

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

**Substantive Hearing
Wednesday, 12 – Friday 21 June 2024,
Thursday, 28 November– Friday, 6 December 2024**

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

Name of Registrant:	Timea Buzas	
NMC PIN	16K0007C	
Part(s) of the register:	Registered Nurse RN1: Adult Nurse L1 – November 2016	
Relevant Location:	London	
Type of case:	Misconduct	
Panel members:	John Kelly	(Chair, lay member)
	Kathryn Smith	(Registrant member)
	James Carr	(Lay member)
Legal Assessor:	Cyrus Katrak	
Hearings Coordinator:	Catherine Acevedo	
Nursing and Midwifery Council:	Represented by Michael Smalley, Case Presenter	
Miss Buzas:	Present and represented by Thomas Buxton, Counsel instructed by the Royal College of Nursing (RCN)	
No case to answer	Charges 1a, 1b, 1d, 1f, 2c, 2d	
Facts proved by admission:	Charged 3a, 3b	

Facts proved:	Charges 2a, 2b, 4, 5 in respect of charge 4
Facts not proved:	Charges 1c, 1e, 1g
Fitness to practise:	Impaired
Sanction:	Suspension order (9 months)
Interim order:	Interim Suspension order (18 months)

Application for the panel to recuse itself

In advance of the hearing, as is normal, the panel was provided, amongst other documents, with an exhibit bundle, in this case consisting of 656 pages for pre-reading. 518 pages of this bundle comprised an internal investigation report commissioned by Croydon NHS Trust (the Trust) consisting of summary information and meeting notes.

At the outset of the hearing, Mr Buxton, on your behalf, made an application for the panel to recuse itself because it had been supplied with an exhibit bundle which contained accounts and evidence from a group of people who are not proposed to be called as witnesses and have not produced witness statements. He submitted that the exhibit bundle contains evidence which both parties acknowledge is inadmissible, and evidence where its admissibility is disputed. He submitted, given the volume of inadmissible hearsay evidence contained in the exhibit bundle, that it would be impossible for the panel to “*perform the mental gymnastics*” necessary to ignore it and proceed without bias or prejudice.

Mr Buxton referenced the case of *Porter v Magill* [2001] UKHL 67. He submitted that a well-informed member of the public would consider there to be a real possibility of the panel being biased against you, having read the exhibit bundle.

Mr Buxton submitted that the charges are serious, and by way of a proposed application to amend charges, may become more serious. He submitted that the allegations are potentially career ending for you, and that you may have a sense of grievance were the panel to not recuse itself in the circumstances.

Mr Buxton referred the panel to the material before it which should not have been included in the exhibit bundle. He referred to the meeting notes and a witness schedule which indicate that people interviewed as part of the Trust’s investigation are in some cases related, moved between vaccination centres, and that there was a culture of friendship,

commonality, and familiarity between them. He submitted that some matters mentioned in these meeting notes are gossip or rumour which came to be treated as fact by a group of close-knit colleagues who did not witness the events alleged in this case. He submitted that some of the material in the exhibit bundle is vastly prejudicial and many of the events described in the material have not been formed into charges by the NMC. He submitted that it would be “*nigh on impossible*” for the panel, having been provided with the bundle in advance of the hearing, to put this out of its mind and avoid any bias. He submitted that, in not recusing itself, the panel would leave lingering doubts about the fairness of the proceedings. He submitted that the overall fairness of these proceedings and the requirement for a safe decision-making process demands that the panel recuses itself in this instance.

Mr Smalley, on behalf of the Nursing and Midwifery Council (NMC), submitted that the panel should not recuse itself. He submitted that the panel is comprised of professionals who regularly make decisions on the relevance of evidence, on whether there is no-case to answer, or on whether a registrant poses a risk to the public after some charges are found proved and some are found not proved. He submitted that a professional panel could put irrelevant evidence out of its mind when making a decision.

Decision and reasons on application for panel to recuse itself

The panel considered the submissions by Mr Buxton and Mr Smalley. It heard and accepted the advice of the legal assessor and considered the relevant case law. In particular, it took into account and applied the test in Porter.

The panel firstly ascertained all the circumstances which have a bearing on the suggestion that it may be biased. The panel then asked itself whether those circumstances would lead a fair minded and informed observer to conclude that there is a real possibility that the panel was biased.

The panel accepted that the exhibit bundle contained material which should not have been included in it. Both parties accept this.

The panel noted that you are present at the hearing and represented.

It is an experienced panel, well used to sifting through conflicting evidence and making decisions about admissibility. The panel is independent from the NMC, and the panel members are independent from one another, which is in itself a check and balance against potential bias against you.

In advance of the hearing, the requirement on the panel is to individually pre-read the material to gain a general overview of the case, such that it can proceed expeditiously. The panel's pre-reading naturally and primarily focuses on the witness statements. Consequently, it did not read in detail through the entire exhibit bundle, which extends to 656 pages, to develop a detailed, forensic understanding of the case. The appropriate time for examining the evidence in such close detail is during the hearing, which is scheduled for eight days.

Additionally, the panel considered that the significant length of the exhibit bundle in this case further impacted its ability to read through all the exhibits in detail. Accordingly, the panel considered itself capable of putting any prejudicial material out of its mind.

The panel considered that the charges are very specific and relate to a set of narrowly defined incidents. During the hearing, it will have regard to primary evidence, namely oral evidence, witness statements, and supporting documents pointed to by the witnesses and counsel. When making its decisions on the facts of the case, it will go through a process of relating each piece of evidence to each charge and sub-charge before deciding whether it is proved or not proved and setting out its reasoning in detail. The panel determined that this process provides a safeguard against any potential bias.

The panel was satisfied that, being a professional panel, it could put out of its mind inadmissible material and further, such inadmissible material would not influence its decision. As an additional safeguard, the panel directed, in advance of this application, that existing hard and electronic copies of the exhibit bundle have all of the material agreed between the parties removed. This will be repeated in relation to any other material which may be deemed inadmissible following subsequent applications.

The panel determined that a well-informed member of the public would not perceive there to be a real possibility of bias against you when the panel makes its decisions in this case. It also determined that there is a strong public interest in the expeditious continuation of this case, noting that the allegations date back to 2021.

Accordingly, the panel determined not to recuse itself from this hearing.

The panel noted Mr Buxton's submission that this case may become more serious if certain amendments to the charges were to be made. However, at this stage such considerations were hypothetical and depended on the outcome of such applications.

Application to amend the charge

The panel heard an application made by Mr Smalley to amend charge 2 by introducing additional sub-charges and to amend charge 5. The application was made pursuant to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004' as amended (the Rules).

Mr Smalley proposed that charge 2 should be amended to introduce two additional sub-charges as follows:

Charge 2(c)

"In that you told Patient A that you had contacted her GP when you had not." and

Charge 2(d)

“your actions at 2(c) were dishonest in that you knew you were giving incorrect and/or misleading information.”

In respect of the proposed amendments to charge 2, Mr Smalley referred the panel to a complaint in the form of an email from Patient A to the Trust dated 21 December 2021 dated 21 December 2021 which stated:

‘Timea lied about contacting my GP and made false statements regarding the situation around Covid-19.’

Mr Smalley also referred the panel to the notes of your internal investigation interview with the Trust that took place on 28 January 2022 and he pointed out that it was put to you:

‘The patient [A] supposedly suggested that you contact the GP.

It is reported that you had said that you had already done that.

Then, when challenged, you retracted that statement.

You then said that you would not be contacting the GP, that is what set out in the complaint [sic].’

Mr Smalley submitted that this shows you have been aware of the accusation of dishonesty since the time of the Trust’s internal investigation. He submitted that there is evidence that you were dishonest, and that the current case makes no mention of dishonesty and therefore is currently undercharged. He referred the panel to relevant case law *The Professional Standards Authority for Health and Social Care v The Nursing and Midwifery Council, Jozi [2015] EWHC 764 (Admin)* and *PSA v HCPC & Doree [2017] EWCA Civ 319*. He submitted that the proposed amendments to add charges 2(c) and 2(d) would correct the undercharging and would better reflect both the evidence and the seriousness of the case.

Mr Smalley also proposed that charge 5, which states that *“Your conduct at charge 1(a), 1(b) and charge 4 were motivated by sexual gratification.”* be amended to include *“and/or”* between each of the charges listed, so the entire charge does not fail if it is found to be not proved in relation to only one of the listed charges.

In response to panel questions Mr Smalley clarified the timeline of events and the internal processes from when your case was referred to the NMC on 9 June 2022, with the case examiners decision on 20 July 2023, and sent the Notice of Hearing on 25 April 2024. He stated that had the amendment been made in the Notice of Hearing no objection could be made.

Mr Buxton opposed the application to amend charge 2. He submitted that the NMC has had sufficient time to introduce this charge at an earlier point. He disputed that you were aware of the alleged dishonesty since the time of the Trust’s investigation in 2022. He also referred the panel to the interview notes above and submitted that this could easily have been a misunderstanding as English is not your native language.

Mr Buxton submitted that you gave your account of your conversation with Patient A during the meeting of 28 January 2022. He disputed that you were being dishonest and reminded the panel that, aside from the comment made during this meeting, you were not followed up about this accusation by the Trust or the NMC until now.

Mr Buxton submitted that it is the NMC Case Examiners’ task to consider your case with care and recommend what matters are to be formulated into charges. Mr Buxton suggested that there must be a reason why dishonesty was not charged. He submitted that the proposed amendment has been suggested too late in the process and would be unfair to you and cause injustice.

Mr Buxton submitted that this case has not been undercharged, and that you face a raft of allegations which already set out the full weight of the case. He submitted that the NMC Case Examiner's failure to recommend a dishonesty charge should not be grounds for an amendment at this late stage.

In relation to charge 5, Mr Buxton did not oppose the application to amend the charge.

Proposed amendments

[...]

2. November 2021, whilst working at Roehampton Vaccination Centre, behaved unprofessionally in that you
 - a) spoke aggressively to Patient A when refusing to provide them with a vaccine.
 - b) tore down posters from walls.
 - c) ***In that you told Patient A that you had contacted her GP when you had not.*** and
 - d) ***your actions at 2(c) were dishonest in that you knew you were giving incorrect and/or misleading information.***

[...]

5. Your conduct at charge 1(a), **and/or** 1(b) and/or at charge 4 were motivated by sexual gratification."

Decision and reasons on application to amend the charges

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

The panel noted that the proposed change to charge 5 is not opposed by Mr Buxton on your behalf. It determined that the amendment is fair and can be made without injustice to you.

In relation to charge 2, the panel was mindful that it is an inquisitory body and its overarching duty is to protect the public. As a consequence, it should not allow charges to be not proven on a technicality. It had careful regard to the merits of the case and the fairness of the proceedings on whether the amendment could be made without injustice to you. When considering injustice, the panel considered very carefully the fairness to both parties. Undoubtedly, for you, there is some unfairness in that you may face new serious charges. There was, however, no new evidence adduced to support this charge, no indication that you would take a different approach to presenting your case if the amendment were allowed or that you required further time to prepare, should the amendment be allowed.

The consequences to the NMC if the amendment were not allowed would be that a serious allegation was not scrutinised by the panel. The panel heard the circumstances which gave rise to this application and noted that the Case Examiners who made a decision on 20 July 2023, that the charges were sent to you on 23 October 2023, and that the final charges contained in the Notice of Hearing were sent on 25 April 2024. Notwithstanding this prolonged analysis of the case by the NMC, it was not until recently that it identified that a charge could lie in respect of dishonesty.

In respect of undercharging, while undoubtedly adding charges so late in the day would be disappointing to you, the panel also recognised the need to consider fairness to both parties and also to satisfy the overarching objectives to protect the public.

It was also mindful that a careful balance needs to be struck so as not to give the appearance of bias or unfairness. In the absence of you being unable to point to any particular specific unfairness in terms of needing to take a different approach to the

presentation of your case/dealing with the proposed amendment, the panel considered it right to allow the amendment to be made.

Application to admit hearsay evidence

The panel heard an application made by Mr Smalley under Rule 31 to allow the hearsay evidence of witnesses Colleague A, Colleague C and Colleague D into evidence. These witnesses are not present at this hearing.

Mr Smalley submitted that the panel should consider relevance and fairness in deciding whether to admit the hearsay evidence. He submitted that there is no rule prohibiting the admission of the evidence if the panel considers that it is fair to do so. He invited the panel to consider whether it is satisfied that either the evidence is demonstrably reliable, or alternatively that there will be some means of testing its reliability.

Mr Smalley submitted that the hearsay evidence of Colleague A is contained within the local investigatory meeting notes dated 5 January 2022 and 22 December 2022 and goes to charges 1a, b, c, d and g. The hearsay evidence of Colleague D is contained within the local investigatory meeting notes dated 22 November 2021 and 11 January 2022 and goes to charges 1d and 1f. The hearsay evidence of Colleague C is contained within the local investigatory meeting notes dated 18 and 20 January 2022, and goes to charge 4.

Mr Smalley referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 Admin. He identified the specific considerations as to the admissibility of the hearsay evidence in *Thorneycroft*, as follows:

- *whether the statements were the sole or decisive evidence in support of the charges;*
- *the nature and extent of the challenge to the contents of the statements;*

- *whether there was any suggestion that the witnesses had reasons to fabricate their allegations;*
- *the seriousness of the charge, taking into account the impact which adverse findings might have on the Appellant's career;*
- *whether there was a good reason for the non-attendance of the witnesses;*
- *whether the Respondent had taken reasonable steps to secure their attendance; and*
- *the fact that the Appellant did not have prior notice that the witness statements were to be read.*

Mr Smalley submitted that the meeting notes of Colleagues A, C and D are records of a formal investigation and that would suggest that the evidence is demonstrably reliable. He referred the panel to the evidence matrix and submitted that the hearsay evidence can be tested by other evidence.

In relation to the witnesses' non-attendance, Mr Smalley submitted that Colleagues C and D were not identified and not pursued by the NMC during its investigation and following the case examiners finding of a case to answer. He accepted on part of the NMC that steps were not taken to secure their attendance. In relation to Colleague A, Mr Smalley told the panel that the NMC attempted to engage with Colleague A until January 2023 when all efforts by them ceased.

Mr Buxton submitted that the admission of the material identified in the application is a cause for serious concern. He submitted that the NMC has not taken reasonable steps to secure the attendance of the witnesses. In particular that the NMC has not made sufficient attempts to secure Colleague A's attendance and that this failure goes fundamentally to the issue of fairness.

Mr Buxton identified that the subject and complainant for charge 1 is Colleague A and that without his attendance, his evidence cannot be properly tested and would leave you at an insurmountable disadvantage.

Mr Buxton acknowledged that Colleague B is attending to give evidence. He submitted that there are significant discrepancies and inconsistencies between Colleague B's evidence and the hearsay accounts of the three witnesses subject of this application. He submitted that there are no means of testing the discrepancies without the attendance of Colleague A, Colleague C and Colleague D.

Mr Buxton identified inconsistencies between those accounts and some areas where the material consisted of hearsay upon hearsay to illustrate the inherent unreliability of the material and the need to be able to test the evidence.

In relation to charge 4, Mr Buxton identified some apparent inconsistencies between the evidence as provided by Colleague B and the hearsay account of Colleague C. In particular that these witnesses identified different locations at which the events took place and a difference in the nature and number of images that each says they were shown by you.

Mr Buxton submitted that some of the hearsay may have been influenced by informal discussions and gossip amongst colleagues working at the Trust.

Mr Buxton therefore invited the panel to reject the application and not admit the hearsay evidence. He submitted that it would be unfair to allow the hearsay on the basis of its unreliability and your inability to test the inconsistencies within the evidence.

Decision and reasons on application to admit hearsay evidence

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 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 considered that the hearsay evidence of all three witnesses was relevant to the charges, because the accounts describe events that are subject of the charges in this case.

In relation to all of the applications to admit hearsay accounts, the panel noted that there were submissions that the witnesses had colluded in their evidence and thus were in effect suggestions of fabrication. The panel was also directed to and took note of the witness statement of Witness G, where she states "*I believe that a few of them had spoken together, for example AE, OB, DS, AR, HD and Colleague A, before the situation was escalated*". Without having heard any evidence the panel were alive to this suggestion in making its decision on the application to admit hearsay evidence.

The panel then considered separately whether it would be fair to admit the hearsay in respect of each of the witnesses. In doing so the panel took account of the considerations set out in *Thorneycroft*.

In relation to the hearsay evidence of Colleague A, it was of the view that Colleague A's hearsay was the sole and decisive evidence in relation to charge 1a. Although Colleague B's statement refers to you "*Cuddling [Colleague A] and squeezing their bottom*", Colleague B makes no mention of the words alleged in charge 1a. The panel also noted that Colleague B gives evidence in respect of charges 1b, 1c and 1g and it therefore determined that Colleague A's evidence to these charges was not sole and decisive. In respect of charge 1d, were the evidence of Colleague D to be also excluded (which the panel has decided to also exclude), Colleague A's hearsay evidence would be sole and decisive.

The panel took into account that you challenge the evidence of Colleague A and any inconsistencies in his evidence which cannot be tested through cross-examination. The panel considered that the charges are serious and are capable of amounting to misconduct.

Colleague A was not present and after January 2023 the NMC did not make further attempts to secure his attendance at this hearing. The panel concluded that there was no good and cogent reason for the non-attendance of the witness.

The panel considered that you have been aware that Colleague A's local investigatory meeting notes would be used in these proceedings because of their inclusion of bundles of documents circulated by the NMC.

In all the circumstances, the panel determined that it would be unfair to admit the hearsay evidence of Colleague A as there is no means of testing the reliability of some of the evidence, nor can inconsistencies be explored on your behalf. Consequently, the panel was unable to conclude that the hearsay evidence of Colleague A is demonstrably reliable. The panel therefore refused the application in respect of Colleague A.

In relation to the hearsay evidence of Colleague C, the panel was of the view that it was not the sole and decisive evidence in relation to charge 4. It took into account that you challenge the evidence of Colleague C and any inconsistencies in her evidence which, because of her absence, cannot be tested through cross-examination. The panel considered that the charges are serious and are capable of amounting to misconduct.

The panel noted that Colleague C was not sought to attend the hearing by the NMC. It appears that Colleague C was not considered as a potential witness from the outset. The panel concluded that there was no good and cogent reason for the non-attendance of the witness.

The panel considered that you have been aware that Colleague C's local investigatory meeting notes would be used in these proceedings because of their inclusion of bundles of documents circulated by the NMC.

In all the circumstances, the panel determined that it would be unfair to admit the hearsay evidence of Colleague C as there is no means of testing the reliability of the evidence, nor can inconsistencies, particularly those between the hearsay evidence of Colleague C and the evidence of Colleague B be explored on your behalf. Consequently, the panel was unable to conclude that the hearsay evidence of Colleague C is demonstrably reliable. The panel therefore refused the application in respect of Colleague C.

In relation to the hearsay evidence of Colleague D, the panel was of the view that this is the sole and decisive evidence in respect of charge 1f.

Further, having ruled out the evidence of Colleague A, Colleague D's evidence is now the sole and decisive evidence in relation to charge 1d.

It took into account that you challenge the evidence of Colleague D and any inconsistencies in his evidence will not be capable of being tested through cross-examination. The panel considered that the charges are serious and are capable of amounting to misconduct.

The panel noted that Colleague D was not sought to attend the hearing by the NMC. It appears that Colleague D was not considered as a potential witness from the outset. The panel concluded that there was no good and cogent reason for the non-attendance of the witness.

The panel considered that you have been aware that Colleague D's local investigatory meeting notes would be used in these proceedings because of their inclusion of bundles of documents circulated by the NMC.

In all the circumstances, the panel determined that it would be unfair to admit the hearsay evidence of Colleague D as there is no means of testing the reliability of the evidence, nor can any inconsistencies between his two accounts be explored on your behalf.

Consequently, the panel was unable to conclude that the hearsay evidence of Colleague D is demonstrably reliable. The panel therefore refused the application in respect of Colleague D.

Finally, the panel raised the question of whether to direct that steps be taken to secure these witnesses' attendance but, after hearing brief submissions, decided not to at this stage.

Details of charge as amended

That you, a registered nurse;

1. Between 1 November 2021-31 December 2021, whilst working at the St Nicholas Vaccination Centre intimidated and /or harassed Colleague A by;
 - a. Grabbing their bum and saying '*you have a nice body*'
 - b. by pinching their bum
 - c. trying to cuddle them
 - d. saying '*It's nearly Christmas would you like to come home with me when my husband is out?*'
 - e. feeding them cake without permission at a Christmas party
 - f. asking them to sit on your lap
 - g. Taking and looking at their bank statement.

2. On 30 November 2021, whilst working at Roehampton Vaccination Centre, behaved unprofessionally.
 - a. in that you spoke aggressively to Patient A when refusing to provide them with a vaccine.
 - b. tore down poster(s) from walls.
 - c. in that you told Patient A that you had contacted her GP when you had not.
 - d. Your actions at charge 2(c) were dishonest in that you knew you were giving incorrect and or misleading information.

3. On 18 December 2021 breached professional boundaries by;
 - a. sharing your personal mobile number with a minor, Patient B
 - b. signing off with red love heart emojis when communicating via text message from your personal mobile phone with Patient B.

4. On or around the 2 December 2021 showed Colleague B images of yourself which were of a sexual nature.

5. Your conduct at charge 1(a) and/or 1(b) and/or at charge 4 were motivated by sexual gratification.

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

Background

The charges arose whilst you were employed as a bank Clinical Supervisor (Lead Nurse, Band 6 role) by Croydon Health Services NHS Trust (the Trust).

It is alleged that between 1 November 2021 and 31 December 2021, whilst working at the St Nicholas Vaccination Centre you made inappropriate comments to a colleague and made inappropriate physical contact with them.

It is alleged that on 30 November 2021, whilst working at the Roehampton Vaccination Centre you behaved inappropriately and unprofessionally in that you spoke aggressively to a patient and tore down a poster(s) when refusing to provide them with a vaccine.

It is alleged that on or around 2 December 2021, whilst working at the St Nicholas Vaccination Centre you shared/displayed inappropriate images of a sexual nature to colleagues.

It is alleged that on 18 December 2021, when a patient who was a minor, attended the Roehampton Vaccination Centre, you shared your personal mobile phone number with the patient and exchanged text messages with them thereafter which are alleged to have used inappropriate language and emojis.

Application of no case to answer

The panel considered an application from Mr Buxton that there is no case to answer in respect charges 1a, 1b, 1d, 1e, 1f, 2c and 2d. At the outset, he informed the panel that Mr Smalley would be conceding to the no case to answer application in respect of charges 1a, 1d and 1f. This application was made under Rule 24(7). Mr Buxton referred the panel to the two limb test, set out in the case of *R v Galbraith* (1981) 73 Cr App R 124 as follows:

- a. If there is no evidence against the registrant to support a particular charge then the case must be stopped in respect of that particular charge*

- b. If there is tenuous evidence in that it is inherently weak or vague or inconsistent with other evidence and if the panel considers taking the NMC evidence at its highest that it could not properly find the particular charge to be proved on the balance of probabilities then the case must be stopped as far as that particular charge is concerned.*

Mr Buxton submitted that in respect of charge 1b, Colleague B gave three pieces of evidence; the local investigatory meeting notes, the NMC witness statement and her oral evidence. He submitted that she made no mention of you squeezing Colleague A's bottom in the initial meeting notes dated January 2022 and the first mention of you squeezing Colleague A's bottom appears in her NMC witness statement dated 10 November 2022. He submitted that in her oral evidence, Colleague B was unable to describe how this touching happened. Colleague B stated that Colleague A was sitting next to you, and she was unable to provide any further detail about this event.

Mr Buxton submitted that the evidence in respect of charge 1b is unsatisfactory because it is inherently weak or vague. He submitted that Colleague B's oral evidence and NMC witness statement are inconsistent with other evidence and her own early account. In these circumstances, it was submitted that charge 1b should not be allowed to remain before the panel.

Mr Buxton submitted that in respect of charge 1e, Colleague B mentioned that you fed Colleague A cake in the local investigatory meeting and in her NMC witness statement. He submitted that, taken at its highest, Colleague B's oral evidence amounted to her observing you feeding Colleague A slice of cake using a fork. Mr Buxton submitted that the evidence is unsatisfactory because it is inherently weak or vague. He pointed out that the charge requires that Colleague A was fed cake without permission and that the evidence for this is singularly lacking. He submitted that her evidence is inconsistent and in these circumstances charge 1e should not be allowed to remain before the panel.

Mr Buxton submitted that in respect of charges 2c and 2d, Patient A's evidence to the allegation is contained within a complaint letter dated 21 December 2021 and in her NMC witness statement in which she stated that you told her you had contacted Patient A's GP and Patient A did not believe this to be true. Mr Buxton submitted that Patient A made concessions appropriately and fairly during her oral evidence. She acknowledged that it was possible that she did not hear you make this assertion. Patient A indicated that on reflection she was willing to accept that she was mistaken. Mr Buxton therefore submitted that there is no evidence to support charges 2c and 2d and they should not be allowed to remain before the panel.

Mr Smalley submitted that the NMC concedes to the application in respect of charges 1a, 1d and 1f. These charges were supported solely by the hearsay evidence which the panel has deemed inadmissible.

Mr Smalley also added a further passage from *Galbraith*:

“Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.”

Mr Smalley submitted that there is prima facie evidence in respect of charges 1b, 1e, 2c and 2d.

In respect of charges 1b and 1e, Mr Smalley submitted the evidence is in Colleague B's witness statement, investigatory meeting notes and her oral evidence.

In respect of the dishonesty alleged in charges 2c and 2d, the evidence is in Patient A's initial complaint letter in which she clearly recalls the words said at that time. He submitted that it is a matter for the panel if the words said then can be seen as dishonest.

Decision and reasons on application of no case to answer

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel made an assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether any or any sufficient evidence had been presented, such that it would be able to find the facts proved and whether you have a case to answer.

The panel agreed and determined that in respect of charges 1a, 1d and 1f, there is no evidence to support these charges and it accepted the application of no case to answer.

In relation to charge 1b, the panel considered that there is some evidence from Colleague B, but it considered Colleague B's accounts of the alleged incident to be inconsistent. There is no mention of you pinching or squeezing Colleague A's bottom in the investigatory meeting notes of January 2022 and Colleague B first mentions this in her NMC statement dated November 2022 "*Ms Buzas was..., getting close to them, cuddling them and squeezing their bottom*".

During her oral evidence, Colleague B described the general circumstances of how the events occurred and that both you and Colleague A had been sitting down next to each other. Colleague B was unable to explain as to how in those circumstances Colleague A's bottom was touched. She also did not mention you squeezing Colleague A's bottom during her oral evidence but did refer to you squeezing his face.

In oral evidence Colleague B said she suffers from poor memory. This led the panel to conclude that whilst there was some evidence of that facts alleged, it is tenuous and inherently weak or vague. The panel was of the view that, taking account of all the evidence before it, there was not a realistic prospect that it would find the facts of charge 1b proved.

In relation to charge 1e, the panel considered that there is some evidence from Colleague B within her written and oral accounts of the events which are consistent.

The panel was of the view that there is sufficient evidence to support charge 1e at this stage and, as such, it was not prepared, based on the evidence before it, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

In relation to charges 2c and 2d, the panel considered that there is some evidence from Patient A. It considered Patient A's two written accounts of the incident to be consistent. However, the panel took account that Patient A made concessions during cross-examination. During oral evidence, she stated her assertion that you claimed to have contacted her GP *"Could be something that I misunderstood or misheard but I didn't make it up"*. When re-examined by Mr Smalley, Patient A said she was *"Willing to accept that I may have misheard. It was one sentence in a long conversation"*.

In light of Patient A making these concessions in her oral evidence, the panel concluded that although her letter of complaint and witness statement appear to establish a prima facie case, in light of her oral evidence, no reasonable panel would find these charges proved.

The panel was of the view that, taking account of all the evidence before it, there was not a realistic prospect that it would find the facts of charge 2c proved. As a result of the panel's finding at charge 2c, charge 2d falls away.

The panel therefore determined there is no case to answer in respect of charges 1a, 1b, 1d, 1f, 2c and 2d.

The panel determined that there is a case to answer in respect of charge 1e.

(Hearing resumed Thursday 28 November 2024)

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

Mr Buxton made an application for parts of the hearing to be held in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Smalley indicated that he did not object to the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there may be reference to [PRIVATE], the panel determined to hold those parts of the hearing in private.

Decision and reasons on application to amend charge 2b

Mr Smalley on behalf of the NMC, made an application to amend the wording of charge 2b.

The proposed amendment was to include brackets around the 's' in poster(s). It was submitted by Mr Smalley that the proposed amendment would provide clarity and more accurately reflect the evidence.

Proposed amendment charge 2b

On 30 November 2021, whilst working at Roehampton Vaccination Centre, behaved unprofessionally.

(a) tore down poster(s) from walls.

Mr Buxton had no observations on the proposed amendment to the charge.

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 you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment to ensure clarity and accuracy.

Admission of part of the investigating interview of Colleague C

During the course of your evidence you referred to the Investigatory Interview (part of local investigation) of Colleague C .

This statement had been previously excluded by the panel as it was hearsay.

In light of your reference to it, both parties accepted and the panel agreed that notwithstanding the earlier panel decision to exclude this evidence in full, it would now be fair and relevant to allow two limited parts of that statement to be put to you in cross examination.

- Witness 2: Clinical Supervisor within the Covid Vaccination Programme, part of the Trust;
- Colleague B: Marshall at the St Nicholas vaccination centre, part of the Trust;
- Witness 3: Clinical Supervisor at the South West London Vaccination Programme, part of the Trust.

The panel also heard evidence from you under affirmation.

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

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

In relation to charges 1 c, 1e and 1g the panel had regard to the legal advice and the NMC guidance at FTP-3, references to section 26 of the Equality Act 2010 and the purpose and effect tests therein as well as the case of *PSA v HCPC and Yong* [2021] EWHC 52 which states that *"it is conceivable that conduct which did not fall within the statutory definition might nevertheless have been behaviour "in a harassing manner"*. It is, however, impossible that conduct falling within the section 26 definition would not constitute behaving *"in a harassing manner"*.

For each of the charges, the panel therefore considered the section 26 definition and whether you had either acted with a purpose or alternatively your conduct had the effect of

harassing or intimidating. When applying these tests the panel also bore in mind the NMC guidance referred to above.

Charge 1c

Between 1 November 2021-31 December 2021, whilst working at the St Nicholas Vaccination Centre intimidated and /or harassed Colleague A by;

(c) trying to cuddle them

This charge is found not proved.

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

The panel had no evidence from Colleague A.

Colleague B's evidence in her witness statement is that *"On a couple of occasions, I witnessed Miss Buzas hugging Colleague A and getting close to them. I cannot remember specific dates of these incidents. I was particularly concerned at a staff party held at Sutton [St Nicholas] vaccination centre for a colleague who was leaving, although I cannot remember when this was, in which Miss Buzas was feeding Colleague A cake, getting close to them and squeezing their bottom. I could tell from Colleague A's face that they were not comfortable with what Miss Buzas was doing"*.

During her local investigation meeting on 14 January 2022 Colleague B is recorded as giving an account as follows *"On the 2 December, [Colleague A] had a leaving party in the staff break room, everyone came together and had some cake. [Colleague A] was sitting leaning against the table, [Miss Buzas] went over and sat very close to him whilst they were having a conversation, [Colleague B] saw her feeding him cake and squeezing his*

face. [Colleague B] described [Colleague A]'s face as looking unhappy and uncomfortable as [Miss Buzas] hugged him approximately five times”.

You admitted during your oral evidence that you hugged Colleague A on a couple of occasions whilst working with him but that this had not been in a harassing or intimidating way. During your local investigation interview on 1 February 2022, you admitted to “... *cuddling to each other several times*”. You went on to say “*Yes, we did cuddling(sic) each other loads of times*”. You accepted that doing so was inappropriate and unprofessional. You said you had a good relationship with Colleague A and that the culture in the vaccination centres was that everyone hugged each other.

The panel noted some inconsistencies between your oral evidence and the account given during your local investigation interview about the number of times you admit to hugging Colleague A. However, the panel found your evidence to be broadly consistent.

The panel also had sight of two photographs. One shows you and Colleague A embracing apparently consensually and, in the second image Colleague A appears to be blowing you a kiss whilst wearing a surgical mask.

The panel took into account that you are older than Colleague A in a senior position at the Trust. The panel also heard evidence about the culture of the vaccination centres was very familiar in that many staff members would hug each other often. The panel noted that Colleague B describes Colleague A as looking uncomfortable when you hugged him. However, beyond this the panel had no other evidence before it from Colleague A or elsewhere as to the impact of you hugging him.

The panel determined on the balance of probabilities that you cuddled or hugged Colleague A whilst working with him on a number of occasions but there is insufficient evidence to determine that this was intended to be either intimidatory or harassing or in

the alternative had the effect of being intimidatory or harassing. There was therefore insufficient evidence to determine that this act was intimidatory and/or harassing.

The panel therefore found charge 1c not proved.

Charge 1e

Between 1 November 2021-31 December 2021, whilst working at the St Nicholas Vaccination Centre intimidated and /or harassed Colleague A by;
(e) feeding them cake without permission at a Christmas party

This charge is found not proved.

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

The panel had no evidence from Colleague A regarding this incident.

Colleague B's evidence in her witness statement is that *"I was particularly concerned at a staff party held at Sutton [St Nicholas] vaccination centre for a colleague who was leaving, although I cannot remember when this was, in which Miss Buzas was feeding Colleague A cake, getting close to them and squeezing their bottom. I could tell from Colleague A's face that they were not comfortable with what Miss Buzas was doing"*.

In her oral evidence Colleague B was unable to fully describe this incident but accepted that you were handing out cake at the party.

Your evidence is that you did not feed Colleague A with cake without his consent. You described in oral evidence that you had been present but had been cutting the cake and handing it out at the party.

The panel concluded that there was insufficient evidence to determine on balance that you fed Colleague A cake without his consent and that it had been intimidatory and/or harassing towards him.

The panel therefore found charge 1e not proved.

Charge 1g

Between 1 November 2021-31 December 2021, whilst working at the St Nicholas Vaccination Centre intimidated and /or harassed Colleague A by;

(g) taking and looking at their bank statement

This charge is found not proved.

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

The panel had no evidence from Colleague A regarding this incident.

Colleague B's evidence in her witness statement is that *"Colleague A was bringing their bank statement in to work for something, I do not remember why. Miss Buzas noticed this and snatched Colleague A's bank statements out of their hand and said something along the lines of 'oh you are rich', what are you buying me' Colleague A was not happy about this at all and I could tell this through their facial expressions"*

Colleague B told the panel in her oral evidence that Colleague A brought his bank statement into work as part of a DBS check

During your oral evidence, you accepted that on a particular day Colleague A had with him at work some papers including a bank statement. You told the panel that you deduced that one of the papers was a bank statement because it included a bank logo. You denied snatching the bank statement from Colleague A and making comment about it.

The panel accepted that Colleague A had with him a bank statement and other papers and it heard evidence that he had brought them into work for a DBS check. However, the panel concluded that in the absence of an account from Patient A, there was insufficient evidence to determine on the balance of probabilities that you had taken and looked at Patient A's bank statement and that it had been intimidatory and/or harassing towards him.

The panel therefore found charge 1g not proved.

Charge 2a

On 30 November 2021, whilst working at Roehampton Vaccination Centre, behaved unprofessionally.

- (a) in that you spoke aggressively to Patient A when refusing to provide them with a vaccine.

This charge is found proved.

In reaching this decision, the panel took into account your evidence and the evidence of Witness 2 and Patient A. The panel also had sight of Patient A's complaint email dated 21 December 2021.

The panel heard evidence that Patient A visited the Roehampton vaccination centre along with her fiancé on 30 November 2021 in order to seek a second Covid vaccination dose in advance of the time period normally required between doses.

In describing your demeanour and conduct at the time you engaged with Patient A at the Roehampton vaccination centre, Witness 2 said in her witness statement *“Miss Buzas’ voice was raised above conversational level (although not shouting) and they came across aggressive and not calm; in that they were speaking rapidly in a frustrated tone. This is not how to speak to a member of the public. It is a fundamental principle for health care professionals to speak to patients members of the public in a way that we would like to be spoken to ourselves or how we would want our family members spoken to. We also need to ensure we speak to people in a professional manner”*.

Witness 2 went on to describe how she intervened in your dealings with Patient A and managed to calm the situation. You told the panel that when Witness 2 became involved matters quickly calmed down.

Patient A described her interactions with you in her witness statement as follows *“When Miss Buzas came over, the interaction became hostile and confrontational, whereas up to this point it had been very matter of fact. From the outset, the conversation was extremely tense by Miss Buzas entering, which was a marked shift from the original individual we were talking to. Miss Buzas appeared like they were readying herself for a fight, which was not what my fiancé or I desired. Miss Buzas was walking aggressively (rocking their arms and stomping with speed) as they approached us, similar to how they were when they walked us to another area. Miss Buzas was extremely curt, shaking my GP letter in my face and not providing any explanations at all”*.

Your account is that you dealt with Patient A as you normally would, not aggressively. You said your voice is loud and you speak fast normally. You said that Patient A’s partner was aggressive towards you and racially abusive and said you are *‘just a fucking nurse’*. You accepted that you were frustrated and that you had become tearful during the interaction. In describing the manner of Patient A and her fiancé, Witness 2 said *“The female (Patient A) in the couple did not really speak and stood to one side. When they did speak, they*

were softly spoken and low in tone. The gentleman was assertive and tone within normal range. I would not say they were shouting but they were frustrated, although calm, in the interactions I observed. When I spoke to the gentleman, they listened and allowed me to speak, whereas when Miss Buzas was conversing with them they were quiet”.

In the local investigation interview dated 4 March 2022, Witness 2 was asked whether you had informed her that you had been verbally abused and she responded “*No, not at any time”.*

The panel found Witness 2 to be credible and impartial and consequently relied on her evidence of the incident stating that you came across aggressively.

The panel found Patient A to be a credible witness because of the similarities between her evidence and that of Witness 2 and because where her memory could not assist she made concessions during her evidence. The panel therefore accepted the evidence of Patient A and Witness 2.

The panel determined that you behaved unprofessionally in that you spoke aggressively to Patient A.

The panel therefore found charge 2a proved.

Charge 2b

On 30 November 2021, whilst working at Roehampton Vaccination Centre, behaved unprofessionally.

(b) tore down poster(s) from walls.

This charge is found proved.

In reaching this decision, the panel took into account your evidence and the evidence of Witness 2 and Patient A.

Witness 2 said in her witness statement *“I was with a patient in an open vaccination pod when Miss Buzas came in and forcefully took one of the posters off of the wall... I asked if everything was okay, as this had caught my attention, but Miss Buzas ignored me and walked away with the poster”*.

Patient A described the incident in her witness statement as follows *“Miss Buzas stormed into the building, walking fast paced and strutting into the building, although still within our view, and started to rip posters off of the wall so we thought that Miss Buas was going to show us the posters to read. My fiancé and I could not make out what the posters were and Miss Buzas did not give us the posters to read”*.

You accepted in oral evidence that you tore a poster down from the wall but that you had done this calmly and that you had to tear it as it had been stuck to the wall with tape.

The panel noted the differences between your account and those of Patient A and Witness 2 in relation to your demeanour in removing a poster from the wall of the vaccination centre. The panel found Witness 2 to be credible and impartial and, as stated above found Patient A to also be a credible witness. The panel therefore accepted the accounts of Witness 2 and Patient A.

It determined that on the balance of probabilities you behaved unprofessionally by tearing down a poster from the wall.

The panel therefore found charge 2b proved.

Charge 4

On or around the 2 December 2021 showed Colleague B images of yourself which were of a sexual nature.

This charge is found proved.

In reaching this decision, the panel took into account your evidence and the evidence of Colleague B. The panel also had sight of extracts from redacted notes of local investigation interview with Colleague C conducted on 18 January and 20 January 2022.

In the record of her local investigation interview dated 21 January 2022, Colleague B is recorded as saying *"[Colleague B] and [Colleague C] were in St Nicholas talking in the staff area, TB approached them both and asked "do you want to see the photoshoot [PRIVATE]". [Colleague B] and [Colleague C] both responded "no thanks", yet she proceeded to show them the photos on her phone, there were approximately 3 photos. [PRIVATE]."*

Colleague B told the panel that she was at the St Nicholas vaccination centre with Colleague C when you approached them. She said in her witness statement *"Miss Buzas came over and showed us approximately three photos on their phone. [PRIVATE]. These photos were of Miss Buzas [PRIVATE]."*

Your evidence is that whilst working at Roehampton vaccination centre you showed colleagues holiday photographs of yourself in the normal course of conversation. You suggested that what Colleague B and Colleague C had seen were in fact such holiday photographs. You adduced in evidence a single image of you standing in water with three other people which showed you on holiday and which you said might have been the image referred to by Colleague B. You said that you would never take photos of a sexual nature let alone show them to anyone as you are very religious [PRIVATE].

During her oral evidence, Colleague B was shown the image that you provided to the panel and she refuted that this was in fact the photo that you had shown to her and Colleague C. The panel noted that Colleague B was consistent between her local investigation interview, witness statement and oral evidence and maintained her position in terms of the nature and number of images that she alleges that you showed her.

The panel had regard to part of a redacted record of an investigatory meeting as part of the local investigation conducted with Colleague C on 18 January and 20 January 2022. During that interview, Colleague C was asked to describe the images that you had shown to her. She is recorded as replying as follows *“It looked like professional photographs as it was edited. [PRIVATE]”*.

When asked in the investigatory meeting whether she saw any pictures of you [PRIVATE], Colleague C’s response is recorded as follows *“[Colleague C] cannot remember the [PRIVATE] but the ones that [Colleague C] remembers were the ones with [you] [PRIVATE].”*

The panel noted the difference in the descriptions of the images from the respective accounts of Colleagues B and C but accepted that, on the evidence multiple photographs were shown. The common ground between Colleagues B and C is that the images were all of a sexual nature.

The panel found the evidence of Colleague B and Colleague C to be sufficiently detailed and broadly consistent. The panel accepted their account of the incident particularly in relation to more than one single image being shown to them.

The panel determined on the balance of probabilities that you showed Colleague B images of yourself which were of a sexual nature.

The panel therefore found charge 4 proved.

Charge 5

Your conduct at charge 1(a) and/or 1(b) and/or at charge 4 were motivated by sexual gratification.

This charge is found proved.

Charges 1a and 1b are not engaged in this charge as the panel has determined there was no case to answer in respect of these charges.

In respect of charge 4, the panel has already found that you showed Colleague B images of yourself which were of a sexual nature.

The panel considered the possibility that your showing of the images was to two people, Colleague B and Colleague C with whom you had a close relationship of friendship, in the course of which showing such images might be considered acceptable. However, the panel noted that you were in a senior position at the vaccination centre and that Colleague B and Colleague C were much more junior to you. The panel heard evidence that you were not close friends, it also noted that this incident took place during working hours in a clinical setting. It therefore concluded that you showing of the images was not part of an ongoing conversation between friends.

The panel took into account the evidence that you went out of your way and approached Colleague B and Colleague C in order to show them the images of yourself and the Colleague B said that she texted her mother about the photos "*as I was shocked*". The panel considered that you showed Colleague B and Colleague C the images of yourself which were of a sexual nature, to illicit a reaction from them about the images.

The panel noted that you showed two junior members of staff a series of sexualised images of yourself. In considering your motivation for doing so, it concluded that the only plausible explanation was in order to elicit a response and prompt some interest and or conversation about the images that would inevitably be sexual in nature. It concluded that your aim was to spark interest in you and the images in Colleague B or Colleague C and was therefore for the purpose of sexual gratification.

The panel considered that your actions were deliberate and inappropriate. It was of the view that deliberately showing images of yourself of a sexual nature [PRIVATE] could only be motivated by sexual gratification.

The panel therefore found charge 5 proved in respect of charge 4.

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, 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

Mr Smalley invited the panel to take the view that the facts found proved amount to misconduct. He 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 your actions amount to misconduct. He submitted that it is a matter for the panel whether your actions amount to misconduct.

Mr Smalley 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. He referred the panel to NMC guidance DMA 1 and to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Smalley submitted that all the concerns in this case are attitudinal in relation to behaviour towards patients or work colleagues and that it is more difficult to put such concerns right. He referred the panel to your reflective statement and submitted that it is a matter for the panel whether it considers that the concerns have been remedied.

Mr Smalley submitted that a member of the public would be shocked if a finding of impairment was not made for a nurse who was found to have acted aggressively towards a patient and breached professional boundaries in relation to patients and colleagues.

Mr Buxton told the panel that you are a nurse who has had a successful and unblemished career. He referred the panel to the positive testimonials you have provided which speak positively to your character and behaviour generally. He submitted that the incidents arose against a background of solid practice.

Mr Buxton submitted that it is a matter for the panel whether it considers that your actions at charges 2, 3, 4 and 5 amount to misconduct. He informed that panel that you have been under an interim suspension order and have not worked clinically since its imposition.

Mr Buxton told the panel that you are a caring and committed nurse who is capable and has demonstrated safe practice in the past. Your clinical skills have never been questioned. He asked the panel to take account of the testimonials which speak to your professionalism. He submitted that the matters could be described as unprofessional but by reason of the interim suspension order you have not been able to demonstrate a period of practice without concern.

Mr Buxton submitted that you have taken steps to address the issues. He referred to your reflective statement where you addressed the proper areas which are likely to be the focus of the panel's consideration

In relation to charge 2, Mr Buxton pointed to your reflective statement in which you indicated feeling frustration, sadness and regret for this incident. You stated you now recognise the importance of maintaining professionalism and acknowledge the negative impact such behaviour can have on the profession. Mr Buxton also referred the panel to relevant online training you have undertaken in duty of candour, complaint handling and communication. He submitted that you have taken time to read and have undertaken the courses with what happened in mind.

In relation to charge 3, Mr Buxton told the panel that you have stated that it was your intention to offer support and assistance to Patient B and you had obtained consent from Patient B's mother before sharing your contact information. He submitted that your intention was to help and such conduct is highly unlikely to be repeated.

In relation to charge 4, Mr Buxton submitted that you showing images of a sexual nature, motivated by sexual gratification was at the lower end of the scale in terms of seriousness.

He submitted that this was a clumsy event and one which you have learnt from. He said that within your reflection you have detailed that you have read widely on sexual harassment in the workplace and gained a deeper understanding of cultural and employee relationships. You also undertook a course in Hungary on sexual harassment in the workplace and properly understand the implications of unwanted sexual behaviour in the workplace.

Mr Buxton submitted that there are no public protection or public interest issues. He submitted that you have learnt from these incidents and if you were to return to practice the NMC will not see you again as a result of any referral. He submitted that public confidence in the profession would not be undermined if a finding of impairment was not made. He submitted that a finding of impairment is not required and this profound learning curve which has been of benefit to you and your practice.

The panel accepted the advice of the legal assessor.

Decision and reasons 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.*'

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

The panel was of the view that your actions fell significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

“1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

2.1 work in partnership with people to make sure you deliver care effectively

2.3 encourage and empower people to share in decisions about their treatment and care

2.6 recognise when people are anxious or in distress and respond compassionately and politely

7 Communicate clearly

To achieve this, you must:

7.1 use terms that people in your care, colleagues and the public can understand

7.4 check people’s understanding from time to time to keep misunderstanding or mistakes to a minimum

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

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

The panel considered each of the charges found proved against you individually. However, in doing so it noted that each of the events that led to its factual findings took place in a clinical setting while you were carrying out a senior leadership role and in work areas to which the public had access at the time.

In relation to charge 2, the panel considers that aggressively speaking to Patient A (charge 2a) was serious and you did not handle the situation appropriately or communicate effectively. Tearing down a poster from the wall (charge 2b) was unprofessional and came across as aggressive. Although no harm was caused to Patient A, your actions risked causing a loss of confidence in the profession leading to reluctance on the part of patients to seek care in the future. The panel considered that as an experienced nurse you should be able to communicate effectively in difficult situations. The panel therefore found that your actions at charge 2a and 2b fell seriously short of the conduct and standards expected of a nurse and amount to misconduct.

In relation to charge 3, the panel found that sharing your personal mobile number with Patient B (charge 3a) and signing off the messages to Patient B with love heart emojis (charge 3b), was serious and breached professional boundaries. The panel considered that as an experienced nurse you should have been aware of the risks of communicating with patients using personal telephone numbers particularly children under the age of 16. The panel found that although no harm was caused to Patient B there was a risk of harm

and potential loss of confidence in nurses leading to reluctance on the part of patients to seek care in the future. The panel therefore found that your actions at charges 3a and 3b fell seriously short of the conduct and standards expected of a nurse and amount to misconduct.

In relation to charges 4 and 5, the panel noted that Colleagues B and C were junior and inexperienced members of staff for whom you were responsible. The panel found that showing images of yourself of a sexual nature was motivated by sexual gratification. The panel considers that your actions were serious and unprofessional and caused distress to Colleague B who described how shocked she was at seeing the images and immediately contacted her mother to tell her of events. The panel therefore found that your actions at charges 4 and 5 fell seriously short of the conduct and standards expected of a nurse and amount to misconduct.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the NMC 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.

The panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant*. 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" for current impairment 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 above are engaged in this case. Patients were put at risk of harm as a result of your misconduct because your behaviour had the potential to divert patients away from receiving care when they actually need it, either because of using inappropriate methods of communication or because of your aggressive and unprofessional behaviour towards Patient A. The panel found that your misconduct breached fundamental tenets of the nursing profession relating to professionalism and prioritising people. Your conduct in areas of vaccination centres to which the public had access, combined with your breach of fundamental tenets of the profession clearly brought its reputation into disrepute.

The panel went on to consider whether the concerns in this case can be addressed, have been addressed and are highly unlikely to be repeated. In doing so, the panel took into account:

1. Personal factors relating to you
2. Your working environment and culture
3. Learning, insight and steps you have taken to strengthen your practice.

The panel considered that your misconduct is generally capable of being addressed but noted that charges 4 and 5 involving sexual misconduct are more difficult to address. It noted that your misconduct in your role at the vaccination centres appears influenced by your attitude towards patients, junior colleagues and working boundaries. The panel also considered this attitudinal aspect of your misconduct more difficult to address.

The panel considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. It noted that for reasons beyond your control you have not been able to demonstrate strengthened practice in a nursing environment. The panel took account of the testimonial evidence which speaks favourably of you personally and as a nursing professional.

In considering the extent to which you have addressed your misconduct. The panel considered the context in which you were working at the time. It noted that you were employed in busy vaccination centres at a time of significant demand from the public for medical support during the Covid pandemic. The working context involved newly established centres operating with a number of junior and rapidly appointed members of staff who had been retrained and diverted into specific roles for the purpose of the Covid vaccination programme. The panel heard evidence from you that this sense of emergency led to more familiar relationships amongst staff members than otherwise might have been the case.

Regarding insight, the panel considered your lengthy reflective statement. The panel noted that you made some admissions to the charges at the outset and demonstrated some understanding into why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. You have also expressed regret for your misconduct and went to some length in your reflective statement to explain and reassure that you will never repeat your misconduct. The panel noted Mr Buxton's submissions on this point. At this stage, the panel is of the view that your reflective statement is couched in general terms and does not specifically address the concerns raised in the charges to any great extent or detail. The panel considered that your reflective statement focuses on statements of good practice and does not fully address your reflections on the impact of your misconduct on patients and colleagues, other than to acknowledge that there was an impact. Neither have you reflected in any detail on the power imbalance between you and junior colleagues.

The panel took into account the multiple training certificates you have provided. It noted that these were online course and some are relevant to concerns in this case whilst others are supportive of your wider nursing skills and knowledge.

Having regard to the factors set out above, the panel determined that your insight is incomplete in key areas and is still developing. The panel concluded that there remains a risk of repetition based on your under-developed insight and remediation. The panel therefore concluded that the first three limbs of the *Grant* test are also engaged as to the future in this case and 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 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 and has decided to make a suspension order for a period of 9 months. The effect of this order is that the NMC register will show that your registration has been suspended.

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

Mr Smalley submitted the NMC recommend a striking-off order in this case. He outlined what the NMC consider to be the aggravating and mitigating features of this case.

Mr Smalley invited the panel to approach the available sanctions in ascending order. He submitted that to take no further action or impose a caution order would not be appropriate in the circumstances. In respect of a conditions of practice order, he submitted that the panel having identified attitudinal concerns and there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. He submitted that the misconduct identified in this case is not something that can be addressed through conditions.

Mr Smalley submitted that a suspension order would not reflect the seriousness of the charges in this case and the only appropriate sanction is that of a striking-off order.

The panel also bore in mind Mr Buxton's submissions. He informed the panel that you fully understand that your failings were serious. He asked the panel to consider proportionality when making its decision on which sanction to impose. He submitted that a striking-off order would be wholly disproportionate. He informed the panel that you have never come before the NMC and have never been criticised about your conduct in the course of your nursing career.

Mr Buxton submitted that at the vaccination centres, people were anxious and scared. It was never your intention to cause harm. He submitted that it cannot be suggested that you acted out of a deep-seated or harmful attitudinal problems and that stress played a

significant part in these matters. In terms of insight Mr Buxton submitted that your reflective statement follows a template, and you have done your best to provide meaningful and considered insight.

Mr Buxton submitted that the misconduct is capable of being addressed. He referred the panel to NMC Guidance SAN-2 'Considering sanctions for serious cases' and submitted that the sexual misconduct is not at the higher end of seriousness. He submitted that this incident was a single instance and isolated and was out of character.

Mr Buxton reminded the panel that the sanction imposed must be proportionate. He invited the panel to impose a conditions of practice order. He informed the panel that you have been suspended for a considerable period of time and there is no reason why a conditions of practice order could not be devised in this case. He suggested a condition requiring regular workplace supervision to monitor standards of behaviour to safeguard against all the concerns. He referred the panel to the positive testimonials you provided.

Mr Buxton submitted that these events whilst concerning and worrying occurred three years ago and were single instances of their type. Given the insight that has been shown, those events and the misconduct associated cannot and do not point to being incompatible with ongoing registration.

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 bore in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had 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:

- Sexually motivated behaviour directed towards junior colleagues.
- Abuse of a position of trust in that your actions occurred whilst you were in a senior position at the Trust and were directed towards junior members of staff.
- Aggressive behaviour towards a patient.
- Breach of professional boundaries with a minor.
- Attitudinal concerns albeit not deep-seated.
- Incidents involving a range of behaviours where you failed to act professionally.
- Conduct which put patients and colleagues at risk of suffering harm.

The panel also took into account the following mitigating features:

- You made some admissions and have demonstrated developing insight into your misconduct.
- Positive testimonials attesting to your good character and behaviour as a nurse
- Evidence of online training undertaken relevant to the charges and wider training to keep your skills up to date.
- All incidents occurred over an 18 day period and are isolated incidents.
- In relation to sexual misconduct:
 - This was not at the higher end of seriousness;
 - Was a single incident lasting a short period;
 - You desisted when it became clear that your actions were unwanted.

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 neither protect the public nor be 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 and that a caution order would be inappropriate in view of the issues identified. 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 mindful that any conditions imposed must be proportionate, measurable and workable. The panel determined that the concerns raised were attitudinal and professional and not clinical issues and cannot easily be addressed by conditions. Further, 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 or address the public interest considerations including sending out a clear message as to the standards expected in the profession.

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 noted that the three incidents occurred over a short period of 18 days. The panel saw no evidence that you had repeated any of your misconduct nor that the attitudinal issues identified are harmful or deep-seated. Your insight into your misconduct is developing although not yet fully developed. The panel was satisfied that in this case, your misconduct is not fundamentally incompatible with remaining on the register. Whilst the panel identified a residual risk of repetition of your misconduct it considers that this is not a significant risk and is based on your current level of insight reflection and evidence of strengthened practice.

The panel went on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and the mitigation provided, it concluded that such an order would be disproportionate. The panel considered that it would be unduly punitive in your case to impose a striking-off order.

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

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

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

In determining the length of the suspension order, the panel took account of all of the information before it and noted relevant background information including the period during which you have been on an interim suspension order. The panel determined that a suspension order for a period of 9 months was appropriate in this case to mark the seriousness of the misconduct and also to give you time to develop further insight.

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

Any future panel reviewing this case would be assisted by:

- Your attendance at the future review hearing.
- Up to date reflective statement.
- Evidence of training undertaken.
- Testimonials.
- Any evidence of up to date relevant employment.

This decision will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Smalley. He submitted that an interim order necessary for the protection the public and is in the public interest. He invited the panel to impose an interim suspension order for a period of 18 months to cover the appeal period.

Mr Buxton indicted that he had no representations.

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 substantive suspension order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.