

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

**Substantive Hearing
13 – 17 February 2023**

Virtual Hearing

| | |
|---------------------------------------|--|
| Name of registrant: | Mr Luke Jordan Nicolle |
| NMC PIN: | 98I1607E |
| Part of the register: | RNA (September 2001) |
| Relevant location: | Carmarthen |
| Type of case: | Misconduct |
| Panel members: | Caroline Rollitt (Chair, lay member) Jane Jones (Registrant member) Georgina Foster (Lay member) |
| Legal Assessor: | Oliver Wise |
| Hearings Coordinator: | Leigham Malcolm |
| Nursing and Midwifery Council: | Represented by Ms Louise Cockburn, NMC Case Presenter |
| Mr Nicolle: | Present and unrepresented |
| Facts proved: | 1b-g, 2 (as amended), 3a, d, e, 4 (as amended), 5 (as amended), 6a in respect of the above charges, 6b in respect of charge 4 only |
| Facts not proved: | 6b in respect of all charges except charge 4 |
| Fitness to practise: | Impaired |
| Sanction: | Striking-off Order |
| Interim order: | Interim Suspension Order (18 months) |

Details of charges

That you, a Registered Nurse:

- 1) *Acted/behaved towards Colleague A in the manner set out in Schedule A;*
- 2) *On 16 January 2019, sent one, or more, text messages to Colleague A, as set out in Schedule B;*
- 3) *Acted/behaved towards Colleague B in the manner set out in Schedule C;*
- 4) *Sent one, or more, text messages to Colleague B, as set out in Schedule D;*
- 5) *Acted/behaved towards Colleague C in the manner set out in Schedule E*
- 6) *Your conduct at any and/or all of charges 1- 4 above was:*
 - a) *Inappropriate;*
 - b) *Motivated in pursuit of sexual gratification;*

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

| SCHEDULE A | | |
|-------------------|-------------|---|
| 1 | Date | Incident |
| a | Unknown | said words to the effect of that when you worked at the NHS, you were dared by your colleagues to see how many times you could wank during an interview |
| b | Unknown | said words to the effect of that when you worked at the NHS, you were dared by your colleagues to see how many times you could wank on 31 October 2019 |
| c | Unknown | said words to the effect of that when you worked at the NHS, you were dared by your colleagues to see how many times you could |

| | | |
|---|---------|--|
| | | wank on Colleague A's second nightshift |
| d | Unknown | said words to the effect that your wife told you not to hire a person who you had interviewed because she was "too pretty" |
| e | Unknown | said word to the effect that you were not sleeping with your wife because her dad was dying |
| f | Unknown | said words to the effect that if she was going to wear a thong, she should make sure that she covered it up |
| g | Unknown | whilst stating words to the effect set out in charge 1(f) above, cornered Colleague A in your office and/or shut the door |

| SCHEDULE B | | |
|-------------------|-------------|--|
| 2 | Date | Text |
| a | 16/01/2019 | would you like me to give you one?X |
| b | 16/02/2019 | Ok. I realised that last text could be taken both ways. Lol" |

| SCHEDULE C | | |
|-------------------|-------------|---|
| 3 | Date | Incident |
| a | Unknown | Asked Colleague B to see you as you were by her house |
| b | Unknown | Asked Colleague B's sister if Colleague B has boys over their flat |
| c | Unknown | Asked Colleague B's sister where Colleague B goes partying |
| d | Unknown | When Colleague b asked to order a smaller sized uniform, said words to the effect that you would like it tighter on Colleague B |
| e | Unknown | Asked Colleague B where she lived on one, or more, occasions |

| SCHEDULE D | | |
|-------------------|-------------|-------------|
| 4 | Date | Text |

| | | |
|---|------------|---|
| | | |
| a | Unknown | Knowing Debbie likes a good break, you have to think of an interesting dare or challenge for Friday night. Lol x |
| b | Unknown | I am sat in my office alone doing catch up with paperwork etc horny as .. Lol x Not a bad night thus far x |
| c | Unknown | I am happy to train you also, I am sure there is lots I could teach you |
| d | Unknown | Well, I know my a&p. Lol x also I am a veteran, thus learnt a few things, and I have been told I have magic hands and good oratory skills |
| e | 21/02/2019 | Hope you're ok xxx I was teasing about coming over, wouldn't come unless invited., Besides I don't know where you actually live, Lol x |
| f | 21/02/2019 | Hi sexy, can I confirm that you are still working Friday night. X |
| g | 21/02/2019 | Bet you cant wait to leave. X have a hug from me. X |
| h | 24/02/2019 | Dare I say what that picture did?? Lol x |
| i | 24/02/2019 | My head is in a silly mood. Fell like doing something outrageous, stupid or just bad. Lol X |
| j | 24/02/2019 | Know any randy women? |
| k | 24/02/2019 | I really want sex, But that is unlikely to happen. So I just want to be random and not so sensible. X |
| l | 24/02/2019 | Feeling a bit rough, very horny, just had a court fine for speeding, but enjoying a day to myself. X |
| m | 24/02/2019 | I am popping in to work for a quick meeting tomorrow. Dare I pop round on my way back to do one of my 5 a day or a coffee? C lol |
| n | 24/02/2019 | Omg ... Just seen your profile pic ... |
| o | 02/0/2019 | Shame I didn't have that other picture to look at |

| | | |
|---|------------|--|
| p | 02/03/2019 | Cheeky lol x |
| q | 02/03/2019 | Your profile the other day x |
| r | 02/03/2019 | A picture of yourself topless |
| s | 06/03/2019 | Restless, horny, etc .. on sofa naked, trying to cool down x lol |
| t | 06/03/2019 | Sorry for saying that I wish it was you helping me.. Lol x probably not what you wanted t hear. Lol x |
| u | 06/03/2019 | I think I babble too much sometime. Lol x maybe it's because I don't really know what you are thinking.. X |
| v | 06/03/2019 | Omg, I am babbling again, Lol x |
| w | 06/03/2019 | Does it bother you x |

SCHEDULE E

| SCHEDULE E | | |
|-------------------|-------------|---|
| 5 | Date | Incident |
| a | 2018 | Discussed your personal/sex life whilst at work |
| b | 2018 | Told Colleague C not to mention your discussion relating to your personal/sex life to their mum |

Background

The NMC received a referral on the 8 April 2019 from the Operations Manager at Peniel House Care Home (the Home) in relation to your nursing practice. You began working at the Home in April 2018 and resigned in March 2019. The referral alleged that during the course of your employment your conduct towards a number of colleagues was inappropriate and motivated in pursuit of sexual gratification, as set out within the Charges.

Since resigning from the Home, you have stated that you do not wish to return to nursing.

Decision and reasons on application to amend the charges

The panel heard an application made by Ms Cockburn, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of Charge 6. The proposed amendment was to relate Charge 6 to charges 1 – 5 as opposed to charges 1 – 4, as follows:

6) Your conduct at any and/or all of charges **1- 5** above was:

a) Inappropriate;

b) Motivated in pursuit of sexual gratification;

Ms Cockburn submitted that the proposed amendment would correct a mistake and reflect the NMC evidence.

You did not oppose the application.

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

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment.

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

You made a request that your case be held entirely in private on the basis that you were easily identifiable online and, given the rural community you live and work in, your employment prospects would be hindered if details of your case were publicly available.

Ms Cockburn objected to your application that the whole hearing be held in private. She submitted that where reference was made to your health, that part of the hearing should be held in private.

The legal assessor reminded the panel that while Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules) 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.

The panel accepted the advice of the legal assessor.

The panel considered your request for the details of the case to be heard in private and your reasons. It bore in mind that hearings are to be conducted in public unless it is satisfied that a private hearing is justified by the interests of any party or by the public interest.

The panel determined that it was in the public interest for your case to be heard in public. The panel considered any impact to your employment prospects to be a consequence of the charges brought against you and any subsequent findings. The panel determined that the charges brought against you and the details of your case should proceed in public in the usual way, and that the public interest outweighed your interests in respect of a private hearing. The panel therefore denied your request. However, it decided that when matters relating to your health arose in the course of the hearing, that part of the case should be heard in private.

Admissions

At the outset of the hearing, you admitted to the following. The admissions as to your conduct being inappropriate as alleged in Charge 6a or motivated in pursuit of sexual gratification as alleged in Charge 6b are dealt with in relation to each of Charges 1 – 5.

- Charges 1b – 1g, and that your conduct was inappropriate. However, you did not admit that your conduct was motivated in pursuit of sexual gratification.
- Charge 2 in its entirety, and that your conduct was inappropriate. However, you did not admit that it was motivated in pursuit of sexual gratification.
- Charge 3a, 3d & 3e, and that your conduct was inappropriate. However, you did not admit that your conduct was motivated in pursuit of sexual gratification.
- Charge 4 in its entirety, and that your conduct was inappropriate and motivated in pursuit of sexual gratification.
- Charge 5, except that you did not admit that your sex life was discussed. You admitted that your conduct was inappropriate. However, you did not admit that your conduct was motivated in pursuit of sexual gratification.
- Charge 6a was admitted in relation to all the admitted charges.
- Charge 6b was admitted in relation to Charge 4 only.

The panel therefore found the relevant aspects of those charges proved on the basis of your admissions.

Offering no evidence

In view of your admissions, Ms Cockburn offered no evidence in relation to Charges 1a, 3b & 3c, and requested that those charges be deleted. She requested that Charge 5 be amended to delete the word '/sex' in Charges 5a and b. She submitted that Charges 1a, 3b, 3c did not add to the seriousness of the remaining admitted charges. Therefore, the NMC had taken the decision to offer no evidence in respect of them and to apply for them to be deleted.

Ms Cockburn also submitted that Charge 6 did not require the calling of witnesses to give oral evidence. She informed the panel that in view of your admissions, and the NMC's decision to offer no evidence in relation to Charges 1a, 3b, 3c, no witnesses would be called to give oral evidence.

Ms Cockburn said that, subject to the panel accepting the NMC's proposal to call no oral evidence, she would still be proceeding on the basis that your conduct in respect of Charges 1, 2, 3 & 5 was motivated in pursuit of sexual gratification.

The panel accepted the advice of the legal assessor, that having regard to the NMC's guidance on offering no evidence on part of the Charges, which the legal assessor read out, it was open to the panel to accept Ms Cockburn's submission if it agreed with it. The panel agreed with Ms Cockburn's submission that Charges 1a, 3b, 3c and the deletion of '/sex' leaving the reference to personal life in Charges 5a and 5b did not make a significant difference to the overall seriousness of the remaining charges or the case. Moreover, the panel bore in mind that a consequence of the NMC's decision to offer no evidence would be to spare witnesses, one of whom was a vulnerable witness who

required special measures, from having to give evidence, and the case would be concluded more expeditiously and economically.

In these circumstances the panel accepted Ms Cockburn's proposal to offer no evidence in relation to Charges 1a, 3b and 3c and her proposal that Charges 5a and 5b be amended.

Further amendments

At the instigation of the panel, Schedule B 2b was changed from 16/02/19 to 16/01/19 to correct the date, and Schedule D 4o was corrected to insert the figure 3 to complete the correct March date.

Ms Cockburn and you agreed to these amendments.

Decision and reasons on facts

The panel proceeded to consider the following remaining and unadmitted part of Charge 6b:

That you, a Registered Nurse:

- ~~1) Acted/behaved towards Colleague A in the manner set out in Schedule A;~~
- ~~2) On 16 January 2019, sent one, or more, text messages to Colleague A, as set out in Schedule B;~~
- ~~3) Acted/behaved towards Colleague B in the manner set out in Schedule C;~~
- ~~4) Sent one, or more, text messages to Colleague B, as set out in Schedule D;~~
- ~~5) Acted/behaved towards Colleague C in the manner set out in Schedule E~~

6) Your conduct at any and/or all of charges 1- 5 above was:

a) ~~Inappropriate;~~

b) *Motivated in pursuit of sexual gratification;*

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

| SCHEDULE A | | |
|-------------------|-------------|--|
| 1 | Date | Incident |
| a | Unknown | said words to the effect of that when you worked at the NHS, you were dared by your colleagues to see how many times you could wank during an interview |
| b | Unknown | said words to the effect of that when you worked at the NHS, you were dared by your colleagues to see how many times you could wank on 31 October 2019 |
| c | Unknown | said words to the effect of that when you worked at the NHS, you were dared by your colleagues to see how many times you could wank on Colleague A's second nightshift |
| d | Unknown | said words to the effect that your wife told you not to hire a person who you had interviewed because she was "too pretty" |
| e | Unknown | said word to the effect that you were not sleeping with your wife because her dad was dying |
| f | Unknown | said words to the effect that if she was going to wear a thong, she should make sure that she covered it up |
| g | Unknown | whilst stating words to the effect set out in charge 1(f) above, cornered Colleague A in your office and/or shut the door |

| SCHEDULE B | | |
|-------------------|-------------|-------------------------------------|
| 2 | Date | Text |
| a | 16/01/2019 | would you like me to give you one?X |

| | | |
|---|------------|--|
| b | 16/01/2019 | Ok. I realised that last text could be taken both ways. Lol” |
|---|------------|--|

| SCHEDULE C | | |
|-------------------|-------------|---|
| 3 | Date | Incident |
| a | Unknown | Asked Colleague B to see you as you were by her house |
| b | Unknown | Asked Colleague B's sister if Colleague B has boys over their flat |
| c | Unknown | Asked Colleague B's sister where Colleague B goes partying |
| d | Unknown | When Colleague b asked to order a smaller sized uniform, said words to the effect that you would like it tighter on Colleague B |
| e | Unknown | Asked Colleague B where she lived on one, or more, occasions |

| SCHEDULE D | | |
|-------------------|-------------|--|
| 4 | Date | Text |
| a | Unknown | Knowing Debbie likes a good break, you have to think of an interesting dare or challenge for Friday night. Lol x |
| b | Unknown | I am sat in my office alone doing catch up with paperwork etc horny as .. Lol x Not a bad night thus far x |
| c | Unknown | I am happy to train you also, I am sure there is lots I could teach you |
| d | Unknown | Well, I know my a&p. Lol x also I am a veteran, thus learnt a few things, and I have been told I have magic hands and good oratory skills |
| e | 21/02/2019 | Hope you're ok xxx I was teasing about coming coming over, wouldn't come unless invited., Besides I don't know where you actually live, Lol x |
| f | 21/02/2019 | Hi sexy, can I confirm that you are still working Friday night. X |

| | | |
|---|------------|--|
| | | |
| g | 21/02/2019 | Bet you cant wait to leave. X have a hug from me. X |
| h | 24/02/2019 | Dare I say what that picture did?? Lol x |
| i | 24/02/2019 | My head is in a silly mood. Fell like doing something outrageous, stupid or just bad. Lol X |
| j | 24/02/2019 | Know any randy women? |
| k | 24/02/2019 | I really want sex, But that is unlikely to happen. So I just want to be random and not so sensible. X |
| l | 24/02/2019 | Feeling a bit rough, very horny, just had a court fine for speeding, but enjoying a day to myself. X |
| m | 24/02/2019 | I am popping in to work for a quick meeting tomorrow. Dare I pop round on my way back to do one of my 5 a day or a coffee? C lol |
| n | 24/02/2019 | Omg ... Just seen your profile pic ... |
| o | 02/03/2019 | Shame I didn't have that other picture to look at |
| p | 02/03/2019 | Cheeky lol x |
| q | 02/03/2019 | Your profile the other day x |
| r | 02/03/2019 | A picture of yourself topless |
| s | 06/03/2019 | Restless, horny, etc .. on sofa naked, trying to cool down x lol |
| t | 06/03/2019 | Sorry for saying that I wish it was you helping me.. Lol x probably not what you wanted t hear. Lol x |
| u | 06/03/2019 | I think I babble too much sometime. Lol x maybe it's because I don't really know what you are thinking.. X |
| v | 06/03/2019 | Omg, I am babbling again, Lol x |
| w | 06/03/2019 | Does it bother you x |

| SCHEDULE E | | |
|-------------------|-------------|---|
| 5 | Date | Incident |
| a | 2018 | Discussed your personal/ sex -life whilst at work |
| b | 2018 | Told Colleague C not to mention your discussion relating to your personal/ sex life to their mum |

Before making any findings on the facts, the panel accepted the advice of the legal assessor. In reaching its decision, the panel took into account your oral evidence, and the documentary evidence in this case, together with the submissions made by Ms Cockburn and your submissions.

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 took account of the fact that you have made a large number of admissions in respect of these charges and that you appeared to be genuinely contrite in respect of your misconduct and you repeatedly apologised for your unacceptable behaviour.

The panel then considered Charge 6b in respect of each of the remaining Charges and made the following findings:

Charge 6b

6) *Your conduct at any and/or all of charges 1 - 5 above was:*

b) Motivated in pursuit of sexual gratification

In respect of Charges 1b & 1c

- 1) *Acted/behaved towards Colleague A in the manner set out in Schedule A;*
 - b) *said words to the effect of that when you worked at the NHS, you were dared by your colleagues to see how many times you could wank on 31 October 2019*
 - c) *said words to the effect of that when you worked at the NHS, you were dared by your colleagues to see how many times you could wank on Colleague A's second nightshift*

The panel had regard to all of the evidence adduced in this case. The evidence consisted of redacted NMC witness statements, exhibits produced by the NMC, your bundle, and your oral evidence which was tested by Ms Cockburn's cross examination and by questioning from the panel.

These two charges were considered together as according to your evidence they related to the same incident. You explained that you were recounting a conversation that occurred in a previous role. That conversation arose in the context of a reality television programme in which masturbation was discussed, arising from which you were asked by colleagues how many times you could masturbate in a day. You told the panel that you recounted this story as members of staff at the Home were discussing reality television programmes whilst on night shift. You admitted that this was inappropriate, but you explained that you had not introduced the topic and that you had not said this for the purpose of your sexual gratification. As there was no other oral evidence on this subject, the panel concluded that it was not established that you had made this statement for the purpose of your sexual gratification.

These parts of Charge 6b are found NOT proved.

In respect of Charge 1d

1) *Acted/behaved towards Colleague A in the manner set out in Schedule A;*

d) *said words to the effect that your wife told you not to hire a person who you had interviewed because she was “too pretty”*

In the panel’s judgement, a remark of this sort, while inappropriate, was unlikely to be made for the purpose of sexual gratification.

This part of Charge 6b is found NOT proved.

In respect of Charge 1e

1) *Acted/behaved towards Colleague A in the manner set out in Schedule A;*

e) *said word to the effect that you were not sleeping with your wife because her dad was dying*

Your account was that you had said that your wife was sleeping in her father’s room because her father was dying. None of the evidence contradicted that. There was no evidence before the panel that it was motivated in pursuit of sexual gratification.

This part of Charge 6b is found NOT proved.

In respect of Charges 1f and 1g

1) *Acted/behaved towards Colleague A in the manner set out in Schedule A;*

f) said words to the effect that if she was going to wear a thong, she should make sure that she covered it up

g) whilst stating words to the effect set out in charge 1(f) above, cornered Colleague A in your office and/or shut the door

1f and 1g are taken together because they relate to a single event. On your evidence, which broadly agrees with the NMC's evidence, Colleague A had been wearing leggings which had made her thong visible; this needed to be addressed as it was inappropriate attire. You had been advised by your manager to have the matter dealt with by a female colleague. Accordingly, during your oral evidence you admitted that it was inappropriate to have this conversation and alone in the office with Colleague A. You told the panel that you had asked a female colleague to discuss this matter with Colleague A, but she had refused, and therefore you decided to go ahead and discuss the issue yourself. In those circumstances the panel could not be satisfied that this was motivated in pursuit of sexual gratification as there was a legitimate reason for the conversation.

These parts of Charge 6b are found NOT proved.

In respect of Charges 2a and 2b

2) *On 16 January 2019, sent one, or more, text messages to Colleague A, as set out in Schedule B;*

a) would you like me to give you one?X

b) Ok. I realised that last text could be taken both ways. Lol"

Your evidence was that the context of the first text message was your allocating a shift to Colleague A. The panel was not satisfied that this first text message was intended in a sexual sense. The panel could not be satisfied that the second text message went further

than an acknowledgement that you had subsequently realised that the first text message could be taken as having a double meaning. The subsequent text message apologised. In those circumstances, the panel could not be satisfied that either of these text messages were sent in pursuit of your sexual gratification.

These aspects of Charge 6b are found NOT proved.

In respect of Charge 3a

3) Acted/behaved towards Colleague B in the manner set out in Schedule C;

a) Asked Colleague B to see you as you were by her house

The panel heard that you drove Colleague B to and from work on a number of occasions. There was no evidence before the panel that the request in Charge 3a was motivated in pursuit of sexual gratification. The panel found Charge 3a not proved, in so far as it was motivated in pursuit of sexual gratification.

This aspect of Charge 6b is found NOT proved.

In respect of Charge 3d

3) Acted/behaved towards Colleague B in the manner set out in Schedule C;

d) When Colleague B asked to order a smaller sized uniform, said words to the effect that you would like it tighter on Colleague B

The context of this charge was that Colleague B had said that she wanted to have a smaller uniform. You agreed with an inappropriate use of language. However, in the panel's judgement, given that the conversation went no further, and the NMC adduced no

further evidence on the conversation, it should not be concluded that your statement was motivated in pursuit of sexual gratification.

This aspect of Charge 6b is found NOT proved.

In respect of Charge 3e

3) Acted/behaved towards Colleague B in the manner set out in Schedule C;

e) Asked Colleague B where she lived on one, or more, occasions

In your oral evidence, and in response to questions by the panel, you explained that Colleague B had changed address and that you had asked for these details in order to complete admin forms. There was no evidence before the panel to contradict your account. In view of the limited evidence adduced by the NMC, the panel accepted your account and determined, on balance, that your request was not motivated in pursuit of sexual gratification.

This aspect of Charge 6b is found NOT proved.

In respect of Charge 5a

5) Acted/behaved towards Colleague C in the manner set out in Schedule E;

a) Discussed your personal life whilst at work

Your evidence was that this discussion was not motivated in pursuit of sexual gratification. It would be reasonable to interpret it as you sharing difficulties in your personal life with another colleague. Colleague C only became involved because she walked in on this private conversation.

The NMC provided no evidence that the discussion Colleague C overheard could justify the conclusion that you were motivated in pursuit of sexual gratification.

This aspect of Charge 6b is found NOT proved.

In respect of Charge 5b

5) Acted/behaved towards Colleague C in the manner set out in Schedule E;

b) Told Colleague C not to mention your discussion relating to your personal life to their mum

In the panel's judgement, a request not to inform a colleague's mother, who was also a colleague, about a discussion relating to your personal life, is intrinsically unlikely to have been motivated by the pursuit of sexual gratification. In the absence of any compelling evidence to the contrary, the panel was not satisfied that your instruction was motivated in pursuit of sexual gratification.

This aspect of Charge 6b is found NOT proved.

Charge 6b

6) Your conduct at any and/or all of charges 1 - 5 above was:

b) Motivated in pursuit of sexual gratification

You have admitted that all the matters relating to Charge 4 set out in Schedule D at 4a-w were motivated in pursuit of sexual gratification. For the reasons set out above, the panel

concluded that your actions in relation to Charges 1 – 3 and 5, whilst inappropriate, as you admit, were not motivated in pursuit of sexual gratification.

This Charge is found NOT proved in respect of Charges 1 – 3 and 5.

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 Cockburn referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and identified the following standards where, in the NMC's view, your actions amounted to misconduct: 8, 8.2, 8.5, 20, 20.1, 20.3, 20.5 & 20.8.

Ms Cockburn submitted that the facts found proven include numerous instances of inappropriate behaviour spanning a number of months. She submitted that the incidents were not isolated. Your conduct led to one of your colleagues requiring counselling due to the distress you caused. Ms Cockburn submitted that your conduct damaged the reputation of the profession and invited the panel to take the view that the facts found proved amount to misconduct.

Ms Cockburn then 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 the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and submitted that there was insufficient evidence of insight or remediation before the panel for it to find that the risk of repetition is low. She submitted that your reflection demonstrated a 'startling lack of insight' into the impact of your conduct on your colleagues. She invited the panel to find your fitness to practise currently impaired on the grounds of public protection as well as in the public interest.

You told the panel that there was no evidence that any of your colleagues required counselling due to distress caused by you. You admitted that your fitness to practise was impaired at the time of the incidents, and you accepted that you breached the Code, as set out by the NMC.

You told the panel that you have insight into your past conduct and that, although you have no desire to return to nursing, you are in attendance at this hearing to apologise and to deal with the issues.

Decision and reasons on misconduct

The panel accepted the advice of the legal assessor.

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. It determined that your actions amounted to a breach of the Code, specifically:

8 Work cooperatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

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

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses and midwives to aspire to

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, there are numerous instances of inappropriate and sexual behaviour towards a number of junior colleagues. Many of the instances were motivated in pursuit of sexual gratification and spanned several months.

Whilst there was no direct oral evidence before the panel from any of your colleagues that they required counselling, the panel understood how your behaviour could have caused them some distress. The panel considered your conduct to be inappropriate and serious; particularly, in relation to Charge 4 because your behaviour was in pursuit of sexual gratification.

The panel determined that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, 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. To justify that trust, nurses must act with integrity. They must make

sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

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

d) ...

There is no evidence that patients were put at risk of harm as a result of your misconduct. However, your misconduct breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel considered your misconduct was indicative of attitudinal issues which are, generally, difficult to remediate. It carefully considered the evidence before it in determining whether or not you had fully developed your insight and taken steps to address the issues arising from your past misconduct. Given that the misconduct in your case includes that of a sexual nature, whilst you had apologised, the panel was of the view that you had not yet demonstrated complete remediation.

Although you expressed regret and remorse, and apologised for your past misconduct, the panel was not satisfied that the risk of repetition is low. The panel considered you failed to demonstrate an understanding of the impact of your actions upon the mental health and wellbeing of your colleagues, and furthermore how any impact on them could have created a risk to patient care. The panel commended you for attending and apologising. However, it determined that you demonstrated only partial insight into your past misconduct.

In addition, there was no evidence before the panel that you have taken steps to address the issues arising from your past misconduct. You told the panel that since the incidents you have undertaken EDI training, [PRIVATE] and 'found the church'. However, the panel had no documentary evidence of any of this to support your assertions.

[PRIVATE].

[PRIVATE].

The panel determined that there is a risk of repetition based on your partial insight and the absence of sufficient evidence that you have remediated your past misconduct. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

In addition, 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 your fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike your name from the Register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and has 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 Cockburn submitted the following as aggravating factors in your case:

- The issues in your case involve misconduct of a sexual nature
- You held a position of trust at the time
- You have demonstrated only partial insight
- You have provided insufficient remediation
- Your misconduct has damaged the reputation of the profession.

Ms Cockburn submitted the following as mitigating factors in your case:

- Your admission to many of the charges
- You have demonstrated considerable regret and remorse for your misconduct.

Ms Cockburn informed the panel that within the Notice of Hearing, dated 11 January 2023, the NMC advised you that, were the panel to find misconduct and current impairment, it would seek a striking-off order. She submitted that given the panel's findings in relation to your misconduct, and that your fitness to practise is currently impaired, the only appropriate order was that of a striking-off order.

You stated that you expected the panel to find that a striking-off order was the most appropriate order.

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 identified the following aggravating features:

- Your misconduct was of a sexual nature
- Your misconduct related to a number of colleagues
- The misconduct was not an isolated incident, but occurred over several months
- It caused distress to those who it was directed at
- You held a position of authority and trust at the time, and directed your conduct towards junior colleagues
- You have demonstrated only partial insight
- You have demonstrated insufficient remediation despite the length of time that has passed.

The panel also identified the following mitigating features:

- You admitted all of the charges found proved
- You have demonstrated considerable regret and remorse
- You have engaged with the NMC and participated in these proceedings.

You have been subject to an interim suspension order for several years, and consequently have not practised as a nurse since these incidents. There is no suggestion that you have been guilty of misconduct either before or since these events and there is no reason to question your clinical abilities as a nurse.

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

It then considered the imposition of a caution order but again determined that, given the sexual nature of your misconduct, 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 sexual nature of the charges in this case. The misconduct identified in this case was not something that can be easily addressed through conditions. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Your misconduct was not an isolated incident: it occurred over several months and involved a number of junior colleagues. Further, the panel have identified attitudinal concerns. It also had regard to the NMC's guidance on 'cases involving sexual misconduct' which advised:

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

You held a position of authority and trust, and your misconduct involved several junior colleagues and included sexual misconduct. The panel bore in mind that you have been subject to an interim suspension order for a period of nearly four years, pending this substantive hearing. It considered that during this time you could have reflected, fully developed your insight, taken steps to fully remediate your misconduct and prepared documentary evidence to support this. If you had done so then a suspension order may have been an option. However, given that you have not, and have expressed an intention not to return to nursing, alongside the seriousness of your misconduct, the panel determined that a suspension order would serve no useful purpose and would also not be appropriate. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

The panel determined that the serious breach of the fundamental tenets of the profession evidenced by your actions was fundamentally incompatible with you remaining on the register.

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 actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all these factors and after taking into account all the evidence before it during this case, the seriousness of the misconduct and the lack of remediation, 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 themselves, 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.

Decision and reasons on 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 took account of the submissions made by Ms Cockburn on behalf of the NMC and from you. It also accepted the advice of the legal assessor.

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 allow for any potential 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.