

**Nursing and Midwifery Council**

**Fitness to Practise Committee**

**Substantive Hearing**

**18 – 29 June 2018**

**8 – 19 July 2019**

**24 – 28 February 2020**

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

<b>Name of registrant:</b>	Shigi Thomas
<b>NMC PIN:</b>	03K0647O
<b>Part(s) of the register:</b>	RN1, Registered Nurse – Sub part 1 Adult Nurse Level 1
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	John Vellacott (Chair, lay member) Amy Lovell (Registrant member) Jocelyn Griffith (Lay member)
<b>Legal Assessor:</b>	Nigel Ingram
<b>Panel Secretary:</b>	Sophie Cubillo-Barsi (18 – 29 June 2018, 8 – 19 July 2019) Edmund Wylde (24 – 28 February 2020)
<b>Registrant:</b>	Present and represented by Terry Walsh of Beardsells Solicitors
<b>Nursing and Midwifery Council:</b>	18 – 29 June 2018, represented by Jeremy Loran, 8 – 19 July 2019, represented by Ruth-Ann Cathcart 24 – 18 February 2020, represented by Ruth- Ann Cathcart
<b>Facts proved:</b>	All charges
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-Off Order
<b>Interim Order:</b>	Interim Suspension Order (18 months)

**Details of charge:**

*That you, a registered nurse:*

1. *On one or more dates unknown between 2014 and 2016 acted inappropriately on one or more occasion towards Colleague A in that you;*

1.1 *Blew 'air kisses' towards Colleague A **Charge found proved***

1.2 *Said to Colleague A words to the effect of 'do you like pain' or 'I bet you like pain' **Charge found proved***

1.3 *Grabbed colleague A's breast **Charge found proved***

2. *On one or more dates unknown between 2013 and 2016 acted inappropriately on one or more occasion towards Colleague B in that you;*

2.1 *Grabbed or attempted to grab Colleague B's chest **Charge found proved***

2.2 *Grabbed or attempted to grab Colleague B's groin **Charge found proved***

2.3 *Stared at Colleague B's chest **Charge found proved***

3. *On one or more dates unknown between 2014 and 2016 acted inappropriately towards Colleague C in that you;*

3.1 *Grabbed or attempted to grab Colleague C's breasts **Charge found proved***

3.2 *Smacked or attempted to smack Colleague C's buttocks **Charge found proved***

3.3 *Touched or attempted to touch Colleague C's buttocks **Charge found proved***

3.4 *Put stickers on Colleague C's chest **Charge found proved***

3.5 *Took pens out of Colleague C's front shirt pocket **Charge found proved***

3.6 *Hugged Colleague C pressing her chest against yours **Charge found proved***

4. *Your actions in charge 1 and/or charge 2 and/or charge 3 were sexually motivated **Charge found proved***

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

## Decision and reasons on application to amend the charge

The panel heard an application made by Mr Loran, on behalf of the NMC, to amend the wording of charge 3.1.

The proposed amendment was to insert the words 'grabbed or', specifically:

3. On one or more dates unknown between 2014 and 2016 acted inappropriately towards Colleague C in that you;

### 3.1 **Grabbed or** attempted to grab Colleague C's breasts

Mr Loran submitted that the proposed amendment would provide clarity and more accurately reflect the witness statement of Colleague C. He invited the panel to consider that no injustice would be caused towards you should the amendment be allowed and that, such an amendment, would serve the administration of justice in this case.

Mr Walsh did not oppose the proposed amendment.

The panel accepted the advice of the legal assessor that Rule 28 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ("the Rules"):

28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—

(a) the charge set out in the notice of hearing; or

(b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

- (2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

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

## **Decision and reasons on application pursuant to Rule 31**

The panel heard an application made by Mr Loran under Rule 31 of the Rules to allow Colleague A and Colleague C to provide oral evidence via WebEx. He submitted that both Colleague A and Colleague C are vulnerable witnesses and referred the panel to Rule 23 (1) of the Rules which applies to vulnerable witnesses, specifically:

*23 (1) in proceedings before the Fitness to Practise Committee, the following may be treated as vulnerable witnesses*

*(e) any witness, where the allegation against the registrant is of a sexual nature and the witness was the alleged victim; or*

*(2) After seeking the advice of the legal assessor, and upon hearing representations from the parties, the Committee may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness.*

*(3) Measures adopted by the Committee may include, but shall not be limited to:*

*(a) Use of video links;*

Mr Loran next referred the panel to the case of *Polanski v Conde Nast Publications Limited [2003] EWCA Civ 1573*, within which Lord Slynn stated:

“...as a starting point is it important to recall that although evidence given in court is still often the best as well as the normal way of giving evidence, in view of technological developments, evidence by video link is both an efficient and an effective way of providing oral evidence both in chief and in cross examination.”

Mr Loran informed the panel that in January 2018, the NMC was informed that Colleague A had had a period of absence from work due to stress and that these proceedings were a source of anxiety. Mr Loran submitted that, given the nature of the allegations it is submitted that the appropriate course of action is to allow the witness to

give evidence via video link in order to minimise the impact these proceedings could potentially have on her.

Further, Mr Loran told the panel that Colleague C was unable to attend in person to give evidence as she is a single parent who is unable to leave her child overnight. Colleague C is also in her final year of University and is concerned that the stress of these proceedings could negatively impact her passing her exams.

Mr Loran submitted that there is a strong public interest in hearing the witnesses' evidence and in light of these circumstances, he invited the panel to accede to the NMC's application and allow Colleague A and C to give oral evidence via WebEx.

Mr Walsh accepted that these were the most serious allegations and submitted that Colleague A and Colleague C have previously answered questions put by you at your formal disciplinary hearing in August 2016, and that no issues were raised regarding their vulnerability at that time. Mr Walsh invited the panel to consider that Colleague B was able to provide evidence in person, despite being described as 'vulnerable'. He submitted that neither witness would unduly suffer from providing evidence in person and that you would be at a disadvantage should they not physically attend the hearing.

Mr Walsh stated that it had been made very clear to the NMC from the beginning of 2018, that these witnesses would be required to attend the hearing in person to give live evidence.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 of the Rules provides that, so far as it is '*fair and relevant*,' a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application in regard to Colleague A and Colleague C detailed consideration. The panel determined that, given the nature of the allegations, both Colleague A and Colleague C are deemed to be 'vulnerable witnesses' under Rule 23 (1) of the Rules. The panel found that both colleagues were key witness and that their

evidence was highly relevant to the charges against to the charges against you and that in all the circumstances, it would be unfair not to hear their evidence. The panel placed no weight on events which may have occurred during your formal disciplinary hearing in August 2016.

The panel were unable to identify any real prejudice or disadvantage to you which would flow from Colleague A and C giving evidence by WebEx. The panel considered the points made by Mr Walsh but found that they were not sufficient to refuse the application. In these circumstances, the panel came to the view that it would be fair and relevant to allow Colleague A and C to provide oral evidence via WebEx but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.



## **Evidential Determination**

During the cross examination of Colleague C (a vulnerable witness), Mr Walsh sought to put before the panel and Colleague C, a Facebook post created by Colleague D. Mr Walsh submitted that this post would support his assertion that there was 'collusion' between colleagues at the Trust, be they, witnesses or not.

Mr Loran opposed this line of questioning. He submitted that the Facebook post was irrelevant to the issue in hand and would in no way assist the panel on its findings of facts.

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

The panel were grateful for the detailed oral submissions of both Mr Walsh and Mr Loran in respect to a Facebook posting (of which, the panel had not had sight but understood that it was a photographic image).

The panel, while forming no view in respect of the posting created by Colleague D and whether or not it had been posted by her, determined it would potentially only be relevant if Colleague D were before the panel.

In respect of Mr Walsh's application to show the posting to Colleague C, the panel was of the view that it would be unfair to do so. The panel's reasoning was that this witness's view of the Facebook post, would not advance the satellite question being posed by you, namely that there was a collusion between individuals at the Trust. Mr Walsh conceded that the posting may be of only questionable relevance, for which he would seek to draw inference in due course.

It would be wrong, in the view of the panel, for anyone to be asked to draw any inferences, adverse or not, or conclusions in relation to the Facebook post.

## **Decision and reasons on application pursuant to Rule 31**

The panel then heard a further application made by Mr Walsh, under Rule 31 of the Rules to allow numerous Facebook postings of the complainants and Colleague D to be submitted as evidence.

Mr Walsh reminded the panel that the allegations which you face are serious and that it is your defence that these allegations are false and untrue. He submitted that the allegations were concocted by the complainants, with the assistance of Mr 1, to take revenge in relation to an altercation between yourself, Colleague D and C. Mr Walsh told the panel that it is your defence that these false allegations are as a result of that collusion between the complainants.

Mr Walsh further submitted that the Facebook postings are of probative value as they demonstrate insight into the complainant's social lives and the close connections they have with each other. He submitted that whilst the complainants are being described as 'vulnerable people', the panel should assess, by way of the Facebook postings, whether the complainants were in fact vulnerable, their connection to management and to other witnesses. Mr Walsh concluded by stating that it is in the interest of fairness and justice to allow the admission of the Facebook posts and failure to do so would result in you receiving an unfair hearing.

Mr Loran opposed the application. He informed the panel that the majority of the Facebook postings relate to Colleague D. Mr Loran submitted that the NMC have not at any stage, attempted to put forward information about Colleague D and that the NMC's documentation relate solely to the witnesses in this case, specifically Colleague A, B and C. He submitted that that any arguments in relation to the NMC suggesting that Colleague D is vulnerable falls away as all information regarding her had previously been redacted.

Mr Loran invited the panel to reject any submissions that the Facebook postings demonstrate that there was collusion within the Hospital. He submitted that this is not a case about the witnesses' lives and social connections and that this application is

simply an attempt to discredit Colleague D, in her absence, despite her not been part of these proceedings.

Further, Mr Loran stated that whether the witnesses are considered 'vulnerable', and whether this can be discredited by the Facebook posts, is not a live issue and would not take the panel any further in its determination on facts or provide evidence as to a 'collusion'. Mr Loran invited the panel to note that the Facebook postings, consisting of around 50 pages, are entirely unrelated to these proceedings and concluded that this application should be rejected.

The panel were not given sight of the disputed Facebook postings.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 of the Rules provides that, so far as it is '*fair and relevant*,' a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel determined that the primary issue to which this relates to your defence was that there was some 'collusion' within the Hospital, not whether the complainants are vulnerable, their lifestyles or social connections.

The panel were of the view that it would be fair and relevant to admit into proceedings posts which relate to witnesses in this case, specifically Colleagues A, B and C in relation to the issue of 'collusion' only. Any Facebook posts which relate to complainant's vulnerability, their lifestyles or social connections and connections with third parties, should be excluded. The panel determined there was a public interest in the issues being explored fully, which supported the admission of this evidence into the proceedings. The panel will give what weight it deems appropriate once the panel have heard and evaluated all the evidence before it.

## Decision and reasons on application of no case to answer

The panel considered an application from Mr Walsh, on your behalf that there is no case to answer in respect of all the charges. This application was made under Rule 24 (7) of the Rules. This rule states:

24 (7) Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and –

(i) either upon the application of the registrant ...

the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.

In relation to this application, Mr Walsh referred the panel to the case of *R v. Galbraith 1981 1 Weekly Law Reports 1039*, within which the following test was established:

*(1) If there is no evidence that the crime alleged has been committed by the Defendant there is no difficulty – the judge will stop the case;*

*(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.*

*a) where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.*

*b) Where however the prosecution evidence is such that its strength or weaknesses depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the*

*conclusion that the defendant is guilty, then the judge should allow the matter to be tried by jury*

With regards to Charge 1, Mr Walsh submitted that the account of Colleague A is wholly inconsistent and that it is her word against yours. Mr Walsh reminded the panel that Colleague A could only recall the latter months in 2014 and was unable to provide any specific days or times of the alleged incidents. Further, Colleague A could not remember when she had allegedly told Colleague B of your behaviour and could not recall if this was prior to Colleague B moving from her post as a HCA to an administration role. Mr Walsh submitted that Colleague B's oral evidence and written statement contradicts her account. Mr Walsh submitted that during cross-examination, Colleague A changed her account and admitted she only came forward to report the allegations after Colleague D and Colleague C came forward. Mr Walsh invited the panel to consider that, as a qualified nurse who claims that she was 'violated', her lack of specific details demonstrates a lack of credibility and reliability.

In relation to Charge 2, Mr Walsh stated that Colleague B's evidence lacked credibility and was wholly inconsistent as, once again, she too was unable to provide specific times and dates as to the alleged incidents.

With regards to Charge 3, Mr Walsh invited the panel to consider that there is no evidence before it to support Charges 3.2 to 3.6. Mr Walsh submitted that Colleague C was unable to provide any specific dates and times.

In relation to Charge 3.1, Mr Walsh asserted that her oral evidence is unreliable as it differs to her statement made to Mr 1 on 12 February 2016, within which she stated "I can't remember specific dates, just every time I would work with him." Mr Walsh reminded the panel that this was a contemporaneous statement made less than three days after the alleged incident.

Mr Walsh then referred the panel to the notes of the investigatory meeting held on 24 February 2016, within which Colleague C made no reference to an attempt to grab her

breast. Mr Walsh submitted that the inconsistencies in Colleague C's evidence and the lack of specific details demonstrates a lack of credibility and reliability.

Mr Walsh asserted that, in light of the above, Charge 4 should fall away.

Mr Loran, on behalf of the NMC, submitted that Mr Walsh has failed to provide an explanation as to why Colleague A and B were inconsistent in the evidence they provided. Further, Mr Loran stated that, whilst Colleague A, B and C had not been able to provide a specific date, the charges as drafted do not require a specific date to find the charge proved. Mr Loran did not accept that there are contradictions between the witness's oral evidence and their account of events and invited the panel to consider that it is often the case that it is 'one person's word against another'.

In relation to Charges 3.1 to 3.6, Mr Loran referred the panel to his evidence matrix, within which he submitted there is shown clear evidence of the alleged incidents by way of Colleague C's written statement.

The panel took account of the submissions made and accepted the advice of the legal assessor in which he directed the panel to the case of *R v. Galbraith 1981 1 Weekly Law Reports 1039* and *Tutin v. GMC 2009 EWHC 553 (Admin)*.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and consequently, whether you had a case to answer.

The panel was of the view that there had been sufficient witness evidence before it, both written and oral to support the charges at this stage. Whilst there may be minor inconsistencies between the written statements and oral evidence of the witnesses, these are not so fundamental to the charges so as to make the panel determine that the allegations could not be proved against you.

Further, the panel were particularly conscious that the charges are drafted in such a way in which there is no requirement to link the charges to specific dates. It was the evidence of the NMC's witnesses that your alleged behaviour had occurred during the time frame set out in the charges. Accordingly, the panel was of the view that the failure to prove specific dates are not fundamental to the findings the panel will have to make.

As such, the panel was not prepared, based on the evidence before it, to accede to an application of no case to answer. What weight the panel gives to the evidence remains to be determined at the conclusion of the case having heard from the witnesses on behalf of the NMC and any evidence presented on your behalf.

## Application under Rule 24 (9)

The panel heard a further application on 28 June 2018, by Mr Walsh, to hear the oral evidence of witnesses, called on your behalf, prior to you giving evidence. He referred the panel to Rule 24 (9) of the Rules, which states:

*“Rule 24 .—(1) Unless the Committee determines otherwise, the initial hearing of an allegation shall be conducted in the following stages—*

...

*9) Unless the Committee has determined that there is no case to answer under paragraphs (7) or (8), the registrant may present her case to the Committee and present evidence in support of her case.”*

Mr Walsh accepted that it was normal practice in these proceedings for the registrant to provide oral evidence before any witnesses are called on his or her behalf. However, Mr Walsh informed the panel that [PRIVATE].

Mr Loran opposed this application. He referred the panel to Rule 22 (6), which states:

*“Rule 22*

*(6) No witness as to fact may observe the proceedings until she has given evidence or been formally released by the Committee.”*

Mr Loran submitted that you have continuously engaged with these proceedings and [PRIVATE].

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

The panel determined that it was unable to rule in what order the oral evidence should be heard, until it had before it [PRIVATE].



After receiving the panel's determination in relation to this application, Mr Walsh submitted that [PRIVATE]. Mr Walsh asked that the panel adjourn this hearing until 29 June 2018. The panel acceded to Mr Walsh's application. The application was not reviewed on 29 June 2018 by Mr Walsh.

**[Hearing resumed 8 July 2019]**

### **Decision and reasons on application pursuant to Rule 31**

The panel heard an application made by Mr Walsh under Rule 31 of the Rules to allow the written statement of Ms 4 into evidence. He informed the panel that Ms 4 has now deceased. Mr Walsh submitted that Ms 4's witness statement is relevant, in that she describes your behaviour and her experience of working with you. Further, Mr Walsh referred the panel to Colleague F's witness statement during the Investigatory Interview held on 21 April 2014, in which she states that she 'punched' you and that Ms 4 was a witness to this. Mr Walsh submitted that it had been Ms 4's intention to provide evidence in person in relation to this incident in order to 'set the record straight' that she had not witnessed the said incident. Mr Walsh appreciated that the witness statement was hearsay evidence. However he submitted that her evidence should be given the appropriate weight the panel deemed necessary.

Ms Cathcart did not object to the statement being submitted as hearsay evidence. She stated that the witness statement had been before the panel throughout these proceedings and that the panel can use its professional judgement as to its relevance. However, she reminded the panel that Colleague F is not one of the complainants in this case and that the panel did not have to determine whether the 'punching incident' occurred between you and Colleague F. Ms Cathcart invited the panel to consider the statement with care and caution. She referred the panel to a number of paragraphs within the statement in which Ms 4 makes comments in relation to Mr 1, comments which were not put to Mr 1 during his oral evidence. Ms Cathcart submitted that the statement of Ms 4 should be considered as a character reference rather than a witness statement as to the facts of this case. Ms Cathcart asked the panel to consider what weight, if any, should be given to the statement but reiterated that, as a matter of law, the evidence was not objected to.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 of the Rules provides that, so far as it is '*fair and relevant*,' a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. Further,

the legal assessor referred the panel to the case *Razzaq v Financial Services Authority* [2014] EWCA Civ 770.

The panel considered the application in regard to the statement of Ms 4. The panel noted that Ms 4's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph 'I believe that the facts stated in this witness statement are true' and was signed by her.

The panel noted that Ms 4's statement speaks to your character, to a number of issues relevant to the charges and other general matters. In light of this, it was of the view that it would be fair and relevant to admit into proceedings Ms 4's witness statement. The panel determined there was a public interest in the issues being explored fully, which supported the admission of this evidence into the proceedings. The panel will give what weight it deems appropriate once the panel have heard and evaluated all the evidence before it.

## Background

You were employed by Stockport NHS Foundation Trust (the Trust) in the Endoscopy Unit (the Unit) from 5 March 2007. Your role in the Unit was as a senior Band 5 Staff Nurse. You were involved predominately working within one of the three theatre procedure rooms alongside other members of nursing staff, both preparing the room and equipment. The Unit was busy with multiple patients being seen throughout the day.

It is alleged by Colleague A, a Band 5 bank nurse. It is her evidence that you began to behave inappropriately towards her in 2014. Colleague A alleges that on a number of occasions you blew air kisses towards her and on one occasion, began tapping a pencil in between her fingers. Whilst doing so, it is alleged that you stated 'do you like pain' or 'I bet you like pain'. It is Colleague A's evidence that there was a sexual undertone in the way in which you said these statements. Colleague A further alleges that whilst she was stood next to a defibrillator machine in the Unit, you unexpectedly grabbed her breast. Colleague A attended an investigatory interview on 21 April 2016, in which she provided a full account of the allegations.

It is further alleged by Colleague B, a Health Care Assistant who worked on the Unit that you began to make suggestive comments to her in 2013. Colleague B alleges that you would ask her how many sexual partners she had been with and make comments about her physique. It is her evidence that on one occasion, you grabbed her breast. Colleague B alleges that this became a 'common occurrence' and that you would often stare at her chest and make lecherous comments towards her. Colleague B further alleges that, whilst working with you in theatre, you made an attempt to grab her breasts and groin area. Colleague B described how she was 'vocal in her response' and swore at you. Colleague B attended an investigatory meeting on 10 May 2016, in which she provided a full account of her allegations.

In February 2016, Colleague C, a Health Care Assistant (HCA) who worked within the Unit, reported that you had acted sexually inappropriately towards her on a number of occasions. Colleague C alleged that you would take pens out of her shirt pocket and put

them back in, brushing her breast whilst doing so. Further she alleges that you would smack and touch her bottom and would take barcode stickers from equipment trays and stick them on her breast. Further, she alleges that, after returning to work after a period of absence, you gave her two hugs, the second hug resulting in you pulling Colleague C into your chest so that her chest pressed against yours, which she found uncomfortable and inappropriate. Colleague C reported your alleged behaviour after learning of complaints about your behaviour from other staff members.

## **Decision on the findings on facts and reasons**

In reaching its decisions on the facts, the panel considered all the evidence adduced in this case together with the submissions made by Mr Loran and Ms Cathcart on behalf of the NMC and those made by Mr Walsh on your behalf.

The panel heard and accepted the advice of the legal assessor which included reference to the case of *Arunkalaivanan v. GMC [2014] EWHC 873*.

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 the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

The panel heard oral evidence from six witnesses tendered on behalf of the NMC.

Witnesses called on behalf of the NMC were:

- Ms 1, Band 5 Staff Nurse;
- Colleague B, Health Care Assistant (at the time of the allegations);
- Ms 2, Head of Performance & Quality in the Diagnostic & Clinical Support Business Group (at the time of the allegations);
- Colleague A, Band 5 Staff Nurse;
- Colleague C, Health Care Assistant; and
- Mr 1, Unit Manager.

The panel first considered the overall credibility and reliability of all of the witnesses it had heard from on behalf of the NMC.

The panel found Ms 1 to be an open, honest, reliable and credible witness. She was able to assist the panel and did not appear to harbour any animosity.

The panel found Colleague B was able to provide consistent and detailed evidence. She accepted that she was 'friendly' with Mr 1. Whilst Colleague B appeared vulnerable at points during her evidence and could not provide specific dates and times of the incidents, the panel found that this did not undermine her evidence. The panel found Colleague B to be a credible and reliable witness.

Whilst Ms 2 was not a direct witness to the allegations, she was able to provide a professional account as to how she conducted her investigation into the complaints made against you. Ms 2 confirmed during her oral evidence that she did not find any evidence of collusion within the Unit. The panel found Ms 2 to be a credible and reliable witness.

The panel found Colleague A to be a credible and reliable witness. Whilst the panel noted that Colleague A was visibly distressed whilst giving her oral evidence and could only provide an approximate timing of these incidents, the panel found that this did not undermine her evidence. It found that she did not seek to embellish her evidence, which was clear and consistent.

The panel found that Colleague C was able to provide clear and measured evidence. Whilst Colleague C could not provide specific dates and times of the incidents, the panel found that this did not undermine her evidence. The panel found Colleague C to be a credible and reliable witness. It had no reason to disbelieve her evidence or to take the view that she had sought to engineer her evidence or instigate others to do so.

The panel found that Mr 1 was able to provide clear and measured evidence. He conceded to his wrong doings and demonstrated a respect for your clinical abilities. Mr 1 was able to provide an explanation of his escalation of the complaints made against you. The panel found that Mr 1 followed the accepted Human Resource's protocols and procedures in this regard and determined that Mr 1 was a credible and reliable witness.

The panel also heard oral evidence from five witnesses tendered on your behalf.

Witnesses called on your behalf were:

- Ms 5, Registered General Nurse (at the time of the allegations);
- Ms 6, Registered General Nurse (at the time of the allegations);
- Ms 7, Gastro Intestinal Surgeon and Endoscopist (at the time of the allegations);
- Ms 8, Sister/ Assistant Manager (at the time of the allegations); and
- Ms 9, Registered General Nurse (at the time of the allegations).

The panel next considered the overall credibility and reliability of all of the witnesses called on your behalf. Before hearing the witnesses' evidence, the panel noted that none of the above witnesses were actually direct witnesses to any of these events and that their evidence confined itself to the geography of the Unit and the working environment. Further, the panel heard evidence that all five of the defence witnesses had regularly 'met up over coffee' and discussed these allegations which may well have innocently impacted upon their evidence to this panel.

The panel found Ms 5 to be defensive at times, particularly during cross-examination. When cross-examined, Ms 5 conceded that there would have been moments within the Unit when you may have been left alone with colleagues. The panel found that a lot of Ms 5's evidence was focused on the management and atmosphere of the Unit. Ms 5 could only give her opinion as to the facts of the case.

The panel found Ms 6 to be too emphatic in her opinion that the alleged offences were 'impossible'. Ms 6 had a fixed, unwavering view of the allegations, based on her opinion alone. The panel found that many of Ms 6's assertions were not supported by facts.

Ms 7 provided evidence as to the procedure room and the wider environment within the Unit. Ms 7 was not familiar with the specific character traits of some of the staff.

The panel found that Ms 8 provided measured and balanced evidence. She accepted what she did not know or could not recall. The panel found that Ms 8 sought to assist the panel to the best of her ability and that the evidence she provided was credible and reliable. However, the panel noted that Ms 8's evidence was primarily peripheral to the allegations being considered by the panel.



The panel found that Ms 9 had robust opinions regarding management within the Unit. It was her opinion that there would have been 'no obstacles' which would have prevented any of the complainants reporting your alleged behaviour.

In addition, the panel heard oral evidence from you.

Whilst the panel has borne in mind the evidence before it in relation to your medical condition and acknowledged that the environment of these proceedings can be challenging, the panel did not find your evidence to be wholly credible. The panel noted in particular that your memory of critical issues was vague at times and that much of your evidence was difficult to accept. In particular, in relation to your 'statement of case', which you had described as inaccurate to this panel. You told the panel you had limited involvement in its preparation and that you had not read the statement prior to your delivery of it at your disciplinary hearing notwithstanding that you had signed a declaration of truth. In the panel's view this inconsistency substantially undermined your defence to these charges.

The panel acknowledged Mr Walsh's submission that it must carefully consider why there was a significant delay in the complainants reporting the alleged incidents. The panel noted the evidence of the complainants, all of whom stated that they did not raise your behaviour immediately as they were junior members of staff and/or bank nurses for a variety of reasons. Those concerns included their lack of seniority, their lack of corroboration and their belief that they would not be believed due to your senior clinical status within the Unit. The panel were however, conscious that victims of sexual harassment would not necessarily, immediately or indeed ever, seek to escalate a complaint of this nature. This point is underlined by the evidence of Colleague A that, if she were to report the matter, 'it would not go well for me' and Colleague C who observed 'it would be my word against his'. The panel had no evidence before it to suggest that Mr 1 sought to mastermind a series of complaints in order to have you removed from the Unit.

It has been your position at various stages in the disciplinary and investigative process that these complaints were prompted by racism, collusion, professional jealousy and a bias by Mr 1 for younger members of staff. The panel rejected the complaint of collusion between Colleagues A, B, C and D, apparently orchestrated by Mr 1 in order to remove 'older staff'. Whilst the panel have been presented with evidence that there may have been some management issues within the Unit, including the suggestion that Mr 1 displayed favouritism towards the younger members of staff, it had not been presented with any evidence to suggest that those individuals colluded in order to have you removed from the Unit. The panel reminded itself that the charges relate to incidents which occurred on numerous occasions, over a prolonged period of time and involved three separate individuals. The panel therefore determined that the defence of 'collusion' is an improbable proposition.

Further, the panel found no support for the allegation of racism and noted in particular, your comments to Colleague B that you would 'use the race card' if people 'upset' you. In respect of your allegation of professional jealousy and a bias towards junior members of staff, as the panel has earlier observed, without exception all the witnesses who have given evidence in these proceedings assert to your high clinical abilities. In those circumstances, the panel struggled to understand why Mr 1 would seek to set in motion a complaint process which would lead to the dismissal of such a valuable practitioner.

In going onto consider the individual charges, the panel were addressing a position where you comprehensively denied any or all inappropriate sexual behaviour set against no less than three members of the nursing staff, all of who gave evidence before both the disciplinary panel and this Committee regarding your serious sexual misconduct. Consequently, the panel approached the charges considering which on a balance of probabilities, was the more likely account.

### **Charge 1.1**

1. On one or more dates unknown between 2014 and 2016 acted inappropriately on one or more occasion towards Colleague A in that you;

## 1.1 Blew 'air kisses' towards Colleague A

### **This charge is found proved.**

When considering this charge, the panel referred to the witness statement of Colleague A, in which she states:

"I am unable to recall exactly when it was, but I believe that it was around late 2014, that the registrant began to behave in a very inappropriate way towards me. There was a number of occasions where he would simulate blowing 'air kisses' at me down the corridor in the unit."

Within her oral evidence, Colleague A explained that this behaviour would often occur when no one else was around, that you would look from side to side, and that you would blow a kiss 'just using the lips, like puckering and making a kissing motion.' She spoke in her evidence of how 'at the time I found it comical but not in a nice way, I found it weird'.

You deny this charge. You stated during your oral evidence that this incident never occurred and that Colleague A is lying.

The panel heard extensive evidence as to the layout, geography and traffic within the Unit. It accepted the evidence that the corridor was often 'very busy' but determined that there would have been times when the traffic within the corridor was reduced. The panel preferred the evidence of Colleague A, having already found her to be a credible and reliable witness. In light of the evidence before it, the panel was satisfied on the balance of probabilities that this fleeting incident, of blowing kisses towards Colleague A, did occur. This charge is therefore found proved.

### **Charge 1.2**

1.2 Said to Colleague A words to the effect of 'do you like pain' or 'I bet you like pain'

## **This charge is found proved**

When making a decision in relation to this charge, the panel considered the written statement of Colleague A, in which she states:

“Another instance of his inappropriate behaviour was one occasion, the exact date of which I cannot recall, when I was standing at a desk with my hand resting on the desk with my fingers spread. The registrant had a pencil in his hand and was tapping the gaps between my fingers and making comments like “do you like pain?” or “I bet you like pain”. It was clear to me that there was a sexual connotation in the way that the registrant said this to me.”

In Colleague A’s oral evidence, when asked why she believed there was a sexual connotation to what you allegedly said, she explained that it was the ‘way he said it, it was the way he said it. It’s not something I can easily describe.’ She further described your behaviour as ‘creepy’.

You deny this charge. You stated during your oral evidence that this incident never occurred and that Colleague A is lying.

The panel found Colleague A’s evidence to be consistent and noted that her oral evidence corroborated her written statement. The panel preferred the evidence of Colleague A. It determined that this incident is not one which would have necessarily been noticed by any other individual and found that, in all likelihood, you acted opportunistically. The panel was therefore satisfied, on the balance of probabilities, that you did say to Colleague A words to the effect of ‘do you like pain’ or ‘I bet you like pain’.

## **Charge 1.3**

### 1.3 Grabbed colleague A’s breast

## **This charge is found proved.**

When determining this charge, the panel took into account the witness statement of Colleague A, in which she states:

“On another occasion I was stood next to the defibrillator trolley, facing towards admissions, and the registrant was also stood there facing me. Totally unexpected the registrant grabbed my breast. It was very quick but deliberate act on the part of the registrant and it left me feeling quite shocked. The registrant was taking a risk doing this as the corridor where we stood can be very busy.”

It was Colleague A’s oral evidence that this incident made her feel shocked, violated and upset. She described to the panel how she spoke with you after the incident and told you that she thought you were ‘sleazy’ and asked whether you had ongoing problems in your personal life in order to make you act the way you did.

You deny this charge. You stated during your oral evidence that this incident never occurred and that Colleague A is lying.

The panel determined that the action of grabbing someone’s breast, as described by Colleague A, would have been quick and not necessarily immediately obvious to others in the vicinity. The panel found that Colleague A’s reaction to the incident was credible, particularly in the context in which this incident occurred. The panel preferred the evidence of Colleague A, having already found her to be a credible and reliable witness. It was therefore satisfied, on the balance of probabilities, that you did grab Colleague A’s breast.

## **Charge 2.1**

2. On one or more dates unknown between 2013 and 2016 acted inappropriately on one or more occasion towards Colleague B in that you;

2.1 Grabbed or attempted to grab Colleague B’s chest

**This charge is found proved.**

In reaching this decision, the panel had regard to the witness statement of Colleague B, in which she states:

“On one occasion whilst working in the Endoscopy department Shigi grabbed hold of my bust. Initially I just laughed it off, but when he kept on doing it I told him to get off his response was that he appeared to find my reaction funny. This kind of behaviour became a regular occurrence when I was working with him, but he only ever did it when it was a one to one situation.”

In her oral evidence Colleague B described to the panel how you were stood in front of her when you attempted to grab her breast and that she was ‘shocked’ at your behaviour. She reiterated that you appeared to find the incident funny and ‘amusing’.

You deny this charge. You stated during your oral evidence that this incident never occurred and that Colleague B is lying. It was your evidence that Colleague B was a ‘serial complainer’ and that if the incident had occurred, she would have reported your behaviour straight away. This submission was supported by all of your witnesses, in particular Ms 3, who told the panel that there would not have been ‘any obstacles’ preventing Colleague B from making a complaint. The panel preferred the evidence of Colleague B, that ‘there were no witnesses when he did it, no one to see where he did it, I wouldn’t be believed. It did happen...that is the truth’. Colleague B’s evidence that her complaint was prompted by the fact that ‘he did it to a student nurse, another nurse and I felt guilty’.

Whilst the panel accepted that Colleague B may have made complaints about various issues, it determined that this did not undermine her account of the incident. The panel found that her reaction was credible, particularly in the context in which the incident occurred. The panel preferred the evidence of Colleague B, having already found her to be a credible and reliable witness. The panel was therefore satisfied, on the balance of probabilities that you did grab or attempt to grab Colleague B’s breast.

## **Charge 2.2**

2.2 Grabbed or attempted to grab Colleague B's groin

**This charge is found proved.**

When considering this charge, the panel referred to the witness statement of Colleague B, in which she states:

“On another occasion whilst working with Shigi in Theatre, he made an attempt to grab my chest and also my groin area. I was quite vocal in my response and believe I swore at him and told him that if he continued to behave in this way that he would get into trouble.”

Colleague B clarified in her oral evidence that this incident occurred in a ‘really small’ theatre and that it was you and her alone in the room.

You deny this charge. You stated during your oral evidence that this incident never occurred and that Colleague B is lying.

The panel noted that Colleague B became very distressed whilst providing oral evidence in relation to this incident. As a result of the shocking nature of your behaviour, Colleague B was able to recall the incident clearly. The panel accepted the evidence of Colleague B, having already found her to be a credible and reliable witness. The panel therefore determined, on the balance of probabilities that you did attempt to grab Colleague B's groin.

## **Charge 2.3**

2.3 Stared at Colleague B's chest

**This charge is found proved.**

When making a decision in relation to this charge, the panel considered the written statement of Colleague B, in which she states:

“He would make frequent attempts to grab me and would stare at my chest and make suggestive and lecherous comments which made me feel very uncomfortable.”

In her oral evidence, Colleague B told the panel how you would make comments such as ‘Oh [Colleague B]’ whilst looking at her breasts.

You deny this charge. You stated during your oral evidence that this incident never occurred and that Colleague B is lying.

The panel determined that consciously staring at someone’s breasts while in the procedure room, may not be immediately obvious to others in the vicinity and that there would have been numerous opportunities when you could have behaved in this way. The panel found that Colleague B’s reaction to your behaviour was credible, particularly in the context in which these incidents occurred and the determination that the panel has earlier made. The panel preferred the evidence of Colleague B, having already found her to be a credible and reliable witness. It was therefore satisfied, on the balance of probabilities that you did stare at Colleague B’s breasts.

### **Charge 3.1**

3. On one or more dates unknown between 2014 and 2016 acted inappropriately towards Colleague C in that you;

3.1 Grabbed or attempted to grab Colleague C’s breasts

**This charge is found proved.**

When determining this charge, the panel took into account the witness statement of Colleague C, in which she states:



“...It was an evening shift and we were waiting in theatre for a patient – and he did something. He went to grab my breasts and I said, “Don’t do that or I’ll tell somebody.” He said “No, you won’t.” Then he said something under his breath that I didn’t hear. The patient was brought in at that point so we were interrupted, but the incident was full on. He absolutely went and groped me.”

In her oral evidence, Colleague C described how she went to block you from touching her breasts but was not ‘quick enough’. She further stated that after the incident she felt ‘violated’ and ‘vulnerable’.

You deny this charge. You stated during your oral evidence that this incident never occurred and that Colleague C is lying. It was put to Colleague C in cross-examination that she was the ‘ring leader’ in respect of these complaints. This she emphatically rejected and the panel remains satisfied that there was no established campaign by her and other nurses.

The panel noted that Colleague C had a clear recollection of this incident. It determined that the grabbing of someone’s breasts, as described by Colleague C, would have been a quick and opportunistic action. The panel found that Colleague C’s reaction to the incident was credible, particularly in the context in which this incident occurred. The panel preferred the evidence of Colleague C, having already found her to be a credible and reliable witness. It was therefore satisfied, on the balance of probabilities that you did grab Colleague C’s breasts.

### **Charge 3.2**

3.2 Smacked or attempted to smack Colleague C’s buttocks

#### **Charge found proved.**

In reaching this decision, the panel had regard to the witness statement of Colleague C, in which she states:

“...I have a young daughter so I always had my phone with me on silent, which I usually kept in my back trouser pocket. He would always try and smack my bum and touch my bum and use my phone as an excuse.”

In her oral evidence, Colleague C described to the panel how you would repeatedly touch and smack her buttocks whilst her phone was in her back pocket, so much so that she decided to leave her phone on the side and not in her pocket, at which time you stopped.

You deny this charge. You stated during your oral evidence that this incident never occurred and that Colleague C is lying.

The panel determined that the smacking and/or touching of someone’s buttocks would have been a quick and opportunistic action. The panel found that Colleague C’s solution to you stopping this behaviour and her reaction to the incident was credible particularly in the context in which this touching had occurred. The panel preferred the evidence of Colleague C, having already found her to be a credible and reliable witness. It was therefore satisfied, on the balance of probabilities that you did smack or attempt to smack Colleague C’s buttocks.

### **Charge 3.3**

3.3 Touched or attempted to touch Colleague C’s buttocks

**This charge is found proved.**

In light of its determination at Charge 3.2, the panel was satisfied, on the balance of probabilities that you did touch or attempt to touch Colleague C’s buttocks.

### **Charge 3.4**

3.4 Put stickers on Colleague C’s chest

**This charge is found proved.**

When considering this charge, the panel referred to the witness statement of Colleague C, in which she states:

“On the scopes we use, the cameras come in a plastic tray. They come with stickers on them with a specific barcode for each so we can track them. You would take the stickers off and put them on yourself until you got the patient’s care plan. The registrant would often take the stickers off the tray and try and put them on me; on my breast pocket or somewhere like that.”

In her oral evidence, Colleague C clarified that often other people who she would work with, would place the stickers on her but that they would usually be placed on her arm. She confirmed that you would deliberately place the stickers on her pocket where he breast was.

You deny this charge. You stated during your oral evidence that this incident never occurred and that Colleague C is lying.

The panel determined that placing a sticker on someone’s breast would not be immediately obvious to others in the vicinity. The panel preferred the evidence of Colleague C, having already found her to be a credible and reliable witness. It was therefore satisfied, on the balance of probabilities that you did place stickers on Colleague C’s breast.

**Charge 3.5**

3.5 Took pens out of Colleague C’s front shirt pocket

**This charge is found proved.**

When making a decision in relation to this charge, the panel considered the witness statement of Colleague C, in which she states:

“With me, I have to say, more than anything he was just very annoying. It was like having a fly around you that you want to swat away. He was just a bit pesty. For instance, he was taking pens out of my shirt pocket and putting them back in. The pockets in the scrubs are quite high, so he’d brush my breast as he did so.” [sic]

In her oral evidence, Colleague C told the panel how she believed you deliberately took the pens out of her pocket in order to ‘brush up against’ her breasts. She described how on many occasions, she was ‘hands free’ and all you had to do is ask to borrow a pen, she could have handed you one.

You deny this charge. You stated during your oral evidence that this incident never occurred and that Colleague C is lying. You stated that you had no reason to act in the alleged way because had you wanted to use a pen, then you would have gone to the secretary’s office in order to obtain one.

The panel noted Colleague C’s evidence that this behaviour was repeated on a number of instances. The panel determined that the action taking a pen out of someone’s pocket would have been quick and not immediately obvious to others in the vicinity. The panel preferred the evidence of Colleague C, having already found her to be a credible and reliable witness. It was therefore satisfied, on the balance of probabilities, that you did take pens out of Colleague C’s front shirt pocket.

### **Charge 3.6**

3.6 Hugged Colleague C pressing her chest against yours

**This charge is found proved.**

When determining this charge, the panel took into account the witness statement of Colleague C, in which she states:

“I had to have some time off work at the end of 2015 to 2016 due to a personal situation at home. When I came back to work, the registrant gave me a big cuddle. I thought he was being friendly and was welcoming me back, and I thought it was nice of him to do. But then he gave me another hug and, on the second hug, he pulled me right into his chest with my chest pressed against his chest. I remember I thought, “This isn’t right.””

In her oral evidence, Colleague C told the panel that the second hug made her feel ‘shocked’ and ‘vulnerable’.

You deny this charge. You stated during your oral evidence that this incident never occurred and that Colleague C is lying. You told the panel that neither of the alleged hugs occurred and that you are not a ‘tactile’ person despite you confirming in your Disciplinary Hearing on 5 August 2016 that the first hug had occur. Whilst the panel noted your submission that the minutes of the Disciplinary Hearing on 5 August 2016 were inaccurate, no explanation was provided to the panel as to why the minutes had recorded both the question from you regarding the hug and the full answer from Colleague C. You were also unable to say what question you had asked which had elicited the answer as recorded from Colleague C.

The panel accepted the evidence of Colleague C, having already found her to be a credible and reliable witness. It determined that you acted opportunistically and inappropriately in giving Colleague C the second hug. In light of this, the panel was satisfied on the balance of probabilities, that you did hug Colleague C, pressing her chest against yours.

#### **Charge 4**

4. Your actions in charge 1 and/or charge 2 and/or charge 3 were sexually motivated

**This charge is found proved.**

In reaching this decision, the panel had regard to all of the evidence before it.

In considering the question of whether the conduct found proved was sexually motivated, the panel considered any explanation other than sexual, to justify your conduct and behaviour. The panel could find no clinical or other reasonable explanation to explain your actions and behaviour and consequently was satisfied, on a balance of probabilities, that they were sexually motivated.

**[Hearing resumed on 24 February 2020]**

**Decision and reasons on application pursuant to Rule 31, for Registrant  
Witnesses to give evidence via GoToMeeting (via video-link)**

The panel heard an application from Mr Walsh, made on your behalf, to hear the evidence of three witnesses (Dr 10, Ms 11, and Ms 12) at the impairment stage over video-link. The application was made under Rule 31 of the Rules. Mr Walsh informed the panel that these witnesses are currently working with you in a healthcare setting, in that you have been working as a Healthcare Assistant, and that they can give evidence to how you are as a colleague. Mr Walsh submitted that all three witnesses reside and work in Manchester, and that the only way to hear their evidence is over video-link. He informed the panel of his anticipated timetable in respect of the witnesses.

Mr Walsh also indicated that, at the impairment stage, he would be relying on parts of the statements of witnesses which the panel have already heard at the facts stage – specifically those parts which refer to your character and to their experience working with you, both in respect of your treatment of patients and how you are to work with.

Ms Cathcart indicated that the NMC are neutral in respect of this application, and that it is entirely a matter for the panel's judgement.

The panel accepted the advice of the legal assessor.

The panel considered the evidence of these three witnesses to be relevant to any decision to be made in respect of current impairment. It determined that no unfairness or prejudice would be caused to either party by hearing the evidence of these witnesses remotely, over video-link.

The panel therefore allowed the application to hear the evidence of Dr 10, Ms 11, and Ms 12 over video-link.

## **Evidence and Submissions on misconduct and impairment:**

Having announced its finding on all the facts, 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.

You gave oral evidence. You read the following statement into the record:

*Anyone touching colleagues indecently and harassing them is totally wrong.*

*More so when the person concerned is a nurse from the medical profession it cannot be entertained in any form, because a nurse is expected to act in a caring, empathetic, and considerate manner to colleagues and patients equally. That is precisely why I would never ever do it.*

*If anyone behaves indecently towards colleagues it is totally inappropriate conduct. A nurse is expected to work cooperatively with colleagues, respect their skills, expertise and contribution. There should be effective communication and keep them informed, work with them to preserve the safety of the patients at all time. Nurse should be totally supportive of colleagues and should be accountable for one's action. Indecent and harassing behaviour has no place in the working relationship and should never ever occur.*

*If a nurse behaves indecently to colleagues that would definitely damage the nursing profession and it cannot be tolerated in any form.*

*One should always uphold the position as a registered nurse, act with honesty and integrity. Never use professional capability to undermine colleagues in any way. A nurse should always promote the highest standards of professional conduct.*



*I have always strived to follow the principles of good practice outlined by NMC. Several colleagues have given testimonials relating to my behaviour in the work place – “never known Shigi to behave in an inappropriate way, extremely professional, always a gentleman, family man and quite polite to colleagues and patients.”*

*Updating my endoscopy skills was always a priority with me and I undertook all the relevant training as and when required.*

*Working to the highest standards outlined by NMC was my moto and I never encountered any work place complaints before and I was always commended for extreme professionalism even when working under pressure.*

*I always loved the nursing profession because it gives me great job satisfaction when I work to the highest standards possible, working amicably with the colleagues and it is mainly to help and care for the patients.*

*I like to highlight the fact that I have never ever done any indecent activity towards colleagues and I would be the first one to apologise if any action of mine is construed in that light. If I have inadvertently offended anybody I like to apologise fully knowing that I have not done anything wrong.*

[sic]

You told the panel that you have had time to consider the findings of fact by the panel and that you understand them. You said, with respect, that you have not done anything inappropriately as alleged, and that what has been alleged is untrue – you still deny all of the charges. You told the panel that you understand the seriousness of the charges, and explained the provenance of the reflective statement you have provided (above, in italics).

You informed the panel of your nursing career, which began in 1996, and told it that you have never had any disciplinary proceedings or complaints about your care of patients

or conduct towards colleagues before these proceedings. You invited the panel to consider the character references provided on your behalf, and said that they explain that you are professional, honest, and a family man. You said that you love to work as a nurse, have only ever worked as a nurse, and that nursing is your profession and your life.

You explained your current employment circumstances; you are working at InHealth as a Healthcare Assistant (HCA) within the Endoscopy Unit (the Unit), and have done so since 2017 – prior to that you worked as a nurse at InHealth, since 2010. You told the panel that you work within a team with colleagues who are always close by. You explained the role of an endoscopy nurse and that of an endoscopy HCA, and described the team of colleagues who you work with now. You work with the same people as you did when working as a nurse; the composition of the team is the same, and there are a mixture of male and female colleagues. You told the panel that there have been no disciplinary issues or complaints while you have been working as a HCA. You said that you no longer work at Stepping Hill (Alexandra) Hospital, and that there were no other complaints made against you while you were working there.

You said that any inappropriate behaviour done in the workplace is absolutely wrong and unprofessional. You told the panel that you are safe to work as a nurse, and that you never did anything inappropriate to colleagues. You said that you have devoted yourself to the nursing profession and want to work as a nurse; you have been punished already as you have not worked as a nurse since 2016.

[PRIVATE] You told the panel that this experience has greatly affected you; you love to work as a nurse and would love to continue to work as a nurse.

When asked what impact your conduct found proved would have had on women, you said “I don’t know”. You told the panel that you have already explained that you have not done anything inappropriate to anyone. You accepted that, in a hypothetically similar case, such conduct would affect women, individually and as a collective; you said that, individually, they would feel upset and would lose confidence in themselves. In respect of the impact of the conduct found proved on colleagues, you said that

nobody should suffer such inappropriate behaviour. You said that your colleagues at the time would “feel very bad”, “because this is not the right way for things to happen”. You told the panel that the public, informed of behaviour found proved against you, “would not be happy with it”.

You told the panel that you undertook training when you started working as an HCA, and explained what this training entailed. You said that you have not undertaken any specific professional boundaries training and cannot remember if you have read any material on maintaining professional boundaries. You said that you are not aware whether you were subject to a risk assessment or monitoring when you began work as an HCA.

When asked if these proceedings have made you change the way you would work in the future as a nurse, you said that you have not thought about it because you are still working with women in the normal way that you would do – there is nothing, in your view, to change. You reminded the panel of the character references provided on your behalf, and said that they explain very well who you are, and how you behave. You said that, if you were allowed to work again as a nurse, you would not change your behaviour in the workplace, notwithstanding the panel’s finding, as you do not have anything to change and are still working in the same manner as you were previously.

You informed the panel of your plans for the future for you to be permitted to return to nursing; your manager has told you that you could join up with the Endoscopy Unit where you currently work. You have informed them of the charges against you, and they are happy to give you a job as a nurse. You said that your employers know you very well as you have worked for them since 2010.

You said that, were you to practise as a nurse, the public would have confidence in you, and if they did not they would say “I do not want this nurse”. You said that the public respect nurses and expect them to always be professional; if a nurse has acted wrongly, the public would not accept this and a complaint would be made.

You said that the findings of this panel would be in your mind in the future, and these proceedings are a “big thing” in your life. You told the panel that you would be happy to go on any training for professional boundaries, and that being chaperoned or monitored at work “would not bother” you; you said that if someone is not doing anything wrong, it is fine for them to be monitored – “no problem”. You said that you are “very frightened” to be working now, as you do not know what people will say or do “behind the scenes”; you told the panel that you have always been “careful” and still do the same now.

You confirmed that since the panel’s finding of fact in July 2019, you have not taken active steps to look into specific training or courses. You “have not thought of anything to be done” and “have not done anything at all”.

Dr 10 gave oral evidence. He read the following statement into the record:

*Thank you for asking me to provide a character reference for Mr Shigi Thomas; whom I have known for over 12 years, first whilst I was practicing at the private – The Alexandra Hospital Cheadle & 3 years later at my NHS Stepping Hill Hospital until I retired in late 2014.*

*Shigi in both places, was held in high esteem by all nursing & medical staff for his professionalism, competence & was out-of-the-way helpful in complex difficult situations for his colleague nursing staff, who at times felt themselves out of their depths – e.g. difficult blood-taking from patients with invisible veins. Most senior staff, including myself preferred to have Shigi assist in complex endoscopy situations like serious upper gastrointestinal bleeding in seriously ill patients in intensive care unit or alien surgical theatres where support staff are not fully trained & experienced. In both places Shigi was considered the ‘best’ help possible one can have around. He was quiet, get-on-with work, no-nonsense-chatting type of endoscopy nurse that allowed long lists to be finished in time compared with many other senior endoscopy nursing staff.*

*In 10 of these 12 years, at both places, I believe, performed the maximum number of patient procedures & I do not recall a single instance where any*

*patient or colleague or nursing or support administrative staff had anything adverse to say about Shigi. On the contrary he was held in a pedestal position for his above-others competence & helpful character*

*I firmly believe that Shigi, who has dedicated his past, over a decade, in serving as endoscopy nurse has only been professional motivated & passionate in his work throughout my period of knowing Shigi, most of which was when I had been Clinical Lead in Endoscopy. I neither observed, not sensed & above all never been hinted, alluded to or informed of anything but praise & quite professionalism. I had weekly meetings with senior admin & senior nursing staff as Lead & never was made aware of any thing but praise.*

*I retired in 2013 & then had minimal contact except on Saturdays till end 2014. It appears intriguing to me what has been alleged was never brought to my attention even informally by any of the staff – both junior & senior nurses – since I was the most easily accessible Lead consultant possible with regular presence in Endoscopy Unit.*

[sic]

Dr 10 explained his role as Clinical Lead and the responsibilities of the role, including as a line manager. He said that, in collating audit data and working with the lead nurse, he would receive feedback regarding all nurses (including you) from other doctors; he had weekly meetings with senior staff to discuss all matters – quality and standards, complications, reflection, analysis, and any complaints by patients or issues raised by colleagues.

Dr 10 described what positively differentiated your skills from those of other endoscopy nurses; you knew intuitively what information and equipment was required in anticipation of the next step of the procedure. You were professional and did not engage in or encourage social chatting when working, but would simply care for the next patient; you were never distracted from your task when assisting Dr 10. Dr 10 found you most helpful and collaborative, and said that he and his colleagues always

found that when you were nurse-in-charge, matters were performed much more efficiently. Dr 10 gave examples of your good nursing practice, and said that you made doctors comfortable in their practice when assisting them. Dr 10 explained his employment history since 2013, and told the panel that he would see you only when on call on Saturdays when you were on the same shift; since November 2014, he has had no contact whatsoever with you as a professional and has never met you outside the endoscopy department. Dr 10 told the panel that between the end of January 2013 and October 2013 he was not in the country and so had no clinical contact with you.

Ms 11 gave oral evidence. She read the following statement into the record:

*I work as a Lead Nurse at InHealth Mobile Endoscopy Unit based in the Greater Manchester area.*

*I am asked to provide a statement for Mr Shigi Thomas regarding his character and his fitness to practise as a nurse. I am aware that there have been allegations of inappropriate behaviour by Mr Thomas against other members of staff that he had worked with at Stepping Hill Hospital in 2016.*

*Mr Shigi Thomas is not a friend. He is a colleague at InHealth.*

*Mr Thomas has worked for InHealth as a bank nurse for over the last 5 years prior to the matter at Stepping Hill Hospital. He worked approximately 3 -4 times a month but then stopped and re-started bank work with us as a HCA.*

*I am currently employed as a Lead Nurse at Inhealth and prior to that I was employed as a Sister and before that as a Staff Nurse at Inhealth. Mr Thomas as already working for InHealth and I have worked with Mr Thomas for approximately 7 years. During his time in Inhealth, there were absolutely no issues with regards to his conduct with other staff. On the contrary, he got on with all staff at all levels in the department.*

*I am aware of the accusations that have been made against Mr Thomas and do not recognise the person that is described in the charges. From my own experience working with him, he has never acted inappropriately towards me or to patients or anyone else. To my knowledge no other members of staff has ever complained of any inappropriate behaviour by Mr Thomas and nobody has raised any other issue about his conduct or behaviour.*

*I have not discussed the allegations that has been made about Mr Thomas with anyone except with a colleague... who is a Sister, when we discussed managing the work place. We discussed the allegations of inappropriate behaviour from a work risk assessment, that is whether Mr Thomas would pose a problem for other staff when Mr Thomas was demoted from a nurse to a HCA. The risk assessment was based on our working experience with Mr Thomas since I have known Mr Thomas for approximately 7 years as he was then a bank nurse.*

*When Mr Thomas was working as a nurse supporting a gastroscopy procedure, a nurse would bring in the patient into the procedure room and would stand / sit towards the head of the patient to check the safety of the patient. The patient will have a mouth guard and the nurse would be on the left hand side, bent over the patient with a suction machine to suck any excess saliva, ensure the patient is not in distress in any way and ensure that scope properly positioned. The nurse would be holding the patient's head and equipment. The other nurse in the room would be taking notes and assisting with taking biopsy / carrying out tasks as instructed by the Consultant. At all times Mr Thomas was very professional in supporting the procedure and caring for the patient. Mr Thomas demonstrated excellent nursing skills and his input was much appreciated by the endoscopy team. I would doubt very much the nurse holding the patient's head could carry out any inappropriate behaviour given the tasks in hand or that it would not be noticed by the consultant. If I was the nurse holding the patient's head, I would be looking mainly at the patient and the screen, not anything else. I would find it difficult to do anything else.*

*Mr Thomas has been working as a HCA which involve cleaning the scopes and equipment. While I know he enjoyed nursing, he has applied himself to his work and not complained.*

*In all the time I have worked Mr Thomas I would describe Mr Thomas as a very quiet man and he takes his work seriously. He is lovely to work with and he does his work very efficiently. He is hardworking and just gets on with his job. I have never had any issues with Mr Thomas. He has been courteous to all members of staff, including junior members of staff. He has worked with a member of staff ... who is in her 20's and there has been absolutely no issues.*

*I do trust Mr Thomas and in fact have offered him a full time post as a Health Care Assistant and based on what I saw and heard over the many years working with him he poses no threats to patients or to staff.*

*He is a great asset to have in the nursing team.*

[sic]

Ms 11 confirmed that she was aware of the charges found proven against you. She said that you began work at InHealth as an HCA approximately three years ago, having previously been employed as a nurse, and, at that time, she became aware of the allegations against you. She said that you came to see her and her colleague, both Sisters on the Unit at InHealth, who had both worked with you previously as a staff nurse. You told them that untrue allegations had been made against you and that you would not be working any longer at Stepping Hill Hospital, in your other employment there – you asked if there were any roles for you at InHealth where you could be useful on the Unit. Ms 11 asked her manager who said that you could be offered a role as an HCA in the decontamination area of the Unit. She told the panel that you had previously worked as a Band 5 bank nurse, and did not work at InHealth for a period of about a year; she did not feel that this was odd as nurses quite often join “the bank” and then not work at InHealth for a little while.



Ms 11 said that, while working as an HCA, you have acted very professionally at work and always have done; you are always on time to work, punctual, and never absent. You “get on with the job”, and there have been no issues with the role or any issues with members of staff at all. Ms 11 described you as “friendly but very quiet”.

Ms 11 told the panel how you previously worked with a female member of staff, who was “in her twenties”; that member of staff joined InHealth towards the end of 2018 and left to pursue another career about twelve months ago. When the member of staff joined InHealth, she was trained by you and Ms 12, and there were no issues raised with your conduct in respect of this.

Ms 12 gave oral evidence. The following statement was read into the record and Ms 12 confirmed that it was her statement, signed and dated by her, and was true and accurate to the best of her knowledge and belief:

*I am an Assistant Practitioner Endoscopy Band 4.*

*I worked with Mr Shigi Thomas over the period 2010 to 2020.*

*I am aware that Mr Thomas is before the NMC and I am aware of the charges against Mr Thomas (these charges are attached) as his solicitors provided the details to me. I have known Mr Thomas from 2010 to 2020. I am aware he is before the NMC because of inappropriate behaviour as I was told by my manager and that his role as Endoscopy Nurse was downgraded from nurse to HCA.*

*When Mr Thomas was an Endoscopy Nurse, he was senior to me and I assisted Mr Thomas on many occasions during endoscopy procedures and other surgical procedures until Mr Thomas ceased working as a nurse. At all times, Mr Thomas was courteous, polite towards me. He never swears, always very quiet, very serious and concentrated on his job. I did not see or hear him gossip or involve himself in small talk. He is a very good man.*

*As mentioned, I was given a copy of the charges by the solicitors acting for Mr Thomas and when I read it, I did not recognise the person described on the charge sheet because he has always been professional and supportive if I ever needed his help. I have always felt comfortable around Mr Thomas and he has never made any suggestive or any other inappropriate remarks about staff or patients. When he worked as a nurse he was very caring with patients and professional. He is an excellent nurse.*

*During all the times that I have worked with Mr Thomas I have observed Mr Thomas working with other members of staff and there have been no complaints. He has worked with a young trainee... who is in her 20's and there has been no complaints or rumours. I often chat with... [her] and there has been absolutely no issues with Mr Thomas in the work place or outside.*

*Mr Thomas has always been professional with people around him. I have worked with Mr Thomas whilst he was a HCA and his behaviour has been the same, courteous and professional throughout.*

[sic]

Ms 12 confirmed that she was recently made aware that the charges against you had been found proved. Ms 12 told the panel that she works with you in your role as an HCA, at least once or twice a week – between 12-24 hours a week. She has worked often with you at InHealth. Ms 12 said that she has observed you working during the shifts almost constantly, in that she is “around [you] most of the time”, as your place of work is a small Unit and you spend most of the day in each other’s presence when you are on the same shift. Ms 12 told the panel that there has been no difference in your conduct from when you were working as a nurse to now when you work as an HCA; you keep yourself to yourself, ask for advice when you need it, and you work well as part of the team.

Ms 12 said that she was informed of the allegations of inappropriate behaviour against you by Ms 11, not long after you came to work as an HCA rather than as a nurse – in approximately 2016.

Ms 12 told the panel how you previously worked with a female member of staff, who was “in her twenties”; she told the panel that this member of staff began work at InHealth in approximately 2017 and does not work there now, having left just over a year ago to do other work. She said that you trained this member of staff and that the member of staff worked at InHealth for approximately 18 months, with no issue raised.

Mr Walsh read relevant extracts of statements, of witnesses called on your behalf at the facts stage, into the record.

Ms Cathcart provided the panel with written submissions.

In her submissions, Ms Cathcart invited the panel to take the view that your actions amount to a breach of *The Code: Standards of conduct, performance and ethics for nurses and midwives 2008* (“the 2008 Code”) and *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* (“the 2015 Code”). She then directed the panel to specific paragraphs and identified where, in the NMC’s view, your actions amounted to misconduct.

Ms Cathcart referred the panel to the case of *Roylance v GMC (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.*’

She submitted that the conduct found proved in this case is extremely serious; it involves inappropriate behaviour towards junior colleagues that the panel found to be sexually motivated.

Ms Cathcart invited the panel to consider that your behaviour fell below the standards expected of a registered nurse and would, without doubt, be found “deplorable” by fellow members of the profession.

Ms Cathcart 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. Ms Cathcart referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Ms Cathcart submitted that this case engages limbs (a), (b) and (c) of the *Grant* “test”. The behaviour found proved was perpetrated in a clinical setting albeit not against patients; however, ‘public protection’ includes a risk to colleagues. Ms Cathcart submitted that the behaviour found proved has not been remediated and therefore a risk remains. She invited the panel to consider that, while there is no evidence of direct harm to patients in this case, should you behave in a similar way towards colleagues in the future there is a risk that this could have an effect on the care received by patients under your, or your colleagues’, care at the time. Ms Cathcart submitted that, where colleagues are wary of a nurse’s behaviour, there is a risk that they may become distracted when in that nurse’s presence - which could lead to patients not being afforded the proper and efficient care they deserve.

Ms Cathcart accepted that there is no question that you possessed excellent clinical skills when working in the endoscopy unit at Stepping Hill Hospital; indeed your witnesses at the impairment stage spoke highly of your work as an HCA since. Ms Cathcart submitted that, despite this, the behaviour reflected in the charges found proved is such that you have brought the profession into disrepute and have breached fundamental tenets of the profession.

Ms Cathcart submitted that sexually motivated behaviour towards colleagues is so serious that it is more difficult for a nurse to put right the conduct/behaviour, or the aspect of their attitude, which led to the incidents happening. She invited the panel to consider that, before effective steps can be taken to remedy concerns, the nurse must recognise the problem that needs to be addressed. Therefore insight on the part of the nurse or midwife is crucially important to the determination of remediation.

Ms Cathcart reminded the panel of the case of *Yusuff v General Medical Council* [2018] EWHC 13. Mrs Justice Yip stated at paragraph 18:

*“It would be wrong to equate maintenance of innocence with a lack of insight. However, continued denial of the misconduct found proved will be relevant to the Tribunal’s considerations on review”.*

Furthermore, Ms Cathcart invited the panel’s attention to the NMC’s public facing guidance at FTP-12b, which notes:

*Where a panel has found that a nurse or midwife was responsible for incidents that they denied (or continue to deny), this should not bar the nurse or midwife from being able to show insight. They may not have insight into the particular events that occurred, but they may be able to show insight by having an understanding of the need to minimise the risk of similar events occurring in the future, and the steps that might be taken to achieve this.*

Ms Cathcart reminded the panel that, in relation to insight and remediation, you have maintained, as is your right, a denial of the charges. She submitted that you have therefore expressed no remorse for your actions and demonstrated very little insight into the behaviour found proved despite noting in your reflective piece:

*‘I like to highlight the fact that I have never ever done any indecent activity towards colleagues and I would be the first one to apologise if any action of mine is construed in that light’.*

Ms Cathcart submitted that, not only was your behaviour ‘construed’ as indecent by the women involved, the behaviour has been found proved by this panel - yet no apology has been forthcoming. She invited the panel to consider that, while your reflective piece (submitted to the NMC on 1 November 2017) shows recognition that indecent touching of colleagues is ‘totally wrong’, you have provided no evidence to demonstrate that you understand how behaviour of the type found proved might impact the victims. Ms

Cathcart reminded the panel that, when questioned hypothetically by the NMC as to how the behaviour of the type found proved might impact the women involved, you answered that you did not know - despite the victims themselves orally telling the panel how the behaviour had made them feel at an earlier hearing. Ms Cathcart invited the panel to consider that words and phrases such as 'violated', 'vulnerable', 'awful', 'upset', 'shocked', 'embarrassed' and feeling a lack of control were all used by the victim witnesses in this case. Ms Cathcart submitted that your comprehension of how the behaviour would be viewed by members of the public was limited to the fact that they would not be 'happy'.

Ms Cathcart invited the panel to assess the quality and nature of any insight shown, and consider whether the insight shown (if any) is enough to address the specific concerns that arise from the past conduct, rather than simply identifying whether 'any' or 'some' evidence of insight is present. She submitted that the insight shown in your reflective piece is extremely limited and, despite questioning, you were unable to expand on this in your oral evidence; this calls into question the quality and sufficiency of any insight the panel determine has been shown.

Ms Cathcart invited the panel to consider that you were specifically asked whether you had undertaken any training or reading around professional boundaries since these allegations were raised but you responded that you had done neither. When you were asked whether, by reason of being involved in these proceedings, you would change anything in his working practice you responded that you would not.

Ms Cathcart reminded the panel of the evidence of Ms 11 and Ms 12 as to your work as an HCA at InHealth since these allegations were raised and you left Stepping Hill Hospital. She acknowledged that both witnesses knew and worked with you while a nurse and before these allegations were raised and neither of them had any concerns then or now. Ms Cathcart reminded the panel that, last year, it heard from several former colleagues of yours who worked with you at Stepping Hill Hospital and who raised no concerns about you behaviour.

However, Ms Cathcart submitted that, by the very nature of the charges found proved and the evidence given by the victims/colleagues involved, it has been found that the misconduct took place in isolation and when no one else was around. She invited the panel to consider that there are no clinical skill concerns in this case and your ability to do your job has not been questioned. Ms Cathcart submitted that, while it is useful to see that you have made efforts to maintain your clinical skills, the testimonials are of limited value to the panel.

Ms Cathcart submitted that, while a nurse is entitled to continue to deny the conduct despite charges being found proved, this does not prevent them demonstrating insight into the behaviour found proved; it is entirely possible for a nurse to stand back and hypothetically speak about the type of behaviour found proved and the effect that behaviour might have on the people involved and the public's perception of nurses. She submitted that you were unable to demonstrate insight into the behaviour found proved in this case, and have made no efforts to demonstrate remediation of the issues particular to this case.

Ms Cathcart submitted that there is a risk of repetition in this case based on the very limited insight shown and the total lack of targeted remediation. She invited the panel to consider that you have failed to avail yourself of knowledge surrounding professional boundaries and have a complete lack of understanding of how behaviour of the type found proved would impact the victims or public perception. Ms Cathcart submitted that, whether or not you accept the behaviour found proved, these proceedings have not acted as a salutary lesson to you about how to be mindful of behaviour and to avoid allegations such as this arising in the future. For these reasons, Ms Cathcart invited the panel to find there is a risk that the conduct will be repeated.

Ms Cathcart also submitted that a finding of impairment is in the public interest as public confidence in the nursing profession would be undermined if a finding of impairment was not made given the nature of the charges found proved against you. She invited the panel to consider that you demonstrated a disregard for your colleagues, and that your behaviour as found proved by this panel fell far below the standards the public would expect of a registered nurse. The public would be appalled by your behaviour.

Furthermore, Ms Cathcart invited the panel to consider that a finding of current impairment is necessary to declare and uphold proper standards of conduct for the profession and in the NMC as regulator. Nurses need to know that it is never acceptable to act inappropriately towards colleagues especially where that inappropriate behaviour is sexually motivated.

Mr Walsh provided the panel with written submissions.

Mr Walsh submitted that you do not accept the truth of the findings against you and you assert that you have not breached either of the relevant NMC Code of Conducts.

Mr Walsh invited the panel to consider that you have worked as an HCA in a health setting from 2017, and that there is no evidence that you are liable to be a risk in a work setting – “as the real evidence is contrary to that assertion.”

Mr Walsh submitted that Ms 11, Lead Endoscopy Nurse, and another senior nursing Sister, risk assessed you in the work place in 2017 and you were managed in the work place. Ms 11, who manages you, describes you as a very quiet man, who does his work very efficiently, is hardworking, and gets on with his jobs. She describes you as courteous to all members of staff including junior members of staff. Mr Walsh submitted that you worked with junior female members of staff and there were 'absolutely no issues'. He invited the panel to consider the evidence of Ms 12, who says you never swear, are always very quiet and serious, and concentrate on your job. Mr Walsh submitted that this evidence comes from a current active work environment where two independent witnesses describe you in the same way, based on their experiences over many years.

Mr Walsh invited the panel to consider that it heard in person from very experienced and highly respectable senior nurses: Ms 3, Ms 5, Ms 6, and Ms 8 (who was summoned to appear as a witness). He reminded the panel of the evidence of Ms 4 - in his submission, a very experienced and highly respectable former nurse. Mr Walsh submitted that all these witnesses describe you in the same way.



Mr Walsh submitted that you have demonstrated compliance and co-operation with your professional regulator; when Stepping Hill Hospital notified the NMC, you immediately stopped all nursing activities and refrained from nursing voluntarily from September 2016 until there was an interim suspension put in place by the NMC in February 2017.

Mr Walsh submitted that it does not follow that you are liable in the future to breach one of the fundamental tenets of the professions. He invited the panel to consider that the NMC accepts that you are a hard working nurse, well-thought of by senior consultants and junior members of staff - both as a nurse and as an HCA. Mr Walsh submitted that your behaviour to all staff, patients and members of the public since 2017 demonstrates that you have upheld the proper standards of the NMC codes of conduct and have maintained public confidence in the profession.

Mr Walsh invited the panel to consider that the issue of risk in the future should be a balanced one, taking into consideration other factors - such as demonstrating compliance with your regulator's rules. He submitted that, as a professional, you voluntarily informed Ms 11 of the allegations of inappropriate behaviour, in pursuance of a post as an HCA. You did not conceal those allegations and this demonstrated transparency and integrity in your conduct

Mr Walsh reminded the panel that the NMC have submitted that the misconduct was sexually motivated behaviour towards colleagues, and was so serious that it is more difficult for a nurse to put right the conduct/behaviour, or the aspect of their attitude, which led to the incidents happening. He submitted that this is an assertion only and not based on the facts. Mr Walsh invited the panel to consider that you have worked full time in a health care setting as a HCA since 2017, and have been monitored and managed by your manager with no issues or evidence of sexually motivated behaviour towards colleagues. Mr Walsh submitted that this is a period of approximately 3 years, which is an extraordinary length of time for someone to be under a microscope.

Mr Walsh submitted that you informed Ms 11, Lead Endoscopy Nurse, of the allegations of inappropriate behaviour, thereby putting your manager on notice, and you did not try

to conceal anything. He submitted that you acted in a commendable professional manner. Mr Walsh reminded the panel that your behaviour in the work place is described by Ms 11 and Ms 12 in the most glowing terms. He submitted that, if there were a continued risk of you carrying out inappropriate acts against colleagues, this would have manifested itself over the period from 2017.

Mr Walsh submitted that you have insight into the charges and have addressed your behaviour by informing prospective employers of your employment history and the regulatory actions taken against you. He invited the panel to consider that insight is an ongoing process and that you have given evidence that you would be prepared to undergo training.

Mr Walsh reminded the panel that, in your oral evidence, you read your reflective piece which, he submitted, clearly shows insight. He invited the panel to consider that you cannot express remorse for inappropriate behaviour as you deny these actions took place; you accept that inappropriate behaviour towards colleagues is not appropriate behaviour, and state in your reflection statement that it is wrong and that you would be the first to apologise. Mr Walsh submitted that, in your oral evidence, you expressed again that you believed any inappropriate behaviour was not acceptable and reiterated that you denied carrying out such inappropriate behaviour. Mr Walsh submitted that you concur in your reflective statement that any inappropriate behaviour is not acceptable.

Mr Walsh submitted that the NMC has dismissed your reflective statement and that it suggests that you have ignored how the victims felt. He submitted, however, that you have always maintained that you never carried out those acts and, if you had done anything which could be construed otherwise, you would be the first to apologise. Mr Walsh invited the panel to consider that the submission by the NMC is unfair as the questions raised by Ms Cathcart were not very clear; he submitted that there were clearly communication issues as you “could not understand the questions”.

Mr Walsh submitted that you said in evidence that “such behaviours would upset anyone subject to such conduct”, and that you agreed “the persons could be tearful”. He invited the panel to consider that Ms Cathcart “is focusing on denials and previous findings when it has been made clear [you do] not accept the truth of findings”.

Mr Walsh reminded the panel that the NMC also questioned you on your comprehension of how your behaviour would be viewed by members of the public but your reply was limited that the fact that they would not be ‘happy’. Mr Walsh submitted that you are clear in your reflective statement that you are conscious that any inappropriate act is not acceptable - not only to colleagues but to patients and to the public. Mr Walsh invited the panel to consider the evidence of Ms 6 and Ms 8, who, from their knowledge of you, suggest that you have poor communication skills. Mr Walsh submitted that your responses are often not expressive and lack detail to properly demonstrate your actual beliefs – which are instead expressed in your reflective statement.

Mr Walsh submitted that you have demonstrated your understanding of the need to not only protect patients, but also colleagues and members of the public; you have ensured that, prior to obtaining work, you fully informed the appropriate people (that is, the senior recruitment manager), of the charges made against you. Mr Walsh submitted that you have never hidden this fact and full information was provided. Mr Walsh invited the panel to consider that, if you had lacked insight, then you would have considered such charges as being of insignificance, and that there would not be a need to be open and frank with regards to your situation. He submitted that your actions speaks louder than your words. Mr Walsh submitted that you informed your manager, Ms 11, upon commencing full time employment in 2017 of the charges and that you complied with the NMC’s interim period of suspension voluntarily. He submitted that you have demonstrated candour and honesty in your behaviour with your employer and regulator.

Mr Walsh reminded the panel that you were asked whether you had undertaken any training or reading around professional boundaries since these allegations were raised - but that you responded that you had done neither. Mr Walsh submitted [PRIVATE]. He invited the panel to consider that, when you were asked whether, by being involved in

these proceedings, you would change anything in your working practice, you responded that you would not. Mr Walsh attributed this to you not understanding the situation and question, under the pressure of giving evidence.

Mr Walsh submitted (again) that as it was very clear to all present during Ms Cathcart's cross-examination of you that your communication skills are poor. He suggested that the questions of the NMC to you were not clear. Mr Walsh submitted (again) that your reflective piece does say that inappropriate behaviour as described in the charges is wrong and that in oral evidence you reiterated that it is wrong.

Mr Walsh invited the panel to find that your conduct should be given credit, in that you informed Ms 11 in 2017 that you were dismissed from Stepping Hill Hospital, thereby placing her on notice that you lost your job based on allegations of inappropriate behaviour. Mr Walsh submitted that "there was no concealment", and that Ms 11 was able to carry out a risk assessment and monitor your behaviour.

Mr Walsh reminded the panel of the NMC's submission that, whether or not you accept the behaviour found proved, these proceedings have not acted as a salutary lesson to you about how to be mindful of behaviour and to avoid allegations such as this arising in the future. He invited the panel to find that this is an unfair submission. Mr Walsh submitted that the Panel Chair asked you about "mindful behaviour" and how you might avoid similar allegations arising in the future; you said you were "frightened" to demonstrate your concerns that you could be put in a vulnerable position and that you were conscious you had to protect yourself in the future. Mr Walsh submitted that you have already demonstrated transparency in your actions by notifying Ms 11 of the charges so that she could take appropriate steps while managing the Unit.

Mr Walsh reminded the panel of the NMC submission that there is a risk that the conduct will be repeated. He submitted that this is an unsupported assertion and contrary to any concept of redemption or rehabilitation. Mr Walsh submitted that you have been employed in a healthcare setting for several years and that your manager, Ms 11, stated in evidence that there were "absolutely no issues".

Mr Walsh accepted that the public would expect high professional standards from all registrants and from the regulatory body.

Mr Walsh concluded his written submissions by inviting the panel to consider that you have worked in a health setting - alongside witnesses with many years of experience in nursing and of seniority, who monitor the work place and you, who state there are absolutely no issues. He submitted that therefore there are no continuing issues of public concern.

Mr Walsh also made oral submissions, highlighting a number of his written submissions for the attention of the panel.

The panel adopted a two-stage process in its consideration, as advised. First, the panel must determine whether the facts found proved amount to misconduct. Second, 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.

## **Decision on misconduct**

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of *The code: Standards of conduct, performance and ethics for nurses and midwives 2008* and *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)*.

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel accepted the advice of the legal assessor, which included reference to the case of *Nandi v GMC [2004] EWHC 2317 (Admin)*.

The panel was of the view that your actions at the relevant time amounted to a breach of the 2008 Code, specifically:

### ***The people in your care must be able to trust you with their health and wellbeing***

#### ***To justify that trust, you must:***

- *Provide a high standard of practice and care at all times*
- *...act with integrity and uphold the reputation of your profession.*

### ***Make the care of people your first concern, treating them as individuals and respecting their dignity***

#### ***Treat people as individuals***

1. You must treat people as individuals and respect their dignity.
3. You must treat people kindly and considerately.

**Work with others to protect and promote the health and wellbeing of those in your care, the families and carers, and the wider community**

***Work effectively as part of a team***

27. You must treat your colleagues fairly and without discrimination.

**Be open and honest, act with integrity and uphold the reputation of your profession**

***Act with integrity***

48. You must demonstrate a personal and professional commitment to equality and diversity.

***Be impartial***

57. You must not abuse your privileged position for your own ends.

***Uphold the reputation of your profession***

61. You must uphold the reputation of your profession at all times.

The panel was of the view that your actions at the relevant time also amounted to a breach of the 2015 Code, specifically:

**Prioritise people**

***You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern and make sure that their dignity is preserved and their needs are recognised, assessed and responded to. You make sure that those receiving care are***

***treated with respect, that their rights are upheld and that any discriminatory attitudes and behaviours towards those receiving care are challenged.***

### ***1 Treat people as individuals and uphold their dignity***

*To achieve this, you must:*

*1.1 treat people with kindness, respect and compassion*

*1.5 respect and uphold people's human rights.*

### **Promote professionalism and trust**

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

### ***20 Uphold the reputation of your profession at all times***

*To achieve this, you must:*

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

*20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*

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



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

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

The panel appreciated that breaches of the Codes do not automatically result in a finding of misconduct. However, the panel was of the view that your behaviour as reflected in the charges, found proved by this panel, fell far below what is expected of a registered nurse in terms of their professional conduct. The panel bore in mind that, in your reflective piece and in your oral evidence, you appeared to accept that if allegations such as these were found to be correct, such actions would amount to misconduct. The panel reminded itself that it has found all of the charges proved against you.

The panel further reminded itself of its finding that your actions were sexually motivated, and determined that your conduct has brought the nursing profession into disrepute. Other members of the nursing profession would, the panel had no doubt, consider your conduct, sustained over a significant period of time and directed towards junior colleagues, to be “deplorable”.

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

## Decision on impairment

The panel next went on to decide, if as a result of this misconduct, your fitness to practise is currently impaired.

The panel accepted the advice of the legal assessor.

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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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.*

Mrs Justice Cox went on to say in Paragraph 76:

*I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my*

*view the test would be equally applicable to other practitioners governed by different regulatory schemes.*

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

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

The panel noted that, prior to the incidents which gave rise to the charges in this case and since their conclusion, you have not been subject to any criticism or complaint in respect of similar allegations. It also bore in mind that there are no clinical issues with your practice, and you are held in high regard as an endoscopy nurse by others who have worked with you.

The panel considered that the first three limbs of the *Grant* "test" are engaged in this case. Your misconduct clearly brought the nursing profession into disrepute and breached fundamental tenets of the nursing profession in the past. Furthermore, your behaviour in the past would have had an effect on the care received by patients in that it would have affected colleagues' care; the panel accepted that where colleagues are wary of a nurse's behaviour, there is a risk that those colleagues may become distracted – leading to patients not receiving the appropriate and proper care.

Having considered the past, the panel turned its attention to the present and future. It considered that your misconduct is remediable; to remediate your practice in the light of the specific, non-clinical, charges found proved may be more difficult than in respect of a purely clinical issue, but to do so is by no means impossible. The panel bore in mind that it has heard no evidence that you have repeated your misconduct since the time of the charges found proved.

The panel noted that you do not accept the findings of the panel in respect of the facts found proved, and maintain a denial of the charges at this stage – which is your right. The panel considered your insight into your misconduct, and determined that you have reflected to only a limited degree on its impact on others.

For a registrant to develop their insight, there must be, to a degree, an acknowledgement that failings or errors have occurred. From the evidence before the panel, you have not so acknowledged that anything untoward occurred over the period of time which gave rise to the charges being found proved. The panel were concerned by your evidence that you do not have anything to change within your behaviour, and that you have not taken any steps to reflect on the charges found proved since the panel handed down its determination on the facts in July 2019. You appear to believe that you have nothing to learn or develop in respect of your professional conduct – in the panel's judgement, this view is flawed.

The panel bore in mind that you have had ample opportunity to reflect on the allegations, and indeed on the panel's findings of fact, and to attempt to remediate your practice in respect of these regulatory concerns. You have not taken any steps to grasp that opportunity – undertaking no specific training, nor reading, nor any up-to-date reflection (save for a reflection piece which the NMC received on 1 November 2017, indicating that it was written prior to that).

The panel considered that the extent of your insight into your misconduct appears to be limited to the fact that you have recognised that the charges against you are serious, have engaged with the regulatory process in respect of these allegations, and have told your employer about the allegations. You have also acknowledged in your reflective

piece (of November 2017) that such behaviour as that found proved is unacceptable. However, your insight is otherwise extremely limited in its extent in respect of the reflection of your actions on others, aside from yourself – on colleagues, on patients, and the wider public interest. For example, your evidence that you are “frightened” appears once more to be introspective, rather than focused upon the impact of your misconduct upon others. The panel reminded itself of your evidence that you believe you have “nothing to change”. It determined that, in the light of all the relevant information before it, your insight into your misconduct and its impact upon others at this time can appropriately be described as “superficial”.

The panel considered Mr Walsh’s repeated submission that, during your evidence, there was a communication issue in respect of the answers you gave to questions. The panel bore in mind that the opportunity for answers to be clarified through re-examination was offered, and taken, by Mr Walsh. It took into account that you are an intelligent man (working skilfully in a complex nursing field) and that Dr 10 described you as “helpful and collaborative” (thereby indicating that your communication abilities are of such a standard as for you to be of assistance in a complex medical theatre). Furthermore, no issues of any language barrier have previously been raised in this hearing, and you were clearly told at the start of your evidence to indicate if you did not understand a question – an opportunity which you took at least once with regards to Ms Cathcart’s questioning.

The panel considered that the questioning of you was not so convoluted or complex that you could not respond, when asked, with your views as to how a woman (or women as a collective) would feel if they had been inappropriately touched. The panel reminded itself of your evidence in respect of this: “I don’t know”.

Taking all of the above into account, the panel considered that you have not remediated the issues with your professional conduct. As such, a risk of repetition of your misconduct remains until such time as you can demonstrate sufficient and developed insight into the impact of your actions on others and have taken steps to attempt to remediate your practice. The panel therefore decided that a finding of impairment is necessary at this time on the grounds of public protection.

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

The panel considered that a reasonable and informed member of the public would be shocked if no finding of current impairment were made, in the light of the charges found proved and the misconduct in this case. The panel reminded itself that your actions found proved amount to genuinely deplorable conduct. It considered that to make no finding of current impairment would undermine confidence in the profession and the regulatory process, and would not declare and uphold the standards of conduct expected of a registered nurse. The panel therefore determined that, in this case, a finding of impairment on public interest grounds was required.

Having regard to all of the above, the panel concluded that your fitness to practise is currently impaired at this time.

## **Determination on sanction:**

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

In reaching this decision, the panel has had regard to all the evidence that has been in this case, including the documentation provided on your behalf at the sanction stage. The panel accepted the advice of the legal assessor, which included reference to the case of *PSA v GMC & Onwughalu* [2014] EWHC 2521 (Admin) – the legal assessor pointed out that this case is essentially fact specific. It took into account the submissions made on your behalf by Mr Walsh, who conceded that a suspension or striking-off order were appropriate in the circumstances of the case. The panel also took into account the submissions made by Ms Cathcart, and the NMC's Sanction Bid ("Striking-Off Order") - but was not bound by such a bid.

The panel bore 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") published by the NMC, including the specific section on "Cases involving sexual misconduct". It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel considered the aggravating factors in this case to be as follows:

- The nature and seriousness of the charges found proved, and their sexual motivation;
- The repeated nature of your misconduct and the significant time-span over which it occurred;
- Your misconduct occurred in a professional work environment, in relation to multiple junior colleagues – in respect of whom you were in a position of power; and

- You have demonstrated a significant lack of insight, which the panel has determined to be “superficial”.

The panel considered the mitigating factors in this case to be as follows:

- The panel has heard evidence that you have excellent clinical skills as an endoscopy nurse; and
- The panel has heard no evidence of any concerns or other issues raised in the two-and-a-half years you have been working as an HCA at InHealth since the incidents.

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 risk of repetition identified, and its finding of impairment on public protection grounds. The panel decided that to take no further action would be neither proportionate nor in the public interest, and would not adequately protect the public.

Next, the panel considered whether a caution order would be appropriate in the circumstances. It took into account that your misconduct was not at the lower end of the spectrum, and determined that a caution order would be inappropriate in view of the nature of the case, the panel’s finding of impairment on public protection ground, and the risk of repetition identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order; such a sanction would not adequately protect the public.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case; they are non-clinical, and have been found to have been sexually motivated. Furthermore the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this



case or the wider public interest in this matter, and would not appropriately protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

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 limited to a single incident, but occurred over a protracted period of time. It was, as the panel has earlier determined, sexually motivated. You have demonstrated extremely limited insight into your misconduct and its impact on others, and a risk of repetition of your misconduct remains until your insight develops significantly; the panel bore in mind the evidence you have given at the facts and impairment stage of this hearing, and considered that such a sustained lack of insight amounts to an attitudinal issue on your part.

The panel also bore in mind that it has seen no evidence of any repetition of your misconduct since the time from which the charges arose. Furthermore, it has heard evidence that you are an excellent endoscopy nurse.

Balancing all of these factors, the panel determined that a suspension order would not be an appropriate or proportionate sanction.

In the circumstances of this particular case, the fact that you are an able nurse in one specific field of nursing (endoscopy) must be balanced against your genuinely deplorable behaviour, which occurred over a prolonged period of time, and your continuing lack of insight into your actions. The panel determined that your clinical skills cannot be placed above the dignity of professional colleagues involved and the public's confidence in the nursing profession and the NMC as regulator.

The panel reminded itself of the evidence it has heard that the relevant junior colleagues they believed that if they reported your behaviour, they would not be believed - because of your senior position and the respect in which you were held by

senior management. The panel considered that an informed member of the public would be shocked if such a nurse, who had inappropriately touched vulnerable junior colleagues over a sustained period of time, in a course of conduct which was sexually motivated, was not permanently removed from the register. The panel was therefore of the view that the findings in this particular case demonstrate that your actions were so serious that to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, and in particular both the effect of your actions in regard to colleagues as well as bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

## **Determination on Interim Order**

The panel has considered the submissions made by Ms Cathcart, namely that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest. The panel took account of the submissions made by Mr Walsh, on your behalf, who did not oppose the application.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim 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.