

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

**Substantive Hearing
2-8 April 2024**

Virtual Hearing

Name of Registrant: Floricel Cezar

NMC PIN: 01B1154O

Part(s) of the register: Registered Nurse - Sub part 1
Adult Nursing - (Level 1) - 1 February 2001

Relevant Location: Wrexham

Type of case: Misconduct

Panel members: Dave Lancaster (Chair, lay member)
Donna Green (Registrant member)
Paula Charlesworth (Lay member)

Legal Assessor: Tim Bradbury

Hearings Coordinator: Samara Baboolal

Nursing and Midwifery Council: Represented by Hena Patel, Case Presenter

Mr Cezar: Not present and unrepresented

Facts proved: Charges 1, 2, 3(a)

Facts not proved: Charges 3(b)

Fitness to practise: Impaired

Sanction: Suspension Order (6 months)

Interim order: Interim Suspension Order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Cezar was not in attendance and that the Notice of Hearing letter had been sent to Mr Cezar's registered email address by secure email on 29 February 2024.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Cezar's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

Decision and reasons on proceeding in the absence of Mr Cezar

The panel next considered whether it should proceed in the absence of Mr Cezar. It had regard to Rule 21 and heard the submissions of Ms Patel who invited the panel to continue in the absence of Mr Cezar. She submitted that Mr Cezar had voluntarily absented himself. Ms Patel referred the panel to an email, dated 1 April 2024, from Mr Cezar which stated:

'Firstly my apologies for not able (sic) to attend the hearing'.

Further, Ms Patel referred the panel to a telephone call between Mr Cezar and the NMC case officer on 28 March 2024, in which he confirmed that he is happy for the hearing to proceed in his absence.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*'.

The panel has decided to proceed in the absence of Mr Cezar. In reaching this decision, the panel has considered the submissions of Ms Patel and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Cezar;
- Mr Cezar has informed the NMC that he has received the Notice of Hearing and confirmed that he is not attending the proceedings and [PRIVATE];
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2020 and 2021 and further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Cezar in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered email

address, he will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give live evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Cezar's decisions to absent himself from the hearing, waive his rights to attend, and be represented, and to not provide evidence or make submissions on his own behalf.

The panel also had a number of documents before it which outlined Mr Cezar's account of events and were able to take those into consideration.

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

Decision and reasons on application to admit written statements as hearsay evidence

The panel heard an application made by Ms Patel on day 1 under Rule 31 to allow the following documents into evidence as hearsay evidence: the local statement of Mr 1, dated 18 April 2021, the local statement of Ms 2, dated April 27 2021, and the minutes of investigatory meeting between Ms 3 and Mr Cezar dated 10 December 2020 and 22 April 2021. Ms Patel submitted that the evidence is relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the internal investigations.

Mr 1, Ms 2 and Ms 3 were not present at this hearing. The two key witnesses, Colleague A and Colleague B were present and were giving live evidence for this matter.

Ms Patel referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin). She submitted that the evidence provided by Mr 1's statement, Ms 2's statement, and the two meeting minutes from the investigatory meeting between Ms 3 and Mr Cezar are relevant because it supports the account of Colleague B. Colleague B was the only direct witness to the 2021 allegation and her account is supported by the local statements made by Mr 1 and Ms 2. Colleague B's statement is also supported by the minutes of investigatory meeting between Ms 2 and Mr Cezar.

Ms Patel submitted that in relation to the 2021 allegations, Mr 1's statement, Ms 2's statement, and the meeting minutes are not the sole and decisive evidence as the panel will be hearing from two live witnesses on this and therefore it will be in a position to form a more informed view on the reliability of the hearsay evidence.

Ms Patel submitted that if the statements are adduced as hearsay evidence, then any unfairness to Mr Cezar can be mitigated by the panel exercising its discretion to attach the weight that it considers appropriate. However, if the panel was to exclude the evidence altogether, the prejudice and unfairness to the NMC could not readily be mitigated. She, therefore, submitted that it would be fair to admit the evidence and to attach the appropriate weight that the panel sees fit, rather than to exclude the entire evidence altogether.

In the preparation of this hearing, the NMC had indicated to Mr Cezar in the Case Management Form (CMF) that it was the NMC's intention for Colleague A and Colleague B to provide live evidence to the panel. Despite knowledge of the nature of the evidence to be given by Colleague A and Colleague B, Mr Cezar made the decision not to attend this hearing. On this basis Ms Patel advanced the argument that there was no lack of fairness to Mr Cezar in allowing the hearsay statements into evidence.

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

The panel first considered the local statement made by Mr 1, which corroborated the account made by Colleague B relating to the 2021 allegations. The panel determined that the evidence contained in this statement was not the sole, decisive evidence in this matter. The panel determined that while the NMC could have done more to secure Mr 1's attendance, it was not in the circumstances proportionate to do so. The panel noted that there were no reasons to suggest that Mr 1 would fabricate his account in the statement. The panel also noted that Mr Cezar was aware of the content contained in Mr 1's statement. The panel determined to admit this evidence, but that it would only attach such weight to it that it considered appropriate having regard to the other evidence in the case and the fact that there had been no opportunity to test or challenge the evidence.

In considering Ms 2's statement, the panel determined that the evidence contained in this statement was not the sole, decisive evidence in this matter. The panel determined that while the NMC could have done more to secure Ms 2's attendance, it was not in the circumstances proportionate to do so. The panel also noted that Mr Cezar was aware of the content contained in Ms 2's statement. The panel noted that there is a character reference from Ms 2 for Mr Cezar which suggests that she is balanced in her view, and there are no reasons to suggest that she would fabricate her account in her statement. The panel determined to admit this evidence, but that it would only attach such weight to it that it considered appropriate having regard to the other evidence in the case and the fact that there had been no opportunity to test or challenge the evidence.

In considering the minutes of the investigatory meetings between Ms 3 and Mr Cezar dated 10 December 2020 and 22 April 2021, the panel determined that this was not the sole and decisive evidence. The panel determined to admit this evidence, but that it would only attach such weight to it that it considered appropriate having regard to the other evidence in the case and the fact that there had been no opportunity to test or challenge the evidence.

In determining whether it is fair to Mr Cezar to admit these statements as hearsay evidence, the panel considered that as Mr Cezar had been provided with a copy of Mr 1's

statement, Ms 2's statement, and Ms 3's minutes and as the panel had already determined, Mr Cezar had chosen voluntarily to absent himself from these proceedings. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings. The panel considered that the unfairness in this regard worked both ways in that the NMC was deprived, as was the panel, from reliance upon the live evidence of Mr 1, Ms 2 and Ms 3. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay statement of Mr 1, accept into evidence the hearsay statement of Ms 2, and accept into evidence the investigatory meeting minutes between Mr Cezar and Ms 3, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Details of charge

That you, a Registered Nurse:

- 1) On 8 December 2020 said to Colleague A "Its nice to see you in normal clothes, showing off your sexy body" or words to that effect. **[PROVED]**
- 2) On 16 April 2021 said to Colleague B "You have a mature, sexy voice on the phone" or words to that effect. **[PROVED]**
- 3) Your behaviour in charges 1 and / or 2 was:
 - (a) Unwanted **[PROVED]**
 - (b) Sexually motivated in that you sought sexual gratification and / or to pursue a future sexual relationship. **[NOT PROVED]**

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

Background

On 17 May 2021 the NMC received a referral from Select Healthcare about Mr Floricel Cezar, a Registered Nurse who worked at Plas Rhosnesni Care Home.

On 16 April 2021 Mr Cezar is alleged to have made a sexual comment to a young female Colleague B which made her feel very uncomfortable. It was alleged that, after a telephone conversation, Mr Cezar said to Colleague B that she sounded very nice on the phone and that she had a “mature sexy voice”. When Mr Cezar was asked about the allegation, he said that he remembered saying something about Colleague B’s voice sounding different on the phone, but he could not remember saying anything about her having a ‘sexy’ voice.

Mr Cezar went through a disciplinary process and was given a final warning. It was advised that Mr Cezar should complete additional training, however he resigned from his job before this could take place at that job.

Prior to the incident on 16 April 2021, there was a similar allegation where it was alleged that on 8 December 2020, at the same care home, Mr Cezar was alleged to have told a Colleague A *‘It’s nice to see you in your normal clothes (...) showing off your sexy body.’* Mr Cezar admitted to having said that his colleague looked sexy but said that it was just a passing comment, and he hadn’t meant for it be sexual.

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 Patel on behalf of the NMC.

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

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:

- Colleague A: Employed by Select Healthcare Group as a manager at Plas Rhosneshi Care Home. Direct witness to the 2020 allegations.
- Colleague B: Colleague of Mr Cezar and was employed as a Healthcare Assistant by Select Healthcare Group at Plas Rhosneshi Care Home. Direct witness to the 2021 allegations.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC.

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

Charge 1

That you, a Registered Nurse:

- 1) On 8 December 2020 said to Colleague A 'It's nice to see you in normal clothes, showing off your sexy body' or words to that effect.

This charge is found proved.

In reaching this decision, the panel accepted the live and written evidence of Colleague A. The panel determined that the evidence provided by Colleague A was supported by her contemporaneous note and statement, as well as Mr Cezar's own admission in his statement. The panel found that the evidence was clear and supported. The panel further noted that there are various points in the registrant's bundle where Mr Cezar accepts that he uses these words when speaking to Colleague A. It was clear that this behaviour was unexpected and unwanted. Colleague A was very clear in her statement and oral evidence that it came out of the blue, was unexpected and that it made her feel uncomfortable. The panel accepted Colleague A's account that nothing had been done or said by Colleague A to prompt or justify the comment from Mr Cezar.

Charge 2

- 2) On 16 April 2021 said to Colleague B 'You have a mature, sexy voice on the phone' or words to that effect.

This charge is found proved.

In reaching this decision, the panel determined that although Mr Cezar refutes using the word 'sexy', he does accept that he made complimentary comments about Colleague B's voice. The panel noted that in Mr Cezar's handwritten apology, he uses the word 'beautiful', which the panel determines means he uses words to this effect. The panel decided that Mr Cezar, on the balance of probabilities, did use the word 'sexy' as

maintained in Colleague B's statements, which was supported by the hearsay statements of Mr 1 and Ms 2.

The panel noted that Mr Cezar's version of events has changed over time, leading to the panel raising questions as to his consistency. In his email to the NMC to say that he was not attending today's proceedings, he asserted that he used the word 'mature' and not 'sexy'. Although hearsay evidence was allowed, the reported comments were inconsistent, and the panel therefore gave them little weighting. However, the panel noted the accounts that on frequent occasions on the evening of the allegations, the care assistant made frequent trips to check on the wellbeing of Colleague B.

Charge 3(a)

3) Your behaviour in charges 1 and / or 2 was:

(a) Unwanted

This charge is found proved.

In reaching its decision regarding the behaviour in charge 2, the panel considered that in her live evidence, Colleague B said that she was 'surprised' when Mr Cezar made the alleged comments to her. In her statement, Colleague B described the comments as making her feel uncomfortable, which appears to be corroborated in Mr Cezar's handwritten apology, dated 21 December 2021. The panel determined that Mr Cezar's behaviour would have been unwanted, as Colleague B reported it to her colleagues at the time. Further, this account of reporting the comments to colleagues and being checked on by the care assistant is contained in Colleague B's signed witness statement.

In reaching its decision regarding the behaviour in charge 1, the panel considered that the response by Colleague A to Mr Cezar's comments made it clear that his behaviour was unexpected and unwanted and would not be acceptable in a professional context. In her

live evidence, Colleague A was very clear that Mr Cezar's comments were unexpected and unwarranted. Colleague A also makes this clear in her signed written witness statement. Colleague A was clearly made uncomfortable by Mr Cezar's comments and the circumstances surrounding his comments; in that Colleague A and Mr Cezar were in a small room together, one on one, while she was bending down to organise a cupboard. The panel accepted Colleague A's account that nothing led up to this comment.

In light of the above, the panel determined that this charge is found proved on charge 1 and 2.

Charge 3(b)

Your behaviour in charges 1 and / or 2 was:

- (b) Sexually motivated in that you sought sexual gratification and / or to pursue a future sexual relationship.

This charge is found NOT proved

In reaching its decision, the panel acknowledged that Mr Cezar's behaviour and conduct was inappropriate and unprofessional. However, it noted that the allegations were two isolated comments made to two different people. This was not a case in which there had been a pattern or course of unwanted attention such that a sexual motivation might readily be inferred. The panel acknowledged that Colleague A had regarded the comments as sexual in nature based on the tone that Mr Cezar used when speaking to her. However, the panel did not consider that Colleague A's subjective opinion was supported by any objective evidence. The panel also considered that both Colleagues confirmed that there had been no other inappropriate comments made by Mr Cezar prior to or following the incidents. The panel also noted that Mr Cezar formally apologised to Colleague A and Colleague B when he became aware of how his behaviour made them feel.

The panel determined that the NMC has not proved, on the balance of probabilities, that Mr Cezar's behaviour was sexually motivated. The panel concluded that this charge is found not proved on both counts, as there is a lack of evidence from these one-off incidents to support that Mr Cezar was seeking sexual gratification and/or pursuing a future sexual relationship in making these comments.

In reaching this conclusion, the panel considered that although the remarks made by Mr Cezar to Colleagues A and B were clearly inappropriate and unprofessional this of itself should not be equated with 'sexual motivation'. Further, the panel considered that it was entirely possible that the registrant had made the remarks in a crass and clumsy attempt to be complimentary.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Cezar's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

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

Submissions on misconduct

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

Ms Patel invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The NMC: Standards of conduct, performance and ethics for nurses and midwives (the Code) in making its decision. in making its decision.

Ms Patel identified the specific, relevant standards where Mr Cezar's actions amounted to misconduct. She informed the panel that the Code requires nurses to:

- treat people as individuals and uphold their dignity and treat people with kindness, respect and compassion
- uphold the reputation of their profession at all times, act with honesty and integrity at all times, treat people fairly and without discrimination, bullying or harassment and be aware of how behaviour could affect and influence the behaviour of other people.
- treat people in a way that does not take advantage of their vulnerability or cause them upset or distress, to 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.

Ms Patel submitted that Mr Cezar's conduct fell short of these elements.

Ms Patel submitted that the seriousness of Mr Cezar's conduct should not be underestimated, as his behaviour has had a negative impact on Colleague B. Ms Patel submitted that Colleague B's live evidence shows that she was 'surprised' by the

comments made, and her statement made clear that she was uncomfortable to the extent that she sought comfort from another work colleague, who had to then frequently check up on her to make sure she was okay in an environment where the staff themselves were short staffed. Ms Patel submitted that this could have affected the care that was provided to patients.

Ms Patel further submitted that there was a power dynamic at play regarding Mr Cezar's conduct toward Colleague B. [PRIVATE]. Although Colleague A [PRIVATE], made equally uncomfortable by Mr Cezar's conduct. Ms Patel further submitted that Mr Cezar's conduct was unwanted on both occasions.

Ms Patel submitted that on the basis of all of the facts found proved, fellow practitioners would view Mr Cezar's conduct as '*reprehensible*' and submitted that Mr Cezar's conduct in this case amounted to serious professional misconduct.

Submissions on impairment

Ms Patel moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Grant* [2011] EWHC 927 (Admin).

Ms Patel submitted that Mr Cezar's fitness to practise is impaired.

Ms Patel submitted that Mr Cezar acted inappropriately in the past and is therefore highly likely to act inappropriately in the future. Ms Patel applied the Dame Janet Smith test (Shipman Inquiry 2002-2005) and submitted that Mr Cezar's conduct has breached its first three limbs; jeopardised the health and well-being of patients, brought the professions into disrepute and breached the fundamental tenets of the Code.

Ms Patel submitted that while Mr Cezar's conduct did not amount to actual harm, it could have put patients at an unwarranted risk of harm. Ms Patel informed the panel that another colleague felt it necessary to check on Colleague B throughout the night shift. She submitted that this, in addition to the comments made by Mr Cezar to Colleague B, could have had a detrimental impact on how the clinical team worked together on that shift. She submitted that lines of communications could have been affected and the positions of trust that nurses have when working together on busy, stressful shifts may have been affected. In turn, this could have jeopardised the health and well-being of patients in their care.

Ms Patel submitted that Mr Cezar's conduct would be viewed negatively by the public and his fellow practitioners and would consequently bring the profession into disrepute. She further submitted that confidence in the profession and the NMC as regulator would be significantly diminished if a nurse who has had two successive regulatory proceedings brought against him, in which allegations of a similar nature have been proved, were allowed to practise without restriction.

Ms Patel submitted that Mr Cezar has breached the fundamental tenets of the medical profession in his singling out of female colleagues and making unwanted personal comments whilst alone and in close, physical proximity. She submitted that this breaches the tenets of upholding dignity and acting in a professional capacity.

Ms Patel submitted that there is a risk of repetition and it is clear that Mr Cezar's conduct has not been remedied. She referred the panel to the NMC impairment bundle containing evidence that Mr Cezar underwent an NMC investigation with his previous employer. She submitted that the charges are similar to the ones found proved at these proceedings. Ms Patel further submitted that the impairment bundle suggests a trend that Mr Cezar's conduct is directed to female colleagues who are perhaps of a less senior ranking or position than himself.

Ms Patel submitted that Mr Cezar was aware of the NMC investigation at the time of these incidents and had not demonstrated that he had learned from this and had not

demonstrated sufficient reflection. She submitted that Mr Cezar's comments and behaviours reflect an attitudinal problem which may be difficult to remedy.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Decision and reasons on misconduct

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

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

1 'Treat people as individuals and uphold their dignity'

1.1 'Treat people with kindness, respect and compassion'

20 'Uphold the reputation of your profession at all times'

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 and distress'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mr Cezar was in a position of power at the time of the allegations, and resultingly took advantage of his female colleagues while they were on their own. The panel noted that Mr Cezar's behaviour negatively

impacted both Colleague A and B. The panel also noted that Colleague B needed support and reassurance after this event, demonstrating the serious impact that Mr Cezar's conduct had on her. The panel also considered that Mr Cezar was being investigated for similar allegations against a female colleague at the time of these allegations, and that despite being aware of this, he did not moderate his behaviour.

The panel found that Mr Cezar's 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, Mr Cezar's fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

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

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

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

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

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

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

The panel found that patients could have been placed at risk of harm as a result of Mr Cezar's misconduct, although noted that no actual harm was caused to patients at this

time. It considered that the staff had to take time from their own clinical duties in order to support Colleague B after she was made to feel uncomfortable by Mr Cezar's conduct. The panel determined that should there be a repeat of this behaviour in the future, it could have an impact on the staff and their ability to provide care to patients.

The panel found that Mr Cezar's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It noted that there have been similar violations of the Code in the past and there is a risk of future violations. Colleagues and the public would be concerned at these repeated behaviours and would find Mr Cezar's actions unacceptable.

The panel noted that Mr Cezar has shown limited insight. He has apologised to the victims for his behaviour and, to some extent, has acknowledged his conduct was wrong. However, the panel found that this has been limited, particularly in regard to the impact on his colleagues, and therefore presents a risk of repetition in the future. Mr Cezar has portrayed himself as the victim and has offered limited insight regarding the seriousness of his behaviours.

The panel considered whether the misconduct in this case is capable of being addressed. It found that while his clinical practice is not currently impaired, Mr Cezar's behaviour relates to attitudinal issues which are difficult to remedy, although not impossible. The panel acknowledged the training certification from 2021 and a positive reference from 2022 provided by Mr Cezar. However, it also considered Mr Cezar's own submissions to the NMC which indicates that although he has some insight into his behaviour, this is limited as he does not sufficiently recognise his own failings, or the impact that this has had on his colleagues.

The panel is of the view that there is a risk of repetition in light of the above. Additionally, the panel noted that there is a history of repeated behaviour. The current incidents occurred after Mr Cezar had been disciplined by his former employer and whilst he was being investigated by the NMC for previous similar incidents. Consequently, the panel

considered that, having failed to learn from his previous misconduct, there is currently a high risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required as a reasonable and well-informed member of the public would be very concerned if a registered nurse, where this misconduct was found proved, was allowed to practise without restrictions. 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 Mr Cezar's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 6 months. The effect of this order is that the NMC register will show that Mr Cezar's registration has been suspended.

Submissions on sanction

Ms Patel informed the panel that in the Notice of Hearing, the NMC had advised Mr Cezar that it would seek the imposition of a suspension order if it found Mr Cezar's fitness to practise currently impaired.

Ms Patel submitted that Mr Cezar did apologise for his behaviour in the form of a letter sent to Colleague B in December 2021. This letter was sent shortly after the decision of the first substantive hearing was given. Ms Patel also submitted that Mr Cezar has a positive employment reference since the incident took place, and that the incidents predate the three-year caution order that was imposed.

Ms Patel submitted that there are a number of aggravating factors in this case, mainly that Mr Cezar has demonstrated limited insight. She submitted that during the local meeting, Mr Cezar did not appear to recognise that what he said to Colleague A was wrong, and despite accepting that he would be more conscious of what he says to colleagues, he went on to make the comment to Colleague B several months later. Ms Patel submitted that in light of this, there is a risk of repetition.

Ms Patel submitted that nearly all of the charges have been found proved, and therefore an appropriate sanction must be put in place to protect the public from harm and to maintain public confidence in the profession. Ms Patel submitted that no order or a caution order would not be appropriate in protecting the public.

Ms Patel submitted that a conditions of practice order would not be appropriate to protect the public and the wider public interest. She submitted that conditions are appropriate in cases where there is a clear clinical concern in relation to the registrant's practice that can be remediated. She submitted that, however, in this case the concerns raised are in regard to Mr Cezar's behaviour and his engagement with female colleagues of varying seniority, both junior to him and more senior to him. Ms Patel submitted that there are no workable, relevant, measurable or proportionate condition that could address the risk that has been identified.

Ms Patel submitted that a suspension order would be the appropriate order given the severity and seriousness of Mr Cezar's actions.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Mr Cezar's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate. 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 Sanctions Guidance (SG) and the overriding objective to protect the public. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Abuse of a position, particularly for Colleague B
- Limited acceptance of culpability
- Overall lack of insight into behaviour as there is little understanding of the harm and the potential harm caused by this behaviour
- Repetitive attitudinal issues
- Charge 1 was committed when Mr Cezar was being investigated for previous incidents which were similar in nature
- Charge 2 was committed after he was warned as a result of charge 1

- Evidence of previous similar behaviour which demonstrates a pattern of misconduct over a period of time and therefore, in the panel's judgement, there is a high risk of repetition.
- Conduct which had impacted colleague B which, as a consequence, had the potential to put patients at risk of suffering harm

The panel also took into account the following mitigating features:

- Some admission to the charges
- Apologies for the behaviour
- Positive reference provided by an employer
- Initially undertook some relevant training
- Has engaged with the NMC

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.

The panel then considered the imposition of a caution order. 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.'* It noted that Mr Cezar's registration is already under the imposition of a caution order. It determined that, due to the seriousness of the case and the public protection issues identified, a further caution order which will not restrict Mr Cezar's practice would not be sufficient in the circumstances. The panel considered that the charges which were found proved by this panel were conducted whilst Mr Cezar was under investigation for similar conduct against others. It, therefore, determined that, in light of the repeated behaviour, the misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel

further concluded that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Cezar's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable. The panel took into account the SG. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges. Further, the panel determined that the repeated attitudinal concerns identified in this case was not something that can be addressed through retraining, particularly as Mr Cezar has the inability to comprehend and accept his behaviour. The misconduct identified in this case was not something that could readily be addressed through retraining, particularly where Mr Cezar had demonstrated limited insight. The panel, therefore, concluded that the placing of conditions on Mr Cezar's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient; and*
- *No evidence of repetition of behaviour since the incident.*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. It was of the view that these are serious offences and that a suspension order would protect the public and colleagues whilst allowing Mr Cezar an opportunity to develop his insight and to take steps to strengthen his practice, particularly in relation to professional boundaries, should he choose to.

The panel noted that Mr Cezar had indicated that he does not intend to return to nursing practice, however, the panel was of the view that as these were serious incidents, even if Mr Cezar has no current intention to return to practice, a suspension order is required to mark the seriousness of his misconduct and to maintain confidence in the profession.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Cezar case to impose a striking-off order.

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

The panel noted the hardship such an order may cause Mr Cezar. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of six months was appropriate in this case to mark the seriousness of the misconduct and to allow Mr Cezar further time to reflect on his behaviour and to take steps to strengthen his practice. Further, it would also allow Mr Cezar time to consider his future in the profession given as he has indicated that he does not currently intend to return to nursing practice.

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

Any future panel reviewing this case would be assisted by:

- Continued engagement with the NMC.
- Mr Cezar's attendance at the next review hearing.
- An up-to-date, signed and dated, reflective piece relating to the matters set out in each of the charges.
- Any relevant up to date testimonials from employer(s).

This will be confirmed to Mr Cezar in writing.

Interim order

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

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

Submissions on interim order

The panel took account of the submissions made by Ms Patel. She submitted that an interim suspension order for a period of 18 months is required for the same reasons as submitted previously and to allow sufficient time for any appeal to be heard.

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 was satisfied that not to impose an interim order will be incompatible with its previous decision.

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 in order to protect the public during any potential appeal period.

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

That concludes this determination.