] was his best friend if you tell her she will brush it under the carpet, and you will lose your job.'

The panel also noted that Colleague A's written statement dated 17 August 2019 stated:

'John [Mr Davies] said that if I was to say anything to [Colleague X], the home manager at the time, [Colleague X] would shove it under the carpet because he was best friends with her.'

The panel also noted that Colleague A's written statement dated 19 January 2022 stated:

'The statement that mentions John [Mr Davies] being good friends with [Colleague X] and that if I told her what was happening, I would 'lose my job'. This part of the statement as written is correct. I can't remember exactly when John told me this, but he did make comments like this, and it made me feel dirty. I didn't think I could tell [Colleague X] because if I did tell her, she would not believe me or she would take John's side. This is how John made me feel and think because of the comments he made. John also made other comments that made me feel unable to speak to [Colleague X] about concerns. John would say that '[Colleague X] would brush it under the carpet as they were friends.'

The panel also noted that the transcript of Colleague A's interview with the police stated:

Interviewer – *'How many times has he said to you about, obviously, 'don't go to the manager?'. Did he just say it just once or twice, or...?'*

Colleague A – *'Twice.'*

[...]

Interviewer – *'And that was after one of the incidents?'*

Colleague A – *'Yeah...'*

The panel had no reason to doubt any of Colleague A's statements and considered that her recollection of this incident has been consistent across a period of over four years and when asked to recollect it at local and regulatory level, as well as during a police interview. The panel therefore considered Colleague A to have provided credible evidence in relation to this charge.

The panel was satisfied, on the balance of probabilities, that Mr Davies did use words to the effect of those detailed in the charges. It therefore found charge 3 proved in its entirety.

Charge 4

4. Your actions at charge 3, showed a lack of integrity in that you sought to pressure a more junior colleague into silence about your conduct.

This charge is found proved.

In considering this charge, the panel had regard to its findings at charge 3 that Mr Davies had sought to discourage Colleague A from reporting his conduct to Colleague X.

The panel had regard to Mr Davies' position at the Home and considered that, as Clinical Lead, he was in a position of power relative to Colleague A who was a Healthcare Assistant. It considered that Mr Davies had abused this position of power to prevent Colleague A reporting his conduct and the panel determined that this demonstrated a lack of integrity.

The panel noted that Colleague A, in the Home's internal investigation notes dated 8 January 2018, stated:

'I'm at bottom as a carer. He [Mr Davies] is a nurse...'

The panel also had regard to its findings at charge 3 that Mr Davies had frequently used his friendship with Colleague X as a way of pressurising Colleague A into silence. It considered that this also demonstrated an abuse of Mr Davies position of power which demonstrated a further lack of integrity.

The panel also noted that Colleague A, in her police interview, stated:

*'And plus, I was scared of, like, of what – if he'd [Mr Davies] come after me or...
You know because I've had like a bad nightmare where he's coming after me...'*

The panel considered that Mr Davies, having put Colleague A under such pressure, had a significant detrimental impact on her. It had no evidence before it to suggest that Colleague A had at any point encouraged Mr Davies' conduct.

The panel was satisfied, on the balance of probabilities, that Mr Davies did demonstrate a lack of integrity. It therefore found charge 4 proved.

Charge 5

5. On Unit 1 during a task where you were dressing an unknown patient's leg:

- a) Looked down Colleague A's top, and;
- b) Used words to the effect *'Oooh, what have you got down there'*.

This charge is found proved in its entirety.

In considering this charge, the panel had regard to Colleague A's written statement dated 17 August 2019, Colleague A's supplementary written statements dated 18 March 2021 and 19 January 2022 respectively and the Home's internal investigation notes dated 8 January 2018.

The panel noted that Colleague A's written statement dated 17 August 2019 stated:

'There was another incident when John [Mr Davies] was dressing a patient's leg in the room near the lounge at late evening after tea. I could walk you straight in there, but I can't remember the room number. I was holding the resident's leg to help, and John was looking down my top. He pulled my top away and said 'ooh what have you got down there?'. I felt so exposed. I looked at it, that he's a nurse and I should be able to go into a resident's room without a nurse doing that to me.'

The panel also noted that Colleague A's written statement dated 18 March 2021 stated:

'At paragraph 7 of my first statement I talk about another incident where I was in the lounge with John [Mr Davies] and he made a comment while looking down my top. I remember that I was working on Unit 1 at the time, and I had gone into the lounge to help with the resident's dressing. At the time, we were allowed to wear our own clothes and I remembered holding the man's leg when John made the comment. After that I had to hold the resident's leg with my left hand and had to hold my top down with my right hand.

I had to tell John to stop looking down my top and he did, and he carried on with the dressing.'

The panel also noted that Colleague A's written statement dated 19 January 2022 stated:

'The fifth incident that is written in the statement is when John [Mr Davies] looked down my top. This incident happened the way it is written in the local statement,

and I've spoken about this incident in my previous statements to the NMC. I needed to bandage the resident's leg and John was assisting me as HCAs cannot do this on their own. As I had that my hands on the resident's legs, he was looking down my top. I used one hand to hold the resident's leg, instead of using both and the other hand to cover my chest so that John was unable to look through my top.'

The panel had no reason to doubt any of Colleague A's statements and considered that her recollection of this incident has been consistent across a period of over four years and when asked to recollect it at local and regulatory level. The panel therefore considered Colleague A to have provided credible evidence in relation to these charges. It noted that Colleague A was able to recall how Mr Davies' actions made her feel.

The panel also noted that Colleague A, in the Home's internal investigation notes dated 8 January 2018, stated:

'Trying look down my top, what have you got down there. Said no, pack in, in work. Had one hand on gents' leg should have two but had hold my top with the other [sic].'

The panel put limited weight on the Home's internal investigation notes as its author is not clear, nor is it clear who else was involved in this meeting. However, it did consider this to add to Colleague A's credibility as a witness as these notes demonstrated her having presented a consistent version of events at local level.

The panel was satisfied, on the balance of probabilities, that Mr Davies did look down Colleague A's top and used words to the effect of those detailed in the charge. It therefore found charge 5 proved in its entirety.

Charge 6

6. In Unit 2/Room 43:

- a) Grabbed Colleague A from behind/on her hips.
- b) Pulled Colleague A into your waist area.
- c) Gyrate against Colleague A's body.
- d) In response to being asked by Colleague A, 'are you ok?' Used words to the effect 'I am now'.

This charge is found proved in its entirety.

In considering this charge, the panel had regard to Colleague A's written statement dated 17 August 2019, Colleague A's supplementary written statements dated 18 March 2021 and 19 January 2022 respectively, Colleague A's local statement dated 1 December 2017 and the Home's internal investigation notes dated 8 January 2018.

The panel noted that Colleague A's local statement dated 1 December 2017 stated:

'I was tidying a room and had bent forward to pick something up when John [Mr Davies] walked in. He grabbed my hips and started gyrating against me. I had asked if he was OK when he entered the room and he said, 'I am now'. I told him to stop, and he did.'

The panel also noted that Colleague A's written statement dated 17 August 2019 stated:

'There was another incident, when I was in room 43 in the morning picking something up on the floor. John [Mr Davies] grabbed me from behind by my hips. I said in a sarcastic tone 'are you okay?' he said, 'I am now'. I felt very manipulated by John. He was a total womaniser.'

The panel also noted that Colleague A's written statement dated 18 March 2021 stated:

'At paragraph 8 of my first statement, I spoke about an incident that happened in room 43. From what I can remember I was in room 43 which is on Unit 2, and I was picking up some clothes from the floor and John [Mr Davies] came into the room as

I was bending down and grabbed me by the hips. I asked if he was alright and told him to stop it, which he did.'

The panel also noted that Colleague A's written statement dated 19 January 2022 stated:

'In the statement it is written 'he came behind me, 2 hands on my hips'. This incident did happen, and I have previously spoken about this incident in my previous statements to the NMC. This was the incident when I had bent down to pick something off from the floor and John [Mr Davies] had come up behind me. I asked if he was alright, and he placed his hands on my hips. There was a gap between John and I, but his hands were on my hips for about 40 seconds. I told him to pack it in and he let go and left. After this incident, I began hiding and avoiding John as much as possible.'

The panel also had noted that Colleague A, in her police interview, stated:

Interviewer – *'What exactly happened there then, just in relation to that incident?'*

Colleague A – *'Well, I was picking stuff up in a resident's room and he must have been walking past because I didn't even see him. He must have been walking past and then when he – he walked past, because – like, I was like that, like bending, you know, to pick – and I went, 'You alright?' and then he came towards me, put his two hands on my hips and went – and pulled me towards him and went, 'I am now' and I went – I stopped him and went, 'No. No. No. Don't.' And he went, 'Okay.' And then he just got off. He just went then. And then I never spoke to him for a bit then. That's when he started again in [a resident's room]. And then in – and then in the end I just...'*

Interviewer – *'Okay, so when he's done that then, did – was there actual contact that – obviously over clothes, but he's pulled you into his –'*

Colleague A – *'Over clothes, yeah.'*

Interviewer – *'Into his waist area.'*

Colleague A – *'Yeah. Yeah.'*

Interviewer: *'Right, okay. '*

Colleague A – *'Yeah, with his two hands on my hips.'*

The panel had no reason to doubt any of Colleague A's statements and considered that her recollection of this incident has been consistent across a period of over four years and when asked to recollect it at local and regulatory level. The panel therefore considered Colleague A to have provided credible evidence in relation to these charges. It noted that Colleague A was able to recall how Mr Davies' actions made her feel.

The panel also noted that Colleague A, in the Home's internal investigation notes dated 8 January 2018, stated:

'Picking stuff up in resident room didn't see, he must walked past. Came towards me grabbed hips said no no. Stopped for a while. Pulled me into his waist area, not acceptable [sic].'

The panel put limited weight on the Home's internal investigation notes as its author is not clear, nor is it clear who else was involved in this meeting. However, it did consider this to add to Colleague A's credibility as a witness as these notes demonstrated her having presented a consistent version of events at local level.

The panel was satisfied, on the balance of probabilities, that Mr Davies did behave in the manner, and use the words, as detailed in the charge. It therefore found charge 6 proved in its entirety.

Charge 7

7. In Room 24:

- a) Attempted to grope/grab/feel Colleague A's breasts.
- b) Attempted to grope/grab/feel Colleague A's bottom.

This charge is found proved in its entirety.

In considering this charge, the panel had regard to Colleague A's supplementary written statement dated 19 January 2022 and Colleague A's local statement dated 1 December 2017.

The panel noted that Colleague A's local statement dated 1 December 2017 stated:

'On one occasion he [Mr Davies] told me Resident A wanted me in his room. He dragged me into room 24 and grabbed me. He was trying to feel my breast and bottom. I told him to get off and he did.'

The panel also noted that Colleague A's written statement dated 19 January 2022 stated:

'In the local statement, it again mentions [this incident]. John [Mr Davies] however did try to place his hands up the front of my top...'

The panel had no reason to doubt either of Colleague A's statements and considered that her recollection of this incident has been broadly consistent across a period of over four years and when asked to recollect it at local and regulatory level. The panel therefore considered Colleague A to have provided credible evidence in relation to these charges.

The panel was satisfied, on the balance of probabilities, that Mr Davies did attempt to grope/grab/feel Colleague A's bottom and breasts. It therefore found charge 7 proved in its entirety.

Charge 8

8. In the lounge in front of one more Residents/Colleagues shouted, *'I've got a big dick!'*

This charge is found proved.

In considering this charge, the panel had regard to Colleague A's written statement dated 17 August 2019, Colleague A's supplementary written statements dated 18 March 2021 and 19 January 2022 respectively and Colleague A's local statement dated 1 December 2017.

The panel noted that Colleague A's local statement dated 1 December 2017 stated:

'John [Mr Davies] would enter the resident lounge and say, 'I've got a big dick.'

The panel also noted that Colleague A's written statement dated 17 August 2019 stated:

'One day he [Mr Davies] came in the lounge, I forgot who else was there due to passage of time, but he stood by the medicine trolley and said, 'I've got a big dick'. This was in front of all the residents. He didn't just say it he shouted it. It was a long time ago, but it stuck in my head. I just left the lounge and went to the office. I couldn't believe John had said that.'

The panel also noted that Colleague A's written statement dated 18 March 2021 stated:

'There was one time where he [Mr Davies] made a comment about himself having a 'big dick' and that was something he shouted in the lounge whilst other members of staff and residents were present.'

The panel also noted that Colleague A's written statement dated 19 January 2022 stated:

'The next incident mentioned in the statement is about John [Mr Davies] shouting 'big dick'. I have talked about the incident and my previous statements to the NMC.'

The way the incident is described in the local statement is accurate. I was completely gobsmacked that John had shouted something like this, and it was not reported by anyone else.'

The panel had no reason to doubt any of Colleague A's statements and considered that her recollection of this incident has been consistent across a period of over four years and when asked to recollect it at local and regulatory level. The panel therefore considered Colleague A to have provided credible evidence in relation to this charge. It noted that Colleague A was able to recall how Mr Davies' actions made her feel.

The panel was satisfied, on the balance of probabilities, that Mr Davies did use the words detailed in the charge. It therefore found charge 8 proved.

Charge 9

9. Your actions in one or more of charges 1a), 1b), 1c), 1d), 2a), 2b), 2c), 2d), 5a), 5b), 6a), 6b), 6c), 7a) & 7b) were sexually motivated, in that you sought sexual gratification from such contact.

This charge is found proved.

In considering this charge, the panel had regard to its findings at charges 1a), 1b), 1c), 1d), 2a), 2b), 2c), 2d), 5a), 5b), 6a), 6b), 6c), 7a) & 7b), all of which have been found proved.

The panel considered that all the charges specified in this charge are of a sexual nature. Further, Mr Davies' conduct in these charges involves both unwanted verbal comments as well as unwanted physical contact and the panel considered that Mr Davies had acted in such a manner to seek sexual gratification. The panel could not identify any other explanation for Mr Davies' conduct.

The panel also had regard to its findings at charge 6d and considered that Mr Davies' comment of '*I am now*' demonstrated that the unwarranted physical contact between he and Colleague A provided him with satisfaction.

The panel was satisfied, on the balance of probabilities, that Mr Davies' conduct at all the charges specified was sexually motivated. It therefore found charge 9 proved.

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 Davies' 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 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. Firstly, 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 Davies' fitness to practise is currently impaired as a result of that misconduct.

The panel had regard to the NMC's written submissions on misconduct, which read as follows:

'We consider the following provision(s) of the Code have been breached in this case:

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 honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

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

We consider the misconduct serious because the registrant made inappropriate comments and sexually harassed Colleague A on multiple occasions. He abused his position of trust by making these inappropriate comments and unsolicited sexual contact with a junior member of staff'

The panel also had regard to the NMC's written submissions on impairment, which read as follows:

'We consider the following questions from the case of Grant can be answered in the affirmative both in respect of past conduct and future risk:

'1. Has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or

2. Has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or

3. Has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future'

We consider the registrant has displayed no insight or remorse. We take this view because he has provided no evidence of any remediation or reflection on the incidents that took place. The NMC has received no response to any of the charges.

Whilst the conduct in this case is difficult to remedy, the registrant has not provided evidence of any steps taken by him to remedy the behavioural and attitudinal concerns in this case.

We consider there is a continuing risk to the public due to the registrant's lack of insight and failure to undergo any meaningful reflection. The sexual misconduct in this case has been repeated over an extended period of time and involved a junior member of staff. The registrant abused his position of trust and showed a lack of integrity in seeking to pressure a junior colleague into silence about his conduct.

There is a high risk of repetition and significant risk of harm to the public were the registrant be allowed to practise without restriction.

We consider there is a strong public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. The registrant's conduct engages the public interest because members of the public would be extremely concerned to hear of a registered nurse sexually assaulting and making inappropriate sexual comments around residents and towards a junior staff member. The public would lose confidence in the profession and the NMC as the regulator if a finding of impairment was not made.'

Decision and reasons on misconduct

The panel accepted the advice of the legal assessor who advised it that a breach of professional duty must be serious if it is to amount to misconduct. He also referred the panel to the cases of *Roylance v GMC* (No 2) [2000] 1 A.C. 311, *Nandi v GMC* [2004] EWHC 2317 (Admin) and *CHRE v Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin)

When determining whether 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).

The panel was of the view that Mr Davies' actions did fall significantly short of the standards expected of a registered nurse, and it considered them to have amounted to several breaches of the Code. Specifically:

'1 - Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 - Treat people with kindness, respect and compassion.

1.3 - Avoid making assumptions and recognise diversity and individual choice.

1.5 - Respect and uphold people's human rights.

20 - Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 - Keep to and uphold the standards and values set out in the Code.

20.2 - Act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment.

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

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, it considered that Mr Davies' actions in the charges found proved, individually and collectively, amounted to serious misconduct.

The panel considered that Mr Davies' actions in all the charges fell far below the standards expected of a registered nurse. It had regard to its findings at charge 9 that Mr Davies' conduct was sexual in nature and considered that such conduct will almost always result in a finding of serious misconduct. Similarly, it had regard to its findings at charge 4 and considered that breaching the duty of integrity will almost always result in a finding of serious misconduct. The panel considered that Mr Davies' actions constituted serious misconduct regardless of position and experience, but also noted that Mr Davies was employed in a senior role at the Home and had been a registered nurse for over 15 years at the time of the incidents.

The panel noted that the concerns are not confined to an isolated incident, rather it constituted a pattern of appalling behaviour during Mr Davies' time at the Home. It considered that Mr Davies' practice had repeatedly fallen below the standards expected. Further, it noted that actual harm was caused to Colleague A who has consistently stated that she felt '*defeated*', '*completely gobsmacked*', '*so exposed*' and '*hounded*' by Mr Davies' behaviour. The panel considered that Mr Davies' actions were deplorable and that other members of the nursing profession and members of the public would share this view.

In all the circumstances, the panel determined that Mr Davies' actions fell significantly short of the conduct and standards expected of a registered nurse and amounted to serious misconduct.

Decision and reasons on impairment

The panel next went on to decide if, as a result of his misconduct, Mr Davies' fitness to practise as a registered nurse is currently impaired.

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

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

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

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

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

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

- b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

- d) *...'*

The panel considered limbs a - c to be engaged.

The panel determined that Mr Davies had caused harm to Colleague A, and it considered that, in all her local and regulatory statements, Colleague A has been consistent about the negative and detrimental effect Mr Davies' behaviour had on her.

The panel also noted that Mr Davies' unwanted sexual conduct led to Colleague A '*hiding and avoiding*' him and considered that this could have placed residents at the Home at risk of harm if one of the Home's employee's responsible for their care was forced to avoid another. The panel considered Mr Davies to be solely responsible for creating this risk.

The panel also had regard to its findings at charges 2a-2d, 5a, 5b, 6a-6d and 8, and considered that Mr Davies' appalling behaviour was conducted in view of residents, either in their rooms or in the lounge. It considered that Mr Davies, having exposed residents to his inappropriate behaviour, had demonstrated a complete lack of respect towards them. The panel considered that Mr Davies' actions in these charges could have caused distress and/or upset to residents.

The panel determined that Mr Davies' actions had brought the reputation of the profession into disrepute. It considered that Mr Davies' colleagues should have expected to be able to

attend work without feeling '*hounded*' and being exposed to serious sexual misconduct. Further, patients/residents and the public expect registrants to adhere to the Code and would not expect to have heard the language and witnessed the conduct as demonstrated by Mr Davies.

The panel next determined that Mr Davies had breached fundamental tenets of the nursing profession. It considered that Mr Davies had breached his duty of integrity by seeking to influence Colleague A, a junior colleague, into being silent about his conduct. The panel also considered that Mr Davies had not treated Colleague A with dignity or respect. Further, it considered that Mr Davies had failed in his duty to provide safe and effective care to those residents of the Home who witnessed his conduct.

The panel considered whether the concerns identified are capable of remediation, whether they have been remediated, and whether there is a risk of repetition of the incidents occurring at some point in the future.

The panel considered that the misconduct identified demonstrated deep-seated attitudinal concerns that would be hard to address. It had no evidence before it to suggest that Mr Davies has taken any steps to address the serious concerns raised. The panel noted that Mr Davies has not engaged with the NMC at all in relation to these regulatory proceedings and it therefore had no evidence of any remorse for his conduct at either local or regulatory level. Further, it had no evidence before it to confirm if Mr Davies has been employed in a healthcare capacity since 2018 and if/how he has strengthened and maintained his nursing practice.

The panel had no evidence of any insight from Mr Davies. It noted that there is no evidence of an apology to Colleague A at local level or of Mr Davies having acknowledged that his conduct fell below the standards expected of a registered nurse.

In all the circumstances, the panel was not satisfied that Mr Davies is currently capable of safe and effective practice. It noted that there is no evidence of Mr Davies having addressed the serious concerns being raised and the panel consequently considered there to be a real risk of the conduct being repeated. The panel considered that the attitudinal

concerns identified heightened the risk of repetition in this case. It therefore determined 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 are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 considered that a well-informed member of the public would be shocked if Mr Davies were permitted to practise unrestricted, having not demonstrated any insight, remorse or addressed the serious concerns identified. It concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made in this case. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

Having regard to all the above, the panel was satisfied that Mr Davies' fitness to practise as a registered nurse 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 Davies' name off the register. The effect of this order is that the NMC Register will show that Mr Davies' name has been removed from 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.

The panel had regard to the NMC's written submission on sanction which read as follows:

'We consider the following sanction is proportionate:

A striking-off order for the protection of the public and the wider public interest.

With regard to our sanctions guidance the following aspects have led us to this conclusion:

- the sexual misconduct raises fundamental questions about the registrant's professionalism and suitability to remain on the register.*
- this case falls at the highest end of seriousness as it involves sexual harassment and abuse of power.*
- there appears to be a deep-seated attitudinal/behavioural problem.*
- the sexual misconduct is extremely serious and very difficult to put right.*
- public confidence in the profession cannot be maintained if the registrant is not removed from the register.*

A striking-off order is therefore the only sanction which will be sufficient to protect patients, members of the public and maintain professional standards.'

Decision and reasons on sanction

Having found Mr Davies 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 considered the following to be aggravating features in this case:

- Mr Davies abused his of position of trust and power.
- Mr Davies has not demonstrated any insight into his failings.

- There was a pattern of serious misconduct that was repeated.
- There is evidence of Mr Davies having deep seated attitudinal issues
- Mr Davies threatened and intimidated Colleague A, who was more junior than him.
- Mr Davies' actions undermined Colleague A's integrity.
- Vulnerable residents witnessed Mr Davies' misconduct.

The panel could not identify any mitigating features.

The panel had regard to the NMC guidance Considering Sanctions for Serious Cases. The panel determined that Mr Davies' misconduct was extremely serious in that it involved intimidating, threatening and sexual behaviour.

The panel considered that Mr Davies had sought to influence Colleague A not to tell the truth which could have contributed to a culture that suppressed openness at the Home.

The panel also considered that Mr Davies had repeatedly subjected Colleague A to sexual harassment and that this amounted to a serious departure from the NMC's professional standards

The panel considered that Mr Davies' inappropriate behaviour towards Colleague A, which was witnessed by vulnerable residents, did not uphold their dignity and that he failed to treat Colleague A and residents with kindness, respect and compassion.

In all the circumstances, the panel determined that Mr Davies did not uphold the reputation of the profession, did not act with integrity, did not treat people fairly and repeatedly caused them upset or distress.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the charges found proved and the public protection issues identified. 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 but again determined that, due to the seriousness of the case, an order that does not restrict Mr Davies 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 Davies' 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 Mr Davies' registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. It noted that there is no evidence before the panel of any clinical concerns with Mr Davies' practice that could be managed by a conditions of practice order. Further, there are no conditions of practice which could sufficiently address the serious attitudinal concerns in this case. The panel also determined that the placing of conditions of practice on Mr Davies' 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 a suspension order may be appropriate where some of the following factors are apparent:

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

The panel considered that Mr Davies' was not a single instance of misconduct and that there was evidence of deep-seated attitudinal concerns. Further, it considered that Mr

Davies has not displayed any insight into the regulatory concerns and that there remains a risk of the misconduct being repeated.

The panel noted that, despite Colleague A repeatedly asking him to correct his behaviour and act in a professional way, Mr Davies continued to act inappropriately and disregarded those impacted by his misconduct. The panel considered that it is likely that Mr Davies' behaviour would be repeated and, consequently, he currently poses a risk to patients, residents and colleagues.

Mr Davies' misconduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in considering 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?'*

The panel also noted that the NMC's guidance on Considering Sanctions for Serious Cases for Sexual Misconduct states:

'They [the panel] will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse, midwife or nursing associate from the register.'

The panel determined that Mr Davies' misconduct raised fundamental concerns about his professionalism and considered that other practitioners would find it extremely difficult to place their confidence in a colleague who had acted in the manner Mr Davies had. Further, members of the public would find it difficult to place their trust in a nurse who had displayed sexually inappropriate and intimidating behaviour, made sexual comments to a colleague, and had not acted with integrity,

The panel considered that Mr Davies' appalling actions were sufficiently serious that they are fundamentally incompatible with him remaining on the register. It considered that to allow Mr Davies to continue practising would seriously undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all these factors and after considering 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 Mr Davies' actions had brought the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves and that nothing short of a striking off order would be sufficient.

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.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. 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 Davies' interest until the striking-off sanction takes effect. The panel accepted the advice of the legal assessor.

The panel had regard to the NMC's written submissions on an interim order which read as follows:

'If a finding is made that the registrant's fitness to practise is impaired on both public protection and public interest grounds, and that their conduct was fundamentally incompatible with continued registration, we consider an interim order of suspension should be imposed on the basis that it is necessary for the protection of the public and otherwise in 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 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 and due to the panel's finding of current impairment on public protection and public interest grounds. The panel 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 striking off order 28 days after Mr Davies is sent the decision of this hearing in writing.

This decision will be confirmed to Mr Davies in writing.

That concludes this determination.