

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

**Substantive Hearing
Tuesday 25 June 2024 – Thursday 4 July 2024**

Virtual Hearing

Name of Registrant: Ezenwa Tee Nzekwe

NMC PIN 08A2142E

Part(s) of the register: RNMH: Mental health nurse, level 1 (4 August 2008)

Relevant Location: London

Type of case: Misconduct

Panel members: Catherine Devonport (Chair, Registrant member)
Catherine Cooper (Registrant member)
Matthew Wratten (Lay member)

Legal Assessor: Gerard Coll (25 – 27 June 2024)
Lucia Whittle-Martin (28 June – 4 July 2024)

Hearings Coordinator: Anya Sharma

Nursing and Midwifery Council: Represented by Alex Radley, Case Presenter

Mr Nzekwe: Present and represented by Rhea Mills,
(UNISON)

Facts proved: 1c, 1d, 1e, 1f, 2 (in respect of 1d, 1e), 3a, 3b(i) and 3b(ii) (in relation to 1c,1d and 1e)

Facts not proved: 1a, 1b, 1g, 1h, 2 (in relation to 1a,1b,1c,1f,1g and 1h), 3b(ii)(in relation to 1a,1b,1f,1g and 1h), 4 and 5

Fitness to practise: **Impaired**

Sanction: **Suspension order (6 months)**

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

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

At the outset of the hearing, Ms Mills made an application that this case be held partly in private on the basis that proper exploration of your case involves [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 Radley on behalf of the Nursing and Midwifery Council (NMC) indicated that he supported 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.

The panel determined to go into private session in connection with [PRIVATE] as and when such issues are raised.

Application to exclude hearsay evidence

The panel had sight of Ms Mills' written skeleton argument in which she objected to reference made by Colleague A in her witness statement to an anonymous colleague who she claimed had "gone through similar problems in the past", the inference being that this was with you. The panel took into account Ms Mills' supplementary oral submissions.

Ms Mills submitted that you would be severely prejudiced by any suggestion that there had been any prior concerns of a similar nature. She submitted that this statement is the sole and decisive evidence of any prior concerns, which are otherwise entirely unsubstantiated. Ms Mills submitted that there is no way for you to respond or test the evidence, and on that basis it ought to be excluded.

Mr Radley referred the panel to Rule 31 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 which provides that evidence may be admitted whether or not such evidence would be admitted in civil proceedings, subject only to the requirements of relevance and fairness.

Mr Radley submitted that pursuant to Rule 31(1), this evidence is admissible and that the content of it is not averse to your case.

The panel accepted the advice of the legal assessor.

The panel determined that reference to the anonymous statement made by Colleague A should be excluded in fairness to you in the absence of any other evidence to support Colleague A's claim. The panel also decided to redact the evidence bundle in part at page 96 of 169 where it said '*[Colleague A] told [Ms 1] that there was someone else but wasn't comfortable revealing the name*'. It considered that this was also anonymous and was also sole and decisive evidence and that it would not be fair to include it.

Application to admit documents under Rule 31

Ms Mills then addressed the panel in relation to the second limb of her application. She submitted that you seek the consent of the panel to introduce evidence of relevant CPD records. Ms Mills set out that the reasoning for this is set out in her written skeleton argument and submitted that there is no better evidence available to the panel of your remedial activities aside from your reflective statement.

Ms Mills set out that this is not controversial and that the NMC have had sight of the documents.

Mr Radley submitted that he takes no issue with Ms Mills' application.

The panel heard advice from the legal assessor.

Taking into account the submissions from both parties who are in agreement, the panel was content for the documents to be admitted.

Details of charge

That you, a registered nurse:

1. Between December 2020 and March 2021, while acting as mentor for Colleague A:
 - a. On 23 December 2020 placed your hand on Colleague A's thigh.
 - b. On 23 December 2020 invited Colleague A to come with you to a friend's house.
 - c. On one or more occasion(s) messaged Colleague A asking if you could come to her house.
 - d. Messaged Colleague A asking if she wanted a bed wash.
 - e. On one or more occasion(s) sent Colleague A sexually suggestive videos and/or pictures.
 - f. Regularly exchanged electronic messages with and/or called Colleague A on the phone outside of your usual working hours.
 - g. In the course of a telephone call with Colleague A, said words to the effect *'This is why I need to get you pregnant. If I got you pregnant, you would feel more relaxed'*.
 - h. In the course of a video call with Colleague A, said words to the effect *'I like the other top you were wearing'* with reference to a vest top she had worn in an earlier video call.
2. Your conduct at charges 1a, 1b, 1c, 1d, 1e, 1f, 1g and/or 1h above were sexually motivated in that you were seeking sexual gratification.
3. Your actions at charge 1a-h above harassed Colleague A in that:
 - a) It was unwanted conduct of a sexual nature, and
 - b) The conduct had the purpose or effect of:
 - i. Violating Colleague A's dignity or
 - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

4. On one or more occasion(s) between December 2020 and March 2021 told Colleague A that her probation could be affected if she did not respond to your messages.
5. Your conduct at charge 4 demonstrated a lack of integrity in that you suggested to Colleague A that her job was at risk unless she responded to your messages.

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

Background

The NMC received a referral about your fitness to practise on 13 September 2021 from the Director of Continuing Healthcare at North Central London Clinical Commissioning Group (CCG). This subsequently became the Integrated Care Board ('the Organisation') with the initials NCLICB.

At the time of the concerns, you were working as a band 7 nurse, assessor, quality assurance nurse, and in that role, you were responsible for conducting quality assurance for the decision support tool, an assessment tool used to assess whether a person has a Primary Health need that would make them eligible for NHS continuing healthcare. You also managed a number of complex patients' cases and had responsibility for a number of nursing homes.

On 15 December 2020, the organisation employed Colleague A as a nurse assessor, and you were appointed as her mentor. On 23 December 2020, Colleague A attended her first and only face to face meeting with you. You arranged this to take place at the organisation's open planned office. Colleague A alleges that whilst you sat next to each other looking at the computer screen, you placed your hand on her mid-thigh and held it there. Colleague A states that she ended up reporting that she had a migraine to get out of the situation and end the session. Colleague A also alleges that when she was leaving, you asked her what she was doing after work and invited her to accompany you to a friend's house.

Between December 2020 and March 2021, at the time of the Covid-19 pandemic, you and Colleague A engaged in frequent electronic communication. Some of this was work-related and some involved personal communication, including sending Colleague A a number of suggestive videos and pictures via WhatsApp, such as a woman dressed provocatively, and making a number of allegedly suggestive sexualized comments. These communications were made from personal mobile phones, because at the time the Organisation did not issue employees with work phones.

In January 2021, you tried to arrange a further face to face meeting with Colleague A. However, [PRIVATE]. It is alleged that she was apprehensive about attending the face-to-face meeting given what had allegedly happened in the meeting on 23 December 2020. On one occasion, you contacted Colleague A via a Microsoft Teams video call. On that day, Colleague A was wearing a pink vest top. It is alleged that she instantly felt more aware of what she was wearing and said that she could call you back in a minute. Colleague A then proceeded to put on a hoodie top to cover up. When you answered the call, you allegedly asked 'why are you wearing that? I like the top you were wearing before'. It is alleged that on another occasion, whilst you were talking to Colleague A on the phone, she told you that she was stressed about her first patient review. You allegedly said to Colleague A 'that is why if I impregnate you, you will feel more relaxed'. Colleague A replied, 'you can't say that to me' and said you were on loudspeaker and that her partner could hear what was being said.

It is alleged that in February 2021, you again tried to arrange a face-to-face meeting with Colleague A and suggested that you both have lunch together. [PRIVATE]. Colleague A reports that she was buying time to avoid going to the office because she was aware that you were planning to go to Nigeria in March 2021. It is alleged that when you were on leave, you carried on messaging Colleague A on a frequent basis.

The day after you returned to work, Colleague A was on duty, and you called again on the Microsoft Teams. However, Colleague A answered these calls without her camera on.

On 9 April 2021, Colleague A reported the concerns for the first time to her employer. She made contact with her manager, Ms 1. Colleague A then also sent the videos that you had sent her to Ms 1. As a consequence, this matter was escalated by Ms 1 to the Organisation's internal disciplinary process, and also then to the NMC.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Mills, who informed the panel that you made admissions to charges 1c, 1d, 1e, 1f, 2 (in respect of 1c, 1d, 1e, 1f,) 3a and 3b(i).

In light of this information the panel found charges 1c, 1d, 1e, 1f, 2 (in respect 1c, 1d, 1e, 1f,) 3a and 3b(i). proved, by way of your admissions. However, when giving your evidence it became apparent that you were denying Charge 2 and that you only admitted Charge 1d on a limited basis. Mr Radley accepted that there may have been a misunderstanding, and that the panel should approach the hearing on the basis that you denied Charge 2, and that your admission to Charge 1d was on a limited basis.

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 Mr Radley on behalf of the NMC and by Ms Mills.

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:

- Ms 1: Clinical Lead at the Organisation

- Colleague A: CHC Nurse Assessor at the Organisation at the time of the incidents
- Mr 1: Senior Manager/Designated professional for safeguarding adults, at the time of the incidents
- Ms 2: Head of People Services at the Organisation

The panel also heard evidence from you under oath.

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

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

Charge 1a)

That you, a registered nurse:

1. Between December 2020 and March 2021, while acting as mentor for Colleague A:
 - a. On 23 December 2020 placed your hand on Colleague A's thigh.

This charge is found NOT proved.

In reaching this decision, the panel took into account your oral evidence, as well as the written witness statement and oral evidence of Colleague A. The panel also took into account the written witness statement and oral evidence of Ms 1.

When considering Colleague A's evidence, the panel was of the view that her evidence was at times unclear and inconsistent. It noted that whilst it was a key component of Colleague A's oral evidence that your hand went on her thigh twice, in her witness statement she stated this happened only once. Colleague A also claimed in her oral evidence that she deliberately feigned a migraine at the time to absent herself from the room, whereas she made no mention of this in her initial account, namely the investigation interview notes.

Further the panel took into account that whilst Colleague A gave evidence that she informed her manager, Ms 1, of this incident, Ms 1 made no mention of this in her witness statement, and in the course of cross examination accepted that she had no recollection of being informed about the incident by Colleague A.

In light of these points, together with a general lack of clarity when giving her evidence, the panel concluded that the evidence given by Colleague A in respect of this matter was not of sufficient reliability to discharge the burden of proof.

The panel took into account your evidence on oath that you deny this charge. The panel considered that you were clear and credible in your oral evidence in relation to this point.

On that basis the panel was not satisfied, on the balance of probabilities that you placed your hand on Colleague A's thigh.

The panel therefore find this charge not proved.

Charge 1b)

b) On 23 December 2020 invited Colleague A to come with you to a friend's house.

This charge is found NOT proved.

In Colleague A's witness statement, she stated that after the face-to-face meeting at the office *'when I was leaving he asked me what I was doing after work, which I said I was going home. He then said he wanted me to accompany him to his friend's house.'*

The panel found Colleague A to be an unreliable witness on this point. In so concluding it took account of its findings regarding the reliability of Colleague A in relation to Charge 1(a).

The panel took into account your oral evidence, where you denied the allegation that you had invited Colleague A to come with you to a friend's house, stating that during the conversation with Colleague A on the way out from the meeting, you merely discussed work-related items.

On that basis the panel was not satisfied, on the balance of probabilities, that you invited Colleague A to come with you to a friend's house.

The panel therefore find this charge not proved.

Charge 1d)

d) Messaged Colleague A asking if she wanted a bed wash.

This charge is found proved on the basis put forward by the NMC.

In reaching this decision, the panel took into account your limited admission to this charge. You accepted that you had sent the relevant message to Colleague A. The message stated "you need a bed wash?". You explained that you had sent the message to Colleague A meaning that she should have a bed wash because she had said that she was ill and had been in bed for a number of days. You however do not admit that this message was you offering to undertake that bed wash yourself, which is what was alleged by the NMC.

The panel had sight of the WhatsApp message chain between you and Colleague A prior to and following the bed wash message, in particular the following messages from you:

'tell me how I can help'

'I can come down'

'put sentiments aside plz'

'u need a bed wash?'

'Of course, I'm here to' [sic]

The panel took account of the progression of the WhatsApp messages between you and Colleague A and, in light of this objective documentary evidence, did not accept your explanation for what you had meant when you sent this message. The panel was of the view that in the messages you had sent, you were offering to come to Colleague A's house and give her a bed wash.

The panel therefore find this charge proved.

Charge 1g)

- g. In the course of a telephone call with Colleague A, said words to the effect *'This is why I need to get you pregnant. If I got you pregnant, you would feel more relaxed'*.

This charge is found NOT proved.

In reaching this decision, the panel took into account your oral evidence, as well as the written witness statement and oral evidence of Colleague A. The panel also took into account its findings in relation to 1a) and 1b).

The panel considered that it has before it Colleague A's statement where she alludes to this taking place, and the WhatsApp messages around you having apologised to Colleague A for the comments you made. You told the panel that you were apologising to Colleague A because her former partner had overheard you telling Colleague A that [PRIVATE]. You thought that your comments may have caused some aggravation between Colleague A and her partner.

The panel also considered that when Colleague A was giving her oral evidence, she was asked what she felt about this comment, and she responded that she was confused as to the connection between doing her first review and this comment. Colleague A told the panel that this was her first review, that she had done everything the night before, and had told you that she was nervous, which was when the comment detailed in the charge is alleged to have occurred.

The panel considered that your explanation of what you said during the course of this telephone call was more plausible than the unlikely comment alleged by Colleague A. The panel considered that it has no other evidence before it which suggests that a conversation about getting Colleague A pregnant took place.

On that basis the panel was not satisfied, on the balance of probabilities that in the course of a telephone call with Colleague A you said the words alleged in this charge.

The panel therefore find this charge not proved.

Charge 1h)

- h. In the course of a video call with Colleague A, said words to the effect '*I like the other top you were wearing*' with reference to a vest top she had worn in an earlier video call.

This charge is found NOT proved.

In reaching this decision, the panel took into account Colleague A's written witness statement and oral evidence that you had made the comment set out in the charge to her.

The panel also took into account that in your oral evidence, you denied making this comment to Colleague A.

When considering the evidence before it, the panel concluded that Colleague A had been inconsistent in that she said on the one hand that she had taken her top off and changed, but on the other she said she had merely zipped up a hoodie before calling you. It considered that there are also other inconsistencies within Colleague A's evidence such as that she has set out in her written statement [PRIVATE].

On that basis the panel was not satisfied, on the balance of probabilities that in the course of a telephone call with Colleague A you said the words alleged in this charge.

The panel therefore find this charge not proved.

Charge 2)

2) Your conduct at charges 1a, 1b, 1c, 1d, 1e, 1f, 1g and/or 1h above were sexually motivated in that you were seeking sexual gratification.

This charge is found proved in relation to 1d and 1e.

This charge is found NOT proved in relation to 1a, 1b, 1c, 1f, 1g and 1h.

In reaching this decision, the panel took into account your admissions and its findings in relation to Charge 1.

Charge 1c)

The panel noted your admission in relation to this charge but concluded that on the wording of 1c it was highly unlikely that you could be seeking sexual gratification from asking such a question.

On that basis the panel found Charge 2 not proved in relation to 1c.

Charge 1d)

In relation to 1d), having concluded that you were asking whether Colleague A wanted a bed wash given by you, the panel concluded that your question was sexually motivated in that you were seeking sexual gratification.

The panel noted its finding in relation to 1d) and was of the view that based on the WhatsApp messages exchanged between you and Colleague A, and the progression of this relationship, you were seeking sexual gratification by offering to give Colleague A a bed wash. The panel determined that there was no legitimate reason for you to have sent a message of this kind other than that you were seeking sexual gratification.

On that basis the panel find Charge 2 proved in relation to 1d

Charge 1e)

In relation to 1e), you admit sending sexually suggestive videos and photos to Colleague A. The panel noted that it does not have all of the messages which were sent between you and Colleague A before it, but that the pictures and videos that the panel do have before it are sexually suggestive in nature.

You explained in your oral evidence that you sent these videos and photos to lots of people, that you were mistaken in thinking that you and Colleague A had a friendship and that you were therefore sending these to Colleague A on that basis. However, the panel considered that in sending sexually suggestive videos/photos to Colleague A, it is more likely than not that you were doing so for sexual gratification.

On that basis the panel find Charge 2 proved in relation to 1e

Charge 1f)

In relation to 1f), the panel considered the messages exchanged between you and Colleague A, some of which were exchanged outside of working hours. The panel could not find any evidence of you having sent Colleague A sexually suggestive electronic messages and/or calling Colleague A on the phone outside of working hours, other than one comment "I'm liking you". The panel concluded that this could not be regarded as evidence of a "regular" exchange.

On that basis the panel find Charge 2 not proved in relation to 1f.

Charge 3b(ii)

3. Your actions at charge 1a-h above harassed Colleague A in that:

b) The conduct had the purpose or effect of:

ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

This charge is found proved in relation to charges 1c, 1d and 1e.

This charge is found not proved in relation to charge 1f.

In reaching this decision, the panel took into account its findings in relation to charges 1c), 1d), 1e) and 1f).

Charge 1c, 1d and 1e

The panel had before it an extensive WhatsApp message chain, which showed that Colleague A had deleted messages that the panel did not have sight of. There are also videos and pictures that were sent by Colleague A that the panel did not have sight of. The WhatsApp messages painted a picture of a mutual exchange. There are moments where it can be seen that Colleague A felt that she had to respond to you, but there are also several instances where Colleague A is initiating the conversations.

However, the panel considered your behaviour would not be classed as appropriate between work colleagues, particularly in the context of a mentor-mentee relationship where you were senior to Colleague A.

The panel was of the view that your actions towards Colleague A in relation to charges 1c, 1d and 1e created an intimidating, hostile, degrading, humiliating and offensive environment for Colleague A to work within.

The panel find charge 3b(ii) proved in relation to 1c, 1d and 1e accordingly.

Charge 1f)

The panel considered that the out of hours messaging appeared to be predominantly mutual, apart from the single instance referred to above in charge 2 and therefore was unlikely to create an intimidating, hostile, degrading, humiliating and offensive environment for Colleague A to work within.

Charge 4)

4. On one or more occasion(s) between December 2020 and March 2021 told Colleague A that her probation could be affected if she did not respond to your messages.

This charge is found NOT proved.

In reaching this decision, the panel took into account your oral evidence, as well as the written witness statement and oral evidence of Colleague A.

The panel considered Colleague A's evidence in relation to this *' I understood he was my manager... it was said to remind me who was in power... he would remind me I was on probation'*.

The panel also took into account your denial in relation to this charge.

The panel also noted that Ms 1 in her witness statement set out the following:

'In addition to this, she told me that he'd been telling her that it was [your] decision as to whether she passed her probation or not. That he would be the main contributing factor in the decision, and it was not down to me.'

The panel also took into account the following extract from Mr 1's witness statement:

'Also, [Colleague A] mentioned that she was told [you] would be instrumental in approving her probation. She was worried that if she said anything it would impact her job. [Colleague A], during the investigation had mentioned that [you] would often remind her that he would be involved in the probation. However, when I asked for any evidence in the communication she had provided there was none as she said this was discussed during Teams meetings and telephone calls.

[You] denied making any such comments in relation to [Colleague A]'s probation. The ultimate decision would lie with [Ms 1], but frequent contact was to be made by [you] as her mentor, so it would be reasonable that he would be sharing his views with [Ms 1] about [Colleague A]'s performance.'

The panel concluded that these extracts suggested that you reminded Colleague A that you would be involved in her probation, but not that you told Colleague A that her probation would be affected if she did not respond to your messages.

The panel was of the view that there has been no evidence provided to the panel by the NMC to prove that you told Colleague A that if she did not respond to your messages it would affect her probation.

The panel also took into account your denial in relation to this charge.

The panel therefore on the balance of probabilities find this charge not proved.

Charge 5)

5. Your conduct at charge 4 demonstrated a lack of integrity in that you suggested to Colleague A that her job was at risk unless she responded to your messages.

This charge is found NOT proved.

In light of the panel's findings in relation to charge 4, charge 5 falls away.

Fitness to practise

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

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

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

facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

The panel heard oral evidence from you under oath, including:

- You explained the effect that your conduct would have on members of the public.
- You explained what you would do in the future to prevent a repetition of your behaviour.
- You apologised, saying that on this occasion you had ‘taken your eyes off the ball’ and you prayed for forgiveness.
- You informed the panel of a number of privately funded courses that you had completed relating to your misconduct, for example in relation to professional boundaries.

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.*’

Mr Radley invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015)’ (the Code) in making its decision.

Mr Radley referred the panel to his written submissions in respect of misconduct. He identified a number of relevant standards. He submitted that the behaviour found proved fell far short of the standards expected of you and amounted to misconduct.

Ms Mills submitted that whilst cases of this nature are inherently serious, there will always be a spectrum of said seriousness. She submitted that your conduct falls at the lower end of the spectrum.

Ms Mills submitted that you take full responsibility for your actions and there is no evidence of harm to patients arising from your conduct. She submitted that it was accepted practice for colleagues at the time, including mentors and mentees, to communicate via WhatsApp. Ms Mills submitted that the sexually suggestive pictures sent by you are not sexually explicit or pornographic in nature. Ms Mills submitted that there is no evidence before the panel, nor has it been suggested that there was ever a physical relationship between you and Colleague A.

Ms Mills further submitted that Colleague A's concerns were never put to you at the time, but if they were, you said you would have desisted. You have been clear in your evidence that had Colleague A ever expressed discomfort with your behaviour, you would not persist or dismiss their concerns. She submitted that there is nothing in the exchanges between you and Colleague A which suggests that she was uncomfortable with you. Ms Mills submitted that Colleague A was an adult and a willing participant in the WhatsApp exchanges with you, but nevertheless, having become aware of the extent of Colleague A's discomfort, you offered your unreserved apologies at the earliest opportunity during the local investigations.

Ms Mills told the panel that you have had an unblemished career of 16 years. There have been no prior concerns relating to your good character or conduct within the workplace and your conduct has not compromised the safety of any patients. She submitted that you have demonstrated both today in your oral evidence to the panel and in your reflective statement that you are a reflective practitioner by nature. You have also made a number of admissions at an early stage.

Ms Mills submitted that as the panel have heard from you today, you have continued to practise kindly, safely and professionally in the three years following the alleged incidents between December 2020 and March 2021.

In relation to whether the statutory ground of misconduct is engaged, Ms Mills referred the panel to the case of *General Medical Council v Meadow [2007] QB 462 (Admin)*, in which the Court of Appeal made clear that misconduct should not be viewed as anything less than serious professional misconduct. She submitted that it is not enough for a finding of misconduct for a professional to have simply departed from professional standards, and the question for the panel is whether your conduct, considered in all of the context of the information in this case, would be deemed so serious as to be deplorable. Ms Mills submitted that your conduct was predicated on a fundamental misunderstanding as to the nature of your relationship with Colleague A, and that may have been ill judged, perhaps even naïve, but your conduct should not be regarded as deplorable.

Submissions on impairment

Mr Radley referred the panel to his written submissions on the issue of impairment. He submitted that a finding of impairment was required to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. He did not submit that a finding was required to protect the public.

Ms Mills set out that if the panel consider that your actions do amount to misconduct, your fitness to practise is not impaired by that conduct and that there is no risk to public safety or the wider public interest arising from your continued practice. Ms Mills submitted that the conduct has been remediated, it is highly unlikely to be repeated, and that your conduct falls at the lowest end of the seriousness spectrum. There is no evidence to suggest that your conduct represents a deep-seated attitudinal issue, having been isolated to a relatively short period of indiscretion by you.

Ms Mills submitted that you have derived a salutary learning experience from the proceedings, and having been made aware of the concerns you have been proactive in demonstrating to your employer and to your regulator that you have taken their concerns seriously and have taken appropriate steps to strengthen your practice. She submitted that there is therefore negligible risk that the conduct will be repeated.

Ms Mills submitted that you have also taken steps to strengthen your nursing practise and referred the panel to your CPD records. She submitted that the panel will note your response to the allegations on 12 March 2023, in which you explain that you have undertaken two separate training sessions to address the NMC concerns, which cover the topics of dignity and respect, as well as professional behaviours. Ms Mills submitted that you have also gone further than that and proactively identified and completed a number of self-funded courses on topics including communicating effectively, diversity, equality and inclusion, leadership and management and professional boundaries. You have also complied fully with the local return to work arrangements, which were put in place to minimise risk, and have attended regular one-to-one meetings and engaged with the support of your employer.

Ms Mills explained that Colleague A is no longer working at the Organisation, but you are fully aware that you will have no contact with her in the future. You have undergone a period of supervision with an identified learning plan and have completed all of your mandatory training save for a few which you have explained to the panel today the reasons for.

Ms Mills submitted that during the COVID-19 pandemic, a great deal of professionals on the NMC register were working under unfamiliar remote conditions. Most professionals were not at that time issued with work phones, and were working from home and she submitted that it is perhaps more understandable to see how the lines between work and personal lives became blurred. Ms Mills submitted that never before had people on the NMC register had to deal with such a rapid reconfiguration of their working conditions, all while dealing with the strain on the NHS and the inevitable isolation which was resulting from the COVID-19 restrictions.

Ms Mills submitted that you have maintained effective professional relationships with your new colleagues in your current role and now better understand how your professional duties ought to be executed and how best to ensure against allegations of this ever arising in the future. She submitted that your reflective statement and your evidence today provides the panel with assurances that you have utilised this experience as an opportunity for learning.

Ms Mills submitted that in light of this, the panel can therefore be satisfied that despite denying some allegations, you have taken the regulatory concern seriously and you have remediated. She submitted that there is negligible risk to the public safety arising from your continued practice, and the series of incidents were short lived against the backdrop of an unblemished career spanning 16 years and isolated to uniquely challenging circumstances which have now largely fallen away. It is therefore unlikely that the conduct will be repeated.

Ms Mills submitted that the criteria in *Cohen v GMC [2008] EWHC 581 (Admin)* have been satisfied in this case. She submitted that you have demonstrated that you are a safe practitioner for 16 years, save for a four-month period in which you exchanged messages with Colleague A. You have full insight into the seriousness of the NMC's concerns, and are committed to working closely with your employer, your union and the NMC to ensure against professional breaches which could bring the profession into disrepute. Ms Mills submitted that the public interest lies with a specialised nurse with more than 16 years of continuous safe practise being permitted to continue on his ongoing journey of continuous professional development.

Ms Mills submitted that the purpose of fitness to practice proceedings is not to punish registrants for past wrongdoing, but to make an assessment of risk moving forward. She submitted that further regulatory action is not required to protect public safety or the wider public interest, and the panel may consider that the reputational damage arising from these proceedings, as well as the impact that it has had on your professional career, [PRIVATE] may suffice as a warning to you and a deterrent against anything such as this arising in future. Accordingly, Ms Mills invited the panel to find your fitness to practise no longer impaired.

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

Decision and reasons on misconduct

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

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

8.7 be supportive of colleagues who are encountering health or performance problems. However, this support must never compromise or be at the expense of patient or public safety

9.4 support ... colleagues' learning to help them develop their professional competence and confidence

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

*20 Uphold the reputation of your profession at all times
To achieve this, you must:*

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

20.2 act with ... 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

20.4 keep to the laws of the country in which you are practising

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Charge 1c) (additionally in relation to 3a, 3b(i) and 3b(ii))

The panel was of the view that considering charge 1c) in isolation, it would not find that your actions were serious enough to amount to a finding of misconduct. However, the panel determined that when considering charge 1c) in light of the mentor-mentee relationship between you and Colleague A and its findings in respect of charge 3a, 3b(i) and 3b(ii), namely the unwanted conduct of a sexual nature, violating Colleague A's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A, your conduct is serious and does amount to misconduct.

Charge 1d) (additionally in relation to 2, 3a, 3b(i) and 3b(ii))

The panel had rejected your qualification on your admission in relation to this charge. The panel considered its findings of fact in relation to charge 1d and noted the WhatsApp message chain surrounding the bed wash message. It was of the view that your conduct in relation to this charge and in relation to 2, 3a, 3b(i) and 3b(ii) is serious and does therefore amount to a finding of misconduct.

Charge 1e) (additionally in relation to 2, 3a, 3b(i) and 3b(ii))

The panel considered its findings of fact, in that you sent Colleague A sexually suggestive videos and/or pictures, which included:

- An image of Chinese characters depicting explicit sexual acts

- A brief video clip featuring a woman dressed in form-fitting attire, highlighting her chest and posterior
- A brief video clip depicting a patient in a bed reaching towards a nurse who is facing a wall, the patient placing his hand on the nurse's posterior, and the nurse promptly slapping his hand away

The panel was of the view that your actions as set out in charge 1e and additionally in relation to 2, 3a, 3b(i) and 3b(ii) are serious and amount to misconduct.

Charge 1f) ((additionally in relation to 3a, 3b(i) and 3b(ii)))

The panel considered that many of the electronic messages that you had exchanged with Colleague A outside of your usual working hours were work-related. The panel noted that Colleague A had also initiated contact with you outside working hours. The panel did not consider that charge 1f) amounted to misconduct in isolation. The panel was however of the view that in relation to 3a, 3b(i) and 3b(ii), the conduct is serious and of a sexual nature involving sexual misconduct and sexual harassment, and that your motivation was to seek sexual gratification and therefore does amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, your fitness to practice 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) ...

Regarding insight, the panel had sight of the NMC Guidance 'Has the concern been addressed' Reference FTP-14b Last Updated 29 November 2021. It considered that you had made admissions at a local level and at this hearing. The panel also took into account your initial reflections in June 2022, and your local level interview where you made admissions to several serious charges.

You have also given oral evidence to the panel at both the facts and the misconduct and impairment stage. The panel was of the view that you have demonstrated an understanding of what you have learnt about professional boundaries and appropriate communication and expressed regret in relation to your conduct and actions and its impact on public confidence. You told the panel that you had 'taken your eye off the ball' and provided an explanation as to how you would ensure that this conduct is not repeated in the future. It also considered that you explained that you had misunderstood your relationship with Colleague A at the time.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken sufficient steps to strengthen your practice. The panel considered that the conduct in this case is not easily remediable with retraining, but you have demonstrated that you have completed appropriate training, and the panel is satisfied that the conduct has been remedied.

The panel took into account the training that you have undertaken, including a number of self-funded training courses on topics including communicating effectively, diversity,

equality and inclusion, leadership and management and professional boundaries. You have also complied fully with the local return to work arrangements, have attended regular one-to-one meetings and do have the support of your employer. The panel is therefore of the view that whilst your misconduct caused harm to Colleague A, the risk of repetition is very low and that a finding of impairment is not 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 your conduct in this case involves violating dignity, sexually motivated behaviour and sexual harassment and needs to be marked from a public interest perspective. The panel was of the view that a reasonably informed member of the public would be extremely alarmed if you were permitted to practise without restriction and concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore 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 on public interest grounds only.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of six 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.

Submissions on sanction

The panel had sight of written submissions on sanction provided by both Mr Radley and Ms Mills.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Position of trust and abuse of power within a mentor-mentee relationship
- Sexually motivated behaviour for sexual gratification and harassment which caused emotional harm to a junior member of staff, namely Colleague A

The panel also took into account the following mitigating features:

- You have no previous regulatory findings against your name and there has been no repetition of your misconduct since the time of the allegation over three years ago
- You made some admissions of the facts at an early stage, both at a local level and to the NMC charges

- You have demonstrated insight, an understanding of the regulatory concerns and effect of your behaviour on the wider public interest
- You have apologised for your actions and shown sincere remorse
- You have demonstrated an understanding of what went wrong and been able to articulate to the panel where you went wrong and how you can prevent something similar happening in the future
- You have taken steps to undertake relevant training, have kept up to date with your mandatory training and have continued to practise safely at the Organisation

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 interest 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 of misconduct and that a caution order would be inappropriate in view of this. 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 is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case.

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:

- ...
- *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 was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

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

Balancing all 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 making this decision, the panel carefully considered the written submissions of Mr Radley in relation to the sanction that the NMC was seeking in this case. However, the

panel considered that a striking-off order would be wholly disproportionate, and that the public interest concerns in this case could be met with a suspension order.

The panel determined that a suspension order for a period of six months was an appropriate and proportionate time in this case, taking into account both the aggravating and mitigating circumstances and to mark the seriousness of the misconduct.

Having found that your fitness to practise is currently impaired, the panel bore in mind that it determined there were no public protection concerns arising from its decision. In this respect it found your fitness to practise impaired on the grounds of public interest.

In accordance with Article 29 (8A) of the Order the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary.

The panel determined that it made the suspension order having found your fitness to practise currently impaired in the public interest. The panel was satisfied that the suspension order will satisfy the public interest in this case and will maintain public confidence in the profession(s) as well as the NMC as the regulator. Further, the suspension order will declare and uphold proper professional standards. Accordingly, the current substantive order will expire, without review at the end of the six-month suspension order period.

This 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 own interests until the suspension sanction takes effect.

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

Submissions on interim order

The panel took account of the submissions made by Mr Radley. He made an application for an interim suspension order for a period of 18 months to be imposed in light of the public interest concerns. He submitted that considering the panel's decision to impose a substantive suspension order, it would be inconsistent with the panel's findings if the panel were not to impose an interim order at this stage of the proceedings.

Ms Mills submitted that to impose an interim order would be inconsistent. She submitted that throughout these regulatory proceedings, you have practised safely, and the purpose of an interim order is to ensure against an immediate risk arising from your continued practice. Ms Mills submitted that it is rare for an interim order to be imposed on public interest grounds alone.

Ms Mills submitted that the panel have found that there is no risk to the public arising from your continued practice, and that a sanction is necessary solely on public interest grounds. She submitted that on this basis, the purpose of the substantive sanction is to send that message which is met by the imposition of the substantive suspension order.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary on public interest grounds. 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 any 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.