Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
22 - 31 August 2022
14 November 2022
20 - 21 December 2022
11 – 14 April 2023

Physical and Virtual Hearing
Nursing and Midwifery Council

Name of registrant:	**Paul Frederick Winter**
NMC PIN:	15B0370E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – Level 1 (25 April 2015)
Relevant Location:	East Anglia and Netherlands
Type of case:	Misconduct
Panel members:	Judith Webb (Chair, lay member) Susan Tokley (Registrant member) Chris Thornton (Lay member)
Legal Assessor:	John Bassett
Hearings Coordinator:	Parys Lanlehin-Dobson (August and December 2022) Ruth Bass (14 November 2022) Catherine Acevedo (April 2023)
Nursing and Midwifery Council:	Represented by Amy Woolfson (August, November 2022 and April 2023), Case Presenter Represented by Matt Cassells (December 2022), Case Presenter
Mr Winter:	Present and represented by Thomas Buxton (August and November 2022) Present and represented by Wafa Shah **(**December 2022) instructed by Royal College of Nursing (RCN)

	Present and unrepresented (April 2023)
Facts proved:	Charges 1b, 3,4a ii, 4a iii, 4b i, 4b ii, 5, 8b, 8c, 8d, 9, 10a i, 10a ii, 10a iii, 10a v, 10b, 11 (in respect of 8b, 8c, 8d), 12 (in respect of 10a v), 13a, 13b, 13c, 15, 16 (in respect of 13c) & 17 (in respect of 15)
Facts not proved:	Charges 1a, 1c, 2, 4a i, 6, 7, 8a, 10a iv, 11 (in respect of 8a & 9), 12 (in respect of 10a i, 10a ii, 10a iii, 10 a iv &10b), 14, 16 (in respect of 13a &13b) & 17 (in respect of 14)
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Details of charges

That you, a registered nurse:

1. On or around 1 November 2017 in relation to patient C you:
    a) Stroked their arm and shoulders
    b) Rubbed their arm and shoulders;
    c) were too close to them.

2. On 18th July 2018 touched Patient A, without clinical justification, by:

    a) Massaging her legs below the knee but above the ankle;
    b) Running your hands up her calves;
    c) Rubbing her legs below the knee but above the ankle;

3. On 18th July 2018 did not provide Patient A with a lower body covering during treatment.

4. On 18th July 2018, without clinical justification,
    a) asked Patient A words to the effect of :
        i. what her rank was;
        ii. whether she had a boyfriend;
        iii. whether she had children;
    b) told Patient A words to the effect of :
        i. she didn't look old enough to have children.
        ii. "you'll have to buy me a drink at the bar now"

5. On a date between 18th July 2018 and 21st July 2018, said to Patient A words to the effect of, "how about a drink then?" when seeing her in the bar in the days following treatment.

6. Your actions at charges 1 and/or 2, and/or 3 above were sexually motivated in that you sought sexual gratification.

7. Your actions at charges 4 and/or 5, above were sexually motivated in that you sought to pursue a future sexual relationship and/or sought sexual gratification.

8. On 19th July 2018 touched Patient B, without clinical justification, when you:

    a) Tickled her feet;
    b) Ran your fingers up the back of her calf towards her knee in a walking motion;
    c) Placed your hands inside her clothes and touched her back;
    d) Pressed yourself against her buttocks as she picked up her clothing/footwear

9. On 19th July 2018 did not provide Patient B with a lower body covering during treatment.

10. On 19th July 2018, without clinical justification,

    a) asked Patient B words to the effect of
        i. Whether she had a husband and children;
        ii. What she did in her spare time;
        iii. Whether she had met her husband on ‘Uniform Dating’;
        iv. “are you ticklish?”;
        v. “do you want me to sort this out” whilst your hands were inside her top;
    b) said to Patient B “don’t worry, I wasn’t looking at you or anything” or words to that effect, after touching her back.

11. Your actions at charges 8 and/or 9 above were sexually motivated in that you sought sexual gratification.

12. Your actions at charge 10 above were sexually motivated in that you sought to pursue a future sexual relationship and/or sought sexual gratification.

13. Between 17th July 2018 and 20th July 2018, without clinical justification, made inappropriate comments to one or more patients during treatment including:

    a) Who they lived with;
    b) If they had boyfriends;
    c) If they were sleeping together;

14. Between the 17th July 2018 and 20th July 2018, without clinical justification, did not provide one or more patients with lower body coverings during treatments.

15. Between 17th July 2018 and 20th July 2020, without clinical justification, touched an unknown patient with an open hand on her inner thigh.

16. Your actions at charge 13 above were sexually motivated in that you sought to pursue a future sexual relationship and/or sought sexual gratification.

17. Your actions at charges 14 and/or 15 were sexually motivated in that you sought sexual gratification.

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 charges

The panel noted that the date '20th July 2020' in charge 15 should in fact be '20th July 2018'. Having drawn this to the attention of the parties, the charge on the instigation of the panel and without any objection from the parties, was amended so that the correct date was inserted.

Following your evidence, but before you were questioned by the panel, the panel heard an application made by Ms Woolfson, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charge 4a.

Ms Woolfson's application was to delete the allegation in charge 4 (a) (i) and to insert a new allegation as charge 4 (c). She accepted that on the evidence before the panel there would have been a justification for asking Patient A what her rank was as this had to be recorded in the medical note. However, she submitted that there was no clinical justification for you to tell Patient A what your rank was and that this was capable of amounting to misconduct.

In response to the application, Mr Buxton submitted that this application was made too late in the day and almost at the end of the evidence. He further submitted that it would be unfair to you to allow an amendment at such a late stage of the hearing and in any event *"in the context of the case as a whole, this is mere tinkering, as opposed to going to the substance of the allegations."*

The panel heard and 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 reminded that Rule 28 does allow for charges to be amended after hearing witness evidence and before a finding of fact is made, however it was mindful that this is discretionary. The panel considered that there would be a degree of unfairness to you by making amendments to the charges at this late stage. The panel was of the view that the amendment, as applied for, was not in the interest of justice and there was no overriding public interest that required the amendment to be allowed.

The panel refused the application to amend charge 4.

Background

You registered as a nurse on the NMC register on 25 April 2015.

In July 2018 you worked for HM Armed Forces as a Reservist Captain Queen Alexandra's Nursing Corps during the Nijmegen Marches (the Marches). In particular you treated members of the UK Armed Forces taking part in the Marches who were suffering from blisters on their feet. On 18 July 2018 you treated Patient A for blisters on her feet. On 19 July 2018 you treated Patient B, also for blisters on her feet.

On 6 August 2018 Patient B made a complaint to a senior officer about the treatment she received from you. As a result, an investigation was commenced by the Ministry of Defence Service Police (the Service Police) into two alleged offences of sexual assault contrary to the Sexual Offences Act 2003 Section 3 and an offence of Conduct Prejudicial to Good Order and Service Discipline contrary to the Armed Forces Act 2006 Section 19. In the course of that investigation, as well as taking statements from Patient B, the Service Police took statements from Patient A in which she also complained about the treatment she had received from you. During the Marches Patients A and B had been in the same unit taking part. In addition, the Service Police obtained a statement from Witness 4, who at the relevant time was a Combat Medical Technician in the Army Reserves. Witness 4 had been working in the same medical treatment centre as you during the Marches.

In the course of the Service Police investigation, you were interviewed under caution concerning the complaints that had been made by Patients A and B.

No criminal proceedings were brought against you by the Service Police, who had been advised by the Director of Service Prosecutions that they considered there was no reasonable prospect of conviction of the alleged offences. However, the matters which were the subjects of the complaints were referred by the Service Police to the NMC. This resulted in the NMC carrying out its own investigation. In the course of the NMC investigation, a request for information was sent to your then employer, the Mid-Essex

Hospital Service Trust. That request resulted in the NMC being informed of a complaint made by Patient C in 2017. Patient C's complaint therefore became part of the NMC investigation.

You engaged in the NMC investigation. That investigation resulted in the matter being referred to this panel on the charges set out above.

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 Woolfson on behalf of the NMC and by your representative Mr Buxton.

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:

- Patient A
- Patient B
- Patient C
- Witness 4

The panel also heard live evidence from Witness 5, called on your behalf, and evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

Charge 1

That you, a registered nurse:

1. On or around 1 November 2017 in relation to patient C you:

a) Stroked their arm and shoulders

b) Rubbed their arm and shoulders;

c) were too close to them.

Charge 1b is found proved and Charges 1a and 1c are not proved.

In reaching this decision, the panel considered the oral and documentary evidence provided by Patient C and by you.

These charges relate to a time on or around November 2017 when you were working as a Band 5 staff nurse in A&E at Broomfield Hospital, Chelmsford, Essex.

Patient C told the panel that she attended A&E for sudden onset shortness of breath and a severe dry cough. She was accompanied by her sister. In her witness statement Patient C said that during your treatment of her you stroked and rubbed her arm and shoulder. While she found this inappropriate and said that it made her feel uncomfortable, she said it was done in the context of you providing reassurance to her. Patient C also said that you were too close to her during treatment and that this also made her feel uncomfortable.

In cross-examination, in private session, Patient C agreed with Mr Buxton's description of the resuscitation bay being a restricted space also containing a desk and chair which a relative was sitting on, the relative was sitting between the bed and the monitors and that it was likely that you, at times, had to reach across the bed to operate the equipment on the

other side. Patient C also agreed that before she used the nebuliser you put a hand on her shoulder, told her to stay calm, to take deep breaths and breathe slowly.

In response to panel questions, Patient C said that she had been treated for a similar presentation at Broomfield Hospital previously. She did not recall specifics but suggested that when reassurance had been provided to her by doctors and nurses previously it had been done verbally and without touching.

When asked to demonstrate the contact made by you, Patient C demonstrated a rubbing motion and said *"it was just a rubbing back and forth on my shoulder and just holding on my shoulder"*.

You told the panel that you neither stroked nor rubbed the arm or shoulders of Patient C. You admitted holding Patient C's shoulder in order to provide reassurance and to help her concentrate during oxygen therapy, but you denied moving your hand. You said you were located close to Patient C and that this was necessary both clinically and in order to reach the relevant equipment.

In reaching this decision, the panel took into account the oral and documentary evidence provided by Patient C and by you.

The panel considered the evidence provided by Patient C was reliable. In particular the panel accepted that Patient C had demonstrated the manner in which you rubbed her arm and shoulder. In this respect the panel rejected your evidence that you had only placed your hand on her shoulder and did not move it. In the circumstances, the panel found charge 1b proved.

Given the panel's finding that Patient C's demonstration was reliable and the way in which she described those actions, in answer to the panel's question, it therefore followed that the panel was not satisfied that you stroked Patient C's arm and shoulders and found Charge 1a not proved.

In relation to Charge 1c, based on the evidence before it the panel formed the view that while you may have been close to Patient C, in the circumstances this would have been necessary and appropriate in providing her care and treatment. It took into account the confines of the workspace, the necessary use of equipment needed for Patient C's monitoring, and the need to reach across Patient C to provide treatment. In light of the above the panel therefore found Charge 1c not proved.

Charge 2

2. On 18th July 2018 touched Patient A, without clinical justification, by:

a) Massaging her legs below the knee but above the ankle;
b) Running your hands up her calves;
c) Rubbing her legs below the knee but above the ankle;

Charge 2 is found not proved.

For reasons that will become apparent the panel felt able to consider the three separate allegations within this charge together.

In reaching its decision, the panel had regard to the oral and documentary evidence provided by Patient A, Patient B, Witness 5 and you.

In her oral evidence, Patient A confirmed the content of her witness statement to the NMC and the content of the exhibits to that statement, subject to corrections she made to her exhibited statement to the Service Police dated 30 January 2019 (exhibit 2, page 26).

In her evidence Patient A confirmed that this was the first time she had attended the Marches and the first time she had sought treatment for blisters in the medical treatment facility. Consequently, she was unaware of precisely how her blisters would be treated.

She agreed that when you were treating her by applying tape, she was lying face down on the trestle bed.

In your evidence, as in your interview with the Service Police, you described the Dutch method of taping that you used when treating blisters. Witness 5 had confirmed the use of this method of taping. Prior to the application of the tapes, it was the practice to measure where the taping would start using your fingers. This enabled you to identify where on the calf the taping would start. You also described how it was necessary to ensure that a patient's leg was relaxed before taping started. When it did come to the application of the tapes, you cut the tape into strips and then applied them in a manner whereby they overlapped each other.

The panel was in no doubt that Patient A felt uncomfortable about the way in which you treated her blisters. Indeed, this is confirmed by the fact that on her return to her accommodation she discussed what had happened with Patient B, whom she knew had previously been treated for her blisters.

The charge alleges that the touching described in it was carried out 'without clinical justification'. The panel was unable to rule out the possibility that Patient A, by attending the medical treatment facility, gave implied consent to being touched in this manner in order to be treated. Her description of what she felt while lying face down was consistent with your and Witness 5's description of how the Dutch method of taping would be applied. In these circumstances the panel could not rule out the possibility that the manner in which you touched Patient A was clinically justified. For this reason, Charge 2 is not proved in its entirety.

Charge 3

3.On 18th July 2018 did not provide Patient A with a lower body covering during treatment.

This charge is found proved.

In reaching this decision the panel had regard to the oral and documentary evidence provided by Patient A, Witness 4, Witness 5 and you.

Factually, there is no dispute regarding this charge. You do not dispute that you did not provide Patient A with a lower body covering. Patient A did not state that she requested such a covering and Witness 5 confirmed that there was no instruction that such a covering should be provided as a matter of course.

On this basis this charge is found proved. However, the real issue relates to alleged motivation, which is dealt with under charge 6 below.

Charge 4

4. On 18th July 2018, without clinical justification,

a) asked Patient A words to the effect of :

i. what her rank was;
ii. whether she had a boyfriend;
iii. whether she had children;

b) told Patient A words to the effect of :

i. she didn't look old enough to have children.
ii. "you'll have to buy me a drink at the bar now"

Charge 4a (i) is found not proved. Charges 4a (ii and iii) and 4b (i and ii) are found proved.

In reaching this decision the panel had regard to the oral and documentary evidence provided by Patient A and your oral evidence. It also had regard to your exhibit 5, Patient B's treatment notes.

On behalf of the NMC, Ms Woolfson conceded that it would have been appropriate for you to ask Patient A for her rank as this needed to be inserted into her treatment notes. For this reason, charge 4a (i) is not proved.

With regard to charges 4a (ii and iii) and 4b (i and ii), the panel had regard to the evidence given by Patient A, Witness 5 and your evidence.

In her witness statement to the NMC Patient A said:

> *"…The Registrant also asked me whether I had a boyfriend or children and told me that I did not look old enough to have children. I thought that the Registrant's topics of conversation were unprofessional. …He finished treating my feet after a total of around 45 minutes. When he finished I got off the bed and he watched me. The Registrant asked me what I thought of the taping of my feet and I said 'yeah it's fine'. I really wanted to get out of there because it was around midnight. The Registrant then said to me 'you'll have to buy me a drink at the bar now'. I took that to mean that I should be thankful for him taping my feet and I replied by saying 'see you later'.*

The above statement was confirmed by Patient A during her oral evidence.

The panel considered that Patient A's recollection of events was clear and consistent both in her documentary evidence and during her live oral evidence.

In your oral evidence you said you have no recollection of these events, however you accepted, these were the sort of comments you might make to put patients at ease.

The allegations in charge 4 are that you made these comments to Patient A *"without clinical justification".* Notwithstanding the relaxed atmosphere during the Marches described by Witness 5, the panel does not consider such questions can ever have clinical

justification, as the questions asked had no relevance to the treatment that was being provided and went beyond mere “bedside manner”.

In these circumstances the panel found these charges proved.

Charge 5

5. On a date between 18th July 2018 and 21st July 2018, said to Patient A words to the effect of, “how about a drink then?” when seeing her in the bar in the days following treatment.

This charge is found proved.

In reaching this decision the panel again had regard to the oral and documentary evidence provided by Patient A and your oral evidence.

In her witness statement Patient A said:

> ***“*** *During my last evening at the camp I came across the Registrant again at the bar. The Registrant was with his work colleagues and we had eye contact and he made a beeline for me and said “how about a drink then?”. I was shocked and said I could not buy him a drink as my friend had my purse. I then left as he made me feel uncomfortable. He kept looking at me all night however, he did not approach me again after this.”*

Patient A’s statement to the Service Police also described this incident and she confirmed the accounts in her statements in her evidence to the panel.

In your evidence, you confirmed that you had been in the bar on the last night of the Marches. However, you have no recollection of speaking to Patient A and the clear impression that the panel got from your evidence was that this incident had not occurred.

The panel found Patient A to be clear and consistent in her evidence. This was an incident that she recalled because it stood out as unexpected and unusual. The panel can find no reason why Patient A would seek to fabricate this account. In the circumstances it accepts her evidence and rejects yours.

The panel therefore found this charge proved.

Charge 6

6. Your actions at charges 1 and/or 2, and/or 3 above were sexually motivated in that you sought sexual gratification.

This charge is found not proved.

In considering this charge the panel had regard to the NMC's guidance in relation to charges that are sexually motivated, which states:

> "*In cases where we charge sexual motivation, careful consideration should be given to the type of sexual motivation that is being alleged. For example, the motivation may have been sexual gratification or the pursuit of a future relationship. It may be advisable to specify the type of sexual motivation alleged in the charges. Where sexual motivation is charged and is then denied by the nurse, midwife or nursing associate at a hearing, they must be given a clear opportunity to respond to the allegation of sexual motivation in cross-examination. In drafting charges relating to sexualised language and behaviour, careful thought will need to be given to the motivation for the behaviour, particularly when such behaviour occurs in the workplace or is connected to the professional's role, such as sexual behaviour towards a colleague or a current or former patient."*

The panel also had regard to the advice of the legal assessor regarding the definition of sexual assault in the Sexual Offences Act 2003, Section 78, which states:

> *"… touching … is sexual if a reasonable person would consider that –*
> *"(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or*
> *"(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual."*

In reaching this decision the panel considered all the evidence it used in making its decision on charges 1, 2 and 3 above.

In relation to Charge 1b, that the panel found proved, in the light of Patient C's acceptance that it was likely that you had rubbed her arm and shoulder in order to reassure her, the panel is unable to find that you were sexually motivated in doing so.

In light of the panel's finding on charge 2, the alleged issue of sexual motivation does not arise for consideration.

With regard to charge 3, in the absence of a specific instruction that lower body coverings should be provided to patients, such as Patient A, and the absence of a request by Patient A for such a covering, the panel is unable to infer your action was sexually motivated.

Charge 7

7. Your actions at charges 4 and/or 5, above were sexually motivated in that you sought to pursue a future sexual relationship and/or sought sexual gratification.

This charge is found not proved

In reaching this decision the panel had regard to the evidence used in making its decision on charges 4a (ii and iii), 4b (i and ii) and 5. It also took into account the NMC guidance relating to sexual misconduct set out above.

The panel has already stated that there was no clinical justification for the questions and comments it has found proved under charge 4. It considers those questions and comments and also what the panel has found proved in respect of charge 5, to be overfamiliar and unprofessional. However, the panel is unable to infer that there was a sexual motivation for them.

The panel therefore found this charge not proved.

Charge 8

8. On 19th July 2018 touched Patient B, without clinical justification, when you:

a) Tickled her feet;
b) Ran your fingers up the back of her calf towards her knee in a walking motion;
c) Placed your hands inside her clothes and touched her back;
d) Pressed yourself against her buttocks as she picked up her clothing/footwear

Charge 8a) is found not proved and 8b), 8c) and 8d) are found proved.

In reaching this decision the panel had regard to oral and documentary evidence provided by Patient B, Patient A and Witness 4.

In relation to charge 8 a) the panel had regard to the oral evidence provided by you and Patient B. Whilst the panel considered that Patient B did her best to assist the panel it was not clear as to her position on whether you had intentionally tickled her feet or whether it was a natural reaction to having the soles of her feet touched, which is considered a sensitive area to some.

The panel therefore did not find charge 8a) proved.

In relation to charge 8b, in her witness statement Patient B said:

> *"The Registrant then ran his fingers up the back of my calf toward my knee in a walking motion by walking his index and middle fingers from the back of my right Achilles up to the back of my right knee. This was a moderate pressured walking motion, it was fairly fast up to my knee. My leg was bare as I wore shorts. The Registrant did not say anything whilst he conducted this action and the incident lasted a couple of seconds. The Registrant did not ask permission to do this action or say anything prior to this incident. I ignored it and did not say a word. I felt awkward as well as vulnerable due to the position I was laying in. Neither of us were talking at this point in time."*

Patient B gave a similar account in her statement to the Service Police and confirmed her account in her evidence to the panel.

In your evidence to the panel, you had no specific recollection of treating Patient B. You did have a recollection that one of the patients whose feet you treated also had a back injury and therefore this may have been Patient B. In treating Patient B's feet, you would have adopted the same procedure described above, namely the Dutch method of taping. In the circumstances you would have not touched Patient B's leg any higher than her calf.

The panel considered that Patient B was clear and consistent in her account. It was Patient B who complained to a senior officer about your conduct having discussed it first with her husband. This allegation was part of her complaint which was not lightly made.

During the hearing, it was suggested that Patient B and Patient A may have either colluded with each other or at least Patient B's account may have been influenced by Patient A's

account and vice versa. The panel does not consider that this suggestion has any merit. It considered both Patient A and Patient B to be credible and found no reason to think that the accounts that they gave were anything other than honest recollections of what had occurred.

The panel accept the account given by Patient B and finds there was no clinical justification for you to run your fingers up the back of her calf to the back of her knee.

The panel therefore finds charge 8b proved.

In relation to charges 8c and 8d, in her witness statement Patient B gave the following account:

“The Registrant continued treating my heels for around 30 - 40 minutes and then told me that the treatment was finished and I got off the table. I stood up in between the 2 trestle tables and began collecting my personal belongings (keys, phone and possibly a drink) I put them on the bed and put my shoes on. At this point the Registrant had gone to the clinical waste bin to dispose of the gloves and dressing wrapper.

After I put my shoes on I began gathering my belongings from the bed which involved me bending over slightly and the Registrant came over and placed himself behind me … and pressed his body against mine. He then slid his hands up my back underneath my clothing. I was extremely nervous as I was not wearing a bra at the time. I was unable to move as I was pinned in between the Registrant and the trestle table. This incident lasted between 5-7 seconds. The Registrant then said 'Do you want me to sort this out?' whilst his hands were still on my skin. I froze when he did this and I felt helpless and could not move. I felt intimidated and I embarrassed. I had no idea what he was referring to, and therefore gave no consent for him to slide his hands up my back nor did he ask me if he could do so. I

said no. He explained I had a Bergen rash, and asked if I wanted him to sort it out - which I declined as I had no rash on my back. He then went on to say 'but it's not that bad'. I replied 'no' to his request to 'sort out my Bergen rash' whilst still remaining pinned to the trestle table. ….whilst his hands were still on my skin. I froze when he did this and I felt helpless and could not move. As I had replied with no, the Registrant stepped aside and then said 'don't worry I wasn't looking at you or anything'. When he removed his hands from underneath my clothing, he brushed my right cheek buttock with his hand. During this incident the medic looked over at me with an expression of concern on his face. I believe he witnessed this incident."

Patient B gave a similar account in her Service Police Statement and confirmed her accounts in her evidence to the panel.

The panel noted that in her account, Patient B related that you told her she had a "Bergen rash". Patient B told the panel she had no recollection of having such a rash or of having a problem caused by her Bergen (rucksack).

In your evidence you stated, you had no specific recollection of seeing Patient B with a Bergen rash on her back. In your interview with the Service Police, you said that you *"probably did see quite a few backs that, oh do you want us to help you with that"*. In these circumstances the panel is satisfied, on the balance of probabilities that you did suggest to Patient B that she had a Bergen rash on her back when in fact she did not.

The panel has noted that in Patient B's treatment card, which is your exhibit 5, there is a reference to her having a past medical history of undergoing physiotherapy in the last three months, but there is no reference to her having a Bergen rash and declining to be treated for it. You explained that as Patient B had declined treatment, it was sufficient for it to be covered by the entry "advice given". The panel regarded this explanation as disingenuous.

Patient B was entirely credible in her account. The fact that she made no immediate complaint was understandable given the circumstances in which she found herself. The panel accepts her evidence as to what happened when she describes how you pressed yourself against her buttocks and placed your hands inside her clothes. It follows that it rejects your account that nothing of the sort had taken place.

The panel recognises that this incident would have occurred in a treatment room where a number of other individuals were present. It was a brief incident and accordingly the panel rejects the suggestion that it could not have taken place.

Plainly, there could be no clinical justification for your conduct and therefore charge 8c and 8d are found proved.

Charge 9

9. On 19th July 2018 did not provide Patient B with a lower body covering during treatment.

This charge is found proved.

In reaching this decision the panel had regard to the oral and documentary evidence provided by Patient B, Witness 4, Witness 5 and you.

Factually, there is no dispute regarding this charge. You do not dispute that you did not provide Patient B with a lower body covering. Patient B did not state that she requested such a covering and Witness 5 confirmed that there was no instruction that such a covering should be provided as a matter of course.

On this basis this charge is found proved. However, the real issue relates to alleged motivation, which is dealt with under charge 11 below.

Charge 10

10. On 19th July 2018, without clinical justification,

a) asked Patient B words to the effect of

i. Whether she had a husband and children;

ii. What she did in her spare time;

iii. Whether she had met her husband on 'Uniform Dating';

iv. "are you ticklish?";

v. "do you want me to sort this out" whilst your hands were inside her top;

b) said to Patient B "don't worry, I wasn't looking at you or anything" or words to that effect, after touching her back.

Charges 10a) i, ii,iii and v and 10b) are found proved and Charge 10a) iv is found not proved.

In reaching this decision the panel had regard to the oral and documentary evidence provided by Patient B and the oral evidence of you and Witness 5.

With regard to charges 10a) i, ii and iii, in her statement Patient B said:

> *"The Registrant began asking me several questions about my personal life. These included whether I had a husband and children and what I did in my spare time. I told the Registrant that my husband was serving in the Army and he asked whether we met on uniform dating."*

The above statement was confirmed by Patient B during her oral evidence. She also confirmed the similar account she had given in her statement to the Service Police.

The panel considered that Patient B's recollection of events was clear and consistent both in her documentary evidence and during her live oral evidence.

In your oral evidence you said you have no recollection of these events, however you accepted, that there would have been conversation between yourself and Patient B in an attempt by you *"to pass the time of treatment in a hopefully more comfortable way, than in total silence*."

The allegations in these charges are that you made these comments to Patient B *"without clinical justification".* Notwithstanding the relaxed atmosphere during the Marches described by Witness 5, the panel does not consider such questions can ever have clinical justification, as the questions asked had no relevance to the treatment that was being provided and went beyond mere "bedside manner".

In these circumstances the panel found these charges proved.

In relation to charge 10a iv, the panel accept that there would have been a reasonable clinical justification for asking "are you ticklish?" because you were about to treat Patient B's feet. In the circumstances charge 10a iv is not proved.

With regard to charge 10a v, the panel has found that you did in fact place your hands inside Patient B's top. It has rejected your account that you may have been asking Patient B whether she wanted you to treat a Bergen rash. Your evidence infers an acceptance by you that you may have said these words or something similar as is alleged by Patient B. Given the panel's finding that when you placed your hands inside Patient B's top it was not to treat a Bergen rash, it follows that there was no clinical justification for you asking this question. Indeed, the inference must be that you were being suggestive in posing it.

With regard to charge 10b, the panel accepts, as Patient B stated in both her witness statement to the NMC and her statement to the Service Police, and confirmed in her evidence to the panel, that you did say *"don't worry, I wasn't looking at you or anything"* or words to that effect after you had touched her back. The panel concludes that you made this remark on realising Patient B's reaction to being touched. It was a clumsy attempt to

excuse what you had done and deflect from it. As such there was no clinical justification for the remark and therefore charge 10b is proved.

Charge 11

11. Your actions at charges 8 and/or 9 above were sexually motivated in that you sought sexual gratification.

This charge is found proved in respect of charge 8b, c and d. This charge is not proved in respect of charge 8a and charge 9.

In reaching this decision the panel had regard to the evidence it used in charges 8 and 9. It also considered the NMC guidance on sexually motivated charges already referred to above.

In respect of charge 8b, in the absence of any clinical justification in the context of this case for you running your fingers beyond Patient B's calf, the only reasonable explanation for your action is that it was sexually motivated.

In respect of charges 8c and 8d, the panel determined that you placed your hands under Patient B's clothes and pressed yourself against her buttocks without clinical justification.

By reference to the Sexual Offences Act 2003 section 78, by their nature, such actions may be sexual and in the circumstances of this case, the panel was satisfied that they were sexual. The panel considered that there is no reasonable explanation for placing your hands inside a patient's clothes and on their back and pressing yourself against their buttocks, other than it being sexually motivated. The panel considered that the statement you made after touching Patient B's back *"don't worry, I wasn't looking at you or anything"* or words to that effect, was made in order to cover up and detract from the severity of what you had done. The panel formed the view that your actions were sexually motivated and therefore found this charge proved.

In light of the panel's finding on charge 8a, the alleged issue of sexual motivation does not arise for consideration.

With regard to charge 9, in the absence of a specific instruction that lower coverings should be provided to patients, such as Patient B, and the absence of a request by Patient B, for such a covering, the panel is unable to infer your action was sexually motivated as alleged.

Charge 12

12. Your actions at charge 10 above were sexually motivated in that you sought to pursue a future sexual relationship and/or sought sexual gratification

This charge is found proved in relation to charge 10a v. The charge is found not proved in relation to charge 10a i, ii, iii and iv and charge 10 b.

In reaching this decision the panel considered that whilst the questions you had asked Patient B as set out in charges 10a i, ii and iii were inappropriate and overfamiliar, the panel is unable to infer that these question were asked for your own sexual gratification or in the pursuit of a future sexual relationship.

In light of the panel's finding on charge 10a iv, the alleged issue of sexual motivation does not arise for consideration.

The panel also considered that your conduct in charge 10 b) was not sexually motivated in that it was an attempt to 'cover up' the sexually motivated act you had just done.

The panel having found that you placing your hands inside Patient B's clothes, touching her back was without clinical justification and was for your sexual gratification, it considered that any questioning or statement made by you at the same time would also be

considered sexually motivated in seeking sexual gratification rather than in pursuit of a future sexual relationship. On this basis the panel found this charge proved in relation to 10a v.

Charge 13

13. Between 17th July 2018 and 20th July 2018, without clinical justification, made inappropriate comments to one or more patients during treatment including:

a) Who they lived with;
b) If they had boyfriends;
c) If they were sleeping together;

This charge is found proved

In reaching this decision the panel had regard to the oral and documentary evidence provided by Witness 4 and your evidence.

In his witness statement, Witness 4 said:

> *"During our time at the Marches, I heard the Registrant speaking inappropriately to at least six young female adult patients. I do not know the names of these patients and I cannot recall the exact dates on which each of the conversations occurred. I heard the Registrant asking the patients who they lived with, if they had boyfriends and if they were sleeping together. I cannot remember exactly how the patients replied but some had answered yes, others no and I did not hear replies of others but I remember that some of them looked very uncomfortable answering these questions."*

This was confirmed by Witness 4 during his oral evidence. Witness 4 had given a similar account in his statement to the Service Police. It is correct as pointed out by Mr Buxton on

your behalf that Witness 4 did not state in this statement that you asked patients if they were sleeping with their boyfriends. The panel does not regard this “omission” as casting doubt on Witness 4’s reliability. Asking a patient if they were living with a boyfriend impliedly involves asking if they are sleeping together. The panel regarded Witness 4 as consistent and credible.

In your evidence, you accepted that the questions referred to in charges 13 a and b were the sort of questions you may have asked to build a rapport with patients. Pressed by the panel you accepted that asking a female patient if she was sleeping with her boyfriend, was *“never going to be clinically justified”* in this context. In this respect the panel considered you were evasive in answering questions and only agreed the question was not clinically justified when you had no option but to do so.

Witness 4 told the panel that you asked such questions of at least six female patients. The panel can find no reason why Witness 4 should fabricate or exaggerate this evidence. It is clear to the panel that Witness 4 is not simply giving an account of what occurred between you and Patients A and B. Indeed, when taken with the evidence of Patients A and B, Witness 4’s evidence demonstrates a pattern of behaviour adopted by you when treating female patients at the Marches. Furthermore, the panel is satisfied that there can be no realistic suggestion that Witness 4 has in any way colluded with Patients A and B to fabricate allegations of misconduct against you. The panel find Witness 4’s evidence to be compelling, in particular his comment in his statement to the Service Police that you *“would take a very different approach when [you were] treating young girls compared to men or older women”*.

In all the circumstances the panel is satisfied that all three elements of charge 13 are proved on the balance of probabilities.

Charge 14

14. Between the 17th July 2018 and 20th July 2018, without clinical justification, did not provide one or more patients with lower body coverings during treatments.

This charge is found not proved.

The panel has noted that in contrast to charges 3 and 9 this charge includes the words *"without clinical justification".* The panel regards the inclusion of these words suggests that you were under a duty to provide patients lower body coverings during their treatment.

For the reasons set out in relation to charges 3 and 9 the panel does not regard you as having been under any such duty. It logically follows that this charge is not proved.

Charge 15

15. Between 17th July 2018 and 20th July 2018, without clinical justification, touched an unknown patient with an open hand on her inner thigh.

This charge is found proved.

In reaching this decision the panel had regard to the oral and documentary evidence provided by Witness 4 and you.

In his witness statement, Witness 4 stated:

"*On one occasion, I cannot recall the exact date, I saw the Registrant treating a young female patient who had heat rash·. I do not know the name of the patient. The heat rash was on the patient's lower leg and on her inner thigh and one leg was worse than the other. It was very obvious to me that it was heat rash and the rash was consistent on the bottom of the legs and the inner thighs. The Registrant used the palm to touch the rash on the lower legs to check the heat of the skin. This is a normal course of action. From this test, the Registrant should have been clear that the rash*

was a heat rash and that, as the rash on the thigh looked the same as the rash on the lower leg, the rash on the thigh was also heat rash. Therefore, the Registrant would not have needed to touch the thigh at all"

You told the panel that during the Marches you had never treated anyone for heat rash and you strongly denied touching anyone on the thigh. You agreed with Witness 4 that if it was clear that a patient was suffering from heat rash below the knee as well as above the knee, there would be no need to physically touch the patient above the knee.

The panel did not consider your evidence to be credible.

The panel accepted the account put forward by Witness 4. Not only was he consistent both in his witness statement and his oral evidence, his evidence was consistent with the account he had given the Service Police, just four months after the Marches. That account was detailed and clearly displayed the concerns that Witness 4 had about the manner in which you treated female patients. There can be no question about Witness 4's motivation in giving this account, given that he did not volunteer it but readily gave it when contacted by the Service Police. The panel consider that if Witness 4 had for some reason wished to fabricate such allegations against you, he would have volunteered such "evidence" at a much earlier stage. The panel determined that on the balance of probabilities it was more likely than not, that you did touch an unknown patient with an open hand on her inner thigh. The panel therefore found this charge proved.

Charge 16

16.Your actions at charge 13 above were sexually motivated in that you sought to pursue a future sexual relationship and/or sought sexual gratification.

In relation to charge 13c this allegation is found proved. In relation to charges 13 a and b, the allegations are found not proved.

In reaching this decision the panel considered that whilst the questions you had asked one or more patients, as set out in charges 13 a and b, were inappropriate and overfamiliar, the panel is unable to infer that these questions were asked for your own sexual gratification or in the pursuit of a future sexual relationship.

In respect of charge 13 c the panel considered that this question was sexually motivated in that you were enquiring about a patient's sexual status without clinical justification. The panel formed the view that there was no reason to ask a young female patient such a question, other than to seek to pursue a future sexual relationship, namely a casual sexual encounter while at the Marches. The panel therefore found this aspect of the charge proved.

Charge 17

17. Your actions at charges 14 and/or 15 were sexually motivated in that you sought sexual gratification.

This charge is found proved in respect of charge 15 but is not proved in respect of charge 14.

In light of the panel's finding on charge 14, the alleged issue of sexual motivation does not arise for consideration.

In reaching its decision in respect of charge 15 the panel had regard to the evidence it used in making its decision on that charge. It also had regard to the NMC guidance on sexually motivated charges and the Sexual Offences Act 2003 section 78.

In respect of charge 15 the panel considered that your action in placing an open palm on a young female patient's inner thigh, whilst they were lying face down, as described by Witness 4 in his statement to the Service Police was sexually motivated. It determined that there was no other reason to do so, other than for your own sexual gratification. The panel is satisfied that if there had been no sexual motivation in your action and it had been

necessary to touch the patient above the knee, you would have examined her using the back of your hand, having first obtained her consent to your doing so. The panel therefore found this aspect of the charge proved.

Interim order

As there are charges found proven in this case and this hearing will adjourn prior to the panel making its decision on your fitness to practise, the panel has considered whether an interim order is required. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the hearing is resumed at a later date. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Cassells. He submitted that an interim order is necessary but that the NMC is neutral as to what type of order should be made. Mr Cassells reminded the panel that a hearing was held in April 2021 to decide whether an interim order was necessary prior to the substantive proceedings. That panel determined that an order was not necessary given the length of time (3 years) since July 2018 that you had been working as a registered nurse without any concerns raised and the positive references provided on your behalf.

Mr Cassells submitted that the NMC accept that this panel is in a different position as it now must take into account the facts found proved and if they pose a risk to the public. Mr Cassells submitted that this panel have found that some of the charges found proved involve sexual assault of a patient. He submitted that given the seriousness of the proven charges public protection issues arise and the public interest would be engaged in this matter. He submitted that taking these into account, restriction on your clinical practice would be appropriate in the circumstances.

The panel also took into account the submissions of Ms Shah, who on your behalf submitted that an interim order is not necessary at this stage. She told this panel that the April 2021 panel had decided an order was not necessary and that panel would have taken into account the possibility of all the charges being found proved at the substantive hearing. She said that the panel at this stage have not been provided information about your level of insight and remediation. Further, she submitted that there have not been any concerns raised since the allegations were made and she drew the panel's attention to two recent positive references made on your behalf. Ms Shah asked the panel to take into account the adverse impact any restriction on your practice would have on you.

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 in reaching the decision to impose an interim order.

Given the seriousness of the charges found proved, the panel was unable to rule out the risk of repetition of your behaviour. In the circumstances the panel decided an interim order was necessary for the protection of the public.

Furthermore, the panel considered that a reasonable member of the public would be concerned to learn that you were allowed to practise unrestricted given the serious charges that have been found proved. Serious damage would be caused to the reputation of the profession and to the NMC as regulator if an interim order were not imposed.

The panel first considered whether an interim conditions of practice order would be appropriate in your case.

Having carefully considered all the relevant circumstances, including the fact that you have had no restrictions placed on your practice until this date and the potential impact on you, the panel decided that there were workable conditions that could be formulated that

would protect the public from a risk of harm and address the public interest in this case. As such it has determined that the following conditions are proportionate and appropriate:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must restrict your practice to your current employer, Imperial College Healthcare NHS Trust.

2. You must not carry out any work which requires you to provide clinical care to individual patients, either directly or indirectly.

3. You must not work in a clinical area that would bring you into contact with patients.

4. You must keep the NMC informed about anywhere you are working by:
   a) Telling your case officer within seven days of accepting or leaving any employment.
   b) Giving your case officer your employer's contact details.

5. You must keep us informed about anywhere you are studying by:
   a) Telling your case officer within seven days of accepting any course of study.
   b) Giving your case officer the name and contact details of the organisation offering that course of study.

6. You must immediately give a copy of these conditions to:

a) Any organisation or person you work for.
b) Any agency you apply to or are registered with for work.
c) Any employers you apply to for work (at the time of application).
d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity

7. You must tell your case officer, within seven days of your becoming aware of:
   a) Any clinical incident you are involved in.
   b) Any investigation started against you.
   c) Any disciplinary proceedings taken against you.

8. You must allow your case officer to share, as necessary, details about your compliance with these conditions with:
   a) Any current or future employer.
   b) Any educational establishment.
   c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The panel decided to make this interim order for a period of 18 months to allow for the completion of the resuming hearing on a future date.

Unless your case has already been concluded, this interim order must be reviewed before the end of the next six months and every six months thereafter. Additionally, you or the

NMC may ask for the interim order to be reviewed if any new evidence becomes available that may be relevant to the interim order.

At any review the reviewing panel may revoke the interim order or any condition of it, it may confirm the interim order, or vary any condition of it, or it may replace the interim conditions of practice order with an interim suspension order.

That concludes this determination.

Hearing resumed on 11 April 2023

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

Ms Woolfson made a request that parts of the hearing be held in private on the basis that proper exploration of your case may involve reference to your health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You did not oppose the application.

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

Having heard that there may be reference to your health, the panel determined to hold those parts of the hearing in private in order to maintain your privacy.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your

fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's 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, your 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 Woolfson invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and identified the specific, relevant standards where the NMC say your actions breached the Code and amounted to misconduct.

Ms Woolfson submitted that in respect of charge 1b, the panel has not found your conduct to be sexually motivated but it would nonetheless be open to it to make a finding of misconduct as Patient C found your behaviour inappropriate and it made her feel

uncomfortable. She submitted that your behaviour was in breach of section 20.5 of the Code.

In respect of charges 3 and 9, Ms Woolfson submitted that the panel has not found that your conduct was sexually motivated. She submitted that the panel accepted Witness 5's evidence that there was no specific instruction to provide lower body coverings and it noted that there was no specific request from Patients A or B for a lower body covering. She submitted that it would nonetheless be open to the panel to make findings of misconduct as, in accordance with section 1.1 of the Code, you have an obligation to treat people with kindness, respect, and compassion.

In respect of charges 4 and 5, 10 (save for 10av), Ms Woolfson submitted that the panel did not find sexual motivation but the panel found your comments to have no clinical justification, and to be overfamiliar and unprofessional. She submitted that your behaviour was completely inappropriate and was in breach of section 20.6 of the Code which required you to stay objective and to have clear professional boundaries at all times. It was conduct that fellow professionals would consider deplorable and amounted to misconduct.

In respect of charge 8, Ms Woolfson submitted that these are the most serious findings which involved sexual motivation and are plainly misconduct. She reminded the panel of the relevant evidence of Patient B. She submitted that your behaviour was in breach of section 20.6 of the Code and section 20.5 of the Code which requires you to treat people in a way that does not take advantage of their vulnerability or cause them upset or distress. Ms Woolfson further submitted that you were also in breach of section 4.2 that required you to ensure you get properly informed consent and document it before carrying out any action.

In relation to charge 10a v, Ms Woolfson submitted that the panel found your comment was sexually motivated and amounted to misconduct.

In respect of charge 13, Ms Woolfson submitted that all comments were found not to be clinically justified and related to multiple young female patients. In respect of charge 13(c) the panel had found that asking if patients were sleeping with a boyfriend was sexually motivated. ~~and~~ She submitted that you were in breach of section 20.2 of the Code by treating young female patients differently to older female patients and male patients, and, therefore, had not treated them fairly and without discrimination. In addition, you were in breach of section 20.6 of the Code. Ms Woolfson submitted that, as such, your behaviour amounted to misconduct.

In respect of charge 15, Ms Woolfson submitted that the panel found your conduct to be sexually motivated and clearly amounted to misconduct.

Ms Woolfson 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. She referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and submitted that the first three limbs of Dame Janet Smith's "test" were engaged in your case.

Ms Woolfson submitted that the charges found proven relate to multiple patients, although over a short period of time, and this increased the risk of repetition. She submitted that medical professionals have access to patients at vulnerable times, and to parts of their bodies where they would not normally expect to be touched by a stranger. This calls for the highest standards of propriety. These standards apply in any medical context, even in the relaxed context of the Marches.

Ms Woolfson submitted that there is limited evidence of insight and remediation. She submitted that these are serious charges, but you believe the charges are at the lower end of the spectrum of sexual misconduct. She submitted that the evidence of courses you

have undertaken and the references you have provided all predate the panel's findings of fact.

Ms Wolfson submitted that you have not demonstrated any real understanding of why you behaved in a sexually motivated way towards female patients, beyond observing that it was an unusual environment in which to be providing medical care. She submitted that sexually motivated conduct is inherently difficult to remediate, even when there is insight. She submitted that the risk of repetition is high and your fitness to practise is currently impaired on the grounds of public protection and in the wider public interest.

Before you made your submissions, the panel took time to ensure you were fully aware of the decision or decisions it would be making at this stage of the hearing. You were also reminded that you could choose to give evidence on oath or under affirmation, in which case you might be cross-examined by Ms Woolfson, or you could choose to make oral submissions only.

In your submissions, you referred the panel to the bundle of documents you submitted for this stage of proceedings and which, at your request, it had read in detail before the resumption of the hearing.

You submitted that the risk of repetition is low, and you have a real understanding into your conduct, and you have shown clear insight into your conduct. You submitted that a significant amount of time has passed since these incidents, and you have bettered yourself in innumerable ways. You said you understand the seriousness of your conduct and you have tried to change your practice going forward. You denied any of your conduct had been sexually motivated but recognised how it might be perceived as such and the potential effect it could have had on the patients you treated. You referred the panel to the positive character references you provided.

You said you believe that you have done your best to continue in the profession and you have shown that you have developed as a nurse. You said you wish to progress further if you are allowed to in the future.

You told the panel you had resigned your commission in the Army and, therefore, would never again be practising in the relaxed atmosphere there had been at the time of the Marches. You had also resigned from your present employment and your immediate plan, if successful in your application, was to work in the ambulance service. This would also reduce the direct, personal contact you would have with patients. Nursing was a vocation for you and you wished to continue in it.

You told the panel that you have been affected by these proceedings and if you really were the character, you have been made out to be, they would not have affected you this way. You said you have suffered personally in the years since the allegations were brought and the findings made by the panel.

You identified two of the training courses referred to in your bundle that had in fact been completed after the panel had reached its findings of fact.

The panel accepted the advice of the legal assessor.

The panel wish to record that it has carefully considered all of the documents in your bundle together with your oral submissions. Recognising that you are unrepresented at this stage of the hearing, in fairness to you, it has attached the same weight to your oral submissions as it would have done had you given evidence on oath or under affirmation.

Decision and reasons on misconduct

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

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

*"**1.1** treat people with kindness, respect and compassion*

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

***5.1** respect a person's right to privacy in all aspects of their care*

***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"*

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

In respect of charge 1b, the panel took into account its finding that your conduct at this charge was not sexually motivated. The panel accepted the evidence of Patient C that your behaviour was meant to provide reassurance. The panel considered that, taken on its own, your conduct at charge 1b was not so serious as to amount to misconduct.

In respect of charges 3 and 9, the panel took into account its finding that your conduct at this charge was not sexually motivated. The panel noted it had accepted Witness 5's evidence that there was no specific instruction to provide lower body coverings. The panel also noted that there were no specific requests from Patients A or B for a lower body covering. The panel considered that your conduct at charges 3 and 9 was not so serious as to amount to misconduct.

In respect of charges 4a.ii, 4a.iii, 4b.i, 4b.ii, 5 and 10a.i, 10a.ii, 10a.iii and 10b the panel took into account its finding that your conduct at these charges was not sexually motivated. However, it noted that it did find that your comments had no clinical

justification, were over familiar and unprofessional. The panel considered that the patients involved would have felt uncomfortable by your comments and it was of the view that fellow professionals would find your behaviour deplorable. The panel determined that you had demonstrated a pattern of behaviour and a repeated use of inappropriate language over a number of days towards young female patients. The panel therefore determined that your actions were in breach of sections 1.1, 5.1 20.5 and 20.6 of the Code. Furthermore, the breaches were serious and amounted to misconduct.

Given it had found that your conduct In respect of charge 8b c and d was sexually motivated, the Panel considered they should be considered together with your conduct proved in charge 11. It noted the detailed account of Patient B and the effect of your actions on her as set out in her witness statement to the NMC and in her Victim Impact statement to the Service Police. The panel considered that your sexually motivated behaviour was in breach of sections 1.1, 4.2, 5.1,20.5 and 20.6 of the Code. Furthermore, the breaches were so serious that they amounted to misconduct.

Given it had found that your proved conduct in respect of charge 10a)v was sexually motivated, the panel considered they should be considered together with your conduct proved in charge 12. It noted the detailed account of Patient B and the effect of your actions on her as set out in her witness statement to the NMC and in her Victim Impact statement to the Service Police. The panel considered that your sexually motivated behaviour was in breach of sections 1.1, 4.2, 5.1, 20.5 and 20.6 of the Code. Furthermore, the breaches were so serious that they amounted to misconduct.

In respect of charges 13a and b, the panel took into account its finding that your conduct at these charges was not sexually motivated. However, it noted that it did find that your comments had no clinical justification, were over familiar and unprofessional. The panel considered that the patients involved would have felt uncomfortable by your comments and it was of the view that fellow professionals would find your behaviour deplorable. As already stated, the panel has determined that you demonstrated a pattern of behaviour and a repeated use of inappropriate language over a number of days towards young

female patients. The panel therefore determined that your actions were in breach of sections 1.1, 5.1, 20.2, 20.5 and 20.6 of the Code. Furthermore, the breaches were serious and amounted to misconduct. The panel therefore determined that your behaviour at charge 13a and b was serious and amounted to misconduct.

Given it had found that your conduct in respect of charge 13c was sexually motivated, the panel determined it should be considered together with your conduct proved in charge 16. The panel determined that your sexually motivated behaviour was in breach of sections 1.1, 5.1, 20.2, 20.5 and 20.6 of the Code. Furthermore, the breaches were so serious that they amounted to misconduct.

Given it had found that your conduct in respect of charge 15 was sexually motivated, the panel determined it should be considered together with your conduct proved in charge 17. The panel determined that your sexually motivated behaviour was in breach of sections 1.1, 5.1, 20.5 and 20.6 of the Code. Furthermore, the breaches were so serious that they amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of your misconduct as set out above, your 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. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

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

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

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

d) *...'*

The panel found limbs a, b and c in the *Grant* test were engaged in your case.

The panel finds that your misconduct did cause Patient B actual emotional harm and potentially put other young female patients you treated on the Marches at risk of similar emotional harm.

Sexually motivated misconduct and persistently asking, without clinical justification, personal questions can only bring the nursing profession into disrepute.

The panel is also in no doubt that your misconduct breached the fundamental tenets of the nursing profession to treat all patients with respect and in a manner that maintains their dignity and does not undermine their confidence in the profession.

Regarding insight, the panel considered that you have demonstrated limited insight into your misconduct. You have not demonstrated sufficient understanding of how your actions put the patients at a risk of harm and instead have attempted to contextualise your behaviour in terms of your naivety as a practitioner and the relaxed working environment you found yourself in at the Marches. You maintained that your behaviour was 'misinterpreted' by patients which the panel considered to be an evasion of professional responsibility on your part. The panel considered that you have not demonstrated an understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel considered that you had not sufficiently demonstrated how you would behave differently in the future.

The panel considered that the nature of the misconduct in this case is difficult to put right. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to address your misconduct. The panel took into account the evidence of training and references you had provided. It noted the majority of the training predated the hearing in August 2022 as did your references and that it had no up to date references including from your current employer.

The panel is of the view that there is a risk of repetition based on your limited insight and lack of recent evidence that you have addressed your misconduct. In these

circumstances, the panel considers that you remain liable in the future to put patients at unwarranted risk of harm, to bring the profession into disrepute and to breach the fundamental tenets of the profession. Accordingly, the panel decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds, on the grounds of public interest, that your fitness to practise is impaired.

Having regard to all of the above, the panel was satisfied that your 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 you off the register. The effect of this order is that the NMC register will show that you have been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case. It has taken full account of the oral and written submissions made by you and Ms Woolfson. It has also re-visited the oral and written submissions you made at the misconduct/impairment stage as they remain relevant to this stage of the hearing. The panel has also 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 Woolfson submitted that only a striking-off order is sufficient to protect the public in this case. This is both because of the risk posed by you but also the need to uphold and declare proper standards. Ms Woolfson outlined what the NMC consider to be the aggravating and mitigating features of the case. She referred the panel to the NMC guidance on sanctions for serious cases and specifically the guidance concerning serious sexual misconduct, namely:

> *"Panels deciding on sanction in cases about serious sexual misconduct will, like in all cases, need to start their decision-making with the least severe sanction, and work upwards until they find the appropriate outcome. They 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. If the panel decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision very clearly and very carefully. This will allow people who have not heard all of the evidence in the case, which includes the victims, to properly understand the decision"*.

Ms Woolfson submitted that no further action or a caution order would not be appropriate as they would not restrict your practice in any way. She submitted that a conditions of practice order would not be appropriate because there was evidence of harmful deep-seated personality or attitudinal problems and there were no identifiable areas for assessment/training that could be met by conditions. She further submitted that there are no conditions which could be imposed which would adequately protect the public and not amount to a suspension order.

In terms of a suspension order, Ms Woolfson submitted that there are no factors in your case, including those expressly set out in the SG, which indicate a suspension order may be appropriate. She submitted that the regulatory concerns raise fundamental concerns about your professionalism, that public confidence cannot be maintained if you are not

removed from the register, and that striking off is the only sanction sufficient to protect patients and members of the public, and to maintain professional standards.

You provided written submissions to the panel which included a personal statement in which, amongst other things, you:

- Stated that you needed to make this statement for your own mental health, and for your family and friends who have supported you through the past 5 years;
- Stated that you felt the starting point of the process had been that all the allegations have been accepted as true;
- Stated that you did not feel time was spent properly establishing the truth behind the allegations in the first place and scrutinising the evidence;
- Maintained that the panel's findings of fact concerning the proven allegations of sexual misconduct are inaccurate;
- Stated that you found the findings of fact process in August clearly overwhelming and struggled to verbalise clearly your responses;
- Considered that it was difficult to show remorse for something you had not done and you had no idea why malicious allegations had been made against you;
- Stated that you had been the subject of character assassination and had suffered an injustice;
- Considered that the process seemed biased, started with the assumption that the allegations made against you were true and the system could not factor in that the allegations may be false; and
- Stated that the process did not contain enough safeguards to support and protect registrants against false allegations.

You then went on to address the panel on sanction. You asked the panel to consider a lesser sanction than a striking-off order which would allow you to return to nursing after a period of suspension.

You provided detailed reasons why you did not agree with the aggravating factors identified by Ms Woolfson on behalf of the NMC. It is not necessary for the panel to set them all out here. It is sufficient it to say that your reasons reiterated much of the bases upon which you had denied the proven charges at the findings stage and you now assert that the panel's findings were wrong, including:

- Your continued reliance upon the evidence of Witness 5;
- Of those who had been present at the time when and location where the charges arising from the Marches occurred, only Witness 4 had "come forward" and you continued to deny he had challenged your behaviour towards young female patients;
- Your assertion that Patient B "had an agenda to find an issue with [you]";
- Your conduct towards Patient B had been professional in "offering help" as you are "trained to do as a nurse"; and
- The proven charges relating to the Marches had arisen in "a unique clinical setting that was the most relaxed environment [you had] ever worked in, and [were] never going to work in again".

With regard to mitigating factors, you stated that, contrary to Ms Woolfson's submissions, you had made a considerable effort to develop insight and explained how you are now behaving and will behave in the future. You stressed that you have endeavoured to understand what it must feel like to be a patient who feels threatened by a nurse treating them. You have explored this further by undertaking CPD courses in maintaining professional boundaries, safeguarding and communication and reflecting on how the service personnel you treated at the Marches had felt. You recognised that reflection is an important process and discussion during clinical supervision can and has helped you learn more about successful patient/nurse treatment. As a male nurse, you have learnt that in treating patients of a different sex, extra care must be taken to explain all treatments clearly and seek permission to proceed. In future, you would also offer a female patient a chaperone or have a second nurse present and wear a body camera for any review of your behaviour if it were to be challenged.

You expressly relied on the following mitigating factors in addition to the fact that you have no fitness to practise history:

- You are of good character and you reminded the panel of the 24 character references in the bundle previously presented, amongst which were senior military and NHS staff. They had been gathered for the Hearing that should have ended in August 2022 and did not present a picture of someone with a 'deep-seated personality or attitudinal problems'.
- The issues arose solely while working in the military, and there had been no concerns about you whilst working in the NHS.
- There is a low risk of repetition of the proven charges.
- You have worked continuously since these allegations 5 years ago and have proved yourself worth promoting twice.
- You have continued to study your profession at your own expense and will be completing your Masters degree if allowed to remain on the register.
- You worked through the COVID pandemic in the emergency department and volunteered as a vaccinator in addition to your full time role.
- You have a job offer to work as an Emergency Care Assistant in the East of England Ambulance Service on the conclusion of this Hearing. You are unlikely to be able to take on this role if you are struck-off.
- The impact of these proceedings on your mental health.
- The loss of future financial earning, as the working parent of a young family with no other sources of income.

You reminded the panel that there had been no restrictions placed on your practice until the interim conditions of practice order made in December 2022.

You said you understand the serious nature of these charges and, having considered the SG, do accept that a lesser sanction than a suspension would not be sufficient. You submitted that that there is no evidence that you have harmful deep-seated personality or

attitudinal problems. You also submitted that the proven charges should be regarded as a single instance of misconduct “at one unique event” namely the Marches and that the panel should accept that you do “have insight into these alleged allegations” *(sic)* and there is little significant risk of repetition.

You suggested that, during a period of suspension, while working in a non-nursing role in for example, the ambulance service, your behaviour could be monitored if necessary by regular appraisals with your manager and case management discussions that could be reported to the NMC as part of a review of the suspension order.

In relation to a striking-off order you submit that the charges do not raise a fundamental question about your professionalism because it was a single incident in a unique setting five years ago and you have been allowed to practice without restrictions since.
You further submitted that public confidence can be maintained if you are allowed to stay on the register as there have been no issues of public confidence in the last five years.

You referred the panel to four cases that appeared to be more serious than yours, but where a lesser sanction than striking off had been imposed.

You submitted that a suspension would be sufficient to protect patients and members of the public and to maintain professional standards. The risk of repetition is the same as it has been throughout the NMC proceedings where it was not considered necessary to impose a restriction. You submitted that a striking-off order would be unfair and harsh in view of you treating and interacting with thousands of patients without issue.

Decision and reasons on sanction

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

SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel accepted Ms Woolfson's submission that, given its clear findings of fact, the following were aggravating features in your case:

- Your conduct involved repeated inappropriate behaviour towards female patients over a period of days.
- You conduct was sexually motivated and included sexual touching of Patient B and an unknown female patient.
- The misconduct took place in a clinical setting.
- You conduct caused Patient B emotional harm.
- You continued your behaviour even when challenged by Witness 4.

In addition, the panel regarded the following as further aggravating factors:

- While it occurred over a short period of time, there was a clear pattern of misconduct in what you did; and
- You have shown very little insight into your behaviour – something that has been underlined by the submissions you have made at the sanctions stage, which have to be contrasted with what you told the panel at the misconduct/impairment stage.

In the circumstances described immediately above, the panel was unable to find any substantive mitigating circumstances in your case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the facts found proved in this case. The panel decided that it would not protect the public nor be in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the facts found proved in this case, and the public protection issues

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

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the facts found proved in this case. The panel noted in this respect that your current employer was unable to facilitate your continuing to work under the interim conditions of practice order that was imposed in December 2022. The proven misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of the charges proved in this case and would not protect the public or address the public interest.

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 panel considered your misconduct was not a single instance. The panel took into account your personal statement where you deny your conduct and the panel's findings of fact. The panel considered that you had demonstrated little or no insight to satisfy it that you would not pose a significant risk of repeating your behaviour. The panel considered that your continued denial of the matters proved to be evidence of attitudinal problems. The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel determined that the serious breach of the fundamental tenets of the profession evidenced by your proved misconduct is incompatible with you remaining on the register.

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

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?*

Your proven misconduct was a significant departure from the standards expected of a registered nurse, whatever setting they are working in, and is fundamentally incompatible with you remaining on the register. The panel was of the view that the proven misconduct in this particular case is so serious that to allow you to continue practising 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. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This decision will be confirmed to you in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the striking-off 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 Woolfson. She invited the panel to impose an interim suspension order on the grounds of public protection and in the wider public interest for a period of 18 months to cover the 28-day appeal period. She submitted that an interim conditions of practice order at this stage would not be appropriate and would be inconsistent in view of the panel's findings.

You made no comment on the application.

Decision and reasons on interim order

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

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

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

That concludes this determination.