

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

**Substantive Hearing**

**Monday 1 July 2024 – Thursday 18 July 2024**

<b>Name of Registrant:</b>	<b>Ahmad Shah</b>
<b>NMC PIN:</b>	01G11050
<b>Part(s) of the register:</b>	Registered Nurse - Sub Part 1 Adult Nursing (Level 1) - 3 July 2001
<b>Relevant Location:</b>	Rotherham
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Museji Ahmed Takolia CBE (Chair, Lay member) Vanessa Bailey (Registrant member) Angela Kell (Lay member)
<b>Legal Assessor:</b>	Tim Bradbury
<b>Hearings Coordinator:</b>	Monsur Ali
<b>Nursing and Midwifery Council:</b>	Represented by Lauren Bates-Brownsword, Case Presenter
<b>Mr Shah:</b>	Present and represented by Zahra Ahmed, Counsel, instructed by Royal College of Nursing (RCN)
<b>Facts proved:</b>	All
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Suspension order (12 months) with a review
<b>Interim order:</b>	Interim suspension order (18 months)

## **Details of charge**

That you, a Registered Nurse:

1. Between 8 March 2019 and 29 July 2020, acted towards Colleague A and/or B in a way that was:

- a. Harassing in that you engaged in unwanted conduct, including physical touching, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague A and/or B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleagues A and or B.
- b. Sexually motivated in that you hoped that by breaking down sexual and/or physical barriers between yourself and Colleague A and/or B your chances of having a sexual relationship with one or both of them would increase.

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

## **Background**

You were referred to the Nursing and Midwifery Council (NMC) on December 4 2020, by Colleague A (Witness 1), a registered nurse. It is alleged that, while working as an agency bank nurse at Ackroyd House Nursing Home (the Home) between April 2020 and July 2020, you engaged in inappropriate behaviour, including sexually motivated harassment and the touching of Witness 1 and another colleague, Colleague B (Witness 2). These incidents allegedly occurred during the COVID-19 pandemic.

The Home, which has 50 beds for adults with various health conditions, including dementia, introduced a COVID-19 wing between April 2020 and June 2020. Staffing was divided between a main wing and the COVID-19 isolation wing. You initially worked in the COVID-19 isolation wing and later transferred to the main wing, primarily working night shifts.

The concerns involve two sets of allegations from two female colleagues. The first set, involving Witness 1, relates to incidents between July 25 and July 31, 2020. The second set of allegations, from Witness 2, are alleged to have taken place over a period of weeks prior to July 2020, though no specific dates are provided.

These allegations were brought to the attention of the Home Manager (Witness 3) on July 31 2020, resulting in your suspension from the Home.

### **Decision and reasons on facts**

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

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

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

- Witness 1: Worked at the Home as a registered nurse from June 2020 to November 2020.
- Witness 2: Worked at the Home as a care assistant from 8 March 2019 to 28 June 2021.
- Witness 3: Worked at the Home from November 2019 and worked as the Home Manager from March 2020.

- Witness 4: Worked at the Home since 2015 as a registered nurse and from May 2019 have been working as Deputy Manager.

The panel heard live evidence from the following witness called on your behalf:

- Witness 5: Worked at the Home from April 2020 to July 2020 as a registered nurse.

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 those by you.

The panel then considered the evidence in respect of each charge separately. However, there was a significant overlap in respect of the facts of each of the charges. Therefore, in its determination, the panel dealt with both parts of the charges together and made the following findings.

### **Charge 1**

1. Between 8 March 2019 and 29 July 2020, acted towards Colleague A and/or B in a way that was:

- a. Harassing in that you engaged in unwanted conduct, including physical touching, related to a protected characteristic, namely sex, and the conduct had the purpose or effect of violating Colleague A and/or B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleagues A and or B.

- b. Sexually motivated in that you hoped that by breaking down sexual and/or physical barriers between yourself and Colleague A and/or B your chances of having a sexual relationship with one or both of them would increase.

**These charges are found proved.**

In reaching this decision, the panel considered all the documentary evidence presented to it and the live testimony of all witnesses. The primary issues faced by the panel in the case turned upon the evidence of witnesses 1 and 2, both of whom alleged that they have been the victims of sexually motivated harassment from you whilst at work, as against your evidence that no such incidents had ever occurred. There were no other witnesses to the incidents. This made the panel's decision heavily reliant on assessing the reliability and credibility of the respective witnesses and your testimony. Having heard the evidence from witnesses 1 and 2, and taken account of your testimony, the panel concluded that fundamentally there was no reason to believe that the witnesses' accounts had been fabricated. It also found no reason to believe that these witnesses had colluded. These matters are discussed later in this determination.

The panel took account of the fact that until this referral you have had an otherwise unblemished career spanning over 24 years, with no prior concerns and that the current allegations do not involve concerns about your nursing competence or your clinical skills. It also considered the Home's geographical layout and requirement to work in confined physical spaces at times (for example in the treatment room and when providing personal care to residents), noting that you had worked in close proximity to female colleagues without any previous complaints.

The panel heard oral evidence from Witness 1 based on her written statement dated 27 September 2022. She recounted that during the shift on 25 July 2020, you told her you wanted to be friends outside of work, asked her to have a meal with you, asked to hold her hand, and asked to cuddle her. She described how you put your body close to hers to take a selfie. She stated, *'The Registrant's tone of voice was as if he was talking to a child. It made me really uncomfortable.'*

The panel also heard evidence from Witness 1 saying she repeatedly rejected your advances and at one point went into the treatment room to get away from you. She further alleged that you followed her and were persistent in harassing her.

Witness 1 explained to the panel that you became angry with her when she rejected you, mentioned your wife and refused to take your telephone number.

Witness 1 then described to the panel how you had moved chairs around in an angry manner in the office. It was submitted by Ms Ahmed on your behalf that had this occurred someone would have heard shouting and/or commotion and come to Witness 1's assistance. The panel did not accept this proposition because Witness 1 was clear that you had not shouted but that it was your tone of voice that was angry. It was only the police call log which mentioned shouting and the panel considered this to be the call handler's interpretation of what Witness 1 had told them rather than her evidence as set out in the police witness statement, her local statement and NMC statement.

Furthermore, witnesses 3 and 4 were also clear that residents' doors may be closed at night, and that staff could likely be elsewhere in the building. Therefore, noises made in the office may not necessarily be heard by residents and/or other staff on duty.

After following Witness 1 into the treatment room, she said you:

*'kept changing from really angry to really calm and asking to hold my hand... '... he started begging me for a cuddle. I started to feel dizzy and lost my balance. I was frightened and sick. I told the Registrant to leave me alone.'*

Witness 1 said that you made her feel guilty to the point that she apologised to you. The panel likened this to 'gaslighting' behaviour and found your actions to be deliberate, calculated and manipulative.

When questioned during her oral evidence about why she did not report the incident immediately, Witness 1 explained that as a relatively new employee, she was uncertain of what to do and that your behaviour made her question herself. She also felt that your actions made her feel as though she had done something wrong, leading her to apologise to you. There were no other senior staff on duty and the panel considered

that given her professionalism, and being new in the role, she may not have felt comfortable approaching care assistants about this situation during the shift.

The panel found a similar pattern of behaviour and exchange of comments that are reported in the statement and oral evidence of Witness 2, between which she was consistent. Witness 2 described an incident:

*"I noticed [the Registrant] was staring at me weirdly so I looked away and ignored it so he said [...] look at me so I can see those sexy eyes so I said give over you daft sod and tried to brush it off because I felt uncomfortable and embarrassed but he didn't stop he said look at me has no one ever told you how sexy they really are, you have beautiful come to bed eyes, at this point I asked him to stop as I was beginning to feel uncomfortable around him..."*

Witness 2 recounted further exchanges between you during that shift and described you staring at her and that your tone of voice was sleazy, making her feel uncomfortable.

Witness 2 went onto refer from her witness statement the following:

*'...the Registrant walked up to me and asked me for a cuddle. I responded telling the Registrant to shut up and stop being stupid. The Registrant then forced himself onto me cuddling me. I just stood with my arms by my side, facing away from him. I felt very uncomfortable.'*

During her oral evidence, Witness 2 described freezing and that she did not know what to do. Her written statement goes onto say:

*When the Registrant stopped cuddling me, he pulled my face mask, which I was wearing as part of my Covid-19 personal protective equipment, down and asked me if he could kiss me. The Registrant's tone of voice was horrible and sleazy and begging. I responded to the Registrant "No, you cannot, how would your wife feel if she knew you were like this". The Registrant became very angry and suggested that it was me in the wrong. This made me feel scared and ashamed.'*

Witness 2 described you as having a charm and being able to talk people around. It is the panel's view that this behaviour mirrors the testimony of Witness 1.

Witness 2 went onto describe another incident during which you are alleged to have touched and attempted to kiss her. Witness 2 in her written statement said the following:

*'...the Registrant came up behind me and put his hands on my hips. The Registrant said "you really are beautiful [Witness 2], you smell so nice.... I turned around and told the Registrant to get off me. The Registrant did not let go of me and put his lips on my face mask as if to kiss me through my mask. I jumped back and said "what the hell are you doing now stop it".'*

Witness 2 also gave evidence recalling an incident where you changed the TV channel to something with sex scenes. You stated that you had no time to watch TV and suggested that it was the residents who changed the TV channel. Witness 2 stated:

*'I said "really?" and then I asked him if he could be something more appropriate on and then I got up and walked away.'*

Witness 2's response to walk away from this situation is similar to how she dealt with other incidents, that is to say, to make herself busy elsewhere thereby preventing further escalation and minimise contact with you.

During her oral evidence, Witness 2 explained that she did not raise a concern at the time due to her previous negative experiences of reporting sexual assault from a resident to her line manager, where she felt the concern was not managed properly. She also did not want to single herself out again, was concerned about losing her job, and feared that raising it might mean you would get arrested. The panel considered that although it was unlikely that Witness 2 would lose her job by reporting your conduct, it considered that this was a genuine concern and she did not want this to happen.

The panel then heard evidence from Witness 3. In her written statement dated 2 November 2021, confirmed during her oral evidence, Witness 3 stated,



*'...[Witness 1] ...texted me during her shift at around 05:00 to tell me that she was feeling very distressed and asked me to come into work earlier that day to have a chat with her. When I arrived at the Home, [Witness 1] was very tearful and informed me that she felt uncomfortable working with the Registrant as he had been making inappropriate comments and behaving inappropriately towards her on the previous shift...'*

During her oral evidence, Witness 3 stated that in the meeting with Witness 1 on 29 July 2020, she appeared distressed and shaking. Witness 3 comforted Witness 1 and gave her a hug. Furthermore, Witness 3 mentioned that both staff were relieved that you would not be returning to work at the Home. Witness 3 recalls Witness 1 *"breathed a sigh of relief"* when told of this. The panel accepted that witnesses 1 and 2 were genuinely fearful and scared of working with you.

The panel also considered the evidence of Witness 4. In his written statement dated 28 September 2021, Witness 4 stated:

*'...[Witness 1] told me that for the past couple of weeks, the Registrant had been inviting her out on dates, trying to kiss her, asking to take photos with her, and making her feel uncomfortable.'*

The panel took into account your written and oral evidence. You stated that all your interactions with witnesses 1 and 2 were professional and innocent and denied all allegations. You claimed that Witness 1 was not truthful, and additionally, Ms. Ahmed, on your behalf, said that Witness 1 had possible financial motivations as she later sought to bring civil proceedings against the Home. Additionally, Ms Ahmed said there might have been collusion between the two witnesses, as they had spoken to each other about your behaviour towards them, before making a complaint.

The panel found the evidence of witnesses 1 and 2 to be credible, consistent, and cogent. It found that Witness 1, as a senior nurse on duty on the night of the incident, had reasonable grounds to feel uncomfortable about raising the issue with a junior staff member whom she also did not know well. Moreover, there was no evidence that Witness 1 knew Witness 2 outside of their occasional work interactions.

The panel acknowledged that witnesses 1 and 2 discussed their concerns before reporting them to Witness 3. Therefore, the panel did not consider that their complaints could be regarded as having been made independently of each other, or that undue weight could be attached to similarities in their respective accounts of your conduct. Furthermore, the panel did not consider that there was any plausible reason why witnesses 1 and 2 would collude in the making of entirely false allegations against you or make false allegations in the terms they did. The panel considered that if witnesses 1 and 2 were motivated to make false allegations of sexually motivated harassment against you, perhaps with a view to pursuing a financial claim against their employer, they would have done so in more serious terms than they in fact did. Furthermore, the panel could not discern any evidence of Witness 1 and/or 2 previously showing any ill will towards you or any other reason why they should make such serious false allegations against you.

The panel considered that Witness 1 and Witness 2's initial reluctance to speak out about your conduct was entirely consistent with that of individuals who had been subjected to unwanted and inappropriate behaviour from a colleague in the workplace but who, for any number of reasons, are uncertain as to how to respond or whether they should make a formal complaint.

The panel determined that it was only when witnesses 1 and 2 had learnt from each other that they had both been subject to your inappropriate and predatory behaviour that they felt able to support each other and to escalate their concerns with management.

The panel also accepted that Witness 2, having previously raised a concern that she perceived had not been managed properly by her employer, would have felt uncomfortable raising another, not dissimilar, concern. Thus, talking to someone who had had a similar experience to herself would have provided Witness 2 with the courage to escalate it further.

Furthermore, the panel deemed that Witness 1's evidence had been consistent throughout, and her description to Witness 3 during the initial meeting was contemporaneous and consistent.

The panel did not consider that your belief that Witness 1 had fabricated the allegations for financial reasons was credible. It considered that it could not conclude that a claim was malicious or false simply because the complainant had sought civil redress in respect of it. The panel found it reasonable that a person who has been mistreated at work might pursue a legitimate civil claim as a result. Moreover, the panel found the evidence provided by witnesses 3 and 4 corroborative and supportive of the evidence of witnesses 1 and 2.

The panel considered that Witness 2, having previously raised a concern that was not managed properly, might have felt uncomfortable raising another concern. Thus, talking to someone who had experienced the same would provide her with the courage to escalate it further.

Furthermore, the panel concluded that Witness 1's evidence had been consistent throughout, and the statement given by her to Witness 3 was contemporaneous and consistent. It found the evidence of Witness 2 was consistent with Witness 1's, with the panel noting similarities about their experiences, with Witness 2 reporting actual touching that went further than what had happened with Witness 1. Therefore, the panel did not accept your claim that Witness 1 fabricated the allegations for financial reasons.

The panel then went onto consider the circumstances relating to your suspension, the investigation and your eventual dismissal. It reviewed a text message sent to you by Witness 3 on 31 July 2020, which stated:

*"Hi Ahmed, there have been some allegations against you from two staff members regarding inappropriate behaviour towards them. I'm afraid I have to take you off your shifts until this is investigated. Please do not contact any staff members during the investigation."*

The panel noted that you did not respond to this text and you accepted that you had not made any attempt to contact Witness 3, or anyone else, to enquire as to the nature of the allegations that had led to your suspension. The panel considered that this was surprising if, as was your evidence, you had no idea as to what the allegations might relate to. The panel did not accept your explanation that you were merely following the instruction in the text '*not to contact any staff members during the investigation*'. The

panel considered it improbable that you would have thought that this precluded you from seeking to speak to Witness 3, your manager, who had suspended you.

Furthermore, the panel also noted that you were sent three letters on 31 July, 6 August and 14 August 2020 to your address where you resided up until October 2021, but you claimed not to have received any of them. The panel found it unlikely that you did not receive these letters. Given your otherwise unblemished nursing career and faced with serious allegations of inappropriate behaviour at work, it found it unlikely that you would not have made further enquiries. In these circumstances, the panel concluded that the only reasonable explanation for ignoring Witness 3's communications, and your failure to participate in the investigation, was because you knew what the nature of the allegations were, you had no answer to them and/or none that would bear examination at that time.

Having considered all the evidence presented, the panel has determined that Charge 1a is found proved. The panel found that your conduct was harassing, involving unwanted behaviour, including physical touching, based on a protected characteristic, specifically sex. This conduct had the purpose or effect of violating the dignity of Witness 1 and Witness 2, or creating an intimidating, hostile, degrading, humiliating, or offensive environment for them.

Furthermore, the panel concluded that Charge 1b is also found proved. The evidence indicated that the aforementioned conduct was sexually motivated, as it appears you intended to break down sexual and/or physical barriers with Witness 1 and Witness 2 in the hope of increasing your chances of establishing a sexual relationship with one or both of them.

The panel therefore found Charges 1a and 1b proved.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amounted 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, does the panel decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct**

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

Ms Bates-Brownsword invited the panel to take the view that the facts found proved did amount to misconduct and asked it to refer to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision.

Ms Bates-Brownsword identified the specific, relevant standards where your actions breached the Code and therefore amounted to misconduct. She stated that each sub-charge will be evaluated individually and collectively, with the panel first considering the seriousness of the conduct before determining if it amounts to misconduct.

Ms Bates-Brownsword submitted that the conduct outlined in the charges, supported by witness testimonies, is serious and could negatively impact the work environment,

performance, attendance, and delivery of care, as well as trust and confidence in nursing professionals.

Ms Bates-Brownsword directed the panel's attention to the relevant guidance from the NMC 'How We Determine Seriousness' (FTP3), which emphasises the serious effects of discrimination, bullying, harassment, and sexual misconduct on trust and confidence in the nursing profession. The Guidance also advises the panel to ensure that such behaviours have been fully addressed with comprehensive insight, remorse, and a commitment to professional improvement. In this case, Ms Bates-Brownsword submitted that you have shown limited insight into your behaviour.

Ms Bates-Brownsword submitted that the guidance FTP3 stresses that sexual misconduct directly conflicts with NMC standards and values, causing profound and lasting harm. She stated that your conduct demonstrates a failure to treat individuals with kindness, respect, and compassion, particularly in respect of a vulnerable colleague.

Ms Bates-Brownsword submitted that your actions, which included attempts to kiss a colleague, and your angry and intimidating behaviour when rejected by both colleagues, have been likened by the panel to 'gaslighting'. Based on these reasons and the test from the case of *Roylance*, she submitted that your conduct constitutes misconduct, falling far below the standard required of a registered nurse.

Ms Ahmed reminded the panel that you were employed at the Home between April and July 2020 as bank staff, with your employment subject to the Home's demands. Witness 1 was a fellow nurse, and Witness 2 had longer tenure at the Home than you. Ms Ahmed submitted that the NMC has not indicated any subordinate relationship between you and these colleagues. However, harassment of any kind, including sexual harassment, is acknowledged as unacceptable and a breach of the Code.

Ms Ahmed submitted that for Witness 1, there is no evidence of physical contact. The discomfort arose from your attempts to ask her out and establish a friendship outside of

work, occurring only once during a single overnight shift between 24 July and 25 July 2020.

Ms Ahmed submitted regarding Witness 2, that the NMC has not suggested a power imbalance or manipulative behaviour on your part. Witness 2 found your attention and compliments unwelcome. She rebuffed your advances, which included compliments, attempts to cuddle, and attempts to kiss her, making her uncomfortable over a period spanning approximately five shifts between April and July 2020.

Ms Ahmed submitted that there is no evidence of long-term impact from your actions. Although Witness 2 took action regarding a separate incident in 2019, she did not file any police complaints against you, and no lasting impact from your conduct has been evidenced.

### **Submissions on impairment**

Ms Bates-Brownsword 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 uphold proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. She made reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Bates-Brownsword invited the panel to find that your fitness to practise is currently impaired and that your conduct has brought the profession into disrepute. She referred the panel to the NMC Guidance DMA-1 stating that the key question for the panel is whether you can practice kindly, safely, and professionally. Given the repeated behaviour observed by two witnesses, her submission is that the answer to this question is “no”. This behaviour occurred when the witnesses were alone with you, particularly affecting Witness 2, who was vulnerable due to experiencing a sexual assault previously at the Home; a fact about which you were aware.

Ms Bates-Brownsword further submitted that an impairment decision requires consideration of the nature of the concern and the wider public interest. She said the panel must assess whether there is a risk of unwarranted harm to people receiving care in the future and whether there are attitudinal issues such as discriminatory behaviour, including sexual misconduct and harassment. The NMC Code emphasises four themes: prioritizing people, practicing effectively, preserving safety, and promoting professionalism and trust. The fourth theme is especially relevant when considering impairment, as a finding of impairment would underscore the unacceptability of your behaviour and reaffirm proper standards.

Ms Bates-Brownsword submitted that your behaviour created a degrading work environment, violating colleagues' dignity and creating an intimidating, hostile atmosphere, which affects patient care by compromising a fellow professionals' ability to practice safely and professionally. She said your behaviour suggests deep-seated attitudinal issues that pose future risks.

Ms Bates-Brownsword submitted that you have demonstrated limited insight, particularly in responses to questions and that your behaviour was likened by the panel to 'gaslighting'. She stated that the repeated nature of your conduct with two witnesses indicates it is not an isolated incident but was repeated a number of times. She said without a finding of impairment, public confidence in the profession would be undermined. The NMC guidance states that serious concerns, such as sexual misconduct, have lasting impacts, making them harder to rectify.

Referring to the tests set out in *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin), Ms Bates-Brownsword submitted that your behaviour was not easily remediable, had not been remedied, and was not highly unlikely to be repeated. Furthermore, she submitted that your behaviour raises fundamental questions about your ability to uphold the Code. Further, she said the profound seriousness of your conduct necessitates a finding of impairment in order to maintain public confidence in the nursing profession and uphold professional standards.



Ms Ahmed reminded the panel that the incidents occurred four years ago in 2020. She emphasised that you have since demonstrated reflection and safe, professional practice, which is crucial for assessing current impairment. According to NMC guidance, the panel's role is to evaluate if a professional's fitness to practice is currently impaired, focusing on the ability to practice kindly, safely, and professionally, not on punishing past behaviour. She said the past concerns can be addressed if evidence shows they have been remediated.

Ms Ahmed argued that your current conduct raises no concerns, particularly regarding harassment. Citing the case of *Cohen*, she asserted that whilst harassment is improper, is an offence, and is serious, the behaviour is potentially remediable and that the panel should consider that it has been sufficiently remediated and is unlikely to be repeated. The incidents involved a single shift with Witness 1 and about five shifts with Witness 2, with no professional or regulatory concerns before or after 2020. Ms Ahmed said you have continued to practice uninterrupted, showing insight and strengthened practice, supported by testimonials attesting to your professionalism and compassion.

Ms Ahmed highlighted the lack of evidence that your behaviour has been repeated or poses a future risk. She addressed your denial of the facts and your right to defend yourself against serious allegations, noting that denial of the allegations do not preclude a finding of insight.

Ms Ahmed submitted that the panel should consider the broader evidence, including your training and feedback from colleagues and patients, which indicates your ability to practice safely, professionally, and kindly. Ms Ahmed concluded that, given these factors, the panel could reasonably find that your practice is 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:

***'Treat people as individuals and uphold their dignity***

*To achieve this, you must:*

*1.1 treat people with kindness, respect and compassion*

***Work cooperatively***

*To achieve this, you must:*

*8.2 maintain effective communication with colleagues*

*8.5 work with colleagues to preserve the safety of those receiving care*

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

*To achieve this, you must:*

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

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

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

*20.4 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*

*20.6 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 and midwives to aspire to'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel had sight of the NMC Guidance FTP-3 which states:

*'Sexual misconduct is unwelcome behaviour of a sexual nature, or which can reasonably be interpreted as sexual, that degrades, harms, humiliates or intimidates another. It can be physical, verbal or visual. It could be a pattern of behaviour or a single incident.*

*Our Code is clear that nurses, midwives and nursing associates have a responsibility to "uphold the reputation of [their] profession". This involves demonstrating a personal and professional commitment to core values such as integrity and kindness, and protecting vulnerable people from any form of harm and abuse.*

*Sexual misconduct can have a profound and long-lasting impact, on people, including causing physical, emotional and psychological harm. Acts of sexual misconduct directly conflict with the standards and values set out in the Code.'*

The panel was of the view that the FTP-3 is clear that sexual misconduct is particularly serious, as is harassment and misconduct involving predatory behaviour.

The panel found that the nature of your misconduct directly conflicted with many of the standards and values set out in the Code relating to being kind and compassionate when carrying out nursing duties. Additionally, the panel took into consideration your abuse of a position of trust in that Witness 2 was a junior colleague (healthcare assistant) under your supervision.. As such, there was a professional duty upon you as the senior nurse to lead by example, and to role model the values and standards of behaviour expected of a nurse supervising the work of a healthcare assistant. Witness 2 should have been able to trust you, instead she was frightened of you and humiliated by you.

The panel also heard evidence from Witness 2 who described this traumatic experience as having a long lasting impact on her. In your oral evidence, you stated how Witness 2 had spoken to you about her previous experience of a sexual assault at the Home. You went onto recall Witness 2 saying that she could not go into a particular room which had previously been used by the resident who committed this assault against her. Knowing this over a number of shifts you still chose to persistently harass her, touch her, and attempt to kiss her despite her repeated rebuttals. This makes the conduct even more serious. The panel found that knowing of Witness 2's previous experience and ignoring it, compounded the serious nature of the concern.

In the case of Witness 1, the panel heard a submission made on your behalf that it was a single incident occurring during a single shift. However, here too the panel found your behaviour was persistent and repeated during the course of the shift. It was unwanted and predatory in nature, and as such the behaviour illustrated a similar pattern of behaviour with nursing colleagues.

The only evidence of physical contact with Witness 1 was when you tried to take a selfie with her in the treatment room, putting your body up close to hers. The panel determined that sexually motivated physical, emotional, and verbal harassment are as serious as each other and they all have a significant negative impact on the victims. Therefore, the lack of physical contact does not minimise the seriousness of your behaviour or the severity of its' impact on Witness 1.

The panel considered the fact that you ignored the rebuttals from witnesses 1 and 2 and became angry when they rejected you. The effect of this was that they felt humiliated, it caused them to doubt themselves and even to apologise to you. This highlighted the manipulative nature of your behaviour.

The panel therefore concluded that your actions at charges 1a and b individually and collectively fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct, in that fellow practitioners and the general public would find your conduct deplorable.

## Decision and reasons on impairment

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

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

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

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients’ and the public’s trust in the profession. In the panel’s judgment these principles apply equally in relation to registered nurses’ obligations towards their colleagues.

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

*‘In determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession*

*would be undermined if a finding of impairment were not made in the particular circumstances.'*

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

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

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

The panel determined that limbs a-c of Dame Janet Smith's test of impairment are engaged in this case.

The panel determined that the public quite reasonably expects healthcare professionals to provide care without engaging in intimidating, degrading, humiliating or any form of harassing behaviour. This expectation extends to professional relationships with colleagues, and is especially problematic in cases involving allegations of sexual harassment or sexually motivated behaviour at work and which will often involve the commission of a criminal offence. The presence of such conduct creates an unhealthy,

unfair and unsafe work environment. This may prevent nurses providing safe delivery of care to patients and will undermine public confidence and trust in the nursing profession.

The panel is of the view that there is a risk of repetition based on the fact that you displayed your sexually motivated behaviour and sexual harassment repeatedly during one shift with Witness 1 and over the course of approximately five shifts spanning a two to three month period with Witness 2. This fact coupled with, as the panel found, an absence of meaningful insight, remorse or remediation created, in the panel's view, a real risk of repetition. Taking account of the nature of the misconduct and the circumstances in which it occurred, the panel was unable to satisfy itself you have continued to practise for approximately four years since the incidents without any further complaints was sufficient to allay its' concerns regarding the risk of repetition.

The panel accepted that you have engaged with the regulatory investigation and process and provided positive testimonials reflecting your ability to continue to practice safely and professionally over the past four years.

The panel referred to the NMC Guidance on impairment (reference DMA-1) and considered whether a professional can practice kindly, safely, and professionally. The panel found insufficient evidence demonstrating that you have addressed the concerns, expressed remorse, or shown meaningful insight into your behaviour.

The panel bore in mind that your continued denial of the allegations did not preclude the possibility of insight although it would inevitably be more difficult to demonstrate. However, even allowing for the constraints of your continued denial, it found little evidence of meaningful reflection on the seriousness of the actions alleged against or their potential impact on others.

The panel had particular regard to the reflection in your response bundle which refers to the upset that these allegations would *'tarnish my reputation ...'*. In that document you stated the impact of the allegations on you personally and how you have *'been reflecting on my practice and questioning on how I can prevent future allegations from*

*occurring.*' Additionally, in your oral evidence, when asked you stated that you undertook the professional boundaries course in an attempt to explore whether colleagues misinterpreted your personality gestures. As such, your reflections have only shown regard for the impact of the allegations on you rather than the lasting impact of your behaviour on your colleagues, the work environment and the reputation of the nursing profession.

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.

Although there is no evidence of a direct risk of harm to patients, the nature of the misconduct has been shown to create an unsafe work environment, which indirectly could cause harm by preventing nurses working effectively and safely. Having considered all of the above, the panel determined that your fitness to practise is currently impaired on the grounds of public protection and also in the wider public interest.

## **Sanction**

The panel has considered this case very carefully and has arrived at a very finely balanced decision. This cannot be emphasised enough to you. It is something on which the panel has deliberated at length, and will elaborate on further. It has decided to make a suspension order for a period of 12 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**



Ms Bates-Brownsword informed the panel that in the Notice of Hearing, dated 28 May 2024, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired.

Ms Bates-Brownsword submitted that in determining the appropriate sanction, the panel must consider the public interest, which includes protecting the public, maintaining confidence in the profession, and upholding proper standards of conduct and behaviour.

Ms Bates-Brownsword directed the panel's attention to two significant cases and submitted that they should guide the panel's decision. The first, *Kambernova v NMC* [2016] EWHC 2955 (Admin), clarifies that while sanctions are not primarily punitive, they can have a punitive effect and must be proportionate. The second, *Bolton v Law Society* [1994] 1 WLR, which emphasises that the reputation of the profession is more important than the fortunes of any individual member.

Ms Bates-Brownsword submitted that the panel should take into account several aggravating factors, including attitudinal and professional concerns, failures related to fundamental aspects of nursing practice, emotional and psychological harm caused to colleagues, a pattern of repeated misconduct, colleagues being in a vulnerable position, and a lack of meaningful insight and remorse. She said the mitigating factors include the absence of repeated behaviour since, positive testimonials, and an unblemished record with the NMC prior to the relevant events.

Ms Bates-Brownsword stated that a striking off order is appropriate due to your inappropriate conduct, harassment, and sexually motivated behaviour, which fell significantly below the expected standards. She said this conduct violated colleagues' dignity and caused them emotional and psychological distress.

Ms Bates-Brownsword submitted that taking no further action is inappropriate due to the seriousness of the case and caution order is insufficient despite positive employment references. She further stated that the guidance states that a conditions of practice order is only suitable when there is no evidence of deep-seated attitudinal or personality issues. She stated that whilst no harm had been caused to patients, the nature of the misconduct creates an environment which makes it difficult for teams to

work effectively and may prevent delivery of safe care and undermine trust in the nursing profession.

Ms Bates-Brownsword submitted that a suspension order may be appropriate where the misconduct is not fundamentally incompatible with being a nurse and that the overarching objective is satisfied without permanent removal. She further submitted that your conduct is incompatible with being a registered professional and referred the panel to the NMC guidance SAN-3d.

Ms Bates-Brownsword submitted that a striking off order is the most suitable sanction. She said the regulatory concerns raise fundamental questions about your professionalism and public confidence in nurses can only be maintained if you are removed from the NMC register. A striking off order will also mark the seriousness of the misconduct and its impact on professional standards and public trust. She referred the panel to the NMC guidance FTP-3a and stated that sexual misconduct is an example of a serious concern that is difficult to put right. She therefore submitted that a striking off order is necessary to protect the public and promote public confidence and uphold professional standards.

Ms Ahmed submitted to the panel that proportionality is a key feature when weighing up the evidence against the overarching objective which is to protect the public and uphold the reputation of the nursing profession. She further submitted that sanctions are not intended to punish past behaviour.

Ms Ahmed reminded the panel that it is tasked with determining the appropriate sanction for you and that you are charged with harassment involving two women over approximately five shifts, including overnight shifts. Although no harm was caused to patients, she accepted that your behaviour created a hostile environment for staff, raising concerns about the risk of repetition.

Ms Ahmed said the panel must weigh the severity of your actions, which created a degrading and humiliating environment for your colleagues, against your overall body of work. She said numerous female colleagues and patients have provided testimonials

highlighting your support, positive influence, and compassionate care. This demonstrates that you are a competent and dedicated nurse.

Ms Ahmed said the NMC has highlighted your lack of meaningful insight and remorse as an aggravating factor, but also acknowledges that insight and reflection can be mitigating factors. She said, whilst your reflection process is incomplete, you have shown initial steps toward understanding your behaviour and your cooperation with the NMC investigation since 2020 should also be considered a mitigating factor.

Ms Ahmed submitted that your previously unblemished record is another valid mitigating feature. She said remediating past behaviour, particularly serious misconduct, is challenging, especially when you have been defending yourself. Ms Ahmed said the panel must balance these considerations when determining the ultimate sanction.

Ms Ahmed stated that the main concerns for the panel include the inadequacy of your remediation, reflection, and insight. However, positive testimonials indicate your significant contributions to healthcare, particularly in caring for vulnerable individuals. Ms Ahmed submitted that the panel should balance these positive aspects against the seriousness of the findings, with the goal of ensuring future compliance with professional standards rather than punishing past behaviour. She said that the proceedings have been a salutary lesson for you and that you should be given an opportunity to reflect on them.

Ms Ahmed submitted that the panel should start with the least restrictive sanctions and justify why lesser sanctions may not be appropriate. She said, while the NMC has suggested a striking off order, other sanctions, such as a suspension order, could be a proportionate response.

Ms Ahmed submitted that a suspension order allows for temporary removal from the NMC register, highlighting the need for further reflection and remediation, and sends a clear message that harassment is unacceptable. Further, she said it also provides you with the opportunity to address your behaviour.

In conclusion, Ms Ahmed submitted that a strike off order should only be given when no other sanction will suffice. She said a suspension order offers a balanced approach, giving you the chance for further reflection and learning. She said the panel must carefully consider all available sanctions and the principle of proportionality to determine the most appropriate outcome.

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:

- Your misconduct undermined the core values and principles of the nursing profession.
- The absence of reflection (notwithstanding your continued denial of the allegations), any genuine remorse for how your actions might have impacted on others, indicates a significant lack of meaningful insight.
- As a senior nurse at the Home, you were in a position of leadership, are expected to be a role model, and in this respect you failed to facilitate a professional, safe and collaborative working environment.
- Your misconduct was repeated over the course of one shift with one witness and over approximately five shifts for another.
- Despite undertaking a Professional Boundaries course, you failed to sufficiently demonstrate how your proven conduct (which you continue to deny) has impacted on others.

- You still have underlining attitudinal issues that need addressing, in particular that part of your behaviour that is manipulative. This attitude reflects a concerning mindset towards women.

The panel also took into account the following mitigating features:

- There has been no repetition of the misconduct in the four years since the relevant events, during which time you have been in unrestricted practice.
- Positive testimonials speak of you providing kind and compassionate care to patients in a variety of clinical settings.
- You have not previously or since been referred to the NMC.

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

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

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical, workable or measurable conditions that could be formulated, given the nature of the concerns in this case. There are aspects of the misconduct identified in your case that in the panel's view could ultimately be addressed through enhanced training. However, in the absence of sufficient insight, the panel is of the view that enhanced training alone would fail to provide adequate protection against identified

risks with your practice in the future; especially in light of its concerns regarding underlying attitudinal issues.

The panel has described your behaviour in different ways for example as, gaslighting, predatory, harassing, degrading, humiliating, and violating dignity, creating a hostile work environment. Colleagues were frightened of you, and what should have been a collaborative working environment became unhealthy and unsafe due to your conduct. The panel was of the view that these cannot be adequately addressed with conditions that might for example rely on training; especially so in your case, who has yet to demonstrate any evidence of genuine remorse or meaningful insight.

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

The panel did not consider that your misconduct could be regarded as a single incident. It acknowledged, however, that the relevant events of misconduct were committed over a period of weeks within the context of many years unrestricted practice.

The panel determined that the persistent nature of your behaviour and your responses to colleagues when challenged indicate attitudinal concerns, such as those described above. However, in all the circumstances, the panel was of the view that, with genuine commitment and serious application, meaningful insight and much deeper reflection, these concerns could potentially be remediable and lead you to practice safely, kindly and professionally.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel found ten breaches of the Code, which taken together meant that your behaviour fell significantly short of the standard expected of a registered nurse, many of which are related to professionalism and trust, and in upholding the reputation of the profession. The panel was therefore concerned that your actions were a serious breach of the fundamental tenets of the profession and as such might raise questions as to whether your actions are fundamentally incompatible with you remaining on the NMC register.

The panel balanced this, however, with the evidence that during the past four years since these concerns were raised, you have practised unrestricted without further concern during which time you have demonstrated that you are capable of safe practice. Furthermore, the panel having found that your misconduct is capable of remediation, concluded that a striking-off order would, in all the circumstances, be disproportionate. Accordingly, the panel determined to impose a suspension order.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a suspension order. Given the seriousness of your misconduct, the panel considered that you should be suspended for the maximum period of 12 months with a review.

The panel considered that this order was necessary to protect the public and 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.

Any future panel reviewing this case would be assisted by:

- Your continued engagement with the NMC, including your attendance at the next review of this order;
- A detailed reflective statement which properly addresses the misconduct identified by this panel in its determination; notably the concerns that relate to attitudes towards and behaviour with female colleagues;

- Evidence of any specific equality, diversity and inclusion training which addresses more directly the misconduct identified by this panel, and some meaningful reflection on what you have learnt as a result of this training and how it may impact your practice going forward; and
- If you are in employment, references from a senior colleague in that organisation who is able to provide testimony based on observation of you, in particular how well you have addressed the underlying concerns that were brought before this panel.

This decision will be confirmed to you in writing.

### **Interim order**

As the substantive 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 is in your own interests until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

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

The panel determined of its own volition to impose an interim suspension order for a period of 18 months to allow for any appeal that may be made. The panel considered that the finding of misconduct was serious and that there was a risk of repetition. In these circumstances, the panel considered that an interim order was necessary for the protection of the members of the public and was otherwise in the public interest.

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 potential appeal of this order that you may make.



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.