

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

**Substantive Hearing  
Wednesday 22 – Thursday 23 November 2023  
Thursday 14 – Friday 15 December 2023  
Monday 18 – Thursday 21 December 2023**

Virtual Hearing

**Name of Registrant:** Amarjeet Yuvraj Gungabissoon

**NMC PIN:** 12F0669E

**Part(s) of the register:** Registered Nurse - Mental Health  
RNMH – 1 February 2023

**Relevant Location:** Berkshire

**Type of case:** Misconduct

**Panel members:** Suzy Ashworth (Chair, Lay member)  
Rosalyn Mloyi (Registrant member)  
Sue Davie (Lay member)

**Legal Assessor:** Oliver Wise (22 – 23 November 2023 &  
14, 18 – 21 December 2023)  
Michael Bell (15 December 2023)

**Hearings Coordinator:** Xenia Menzl (22 – 23 November 2023)  
Shela Begum (14 – 15 & 18 – 21 December  
2023)

**Nursing and Midwifery Council:** Represented by Jane Carver, Case Presenter

**Mr Gungabissoon:** Present and represented by Ellen Wright,  
Counsel

**Facts proved:** 1, 2, 3 and 4

**Facts not proved:** None

**Fitness to practise:** Impaired

**Sanction:** Striking off order

**Interim order:** Interim suspension order (18 months)

## Details of charge

That you, a registered nurse

1. Between 04 March 2021 and 25 March 2021 harassed Person A by engaging in unwanted conduct namely sending Person A one or more unsolicited sexually graphic or explicit electronic images or messages which had the effect of violating Person A's dignity.
2. The conduct at Charge 1 above was motivated by sexual gratification or in pursuit of a sexual relationship with Person A.
3. Between 20 March 2021 and 22 April 2022 harassed Person B by engaging in unwanted conduct namely sending Person B one or more unsolicited sexually graphic or explicit electronic images or messages which had the effect of violating Person B's dignity.
4. The conduct at Charge 3 above was motivated by sexual gratification or in the pursuit of a sexual relationship with Person B.

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

## Background

The charges arose whilst you were working as a Clinical Team Leader at the [PRIVATE] (the Hospital). Whilst having worked with you previously, neither Person A nor Person B were employed in a job working with you during the period the messages were sent.

Between 4 March 2021 and 25 March 2021 Person A received unsolicited messages and images from your telephone number on WhatsApp which were sexually graphic and/or explicit.

In December 2019 you were contacted by Person B on Facebook Messenger asking for a reference from you, and you communicated with her about this. You contacted her again on 20 March 2021 and continued conversing with her on Facebook Messenger about the hospital, opportunities in nursing and training in mental health nursing. However, these messages were interspersed with unsolicited messages and images which were sexually graphic and/or explicit. The conversation continued until July 2022.

In communications from you to Person A by WhatsApp and Person B by Facebook Messenger, some of the messages which contained graphic images had been deleted after sending by the sender. In both conversations, the sender provided various explanations on why these messages were sent, including claiming that:

- It was friends who got hold of the phone;
- It was a jealous girlfriend; and
- The phone accidentally sent pictures whilst in a wet environment in the bathroom.

You deny that you sent any of the messages, and say that you believe the messages to have been sent by your ex-girlfriend, who had the passwords to your social media accounts, and who was impersonating you.

## **Application to exclude an observer**

At the beginning of this hearing several observers were permitted to attend the hearing with their cameras switched off. During your evidence-in-chief you noticed that someone you knew was in attendance. Your counsel requested that that person be excluded, because his attendance was making you uncomfortable. The panel considered this request. It determined that the charges gave rise to an embarrassing situation and that it could cause further embarrassment if someone you knew was in attendance. However, this is a public hearing and it would not be right to exclude someone from witnessing it, without solid grounds for doing so. Embarrassment and discomfort would not be enough. The panel concluded that it would not be right to exclude from the hearing someone who was quietly watching it.

## **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Carver on behalf of the NMC and by Ms Wright on your behalf.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Person A: [PRIVATE];
- Person B: [PRIVATE].

The panel heard evidence from you under oath. It also heard evidence from the following witness called by you:

- Person 1: Support worker at the time of working with you

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

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

### **Charge 1**

1. Between 04 March 2021 and 25 March 2021 harassed Person A by engaging in unwanted conduct namely sending Person A one or more unsolicited sexually graphic or explicit electronic images or messages which had the effect of violating Person A's dignity.

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Person A, your evidence and the evidence of Person 1, and the documentary evidence.

The panel took into account that you do not dispute that the messages were sent to Person A from your WhatsApp account. However, you did deny having sent those messages yourself. During your evidence, you explained that the messages were sent by your former girlfriend and that she had accessed your WhatsApp remotely by scanning a QR code. You stated that you had not seen any messages that were sent from your account nor did you receive any notifications for the messages sent by Person A. It was conceded by you that the messages that had been sent were wholly inappropriate and had the potential to violate Person A's dignity.

The panel found the evidence given by Person 1 in support of your position to be inconsistent and unreliable. The panel considered that it did not have any evidence before it which showed any messages sent from your account to Person 1, and that her account of dates and the content of the messages fluctuated and was not consistent with a previous written account. Further, the panel took into account that the written account was not attributed to her, was not signed or sent directly from Person 1.

The panel noted that in her written statement, Person A stated:

*"The majority of messages that I received from Mr Gungabissoon's phone had been retracted before I saw them but I recall seeing one photograph of a close up of a blond female looking at the camera. She had a penis in her mouth."*

The panel had regard to the screenshots which supported Person A's evidence. The screenshots of the messages evidenced that on 5 March 2021 between 21:34 and 23:09, 23 WhatsApp messages were sent and deleted from your account, interspersed with text messages that continued a conversation with Person A.

The screenshots evidenced that the messages sent from your WhatsApp account to Person A contained a degree of detailed conversation relating to events whilst you and Person A were working closely together [PRIVATE]. For example, on 5 March 2021, messages were sent from your WhatsApp account to Person A which stated:

*"U owe me since [Colleague 5] still took date thinks you saw mine after you put the banana on the wall"*

and

*"We had fun and got everything done with no issues only issue was of other staff complaining on us".*

During your evidence, you confirmed that the detail included within the messages was true but maintained that it was not you who sent these messages. You suggested that your former girlfriend would have been privy to this detail as you would have mentioned this in conversation with her.

The panel was satisfied that this was not a plausible explanation. The panel considered it highly unlikely that your former girlfriend would have been able to participate in a conversation offering a degree of detail which involved reference to events at work in 2017 or 2018, three or four years prior to the date of the messages, and two years before you said that your relationship with your former girlfriend began.

The panel determined that although Person A initially believed the explanation that your former girlfriend sent the messages and initially sympathised with you, it was implausible for your former girlfriend to blame herself if she was sending the messages.

The panel accepted Person A's evidence that she saw at least one sexually graphic image, which was supported by the conversation that followed when she reacted

angrily. It also took into account that after deleting a number of the messages, you had sent Person A messages which stated:

*“Soz if u saw and read [...] but not to send pics of me like that to random females [...]”[sic]*

*“This is embarrassing dnt tell anyone only cas I thought you saw what she sent and wrote to you I said in case u saw but delete your memory lol”[sic]*

The panel found that these messages from you suggest that the messages and/or electronic images that were sent and subsequently deleted were of a sexually graphic or explicit nature. It was therefore satisfied that the messages sent from you to Person A was sexually graphic and explicit.

The panel noted Person A’s responses within the screenshots, and it was satisfied that Person A made it clear to the you that the messages were unwanted. It concluded that there was no evidence or suggestion that Person A solicited the messages. Further, the panel was satisfied that receipt of such messages had the effect of violating Person A’s dignity, and noted that you agreed that this was the case.

The panel considered the totality of the exchange between you and Person A via WhatsApp and found that the number of deleted messages and the unwanted sexual content sent by you were sufficient to amount to harassment.

The panel concluded that between 4 March 2021 and 15 March 2021 you harassed Person A by engaging in unwanted conduct namely sending Person A one or more unsolicited sexually graphic or explicit electronic images or messages which had the effect of violating Person A’s dignity. It therefore finds this charge proved.

## **Charge 2**

2. The conduct at Charge 1 above was motivated by sexual gratification or in pursuit of a sexual relationship with Person A.



**This charge is found proved.**

In reaching this decision, the panel took into account all of the evidence, and its factual findings under Charge 1 above.

The panel noted that you sent Person A numerous messages which were sexually graphic and explicit in nature. It took into account that after retracting the messages sent, you told Person A not to tell anyone about what she might have seen in the messages.

The panel noted that the messages from you to Person A persisted until she responded stating:

*“What is the point in sending me these? Firstly, I don’t want to see my mate like that.[...]”*

To which you responded:

*“Omg I’m so sorry if u saw anything seriously and don’t want you to thing anything bad of me”[sic]*

The panel noted that once Person A had reacted angrily and had made it clear that she was not interested in a sexual relationship with you, the inappropriate messages stopped.

The panel found that the messages sent by you were sexual in nature, and it was of the view that there was no reasonable explanation for the conduct other than that they were motivated by sexual gratification, and in pursuit of a sexual relationship with Person A.

The panel concluded that the conduct at Charge 1 above was motivated by sexual gratification and in pursuit of a sexual relationship with Person A. It therefore finds this charge proved.

### Charge 3

3. Between 20 March 2021 and 22 April 2022 harassed Person B by engaging in unwanted conduct namely sending Person B one or more unsolicited sexually graphic or explicit electronic images or messages which had the effect of violating Person B's dignity.

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

In reaching this decision, the panel took into account Person B's evidence, your evidence and the documentary evidence before it.

The panel took into account that you accept that messages which included explicit images were sent to Person B using your Facebook Messenger account. However, you deny having sent those messages yourself. You explained that these messages were sent to Person B by your former girlfriend who you said had accessed your Facebook account.

The panel had regard to a screen recording and screenshots which showed the messages exchanged. The panel noted that the screen recording evidenced long conversations which included messages from your account offering to provide a job reference for Person B.

Further, the panel noted that there was a degree of specific detail to the messages from your account relating to events whilst you and Person B worked together during 2018-2019, including references to colleagues you both worked with. For example, on 15 July 2021, a message sent from your account to Person B read: *"[Colleague 1] is [PRIVATE] and some old staff like [Colleague 2], [Colleague 3], [Colleague 4]... Best team ever and still can't beat that team"*.

The panel also noted that a message was sent from your account to Person B advising her on what nursing agency to use to apply for a nursing position. On 15 July 2021 a message stating *"We don't use lime agency"* was sent to Person B and later on 16 July

2021, in response to a question from Person B about which agencies the Hospital did use, you replied “*Elite and Outreach*”. The panel observed that you confirmed that the detail within the messages was correct. It found that it was inherently likely that it was only you who could advise Person B to this degree of detail, and that any person operating an account to impersonate you would be highly unlikely to conduct such a conversation.

The panel found the evidence given by Person 1 in support of your position to be inconsistent and unreliable for the reasons already stated under charge 1.

For these reasons, the panel was satisfied that it was not plausible that your former girlfriend could have sent the messages contained in the conversation with Person B. It concluded that the messages from your Facebook Messenger account to Person B were sent by you.

The panel took into account Person B’s written statement in which it stated:

*“I only recall ever seeing a few of the unsent messages. I believe these were some of the earlier messages [...] One of these pictures was AJ’s genitalia in underwear. I considered this to be very inappropriate and did not want to see those kind of images so I stopped opening the images that AJ would sent[sic] me. AJ would also delete the messages very soon after they were sent. Therefore I have not seen and do not know the contents of the majority of the unsent messages [...] however I believe that the other photographs and messages he sent and deleted were of a similar inappropriate nature.”*

Person B’s evidence was consistent and was supported by the screen recording which evidenced that on 23 April 2021, you sent Person B a sexually graphic and explicit electronic image. This image was visible to the panel. The screen recording also showed that 119 of the messages you sent to Person B between 20 March 2021 and 22 April 2022 were subsequently unsent by you, and so were not visible other than a message “*AJ unsent a message*”.

In terms of the content of the messages, the panel was satisfied that you had sent Person B sexually graphic and explicit electronic images and messages. The panel accepted the Person B's evidence during which she stated: *"On 23 April 2021, AJ sent me a sexually explicit video of a female... This makes me really uncomfortable"*.

The panel determined that, when Person B ignored the inappropriate messages and tried to focus on the professional elements of the conversation, it should have been clear to you that she did not want to receive them but wished to retain you as a professional contact.

Person B also told you *"just to let you know I do have a boyfriend"*. She stated in her evidence that this was said in the hope that it would stop the inappropriate messages, however, they continued.

The panel was satisfied that Person B did not solicit the messages sent by you. It was satisfied that receipt of such messages had the effect of violating Person B's dignity and noted that you agreed that this was the case.

The panel considered the totality of the exchange between you and Person B via Facebook Messenger and found that the number of deleted messages and the unwanted sexual content sent by you were sufficient to amount to harassment.

The panel concluded that you harassed Person B by engaging in unwanted conduct namely sending Person B one or more unsolicited sexually graphic or explicit electronic images or messages which had the effect of violating Person B's dignity. It therefore finds this charge proved.

#### **Charge 4**

4. The conduct at Charge 3 above was motivated by sexual gratification or in the pursuit of a sexual relationship with Person B.

In reaching this decision, the panel took into account the oral and documentary evidence before it.

The panel had regard to the messages exchanged between Person B and you which included you sending text messages of a sexually explicit nature and a sexually graphic electronic image. The panel noted that sexual nature of these messages persisted and included very direct and inappropriate comments by you.

The panel noted that in the messages to Person B you stated:

*“You can do anything as long as you put your mind to it and who wouldn’t take you*

*Just appearing they’ll say yes lol*

*Your to beautiful to say no to lol”*

*“you just make it your outfit look hot cas your to hot”[sic]*

The panel noted that these messages prompted Person B to subsequently respond stating: *“just to let you know I do have a boyfriend I hope you didn’t sent any wrong vibes” [sic]*.

You responded: *“Ok Didn’t know sorry if I showed u anything lol etc but no worries But he’s one lucky guy”[sic]*.

The panel considered the response Person B gave to you and it has drawn the inference that she felt the need to clarify that she is engaged in a relationship with another individual because she felt that your comments were motivated by the pursuit of a sexual relationship.

The panel found that the messages sent by you were sexually graphic and explicit in nature, and it was of the view that there was no reasonable explanation for the conduct other than that they were motivated by sexual gratification and in pursuit of a sexual relationship with Person B.

The panel therefore concluded that your conduct at Charge 3 was motivated by sexual gratification and in the pursuit of a sexual relationship with Person B. It therefore finds this charge proved.

## **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether 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 ability to practise kindly, safely and professionally.

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

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

## **Submissions on misconduct and impairment**

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

Ms Carver accepted that there is no burden of proof at this stage and that misconduct is a matter for the panel's professional judgement. She stated that the standard of propriety may often be determined by reference to the rules and standards ordinarily required to be followed by the nursing practitioner in the particular circumstances.

Ms Carver referred the panel to the case of *R (Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin), which stated that misconduct must be sufficiently serious in order for it to be properly described as misconduct going to fitness to practice.

Ms Carver referred the panel to its findings in relation to the facts of the case and reminded the panel that this is a case which involved you engaging in unwanted conduct by sending Person A and Person B, over a period of time, unsolicited sexually graphic or explicit images or messages which had the effect of violating their dignity. Further, she reminded the panel that it determined that this was motivated by sexual gratification and in pursuit of a sexual relationship. She submitted that this conduct has fallen seriously short of the standards expected of a registered nurse.

Ms Carver highlighted that your inappropriate behaviour was persistent, repetitive and clearly unwanted by both Person A and B. She submitted that the conduct distressed both Person A and B and that during your evidence, you failed to acknowledge how it would have made those witnesses feel to receive such messages.

Ms Carver invited the panel to take the view that the facts found proved amount to misconduct and that your actions fell far short of what would be proper in the circumstances. She referred the panel to *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* (the Code) in making its decision. She identified the specific, relevant standards where the NMC says that your actions amounted to misconduct.

Ms Carvery moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2), Grant* [2011] EWHC 927 (Admin) and *Zygmunt v General Medical Council* [2008].

Ms Carver referred the panel to the NMC's guidance on impairment. She acknowledged that determining impairment is a forward-looking exercise and therefore the panel should consider whether your fitness to practise is impaired as of today's date. She accepted that a breach of the Code is not, of itself, sufficient to establish impairment of



fitness to practise, and that, as with misconduct, there is no burden or standard of proof to apply, and the decision is a matter for the panel's professional judgment.

Ms Carver informed the panel that the NMC defines the question of whether a registrant's fitness to practise is impaired as whether the registered professional is able to remain on the register without restriction. She outlined that current impairment of fitness to practise could be found either on the basis that there is a continuing risk to members of the public, or that the public confidence in the nursing profession and the NMC as its regulator would be undermined if such a finding were not made.

Ms Carver referred the panel to the NMC's guidance on determining impairment which sets out the relevant considerations. She invited the panel to give regard to the considerations as set out in the case of *Grant*.

Ms Carver submitted that in the future, if you were to act in the same way towards a junior colleague, this has the potential to put a colleague who is a member of the public at risk of harm. She submitted that patients may be placed at risk if a junior colleague's performance were affected as a result of any such behaviour towards them.

Ms Carver further submitted that your actions breached the fundamental tenets of nursing, breached the NMC code of conduct, and brought the reputation of the profession into disrepute.

Ms Carver acknowledged that the NMC guidance sets out that when determining fitness to practise, it is important to consider personal factors relating to the professional working environment and culture, and any evidence of insight and steps taken to strengthen their practice. She submitted that the panel has not been provided with any information to consider in terms of personal factors or the working environment and culture. She further submitted that you have not provided any information to demonstrate insight regarding the proven allegations, or any reflections or evidence of training to assist the panel in assessing whether it is highly unlikely that the conduct will be repeated.

Ms Carver referred the panel to the case of *Cohen*. She invited the panel to consider whether the conduct is easily remediable, and if so, has it in fact been remedied. She further invited the panel to consider whether it is highly unlikely for the conduct to be repeated. She referred to the NMC guidance which sets out that the panel should always consider the full circumstances of the case in the round when assessing whether or not the issues in the case can be remedied.

Ms Carver submitted that concerns relating to clinical practice will tend to be easier to address, particularly where they involve isolated incidents, and that this is a case which relates to conduct outside of a clinical setting, and where the incidents of conduct were not isolated.

Ms Carver submitted that the concerns in this case give rise to attitudinal concerns, and that the seriousness of the misconduct is such that it calls into question your professionalism in the workplace. She reminded the panel that examples of conduct which may not be possible to address by way of training courses or supervision at work include incidents of harassment, such as sexual harassment, that have taken place in a professional context. She acknowledged that whilst the conduct occurred outside the workplace, it involved former colleagues who were only known to you through having worked together.

Ms Carver submitted that as there is no evidence of insight before the panel, no evidence of reflection or strengthening practice, it cannot be said that you have addressed the concerns. She submitted that there is no evidence before the panel which suggests that you would not repeat your actions in the future.

Ms Carver submitted that you have failed to appreciate the effect of your actions on others despite Person A and Person B clearly indicating that they were made uncomfortable by the receipt of your messages. She submitted that as a registered nurse, you should be aware of professional boundaries, even with former colleagues.

In relation to the public interest, Ms Carver invited the panel to consider whether a finding of impairment of fitness to practise is required to uphold proper professional

standards and conduct and maintain public confidence in the profession. She reminded the panel that this is not a case where the concerns are easy to put right and invited the panel to take into account the seriousness of the case. She referred the panel to the NMC's guidance on seriousness.

Ms Wright, on your behalf, made short submissions. She submitted that the panel must be satisfied that the circumstances of this case amount to misconduct and that your fitness to practise is currently impaired in accordance with the law. She submitted that misconduct and impairment are a matter for the panel's judgement.

The panel accepted the advice of the legal assessor who referred to passages in the case of *Grant*.

### **Decision and reasons on misconduct**

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

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

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

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

*20.2 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, midwives and nursing associates to aspire to'*

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

The panel took into account that at the time of the incidents, you were a senior nurse, and would have been expected to be a role model of professional behaviour for more junior healthcare professionals. It considered that Person A and Person B were both junior former colleagues which made them particularly vulnerable to your actions. It noted that Person A described that she viewed you as her mentor and therefore you would have been expected to set the standards expected of a registered nurse. In addition, the panel noted that Person B contacted you to request a professional reference for her, and later asked for your support for an application to study nursing, and that you provided her with professional guidance interspersed with explicit messages.

The panel found that, in both scenarios, Person A and Person B placed you in a position of trust by viewing you in high professional regard, and that you abused this position of trust by violating their dignity for your own sexual gratification. Your conduct only came into question when Person A became Person B's mentor during Person B's nursing training, and Person B disclosed the messages to her.

The panel took into account Person A's witness statement which stated:

*“Person B reported to me that she was terrified about how people might think about her if she was raising concerns about a senior nurse.”*

The panel concluded that your conduct was so serious that it amounted to professional misconduct. It determined that there is clear evidence before it that your actions caused both Person A and Person B distress, some degree of emotional harm, not least arising from your senior professional position, and had the effect of violating their dignity.

The panel concluded that your actions demonstrate a serious departure from the professional standards expected of a registered nurse and a serious falling short of

what would be proper in the circumstances. The panel was satisfied that your actions amounted to misconduct.

### **Decision and reasons on impairment**

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

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

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

*“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”*

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

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. At 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.'*

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

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

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

The panel finds that limbs a, b and c of the "test" are engaged in this case. The panel noted that this is not a case which relates to your clinical practice. However, it found that your former colleagues were caused emotional harm as a result of your misconduct. The panel concluded that your misconduct breached the fundamental tenets of the nursing profession and brought the reputation of the profession into disrepute.

The panel considered whether you have demonstrated any insight. It acknowledged that you denied the charges and that you maintain your position in relation to this. However, the panel noted that while you accepted as fact that the messages were sent to Person

A and Person B, you failed to acknowledge the significant impact of the messages on Person A and Person B, who were both your junior colleagues. Instead, you portrayed yourself as a victim. The panel took into account that both Person A and Person B were caused distress by your actions, and that you have not demonstrated any evidence of remorse, despite having accepted that the messages were sent from your social media accounts. The panel has not seen any evidence that you understand the importance of professional boundaries or acting as a role model, nor has it seen any evidence of how you intend to ensure to maintain professional boundaries with colleagues in future. Further, the panel found that you have not demonstrated any understanding of how your conduct may have impacted negatively on the reputation of the nursing profession.

The panel took into account the NMC's guidance on seriousness. It found that the factors which indicate seriousness are present in this case. The panel has concluded that the concerns in this case are more difficult to put right as it is not a case in which the concerns relate to areas of clinical concern but instead relate to harassment which took place outside the workplace. The panel found that there is evidence of underlying attitudinal concerns and concluded that you have not taken any opportunities to demonstrate insight, remorse or reflections into your misconduct.

The panel has concluded that the nature of this case, and the lack of any insight, remorse or steps taken to address the concerns gives rise to public protection concerns. The panel determined that, if the conduct was carried into a workplace environment, it would have the potential to interfere with patient care. It determined that concerns of this nature, when they are not put right, have the potential to place patients and the public at a risk of harm. The panel concluded that, as it has not seen any evidence that you have tried to put your actions right, and that you have failed to demonstrate an understanding of the importance of professional boundaries, you are liable to repeat the conduct found proved placing your future or former colleagues at a risk of emotional harm.

The panel therefore decided that a finding of impairment of fitness to practise is necessary on the grounds of public protection.

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

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

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



## **Sanction**

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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

## **Submissions on sanction**

Ms Carver informed the panel that the NMC's position is that the only appropriate and proportionate sanction in this case is that of a striking off order. She referred the panel to the SG.

Ms Carver highlighted what the NMC suggests are aggravating features in this case: that your misconduct was abuse of a position of trust, that it related to persistent and repeated instances of sexual harassment towards junior former colleagues, and that there is a lack of genuine remorse.

Ms Carver acknowledged that the proper approach for the panel is to consider the full range of sanctions, starting with the least severe. However, she submitted that neither taking no action nor a caution order would be appropriate in this case as neither of these sanctions would protect the public or meet the wider public interest by marking the seriousness of the misconduct.

Ms Carver submitted that cases of sexual misconduct are always considered serious and such cases undermine the public's trust in nurses, midwives and nursing associates.

Ms Carver submitted that a conditions of practice order may be considered appropriate in cases where there is no evidence of harmful deep-seated personality or attitudinal

problems, and where there are identifiable areas of the registered professional's practice in need of assessment and or retraining, but that these factors do not apply in this case. She submitted that there are no conditions that would adequately address the concerns in this case or reflect the seriousness of the conduct.

Ms Carver addressed whether a suspension order would be appropriate. She referred to the SG and reminded the panel that this is a case which does not relate to an isolated incident of misconduct, as you sent many explicit messages over a significant period of time.

Ms Carver referred the panel to your reflective account which was placed before the panel after it had handed down its decision in relation to misconduct and impairment. She submitted that within this reflection you demonstrated only limited insight, and therefore that there remains a risk that your misconduct would be repeated in the future. She invited the panel to consider whether the remorse you expressed in this document was sincere, and submitted that the misconduct in this case suggests deep-seated attitudinal concerns that are fundamentally incompatible with ongoing registration. She acknowledged the references you provided but submitted that the NMC's position remains that your misconduct was fundamentally incompatible with remaining on the register.

Ms Carver therefore invited the panel to impose a striking off order. She submitted that this is the only appropriate and proportionate sanction given the fundamental questions raised about your professionalism by the panel's findings. She submitted that a striking off order was required to protect the public, to maintain public confidence in the profession, and to declare and uphold professional standards.

Ms Wright, on your behalf, submitted that you understand the need for the NMC to uphold public confidence in nurses, midwives and nursing associates, and to promote proper professional standards, and that you recognise that sexual misconduct directed towards former colleagues could undermine the public's trust in the nursing profession. However, she invited the panel to consider that you have been a registered nurse for 10

years during which you have never been subject to any previous findings by the NMC, or indeed any disciplinary findings.

Ms Wright submitted that your conduct, although serious, is not such that patients and service users have been placed at risk. She reminded the panel that it has not heard any evidence which suggests that you behaved inappropriately within a clinical setting, and that it had, in fact, heard evidence to the contrary. She reminded the panel that it had heard from Person A that she did not recall any inappropriate behaviour from you in a social setting on one occasion in a pub with other colleagues.

Ms Wright referred to the evidence of Person 1 who described you as very professional, very kind, and good at your work, and stated that she admired you. She submitted that it is clear from the evidence, and indeed from the character references provided, that you are an individual who was held in very high regard by your colleagues.

Ms Wright submitted that you have reflected on the allegations found proved, and referred the panel to your reflective piece which sets out that you have already started exploring possible courses relating to professional boundaries, the use of social media and the General Data Protection Regulation. She submitted that there is evidence of some insight into the conduct found proved, and that you have made a start towards examining your behaviour.

Ms Wright submitted that the sanction imposed by the panel ought to be proportionate and ought not go further than it needs to. She submitted that you will comply with any sanction that the panel deems fit, and will be eager and willing to engage in further personal development.

Ms Wright invited the panel to consider imposing a sanction that would allow you to continue your long-standing career as a mental health nurse. However, she stated that you are not unrealistic, and that you appreciate the seriousness of the findings in this case. She suggested that the panel may be of the view that you should be afforded an opportunity to demonstrate that you can rectify your misconduct moving forward, and could facilitate this with a suspension order rather than a striking off order.

In response to a question from the panel, you indicated that you have been subject to an interim suspension order since August 2022. This was confirmed by Ms Carver on behalf of the NMC.

### **Decision and reasons on sanction**

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

The panel took into account the following aggravating features:

- Abuse of a position of trust in respect of junior professionals;
- Lack of genuine remorse;
- A pattern of misconduct which occurred over a significant a period of time, particularly in respect of Person B;
- Misconduct which caused emotional harm to Person A and Person B; and
- Lack of insight into your failings, and your focus in oral evidence on what you said had happened to you, rather than on the impact of the messages on Person A, on Person B, and the impact on the profession or the public's confidence in it.

The panel considered the guidance set out in the SG which stated:

*“The fact that a professional has denied an allegation (and their defence has been rejected) might, in some cases, be regarded as an aggravating factor but panels must bear in mind the principle that professionals are fairly entitled to defend themselves. Panels should carefully consider the nature of the rejected defence before concluding that it can properly be regarded as an aggravating factor.”*

The panel noted that the nature of your defence was that you were a victim of impersonation by your former girlfriend, who had sent messages to junior colleagues pretending to be you. The panel determined that the nature of your defence sought to divert attention from the fact that the victims of the misconduct in this case were Person A and Person B, who, as your former junior professional colleagues, were subjected to sexualised, offensive and – particularly in the case of the long strings of deleted messages – potentially intimidating communications. In addition, the panel had particular concern regarding conversations with Person B where you regularly interspersed inappropriate messages with answers to her questions on career advice so that the conversation would continue. The panel found that this was highly indicative of deep-seated attitudinal concerns, which it found to be an aggravating feature in this case.

The panel was not satisfied that there are any mitigating features in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and would not protect the public. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

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

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the serious nature of

the charges in this case. The panel determined that, given this is a case which relates to harassment and sexual misconduct, and that there is evidence of underlying attitudinal concerns, the misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel determined that none of the factors as set out above are present in this case and therefore it determined that a suspension order was not the appropriate or proportionate sanction.

Your misconduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel determined that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with your remaining on the register.

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

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

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

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

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

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

This will be confirmed to you in writing.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the striking-off sanction takes effect. The panel accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Ms Carver. She submitted that given the panel's findings in relation to impairment and sanction, the NMC's position is that an interim order is required for a period of 18 months. She submitted that an interim suspension order is necessary for the protection of public and is otherwise in the public interest to cover the 28-day appeal period. She reminded the panel that if an appeal is not made, the interim suspension order will lapse after 28 days and be replaced by the substantive striking off order.

Ms Wright did not provide any submissions in respect of an interim order.

### **Decision and reasons on interim order**

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

The panel concluded that an interim conditions of practice order would not be appropriate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28-day appeal period and the period during which an appeal may be lodged and dealt with.



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

That concludes this determination.