

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

**Substantive Hearing
Monday, 12 – Thursday, 22 August 2024**

Virtual Hearing

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

Name of Registrant: Alexander O Osuchukwu

NMC PIN 02H05810

Part(s) of the register: Nurses part of the register Sub part 1
RN1: Adult nurse, level 1 (8 August 2002)

Relevant Location: Telford

Type of case: Misconduct

Panel members: Louise Guss (Chair, lay member)
Mark Gibson (Registrant member)
Suzanna Jacoby (Lay member)

Legal Assessor: Patricia Crossin (12 August 2024)
Charles Conway (13 – 22 August 2024)

Hearings Coordinator: Catherine Acevedo

Nursing and Midwifery Council: Represented by Isabella Kirwan, Case Presenter

Mr Osuchukwu: Not present and unrepresented

Facts proved: All

Facts not proved: None

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order:

Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Osuchukwu was not in attendance and that the Notice of Hearing letter had been sent to Mr Osuchukwu's registered email address by secure email on 12 July 2024.

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

The panel accepted the advice of the legal assessor.

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

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

Decision and reasons on proceeding in the absence of Mr Osuchukwu

The panel next considered whether it should proceed in the absence of Mr Osuchukwu. It had regard to Rule 21 and heard the submissions of Ms Kirwan who invited the panel to continue in the absence of Mr Osuchukwu. She submitted that Mr Osuchukwu had voluntarily absented himself.

Ms Kirwan submitted that there had been no engagement at all by Mr Osuchukwu in relation to this hearing, although he has corresponded with the NMC by email on 23 July

2024 in relation to another matter and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

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

- No application for an adjournment has been made by Mr Osuchukwu;
- Mr Osuchukwu has not engaged with the NMC about this hearing;
- There is no reason to suppose that adjourning would secure Mr Osuchukwu's attendance at some future date;
- 3 witnesses have been warned to attend the hearing to give live evidence and not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2021;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Osuchukwu in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him, he will not be able to

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

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Kirwan on behalf of the NMC, to amend a typographical error in the wording of charge 10 which refers to charge '11d'. She submitted that charge 11d does not exist in the charge and the proposed amendment is to remove the reference to charge 11d.

It was submitted by Ms Kirwan that the proposed amendment would provide clarity and more accurately reflect the evidence.

"10) Your conduct in one or more of charges 1a), 1b), 1c), 2a), 2b), 2c), 3), 4), 5a), 5b), 5c), 5d), 5e), 5f), 5h), 6a), 6b), 6c), 11a), 11b) **and** 11c), ~~and 11d)~~ was sexually motivated as you sought sexual gratification from one or more of your acts".

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Osuchukwu 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.

Details of charge

That you, a registered nurse;

On 25 October 2021;

1)

- a) Brushed your finger across and/or touched Colleague A's right breast;
- b) Touched Colleague A's bottom.
- c) Touched Colleague A's body.

2)

- a) Patted Colleague A's buttock.
- b) Pushed your body and/or leant onto Colleague A;
- c) Touched Colleague A's lower back and/or bottom.

3) Placed your hand on Colleague A's buttocks.

4) On one or more occasion attempted to hug Colleague A

5) On one or more occasion, other than the incidents in charges 1a, 1b, 1c, 2a, 2b, 2c, 3 and 4 above;

- a) Tapped and/or touched Colleague A's bottom;
- b) Placed your hand on Colleague A's lower back;
- c) Tried to hold and/or touch Colleague A's hand and/or arm;
- d) Wiggled your finger on Colleague A's palm;
- e) Pinched the top of Colleague A's hand;
- f) Touched Colleague A with your leg;
- g) Stared at Colleague A's bottom;

h) Pressed your body up against Colleague A's body.

6) Made the following inappropriate comments to Colleague A using words to the effect;

- a) *'You are a beautiful and/or attractive woman';*
- b) *'See what you made me do, you are very distracting';*
- c) *'See how you distract me.'*

7) On 26 October 2021, made the following inappropriate comment to Colleague A using words to the effect *'I am working with an attractive woman, that's all I can say'*.

8) In or around October/November 2021;

- a) Kissed your teeth at Colleague A
- b) Raised and/or shook your fist at Colleague A.
- c) Spoke to Colleague A using words to the effect *'I will hit you.'*
- d) After being challenged by Colleague A for your actions in charge 8 c) above, used words to the effect *'You think so.'*

9) On unknown dates, whilst working with Colleague B on one or more occasions;

- a) Touched and/or held Colleague B's hand.
- b) Placed and/or pressed your body close to Colleague B's body.
- c) Attempted to hug Colleague B.
- d) Made faces indicating that you wanted to kiss Colleague B

10) Your conduct in one or more of charges 1a), 1b), 1c), 2a), 2b), 2c), 3), 4), 5a), 5b), 5c), 5d), 5e), 5f), 5h), 6a), 6b), 6c), 11a), 11b) and 11c) was sexually motivated as you sought sexual gratification from one or more of your acts.

11) Your conduct in one or more of charges 5g), 6a), 6b), 6c) and 7) amounted to harassment of Colleague A in that;

- a) It was unwanted.

- b) It related to Colleague A's sex.
- c) It had the purpose or effect of:
 - a. Violating Colleague A's dignity, and/or
 - b. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

12) Your conduct in charge 9 d) amounted to harassment of Colleague B in that;

- a) It was unwanted.
- b) It related to Colleague B's sex and/or was sexual in nature.
- c) It had the purpose or effect of:
 - i) Violating Colleague B's dignity and/or;
 - ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B.

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

Background

The charges arose whilst Mr Osuchukwu was working as a registered nurse for a care agency at a client's house (the Client). It was alleged that whilst working on a care package Mr Osuchukwu approached Colleague A for a hug and then held her very tightly and pressed his body and rubbed against her. Over the course of the shift, it was alleged that there were several times Mr Osuchukwu touched Colleague A inappropriately, including several incidents of touching her bottom.

There were two CCTV cameras in the Client's room and when this was reviewed, several episodes of alleged inappropriate behaviour in relation to touching Colleague A were identified.

It was further identified that Colleague B who worked alongside Mr Osuchukwu in his

previous role also raised allegations of sexual harassment in the workplace against him. Mr Osuchukwu has denied the allegations put to him.

Decision and reasons on application to admit CCTV evidence

The panel heard an application made by Ms Kirwan under Rule 31 to allow the CCTV evidence exhibited by Colleague C prior to her giving live evidence.

Ms Kirwan submitted that Colleague C is the third witness and is not due to attend until later in proceedings. She submitted that the CCTV evidence is the key evidence in this case and provides video evidence of what happened. She submitted that the panel should see the evidence during the NMC's opening of the case and before hearing from any of the witnesses. She submitted that there was no lack of fairness to Mr Osuchukwu in allowing the CCTV evidence at this stage.

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 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 the CCTV evidence serious consideration.

The panel considered whether Mr Osuchukwu would be disadvantaged by exhibiting the CCTV evidence before hearing Colleague C's live evidence.

The panel considered that Mr Osuchukwu had been provided with a copy of Colleague C's statement and exhibits (including the CCTV) but he would not be in a position to cross-examine this witness in any case as he had not attended the hearing. There was also public interest in the issues being explored fully which supported the admission of the CCTV evidence into the proceedings at this stage.

In these circumstances, the panel came to the view that it would be fair and relevant to exhibit the CCTV evidence before Colleague C gives live evidence at the hearing.

Decision and reasons on application to amend the facts set out in the charge

Following the conclusion of the NMC's evidence and closing submissions on facts, the panel heard an application made by Ms Kirwan, on behalf of the NMC, to amend the facts set out in charge 4, on which part of the allegation is based under Rule 28 1(b).

Ms Kirwan's application is to exclude the evidence of the facts relating to charge 4 which relates to the 'second hug' which is seen in the CCTV at 8:31am. The reason for the proposed amendment is that there was an error on the part of the NMC in that the evidence in relation to this hug should not have been included within charge 4.

Therefore, in line with Rule 28 1(b) Ms Kirwan invited the panel to disregard the evidence in relation to the 'second hug' at 8:31am.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel considered Mr Kirwan's application that an error was made and evidence of the second hug was introduced when it should not have been. However, it determined that the application has been made late in proceedings and it has not been given a reason for the application other than Mr Kirwan conceded on behalf of the NMC that it should have been made at the start of the hearing.

Further, the panel has seen and heard evidence relating to this incident which it considered to be very serious in the very early stages of a shift which set the context for the other allegations.

The panel therefore decided to reject the application.

Decision and reasons on facts

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

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

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

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

- Colleague A:
- Colleague B:
- Colleague C:

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

The panel took into account Mr Osuchukwu's denials of the allegations as set out in the local investigation hearing on 2 November 2021 and in his written response to the NMC.

Charge 1a

That you, a registered nurse;

On 25 October 2021;

1a) Brushed your finger across and/or touched Colleague A's right breast;

This charge is found proved.

In reaching this decision, the panel took into account the CCTV evidence and the evidence of Colleague A and Colleague C.

Colleague A's witness statement states *"Also, around this time Alex brushed his fingers from his left hand under my right breast as he took [the Client]'s apron from me. This was intention and I felt extremely uncomfortable"*.

This was consistent with her oral evidence.

Colleague C's opinion when she viewed the CCTV closer to the time of the incident was that Mr Osuchukwu's hand went towards the side of Colleague A's body. However, she conceded in oral evidence that the CCTV does not clearly show Mr Osuchukwu touching Colleague A's breast.

Despite the lack of clarity from the CCTV footage, the panel found Colleague A's evidence to be credible and reliable and her written and oral accounts of the incident were consistent. The panel found her evidence to be balanced; she did not embellish or exaggerate. The panel therefore accepted Colleague A's account of the incident.

The panel determined on the balance of probabilities that Mr Osuchukwu brushed his finger across and/or touched Colleague A's right breast. It therefore found charge 1a proved.

Charges 1b and 1c

b) Touched Colleague A's bottom.

c) Touched Colleague A's body.

These charges are found proved.

In reaching this decision, the panel took into account the CCTV evidence and the evidence of Colleague A and Colleague C.

Colleague A's witness statement states *"Shortly after this, around 09.45-10.00, I was stood at [the Client]'s bed. I think I was changing [the Client] or talking to him. Alex walked past, and with the back of his hand and arm he brushed intentionally past me, touching my bottom and my body as he did so. I felt this was intentional; I could feel him applying pressure"*.

Colleague A's account was consistent with her police statement on 30 October 2021 and her oral evidence.

The panel had sight of the CCTV footage and determined that it could not see Mr Osuchukwu touch Colleague A's bottom because of the angle of the footage. The panel found Colleague A's evidence to be credible and reliable in relation to this charge, the panel accepted Colleague A's evidence of this incident.

The panel determined on the balance of probabilities that Mr Osuchukwu touched Colleague A's bottom and body. It therefore found charge 1b and 1c proved.

Charge 2a

a) Patted Colleague A's buttock.

This charge is found proved.

In reaching this decision, the panel took into account the CCTV evidence and the evidence of Colleague A.

Colleague A's witness statement states *"At 12.54 Alex patted my right buttock with his left hand whilst smiling at me. Then at 13.28 he placed his left hand on my left buttock"*.

Colleague A's account was consistent with her police statement of 30 October 2021, her most contemporaneous email local statement of 28 October 2021 and her oral evidence where she stated she was in 'disbelief' that it happened.

The panel had sight of the CCTV footage and determined that although it does not clearly show Mr Osuchukwu pat Colleague A's buttock, it shows Mr Osuchukwu move his hand behind Colleague A consistent with him patting her buttock.

The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her evidence of this incident.

The panel determined on the balance of probabilities that Mr Osuchukwu patted Colleague A's buttock. It therefore found charge 2a proved.

Charge 2b

b) Pushed your body and/or leant onto Colleague A;

This charge is found proved.

In reaching this decision, the panel took into account the CCTV evidence and the evidence of Colleague A.

Colleague A's witness statement states *"Alex came right next to me to the point he was pushing up against the side of my body. He was leaning on me"*.

Colleague A's account was consistent with her police statement of 30 October 2021 and her most contemporaneous email local statement of 28 October 2021.

The panel had sight of the CCTV footage and determined that it could see clearly when Mr Osuchukwu steps towards Colleague A and then presses against her.

The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her evidence of this incident.

The panel determined on the balance of probabilities that Mr Osuchukwu pushed his body and/or leant onto Colleague A. It therefore found charge 2b proved.

Charge 2c

c)Touched Colleague A's lower back and/or bottom

This charge is found proved.

In reaching this decision, the panel took into account the CCTV evidence and the evidence of Colleague A.

Colleague A's witness statement states *"Then at 13.28 he placed his left hand on my left buttock".* She further states *"I was stood by the bed and recall Alex pressing up against the right side of my body and with his left arm touching the lower part of my back and bottom. He touched my bottom in a sweeping motion across it".*

Colleague A's account was consistent with her police statement of 30 October 2021 and her most contemporaneous email local statement of 28 October 2021.

The panel had sight of the CCTV footage and determined that it could see Mr Osuchukwu reaching his left hand behind Colleague A and placing his left hand on her left buttock

The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her evidence of this incident.

The panel determined on the balance of probabilities that Mr Osuchukwu touched Colleague A's lower back and/or bottom. It therefore found charge 2c proved.

Charge 3

3) Placed your hand on Colleague A's buttocks.

This charge is found proved.

In reaching this decision, the panel took into account the CCTV evidence and the evidence of Colleague A.

Colleague A's witness statement states *"Then at 13.28 he placed his left hand on my left buttock".* She further states *"I was stood by the bed and recall Alex pressing up against the right side of my body and with his left arm touching the lower part of my back and bottom. He touched my bottom in a sweeping motion across it".*

Colleague A's account was consistent with her police statement of 30 October 2021 and her most contemporaneous email local statement of 28 October 2021 where she details several instances where Mr Osuchukwu placed his hands on her bottom.

The panel had sight of the CCTV footage and determined that it could see Mr Osuchukwu on more than one occasion placing his hand on Colleague A's buttocks.

The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her evidence of this incident.

The panel determined on the balance of probabilities that Mr Osuchukwu placed his hand of Colleague A's buttocks on several occasions. It therefore found charge 3 proved.

Charge 4

4) On one or more occasion attempted to hug Colleague A

This charge is found proved.

In reaching this decision, the panel took into account the CCTV evidence and the evidence of Colleague A and Mr Osuchukwu's evidence.

In the investigation meeting minutes, when asked about the alleged incidents by Colleague C, Mr Osuchukwu stated:

“AO – What I remember is that when we hugged she felt pain in her breast and that it was due to her menstrual cycle, I apologised and we spoke about it and she said its ok, I thought that was it, then it never happened again. I remember on Tuesday she hugged me, but I didn't see it as anything other than colleagues at work. May I say that morning the cameras were on so not like I hid anything

SL – So jus to recap you do not feel your behaviour was inappropriate that day?

AO – No she raised hands to hug me when she came in she said she doesn't mind hug, she said she hugs colleagues, not just me all colleagues. She has always said she enjoys working with me, did she not mean it, I don't mean to cause her any harm at all or upset her at all and I really feel sorry for disruption and the time taking and for [the Client], I just feel I could have been there for [the Client] today (sic)”.

The panel noted that Colleague A did not recall a 'first hug' in oral evidence or in her written statements to the NMC and police. Colleague A mentions a hug in her contemporaneous email local statement of 28 October 2021 *"The day started off as normal nothing unusual the around 9.30 ish Alex went to hug me and held very tight so I couldnt break away and pushed his chest so hard against mine and moved side to side against my breast I tried to pull away and he didn't let go, at this point I was in pain and he seemed to be enjoying what he was doing."*

In relation to a second hug, Colleague A does make reference to this in her witness statement *"Between 13.00-14.00, Alex tried to hug me a second time. Again, he tried to push up against my breasts"*. Colleague A's account was consistent with her police statement of 30 October 2021 and her most contemporaneous email local statement of 28 October 2021.

The panel had sight of the CCTV footage. At 08:31:08, during the second hug, Mr Osuchukwu was clearly seen overtly rubbing his body from side to side against Colleague A with Colleague A trying to push him away.

The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her evidence of this incident.

The panel determined on the balance of probabilities that Mr Osuchukwu attempted to hug Colleague A on more than one occasion. It therefore found charge 4 proved.

Charge 5a and 5b

- 5) On one or more occasion, other than the incidents in charges 1a, 1b, 1c, 2a, 2b, 2c, 3 and 4 above;
 - a) Tapped and/or touched Colleague A's bottom;
 - b) Placed your hand on Colleague A's lower back;

These charges are found proved.

In reaching this decision, the panel took into account the evidence of Colleague A.

Colleague A's witness statement states *"On several occasions, Alex also proceeded to tap my bottom and put his hand on my lower back"*.

Colleague A's account was consistent with her police statement of 30 October 2021 where she stated *"On several occasions, Alex also proceeded to tap my bottom and put his hand on my lower back a few times"*.

In Colleague A's most contemporaneous email local statement of 28 October 2021 she stated *"As the morning went on he proceeded to tap my bottom and put his hands on my lower back"*

The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her evidence of these incidents.

The panel determined on the balance of probabilities that on more than one occasion Mr Osuchukwu tapped or touched Colleague A's bottom. It therefore found charges 5a and 5b proved.

Charges 5c, 5d and 5e

- c) Tried to hold and/or touch Colleague A's hand and/or arm;
- d) Wiggled your finger on Colleague A's palm;
- e) Pinched the top of Colleague A's hand;

These charges are found proved.

In reaching this decision, the panel took into account the CCTV evidence and the evidence of Colleague A.

Colleague A's witness statement states *"He tried to hold my hand and wiggle his finger on my palm and pinch the top of my hand"*.

Colleague A's account was consistent with her police statement of 30 October 2021 and is also referred to in her email local statement of 28 October 2021.

Colleague C confirmed in her oral evidence that she had also viewed another CCTV clip of this incident from another angle at the time she was reviewing the footage. She said in the footage she could also see Mr Osuchukwu wiggle his fingers on Colleague A's hand and touch/hold her hand.

The panel had sight of some CCTV footage of this incident and determined that it could see Mr Osuchukwu's fingers and hands touch Colleagues A's hands. The panel could not view the footage from the second CCTV camera as it was no longer available. However, it accepted Colleague C's recollections. The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her evidence of these incidents.

The panel determined on the balance of probabilities that on more than one occasion Mr Osuchukwu tried to hold and/or touch Colleague A's hand and/or arm; Wiggled his finger on her palm and pinched the top of Colleague A's hand. It therefore found charges 5c, 5d and 5e proved.

Charges 5f and 5h

- f) Touched Colleague A with your leg;
- h) Pressed your body up against Colleague A's body.

These charges are found proved.

In reaching this decision, the panel took into account the CCTV evidence and the evidence of Colleague A.

Colleague A's witness statement states *"Alex came right next to me to the point he was pushing up against the side of my body. He was leaning on me."*

Colleague A's account was consistent with her police statement of 30 October 2021 and is also referred to in her email local statement of 28 October 2021.

The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her evidence of the incident.

The panel determined on the balance of probabilities that Mr Osuchukwu touched Colleague A with his leg and pressed his body up against Colleague A's body. It therefore found charges 5f and 5h proved.

Charge 5g

g) Stared at Colleague A's bottom;

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague A.

Colleague A's witness statement states *"No matter what I was doing, I was aware of him staring at me. When I was bathing [the Client], Alex would stand at the door staring at me. When I turned around Alex wouldn't hide the fact he was staring at my bum and looking me up and down"*.

Colleague A's account was consistent with her police statement of 30 October 2021 and is also referred to in her email local statement of 28 October 2021. The panel also noted in her oral evidence, Colleague A stated *"Whenever my back was turned he'd be staring at my bum, he didn't look away"*.

The panel noted that there was no CCTV footage which showed Mr Osuchukwu staring at Colleague A's bottom. However, the panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her evidence.

The panel determined on the balance of probabilities that Mr Osuchukwu stared at Colleague A's bottom. It therefore found charge 5g proved.

Charges 6a, 6b and 6c

6) Made the following inappropriate comments to Colleague A using words to the effect;

- a) *'You are a beautiful and/or attractive woman';*
- b) *'See what you made me do, you are very distracting';*
- c) *'See how you distract me.'*

These charges are found proved.

In reaching this decision, the panel took into account the evidence of Colleague A.

Colleague A's witness statement states *"Alex continued to make me feel uncomfortable. He made comments saying that he was working with a beautiful and attractive woman and insinuating it was my fault for him touching me. When he made a mistake hoisting [the Client], he blamed it on me saying words to the effect of "see what you made me do, you are very distracting."*

Colleague A's account was consistent with her police statement of 30 October 2021, her email local statement of 28 October 2021 and her oral evidence.

The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her clear and detailed evidence of the incident.

The panel determined on the balance of probabilities that Mr Osuchukwu made inappropriate comments to Colleague A using words to the detailed in the charge. It therefore found charges 6a, 6b and 6c proved.

Charge 7

On 26 October 2021, made the following inappropriate comment to Colleague A using words to the effect *'I am working with an attractive woman, that's all I can say'*.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague A.

Colleague A's witness statement states *"The next morning I returned to work at the same address around 08.00 hours and could not bear to be in the same room as Alex. Throughout the morning he kept saying that he was glad we set the boundaries yesterday and repeatedly that he was working with an attractive woman. He was coming across as smug and sarcastic."*

Colleague A's account was consistent with her police statement of 30 October 2021 she stated *"Again, he said "I'M WORKING WITH AN ATTRACTIVE WOMAN, THAT'S ALL I CAN SAY". He was sarcastic and smug"*.

In her email local statement of 28 October 2021 Colleague A stated *“He made me feel uncomfortable and said twice once I had told him in the Park never to touch me, what can I say I'm working with a very beautiful attractive woman and I will leave it there insinuating it was my fault...Before 12 I think he got the idea I wasn't happy and on numerous occasions said I'm glad we set boundaries yesterday. He was sarcastic and smug. And yet again said I'm working with an attractive woman that's all I can say”*.

The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her clear and detailed evidence.

The panel determined on the balance of probabilities that Mr Osuchukwu made inappropriate comments to Colleague A using words detailed in the charge. It therefore found charge 7 proved.

Charge 8a

- 8) In or around October/November 2021;
 - a) Kissed your teeth at Colleague A

This charge is found proved.

In reaching this decision, the panel took into account the CCTV footage and the evidence of Colleague A.

The panel noted that the CCTV footage has no audio so it could not hear whether Mr Osuchukwu ‘kissed his teeth’ at Colleague A.

Colleague A’s witness statement states *“A few days later, I cannot recall the date, I was Hoovering in the bedroom by the window at the head end of the bed. Alex would not move out of my way and I accidentally caught his toe. He suddenly raised and shook his right fist at me, whilst kissing his teeth”*.

Colleague A's account was consistent with her police statement of 30 October 2021, her email local statement of 28 October 2021 and her oral evidence.

The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her clear and detailed evidence on this incident.

The panel determined on the balance of probabilities that Mr Osuchukwu kissed his teeth at Colleague A. It therefore found charge 8a proved.

Charge 8b

b) Raised and/or shook your fist at Colleague A.

This charge is found proved.

In reaching this decision, the panel took into account the CCTV footage and the evidence of Colleague A.

Colleague A's witness statement states "*He suddenly raised and shook his right fist at me*".

Colleague A's account was consistent with her police statement of 30 October 2021, her email local statement of 28 October 2021 and her oral evidence.

The panel had sight of the CCTV footage of this incident and determined that it could see Mr Osuchukwu raise his hand and make a short sharp shake of his fist.

The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her clear and detailed evidence on this incident.

The panel determined on the balance of probabilities that Mr Osuchukwu raised and/or shook his fist at Colleague A. It therefore found charge 8b proved.

Charges 8c and 8d

- c) Spoke to Colleague A using words to the effect '*I will hit you.*'
- d) After being challenged by Colleague A for your actions in charge 8 c) above, used words to the effect '*You think so.*'

These charges are found proved.

In reaching this decision, the panel took into account the CCTV footage and the evidence of Colleague A.

The panel noted that the CCTV footage has no audio so it could not hear whether Mr Osuchukwu said these words to Colleague A.

Colleague A's witness statement states "*He said "I will hit you". To which I said "you would lose" and he said "you think so". I stayed quiet after that and continued hoovering as I did not want to antagonism (sic) the situation*".

Colleague A's account was consistent with her police statement of 30 October 2021, her email local statement of 28 October 2021 and her oral evidence.

The panel found Colleague A to be a credible and reliable witness in relation to this charge, the panel accepted her clear and detailed evidence on this incident.

The panel determined on the balance of probabilities that Mr Osuchukwu said the words detailed in the charge to Colleague A. It therefore found charges 8b and 8c proved.

Charge 9a

- 9) On unknown dates, whilst working with Colleague B on one or more occasions;
- a) Touched and/or held Colleague B's hand.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B.

Colleague B's witness statement states *"He would try to hold your hand or make excuses to touch you or brush up against you"*.

This is consistent with her email local statement *"However, oftentimes (sic) He is very touchy to me, hold my hands discretely..."* and also her oral evidence.

The panel found Colleague B's evidence to be credible and reliable and her written and oral accounts of the incident were consistent in relation to this charge.

The panel determined on the balance of probabilities that Mr Osuchukwu touched and/or held Colleague B's hand. It therefore found charge 9a proved.

Charge 9b

- b) Placed and/or pressed your body close to Colleague B's body.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B.

Colleague B's witness statement states *"I remember on one occasion the ventilator machine was placed a little higher up on the shelf and he cornered me and came up*

behind me when I was taking it down. He was so close he made me jump. Afterwards I told him not to do that again and he apologised”.

This is consistent with Colleague B’s email local statement *“Once I was checking the ventilator and reaching out and he had suddenly came behind me and nearly hug me that made me jump. I warned him in a loud voice and He told me to hush. I clearly told him that I don’t like what he was doing and he apologised and told me he will try not to do it again.”*

The panel found Colleague B’s evidence to be credible and reliable in relation to this charge and it accepted her account of the incident.

The panel determined on the balance of probabilities that Mr Osuchukwu placed and/or pressed his body close to Colleague B’s body. It therefore found charge 9b proved.

Charge 9c

- c) Attempted to hug Colleague B.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B.

Colleague B says in her email local statement *“There are many times that he nearly hug me but I manage to push him away.”*

The panel noted that Colleague B does not mention this in her witness statement. However, she was consistent in her more contemporaneous email local statement and oral evidence. She stated in oral evidence *“He tried to hug me and act like he wanted to kiss me even when we were apart”.*

The panel found Colleague B's evidence to be credible and reliable in relation to this charge and it accepted her account of the incident.

The panel determined on the balance of probabilities that Mr Osuchukwu attempted to hug Colleague B. It therefore found charge 9c proved.

Charge 9d

d) Made faces indicating that you wanted to kiss Colleague B

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B.

Colleague B says in her email local statement *"There are times he would make faces like he wanted to kiss me"*.

The panel noted that Colleague B does not mention this in her witness statement. However, she was consistent in her more contemporaneous email local statement and oral evidence. She stated in oral evidence *"He tried to hug me and act like he wanted to kiss me even when we were apart"*. Colleague B also demonstrated for the panel in live evidence how Mr Osuchukwu would pucker his lips at her.

The panel found Colleague B's evidence to be credible and reliable in relation to this charge and it accepted her account of the incident.

The panel determined on the balance of probabilities that Mr Osuchukwu made faces indicating that he wanted to kiss Colleague B. It therefore found charge 9d proved.

Charge 10

Your conduct in one or more of charges 1a), 1b), 1c), 2a), 2b), 2c), 3), 4), 5a), 5b), 5c), 5d), 5e), 5f), 5h), 6a), 6b), 6c), 11a), 11b) and 11c) was sexually motivated as you sought sexual gratification from one or more of your acts.

These charges are found proved.

The panel considered each of the charges in turn and determined that each of the acts detailed in the charges in charge 10 was sexually motivated.

The panel considered that there was a repeated pattern of sexual touching all of which was deliberate and could not be considered to be accidental. The panel determined on the balance of probabilities that all of these actions were sexual in nature in that you sought sexual gratification on each occasion.

The panel therefore found charge 10 proved in respect of 1a), 1b), 1c), 2a), 2b), 2c), 3), 4), 5a), 5b), 5c), 5d), 5e), 5f), 5h), 6a), 6b), 6c), 11a), 11b) and 11c).

Charge 11

11) Your conduct in one or more of charges 5g), 6a), 6b), 6c) and 7) amounted to harassment of Colleague A in that;

- a) It was unwanted.
- b) It related to Colleague A's sex.
- c) It had the purpose or effect of:
 - a. Violating Colleague A's dignity, and/or
 - b. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

These charges are found proved.

The panel considered that staring at Colleague A's bottom and the comments Mr Osuchukwu made were related to Colleague A's sex and were unwanted as Colleague A had previously asked Mr Osuchukwu to stop.

Colleague A confirmed when asked during her oral evidence that Mr Osuchukwu's actions violated her dignity, and created an intimidating, hostile, degrading, humiliating or offensive environment for her.

The panel found Colleague A's evidence to be credible and reliable in relation to this charge and it accepted her evidence.

The panel determined on the balance of probabilities that Mr Osuchukwu's conduct in charges 5g), 6a), 6b), 6c) and 7) both individually and collectively amounted to harassment of Colleagues A. It therefore found charge 11 proved.

Charge 12

Your conduct in charge 9 d) amounted to harassment of Colleague B in that;

- a) It was unwanted.
- b) It related to Colleague B's sex and/or was sexual in nature.
- c) It had the purpose or effect of:
 - i) Violating Colleague B's dignity and/or;
 - ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B.

This charge found proved.

The panel consider that making faces indicating that Mr Osuchukwu wanted to kiss Colleague B were unwanted as had previously asked Mr Osuchukwu to stop and related to Colleague B's sex.

Colleague B confirmed when asked during her oral evidence that Mr Osuchukwu's action set out in charge 9d violated her dignity, and created an intimidating, hostile, degrading, humiliating or offensive environment for her.

The panel found Colleague B's evidence to be credible and reliable it accepted her evidence.

The panel determined on the balance of probabilities that Mr Osuchukwu's conduct in charge 9d) amounted to harassment of Colleague B. It therefore found charge 12 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 Mr Osuchukwu's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

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

Submissions on misconduct

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

Ms Kirwan invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and identified the specific, relevant standards where the NMC say Mr Osuchukwu's actions amounted to misconduct.

Ms Kirwan submitted that Mr Osuchukwu's actions in the charges, which were all found proved, involved numerous incidents of misconduct and breaches of the Code.

Ms Kirwan submitted that the panel has accepted evidence of harassment of two colleagues, including sexual harassment. The nature of the conduct was insidious and subtle and was a pattern of conduct which was carried out whilst Mr Osuchukwu was delivering nursing care to a vulnerable patient.

Ms Kirwan submitted that Mr Osuchukwu abused his position as a registered nurse and his position of power in a senior role, to exploit those in less senior positions for his own sexual benefit. She further submitted that Mr Osuchukwu failed to maintain clear professional boundaries.

Ms Kirwan submitted that Mr Osuchukwu's harassment of colleagues placed vulnerable patients at risk as he failed to follow proper policies and procedures. She submitted that Mr Osuchukwu's conduct in relation to Colleague A was frequent and continuous and became progressively worse throughout the shift. Colleague B also described that his conduct became more frequent and more serious.

Ms Kirwan submitted that Mr Osuchukwu failed to uphold public confidence in the nursing profession and failed to maintain professional standards.

Ms Kirwan referred the panel to the NMC guidance FTP-3 and outlined some of the behaviours which are particularly serious as they suggest there may be a risk to people receiving care which included; conduct which indicates a dangerous attitude to the safety of people receiving care, sexual misconduct, harassment, and predatory behaviour.

Decision and reasons on misconduct

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

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

"8 Work co-operatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

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

The panel had regard to NMC guidance FTP-3 and considered in the light of this guidance that Mr Osuchukwu's conduct was particularly serious as it involved, sexual misconduct, harassment, and exploitative and predatory behaviour. It considered that his conduct involved two victims who were colleagues at two different locations which indicated a pattern of sexually motivated and harassing behaviour. The panel considered that Mr Osuchukwu abused his position of power as a nurse. The panel determined that his conduct was exploitative in that it occurred in the presence of a vulnerable patient and while care was provided in a private home setting in Mr Osuchukwu's care. His behaviour was predatory as he was a senior member of staff.

In relation to Colleague A, the panel considered Mr Osuchukwu's conduct was sexually motivated, particularly serious and took place throughout the course of a shift. Further, his behaviour towards Colleague A involved elements of aggression and intimidation.

In relation to Colleague B, the panel considered that Mr Osuchukwu's conduct amounted to harassment. The panel considered Mr Osuchukwu's conduct was serious and involved a pattern of behaviour which escalated over a period of time at work.

The panel noted that no patient harm was caused by Mr Osuchukwu's conduct. However, it took into account the negative impact his actions had on Colleague A and Colleague B.

The panel considered that Mr Osuchukwu's conduct at each charge individually and collectively would be regarded as deplorable by fellow practitioners and fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

After the panel handed down its decision on misconduct, Ms Kirwan informed the panel that this hearing originally involved a conviction charge as well as charges relating to misconduct. Ms Kirwan did not inform the panel of the conviction charge until after the misconduct charges had been dealt with.

The panel was then provided with a certificate of conviction showing that on 3 February 2023 Mr Osuchukwu was convicted of the below offence:

“On 25/10/2021 at WATFORD in the county of HERTFORDSHIRE intentionally touched a woman aged 16 or over and that touching was sexual when she did not consent and you did not reasonably believe that she was consenting”

Ms Kirwan informed the panel that Mr Osuchukwu's conviction relates to the single allegation which occurred at 08:31 on 25 October 2021 and has been referred to as the “second hug” in these proceedings; the facts which were encompassed in charge 4 and which the panel has found proved.

The panel was provided with an email from the Watford Local Crime Unit dated 19 May 2023 stating:

“The only offence for which he pleaded guilty to and has been convicted of is the offence at 08:31 hrs. The others were dismissed by the prosecution”.

Ms Kirwan informed the panel that the charge relating to the conviction was duplicated within the misconduct charge and for this reason she had made an earlier application to amend the facts set out in the charge. The panel did not grant the application and

therefore, given that the panel has found the facts of that event proved by misconduct, the NMC will not proceed with the conviction charge.

Ms Kirwan submitted that this was an error on part of the NMC and the NMC would like to put on record that the reasons behind it were to ensure clarity regarding how the hearing has proceeded as Mr Osuchukwu was notified of the conviction charge prior to commencement of the hearing.

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

Submissions on impairment

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

Ms Kirwan invited the panel to find Mr Osuchukwu's fitness to practise currently impaired. She submitted that the panel must consider whether Mr Osuchukwu can practise kindly, safely and professionally.

Ms Kirwan submitted that the concerns are evidence of deep-seated attitudinal issues. Mr Osuchukwu disregarded the safety of patients and the policies and procedures in place in the workplace. She submitted that his actions affected his colleagues' ability to do their jobs practically and affected their ability carry out their duties. She therefore submitted that there is a risk that people receiving care could be placed at risk of harm.

Ms Kirwan submitted that Mr Osuchukwu's misconduct breached fundamental tenets of the nursing profession and that, although dishonesty is not explicitly charged, there is a

suggestion that Mr Osuchukwu has in the past acted dishonestly and/or is liable to act dishonestly in the future.

Ms Kirwan submitted that there is no evidence that Mr Osuchukwu has reflected or learned from his mistakes or taken steps to address the concerns and therefore the risk of repetition in this case is high. She therefore submitted that a finding of impairment is required on the grounds of public protection and in the wider public interest.

The panel accepted the advice of the legal assessor.

Decision and reasons on impairment

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

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

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

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

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

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

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

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

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

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

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

The panel found limbs a, b and c engaged in the *Grant* test. The panel found that although no patient harm was caused, patients were put at risk of harm by Mr Osuchukwu's conduct towards Colleague A and Colleague B. The panel considered that his misconduct, which occurred during shifts whilst he was caring for highly vulnerable patients with complex needs, had the potential of distracting Colleague A and Colleague B from properly undertaking their caring tasks. His conduct created an intimidating, hostile, degrading, humiliating and offensive working environment for Colleague A and Colleague B. The panel found that Mr Osuchukwu's misconduct, which was sexual in nature and harassing, had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel took into account Mr Osuchukwu's responses in the local investigation meeting minutes dated 2 November 2021 and in his reflective statement. It noted that Mr Osuchukwu stated in his written reflection "*I will be very careful in any kind of physical contact with any work colleagues*". The panel considered that Mr Osuchukwu has demonstrated a lack of insight into his misconduct. He has not demonstrated an understanding of how his actions had the potential to put the patients at a risk of harm, nor has he demonstrated an understanding of why what he did was wrong and how this impacted negatively on his victims Colleague A and Colleague B and on the reputation of the nursing profession.

The panel referred to the NMC guidance 'Serious concerns which are more difficult to put right' FTP 3a. In the light of this guidance, the panel determined that the concerns are of a sexual nature, demonstrate deep seated attitudinal issues and are therefore more difficult to put right. The panel had no information from Mr Osuchukwu regarding whether he has taken steps to address the concerns. Therefore, the panel is of the view that Mr Osuchukwu is highly likely to repeat his misconduct based on the absence of evidence of insight or remedial steps to address the concerns. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Osuchukwu's fitness to practise impaired on the grounds of public interest. The panel considered that a well-informed member of the public would be appalled if a finding of impairment was not made for a nurse who had conducted himself in this way.

Having regard to all of the above, the panel was satisfied that Mr Osuchukwu's 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 Mr Osuchukwu off the register. The effect of this order is that the NMC register will show that Mr Osuchukwu has 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 Kirwan submitted that a striking off order is the appropriate sanction in this case. She submitted that this is a serious case and referred the panel to the NMC Guidance

'Considering sanctions for serious cases', 'Cases involving sexual misconduct' and 'Cases involving criminal convictions or cautions'. She also referred the panel to the Professional Standards Authority (PSA) Guidance 'Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels'.

Ms Kirwan submitted that Mr Osuchukwu's misconduct demonstrated a course of conduct which was sexually motivated and/or harassing towards Colleague A and Colleague B, occurred over a period of time and was repetitive and persistent. Mr Osuchukwu carried out his misconduct whilst working in his role as a registered nurse and also in the context of his seniority to Colleague A and Colleague B. His conduct placed patients at risk of suffering harm and only ceased when his colleagues either asked not to work with him or raised an issue with their employer. Mr Osuchukwu has been convicted for the 'second hug' incident which took place on 25 October 2021 at 08:31.

Ms Kirwan submitted that Mr Osuchukwu has taken no responsibility for his actions and has demonstrated a lack of insight into his misconduct and therefore he is highly likely to repeat the behaviour.

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Ms Kirwan therefore invited the panel to impose a striking-off order. She submitted that sexual misconduct against colleagues, one incident which Mr Osuchukwu has a criminal conviction for, is incompatible with him remaining on the register.

Decision and reasons on sanction

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

The panel particularly took into account the following NMC guidance:

- How we determine seriousness FTP 3,
- Considering sanctions for serious cases SAN 2, and
- The Professional Standards Authority Guidance 'Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels dated 2008.

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

The panel took into account the following aggravating features:

- Mr Osuchukwu has a criminal conviction for the incident at 08:31.
- Mr Osuchukwu's conduct was sexually motivated and carried out for sexual gratification.
- Mr Osuchukwu abused his position of trust as a nurse in a senior position to his victims who were his colleagues.
- Mr Osuchukwu's lack of insight into his misconduct.
- Mr Osuchukwu demonstrated a pattern of sexual abuse and harassment to two different victims over a period of time.
- Conduct which caused harm to Colleague A and Colleague B and put patients at risk of suffering harm.
- Mr Osuchukwu's actions had a detrimental impact on Colleague A's life.

The panel identified no mitigating features in this case.

It noted that Mr Osuchukwu said in his reflective statement "*The person who accuses me of this said to me that it was extremely difficult to work in such challenging emotional and stressful environment with the additional impact of covid*". However, the panel determined that this is not a mitigating factor for his misconduct.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Osuchukwu's 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 Mr Osuchukwu's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Osuchukwu's 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 that the charges in this case did not relate to his clinical practice. The sexual misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Osuchukwu's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel considered that this is not a single instance of misconduct; Mr Osuchukwu's behaviour which was sexual in nature was repeated over a period of time to two different victims at different locations. The panel identified harmful deep-seated personality or attitudinal problems. The panel considered that although there is no evidence that he has repeated his conduct since these events, in the absence of any insight into his conduct, Mr Osuchukwu poses a significant risk of repeating the behaviour.

The panel therefore determined that the conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Osuchukwu's actions is fundamentally incompatible with Mr Osuchukwu 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 Mr Osuchukwu's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him

remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Osuchukwu's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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

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

This decision will be confirmed to Mr Osuchukwu 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 Mr Osuchukwu's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Kirwan. She submitted that an interim suspension order is necessary on the grounds of public protection and is in the

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

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

That concludes this determination.