

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

**Substantive Hearing
Tuesday 11 June 2024 – Monday 24 June 2024**

Virtual Hearing

Name of Registrant: **Clint Agcopra**

NMC PIN 20K0196O

Part(s) of the register: Nurses part of the register- Sub part 1
RN1: Adult nurse, level 1 (6 November 2020)

Relevant Location: Birmingham

Type of case: Misconduct

Panel members: Anthony Griffin (Chair, lay member)
Melanie Lumbers (Registrant member)
Seamus Magee (Lay member)

Legal Assessor: Charlene Bernard

Hearings Coordinator: Jack Dickens

Nursing and Midwifery Council: Represented by Rebecca Steels, Case
Presenter

Mr Agcopra: Present and represented by Dan Santos-Costa,
of Counsel, instructed by Royal College of
Nursing ('RCN')
Mr Agcopra was absent on Thursday 20 June
2024

Facts proved: Charges 1a, 1b, 1c, 2 (in its entirety)

Fitness to practise: Impaired

Sanction: Striking-Off Order

Interim order:

Interim Suspension Order (18 months)

Details of charge:

That you, a registered nurse;

1. Between around 24 November 2021 and 29 November 2021, after being informed and/or believing that Person A was [PRIVATE];
 - a. Engaged in inappropriate electronic communication with Person A, referencing sexual activity;
 - b. Asked Person A to send photographs of an intimate nature;
 - c. Suggested meeting with Person A.
2. Your conduct at Charges 1a) and/or 1b) and/or 1c) above was sexually motivated in that it was in pursuit of a sexual relationship with Person A.

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

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

At the outset of the hearing, Mr Santos-Costa, on your behalf, made an application pursuant to Rule 19 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ('the Rules'). He submitted that the hearing should be held wholly in private on the basis of the sensitive nature of the allegation and to [PRIVATE]. Mr Santos-Costa submitted that in the alternative a ruling of a partly private hearing is made when [PRIVATE].

Ms Steels, on behalf of the Nursing and Midwifery Council ('NMC'), indicated that she opposed the whole hearing being in private, yet supported the application for a partly

private hearing when [PRIVATE]. She submitted that there is a public interest in seeing the regulator fulfilling its obligations to protect the public. [PRIVATE]

The legal assessor reminded the panel that while Rule 19(1) of the Rules provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) of the Rules 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 considered that the hearing to be wholly in private is not in the interests of justice [PRIVATE]. Therefore, it determined to go into private session when [PRIVATE] are discussed and is justified in protecting your interests and those of a third party.

Decisions and Reasons on Abuse of Process, or in the alternative Exclusion of Evidence, Application.

An application for a stay in proceedings due to an abuse of process, or in the alternative exclusion of evidence, was made by Mr Santos-Costa on your behalf. The panel considered this application carefully at the start of the hearing.

In reaching its decision, the panel considered the lengthy and helpful skeleton arguments that were provided by both parties ahead of the hearing, which included relevant case law and authorities. The panel considered the oral submissions of Mr Santos-Costa and Ms Steels, which, in the main, mirrored their skeleton arguments, and accepted the advice of the legal assessor. It also bore in mind the relevant guidance issued by the NMC to panels and the overarching objective of the NMC which is contained in Article 3 of the Nursing and Midwifery Order 2001 ('the Order').

The panel noted that this application has been brought in line with the case of *Maxwell* [2011] UKSC 48, which stated:

'It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair

trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will "offend the court's sense of justice and propriety" (per Lord Lowry in R v Horseferry Road Magistrates' Court, Ex p Bennett [1994] 1 AC 42 , 74G) or will "undermine public confidence in the criminal justice system and bring it into disrepute" (per Lord Steyn in R v Latif and Shahzad [1996] 1 WLR 104 , 112F'

It further noted that there is no overarching definition of undermining the public confidence and that the concepts are to be applied in case specific contexts.

The panel considered the application in four stages:

- (i) it considered whether, as a result of the disclosure of information by West Midlands Police ('WMP') to the NMC breached your right to a private and family life under Article 8 of the European Convention on Human Rights ('ECHR'); in the event that it did, whether this was an abuse of process.
 - (ii) [PRIVATE]
 - (iii) whether the conduct of CIM in obtaining the evidence before the panel is such that to rely upon this material would be an affront to the Fitness to Practise Committees sense of justice and propriety; in the event that it did, whether this was an abuse of process.
 - (iv) whether, in light of its findings, a stay of proceedings is necessary, or in the alternative, whether exclusion of evidence would be appropriate.
- (i) a breach of your rights under Article 8 of the ECHR by the disclosure of information by WMP:

The panel first turned to submissions from Mr Santos-Costa. He submitted that these proceedings ought to be stayed in order to preserve the integrity of the Fitness to Practise Committee due to the fact that (i) the WMP actions unjustifiably breached the Registrant's Article 8 rights, and (ii) the evidence obtained by the vigilante group is irreparably tainted by their own conduct. Further he submitted that, in the alternative, the 'confession' evidence is so unreliable, that it would be unfair for it to be admitted and, therefore, under Rule 31 of the Rules, it ought to be excluded.

Mr Santos-Costa submitted that your rights under Article 8 were engaged and that interference was not justified in these circumstances. He distinguished the case of *Sutherland v HM Advocate (Scotland)* [2020] UKSC 32 submitting that the appellant in that case lost the protection of their rights under Article 8 of the ECHR as they were convicted by a criminal court. It was submitted by Mr Santos-Costa that the communication in this case is not such that you should "lose" your Article 8 protection, and relied on the following points in support of the submission:

- a. The Registrant's messages are not in and of themselves criminal. The messages are only criminal if the Registrant knew that the person that he was corresponding with [PRIVATE], otherwise the messages constitute an entirely lawful, albeit sexual, conversation between two adults.*
- b. The Registrant has advanced a defence in the prepared statement provided to the Police. It is submitted that the Registrant's defence is capable of belief. The conversation started on [PRIVATE], an adult dating website. [PRIVATE] is well known for being a forum in which perfectly legal, albeit sexually explicit, conversations often take place. The photographs used by the 'decoy profile' were of an eighteen-year-old. While a meet was suggested by the Registrant, no meeting was arranged. In fact, communication was stopped by the Registrant.*
- c. No sexually explicit photographs were sent by the Registrant after the 'age reveal' by the decoy.*
- d. The 'confession' evidence obtained by the PHG (Paedophile Hunter Group) it is submitted, was at the very least obtained in the circumstances which might render the confession unreliable.*

e. The West Midlands Police decided to take no further action.'

Mr Santos-Costa further submitted that a reasonable expectation of privacy should exist following WMP's decision to take no further action; especially against the backdrop of your prepared statement to WMP which, it is submitted, is capable of belief.

He further submitted that, in light of the above, your rights under Article 8 of the ECHR outweighs the competing interest of disclosure of the material and was therefore an unjustified interference. He said that the alleged conduct is inflammatory and when assessed objectively you are not a danger to the public as there is no criminality established and the link between the allegations and your practice as a nurse is tenuous.

Following Mr Santos-Costa's submissions, the panel invited Ms Steels to make submissions. Ms Steels drew the panel's attention to the case of *R v Norman* [2016] EWCA Crim 1564, at paragraph 23, which sets out a two-stage approach:

'First it must be determined whether and in what respects the prosecutorial authorities have been guilty of misconduct. Secondly it must be determined whether such misconduct justifies staying the proceedings as an abuse. This second stage requires an evaluation which weighs in the balance the public interest in ensuring that those charged with crimes should be tried against the competing public interest in maintaining confidence in the criminal justice system and not giving the impression that the end will always be treated as justifying any means. How the discretion will be exercised will depend upon the particular circumstances of each case, including such factors as the seriousness of the violation of the accused's rights; whether the police have acted in bad faith or maliciously; whether the misconduct was committed in circumstances of urgency, emergency or necessity; the availability of a sanction against the person(s) responsible for the misconduct; and the seriousness of the offence with which the accused is charged. These are merely examples of factors which may be relevant. Each case is fact specific.'

She stated in your case, the prosecutorial authority is the NMC and submitted that no misconduct has been committed by the NMC. Ms Steels submitted that WMP acted properly in providing this information to the NMC, which the NMC had the power to require and that there is evidently a pressing social need for the police to act collaboratively and with cooperation with professional regulatory bodies to enable the full and thorough investigation of concerns by those bodies.

Ms Steels submitted that it is not accepted that your rights under Article 8 of the ECHR are engaged and said that the case of *Sutherland* concerns conduct of the same type and therefore there can be no expectation of a right to a private life in respect of your conduct. She further submitted that there can be no expectation of privacy in respect of such material as involved in this case by a registered nurse who, when registering as such, undertakes to abide by the regulatory standards and codes of practice inherent within such registration. Ms Steels submitted that there is no requirement that misconduct can only be established if it would amount to a criminal offence were it to be prosecuted.

In response to Mr Santos-Costa's submission that the allegations are, at best, tenuously linked to your practice as a nurse, Ms Steels submitted that it is wrong to elide the concepts of "clinical practice" and "practice as a nurse" and the latter is properly wider and can encompass conduct in a professional's private life.

Ms Steels submitted that, if the panel were to determine that your rights under Article 8 of the ECHR are engaged, any interference with the Article 8 rights was justified as it is accordance with the law, namely the Order. Further, she submitted that any infringement does not offend the tribunal's sense of propriety and justice to such a degree that it outweighs the public interest in the holding of the proceedings and upholding the NMC's overriding objective to protect the public.

Following Ms Steels' submissions Mr Santos-Costa was afforded the opportunity to reply to any issues arising from her submissions, and he provided clarification regarding the NMC guidance.

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

The panel considered Article 8 of the European Convention on Human Rights ('ECHR') when reaching its decision. Article 8 of the ECHR states the following:

'(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

This means that Article 8 confers a qualified right which means that it may be interfered with when such interference is in accordance with the law and necessary in pursuing a legitimate aim (of which are outlined in the subparagraph two).

The panel first considered whether the material which was subject to the disclosure by WMP (a public authority), namely, the messages on [PRIVATE] and [PRIVATE], and the video footage taken by CIM, was material that falls within the scope of Article 8(1). The panel noted the judgment of *BC v Chief Constable, Police Scotland* 2021 S.C. 265, paragraph 87 in which Lord Bannantyne stated:

'It is uncontentious to observe that correspondence, including electronic correspondence, is within the area of private life which is protected by Art 8 ECHR , or that such protection may be afforded even within the context of an individual's professional life. The Lord Ordinary considered that the general characteristics of WhatsApp were such that, compared with other social media platforms, an ordinary member of the public using it could have a reasonable expectation of privacy.'

Therefore, the panel was satisfied that the [PRIVATE] and [PRIVATE] messages in your case fall within the scope of Article 8(1) of the ECHR. In respect of the video footage, the panel determined that it also falls within the scope of Article 8(1) of the ECHR as it shows the exterior of your house.

The panel first considered whether the alleged conduct is capable of respect under Article 8 of the ECHR. It turned to the case of *Sutherland* and took note of paragraph 32 of Lord Sales' judgment:

'In my view, it is implicit in this formulation that the features of his private life and his correspondence for which protection is claimed under article 8(1) should be capable of respect within the scheme of values which the ECHR exists to protect and promote.'

Following the precedent in *Sutherland* the panel determined that the alleged conduct could be capable of respect.

The panel then went on to consider whether the disclosure (interference) of this material by WMP to the NMC was justified in accordance with Article 8(2) of the ECHR.

The panel then considered whether an expectation of privacy existed in light of the nature of the material. The panel noted the facts in the case of *Sutherland* outlined at paragraph 3 of the judgment:

'An adult member of a PH group, acting as a decoy, created a fake profile on the Grindr dating application using a photograph of a boy aged about 13 years old as a lure to attract communications from persons with a sexual interest in children. The appellant entered into communication with the decoy, who stated in the course of exchanges first on Grindr and continued on the WhatsApp messaging platform that he was 13 years old. In the belief that the decoy was a child, the appellant sent him a picture of his erect penis. The appellant also sent him messages to arrange a

meeting. When the appellant arrived for the meeting, he was confronted by members of the decoy's PH group who remained with him until the police arrived.'

The panel were of the view that the allegations in your case, notwithstanding the absence of a criminal conviction, are similar to those in *Sutherland*, and thus a reasonable expectation of privacy does not exist.

Furthermore, it considered paragraph 60 of *Sutherland*, in which Lord Sales said:

'Once evidence of the messages had been passed to the police by the decoy, the appellant had no reasonable expectation that the police should treat them as confidential, so that they should not make use of that evidence to investigate whether a crime had been committed. Under the scheme of the ECHR, they were bound to do so in order to safeguard children. Nor did the appellant have any reasonable expectation that the respondent should treat the messages as confidential, so that they should not make use of that evidence in bringing a prosecution in respect of his criminal activity. Again, under the scheme of the ECHR, the possibility of effective prosecution of serious crimes committed in relation to children is part of the regime of deterrence which a state is required to have in place to protect them. Open justice is an important principle in domestic law and under the ECHR, so a defendant in the position of the appellant can have no reasonable expectation that a prosecution in which reliance is placed on material of this kind will take place in anything other than a public forum.'

In light of this, the panel determined that the alleged conduct is such that it could interfere with the rights and freedoms of others and the health and moral of others (legitimate aims in Article 8(2) of the ECHR for interference), and therefore a reasonable expectation of privacy cannot be said to exist.

In addition, the panel considered that just because no further action ('NFA') was taken by WMP, this does not preclude regulatory proceedings and reliance on such information. This is consistent with guidance DMA-6 issued by the NMC which states:

'The panel must not use the findings of another body as a substitute for reaching its own decision on the issues before it. The judgment or findings of another decision-maker on the issues before the panel are not relevant to the panel's decision-making'.

It also noted the difference in standard of proof between the lower standard in regulatory proceedings (being the balance of probabilities) and higher standard in criminal proceedings (being beyond all reasonable doubt). The panel considered Article 25(1) of the Order provides that:

'For the purpose of assisting the Council or any of its Practice Committees, the Registrar or any other officer of the Council in carrying out functions in respect of fitness to practise, a person authorised by the Council may require any person (other than the person concerned) who in his opinion is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document.'

In light of this, the panel were of the view that at the time of WMP's disclosure there was a pressing social need for the material to be disclosed to your regulator in accordance with the NMC Order and Rules (the law), and the relevant case law of *R (on the application of L)(FC) v Commissioner of Police of the Metropolis* [2009] UKSC 3. In considering whether it was necessary and applying principles of proportionality, it balanced this against your rights under Article 8 of the ECHR but determined that the pressing social need outweighed your rights.

For these reasons, the panel concluded that the disclosure (interference) of the information by WMP to the NMC was in accordance with the law (the Order) and was

necessary and justified '[...] for the protection of health or morals, or for the protection of the rights and freedoms of others', and to uphold the statutory functions of the NMC. Having come to this conclusion, the panel determined that there is no abuse of process and there is no infringement of your rights under Article 8 of the ECHR.

(ii) [PRIVATE]

Conclusion of the Article 8 issues:

The panel therefore concluded, for the reasons stated above, that although your rights under Article 8 of the ECHR were engaged, the interference with your right by the WMP in their disclosure of this information to your regulator (the NMC) was justified and lawful, and therefore there is no abuse of process.

(iii) whether the conduct of CIM in the obtaining of the evidence before the panel is such that to rely upon this material would be an affront to the Fitness to Practise Committees sense of justice and propriety

Mr Santos-Costa submitted that:

'the actions of the vigilante group are such, that reliance upon the material provided would affront the Tribunal's sense of justice and propriety. That submission is made for the following reasons:

a. The PHG effectively entrapped the Registrant. The PHG used a photograph of an 18- year-old boy. The conversation started on an adult dating website. It was the 'decoy' that suggested moving to [PRIVATE]. The 'decoy' also asked for photos from the Registrant. The PHG turned up at the Registrant's house uninvited because communication had ceased. It is submitted that this goes beyond providing an unexceptional opportunity to commit a crime and constitutes what might be considered 'random virtue testing' or enticing criminality.

- b. The witness statement was clearly drafted in the absence of a police officer as it was provided to the police upon their arrival. It is clear, in my submission, that parts of the statement were drafted on different occasions due to the inconsistency of the handwriting.*
- c. The evidence provided consists simply of screenshots of messages taken by the PHG. They messages are not clear, and it is not clear when the messages were sent. Ostensibly, the PHG did not provide the full [PRIVATE] and [PRIVATE] conversation.*
- d. The conduct of the PHG when they attended the Registrant's property was deplorable. It is submitted that they coerced a confession and assaulted the Registrant. He was pinned to the ground under the guise of a s.24A citizen's arrest. The citizen's arrest, it is submitted, was not lawful as the force used was not reasonable. His 'confession' was publicly shared to Facebook, with his name and profession exposed on social media.*
- e. [PRIVATE].'*

Ms Steels submitted that the conduct of CIM does not act to render the evidence provided by them to the WMP, and in turn to the NMC, so tainted that its use would offend the tribunal's sense of propriety and justice.

She submitted that the evidence of what you can be heard to be saying in the video footage when confronted by the CIM is plainly relevant. Ms Steels further submitted that it is fair to admit the video footage as it can assist the Panel in its consideration of the evidence at fact finding stage and that you have the opportunity to explain the conduct to the panel for its consideration in determining the facts of the case.

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

The panel considered all the submissions carefully and looked at the evidence, including the video footage of CIM's interaction with you.

The panel first considered whether you had been entrapped by CIM as a result of their conduct. In reaching its decision it considered the ordinary Cambridge English Dictionary definition of entrapment:

'the act of causing someone to do something they would not usually do by tricking them'

The panel considered the screenshots of the alleged conversations between you and Person A and determined that these conversations appeared to be voluntary. It was of the view that there is no indication that CIM's conduct tricked you into doing something that you would not usually do, i.e., messaging another individual on a dating application or WhatsApp. It next considered the video footage of the interaction between you and CIM. Although the interaction escalates, the panel were of the view that the interaction between you appears to be voluntary in the first instance as your manner at the door appears to be uncontentious. The panel concluded that the conduct of CIM does not affect the reliability of the evidence and thus, it would be safe to admit as evidence for consideration by the panel later in the proceedings. In any event, these are matters which ought to be properly tested at the fact-finding stage and for you to have the opportunity to explain the alleged conduct.

The panel next considered whether the alleged 'confession' that can be heard in the video footage is such that it was elicited by the conduct of CIM. As noted above the video footage shows the interaction escalating, however the 'confession' and other evidence relied on occurs before this escalation. Therefore, the panel were of the view that the conduct of CIM does not appear to materially affect the reliability of this evidence and it would be safe to admit as evidence for consideration by the panel later in the proceedings.

In any event the panel were aware of the relevant case law of *Idenburg v GMC* (2000) UKPC 13 which makes it clear that

'the admissibility of the evidence does not depend upon its having been legally obtained.'

It noted that this law was recently affirmed in *Ras Al Khaimah Investment Authority v Azima* [2021] EWCA Civ 349:

'the general rule of English law is that evidence is admissible if it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained.'

It therefore considered that, although the interaction between you and CIM appears to become heated, the admissibility of the evidence is not tainted by the conduct of CIM and when balanced against all the other evidence before the panel, it appears consistent. Therefore, it would be safe to admit it as evidence for consideration by the panel later in the proceedings.

For all these reasons the panel does not find that there was an abuse of process in relation to this evidence nor is it irreparably tainted by CIM's conduct. Likewise, it does not consider that the reliance on this information would affront its sense of justice and propriety should it be admitted.

(iv) in light of the above findings, should a stay of proceedings or the exclusion of evidence be granted.

Mr Santos-Costa submitted that a stay is the appropriate remedy to preserve the integrity of the NMC Fitness to Practise Committee in light of these infringements, and to ensure you receive a fair hearing. He submitted that to continue in light of the above would offend the tribunal's sense of propriety and justice and could be seen as adopting an approach that the end justifies the means.

In the alternative Mr Santos-Costa submitted that the evidence (the video footage) of your 'confession' is manifestly prejudicial and should be excluded under Rule 31 of the Rules to ensure you receive a fair hearing. He submitted that this was necessary as it may have been obtained through oppression, and/or in consequence of the CIM's actions which, he says, was likely, in the circumstances existing at the time, to render unreliable any confession which might have been made by you.

Ms Steels submitted that neither a stay of proceedings or the exclusion of evidence is necessary nor appropriate in this case. She said that the panel will, in due course, weigh up all the evidence when determining facts and therefore relevant evidence should be before them and not be excluded under Rule 31 of the Rules. She said that it would not be unfair to admit it when the only person who can speak to your motivations is yourself and that you are in attendance to give any explanation both for sending the messages and for your comments made in the video footage should you wish to do so. The panel will then be in a position to evaluate all the evidence so as to make a factual determination on the allegations at the relevant time.

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

In considering a stay of proceedings the panel were aware of the relevant case law and the NMC's guidance DMA-4 that states '*The panel will only use its power to stop all or part of a case due to delay, in exceptional circumstances.*'

For the reasons given above at point one to three, the panel determined that no abuse of process had taken place. It concluded that the interference with your rights under Article 8 of the ECHR were justified and that the conduct of CIM were not deplorable to the extent that reliance on the evidence before the panel would affront its sense of justice and propriety. Therefore, the application to stay the proceedings is unsuccessful.

The panel next considered whether, in light of its findings it would be fair to admit the evidence of the video footage. It had regard to Rule 31(1) of the Rules, which states:

‘Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place).’

The panel determined that the evidence is relevant to the charges before the panel. It further determined that it would be fair to admit the evidence as there is an opportunity for you to challenge the evidence and give your own evidence in reply to the charges which then would be considered and weighed by the panel when reaching a decision on facts.

For these reasons, in addition to the reasons given above at points one to three, the panel determined that it would not be appropriate to exclude the evidence under Rule 31 of the Rules.

Conclusion

Having carefully considered this application the panel determined, for the reasons given above, to refuse the applications.

Decision and reasons on application to admit hearsay evidence.

The panel heard an application made by Ms Steels under Rule 31 of the Rules to allow the written statement of Person A, dated 28 November 2021, to be admitted into evidence in light of Person A not being called to give evidence by the NMC. She stated that the other evidence, namely the screenshots of the messages and video footage, is admissible in and of itself as the witness who is being called by the NMC can produce these exhibits.

Ms Steels outlined the legal position regarding admissibility of evidence, including Rule 31 of the Rules and the relevant case law. She stated that the panel will adopt a two-stage process: firstly whether the evidence is admissible, ensuring consideration of fairness and relevance, and then, in the event it is admitted and having heard all the evidence, the

weight attributable to it. In considering the fairness of admitting the evidence under Rule 31 of the Rules, Ms Steels invited the panel to consider all the circumstances of the case. She said that in line with the case law, the panel should consider whether the witness statement of Person A is sole and decisive evidence. Ms Steels submitted that it is not sole and decisive as corroborating and consistent evidence, namely the messages and the video footage, is also before the panel.

Ms Steels informed the panel that Person A would not be attending the hearing as the identity of Person A was not disclosed by WMP and thus the NMC could not take steps to secure their attendance. She submitted that it is clear from the video footage and its consistency with Person A's statement that, although the person speaking in the video cannot be seen, it is Person A speaking to you in the video footage. She submitted this because the person in the video that can be heard speaking to you is effectively putting messages to you for your response and it is clear from the language used that it is the same person.

Ms Steels distinguished the case of *White v Nursing and Midwifery Council* [2014] EWCA 520 (Admin). She submitted that the non-attendance of Person A does not inhibit you in the same way as it did the Registrant in that case. She said the issue is not why Person A is critical of your actions and whether you sent the messages, but rather your belief of the age of the decoy, and your motivations for sending the messages, and thus of importance is your evidence and not the cross-examination of Person A. She stated that Person A's statement simply provides a consistent narration of the underlying material.

Ms Steels submitted that in all the circumstances of this case it is clear this statement was prepared for criminal proceedings and complies with the requirements of witness statements for those proceedings. She submitted that there is no evidence before the panel to suggest that the witness statement is fabricated or that this is a false allegation. She stated that although you would not have the opportunity to cross-examine Person A, there are safeguards in place to ensure fairness of these proceedings, namely that the panel will weigh up all the evidence at the conclusion of the fact-finding stage.

Therefore, Ms Steels submitted that Person A's statement ought to be admitted, as it is plainly relevant to the issues before the panel, and it is therefore fair to admit this as evidence for the panel to consider.

In reply, Mr Santos-Costa cautioned the panel on relying on anonymous hearsay evidence and submitted that Person A's statement should not be admitted as evidence, or in the alternative parts of the statement should be excluded.

Mr Santos-Costa submitted that Person A's statement is sole and decisive as the other evidence in this case, namely the messages and the video footage, is exhibited by Person A; therefore, Person A's evidence is fundamental as it links you to the alleged conduct. Mr Santos-Costa submitted that it is assumed that the statement is drafted by the same person, however we do not know this and drew the panel's attention to the difference in handwriting, which if admitted would go unchallenged. He stated that it was drafted prior to WMP involvement and not in conjunction, or in interview, with WMP. He submitted that CIM are interested in obtaining a confession and thus the assertions made within the statement are inherently unreliable.

Mr Santos-Costa stated that, although on the face of it, from your prepared statement to WMP, it does not appear as though you contest sending the messages but you may want to challenge the evidence given by Person A in their statement. Mr Santos-Costa also submitted that it is contested that the 'confession' is corroborated as you assert that you made these statements, which can be heard in the video footage, under duress and not in good faith. He submitted that the evidence relied on by the NMC as corroborating Person A's statement would go untested and unchallenged in light of the statement being admitted into evidence and that the wider circumstances around the captured video footage would not be explained in evidence by the Person who has adduced it.

Mr Santos-Costa said that although you have the right to give evidence you are not obliged to do so. However, through admission of Person A's evidence, due to you not being able to challenge and test the evidence through cross-examination, you may feel as though you have no choice but to give evidence, and this may impact on your right to a fair hearing. He submitted that by admitting Person A's statement into evidence, the information contained within are blanket assertions and opinions made by a Person who the panel will not hear from and thus it is unfair to admit this evidence as it cannot be challenged and tested.

Mr Santos-Costa submitted that these charges are serious with potentially wide-ranging consequences and thus for the panel to rely on anonymous hearsay evidence is unfair to you.

In response to Mr Santos-Costas Ms Steels re-submitted that the video-footage corroborates Person A's statement and therefore the statement is not sole and decisive.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 of the Rules provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The legal assessor further referred the panel to the relevant case law, including *Thorneycroft v Nursing and Midwifery Council* [2014] EWCA 1565 (Admin) and *White v Nursing and Midwifery Council* [2014] EWCA 520 (Admin). She also drew the panel's attention to the NMC's guidance DMA-6 entitled 'Evidence'.

The panel first considered the relevance of the statement. It considered that the contents of the statement broadly appear to be a narrative of the other evidence, i.e., the screenshots of the messages and the video footage, that is also before it. Therefore, it determined that Person A's statement is relevant and links to the case and the charges, on which the panel are yet to determine.

The panel next considered whether it would be fair to you, in accordance with Rule 31 of the Rules, to admit Person A's statement as evidence. It determined that Person A's statement is consistent with the other evidence and is not sole and decisive. It was of the view that the statement provides a narrative of the other evidence and the alleged conduct. The panel considered that it appears to have been written contemporaneously, and there is no reason to doubt this. Furthermore, the panel were of the view that it is speculative to doubt the reliability of Person A's statement merely because the handwriting changes throughout the document. The panel noted that the NMC were not aware of the identity of Person A.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay evidence of Person A's written statement. It noted that it would determine the appropriate weight to be given to the evidence once the panel had heard and evaluated all the evidence before it.

For these reasons, the NMC's application to admit the hearsay evidence of Person A's witness statement is granted and this case will now proceed to the fact-finding stage.

Background

On or around 16 December 2021, a referral from Worcestershire Acute Hospital NHS Trust ('the Trust') was received by the NMC. You were employed as Band 5 Nurse and had been employed by the Trust since 6 November 2020.

The referral was received after you informed the Trust on 29 November 2021 of your arrest on 28 November 2021 for the offence of facilitating the commission of a child sexual offence. Your arrest followed a Paedophile Hunter Group (Children's Innocence Matters 'CIM') being in contact with you through a decoy account operated by Person A, a member of CIM.

It is alleged that initial contact was made through [PRIVATE], where you subsequently sent explicit images and a dropped pin of your address. You at the request of Person A then moved the conversation to WhatsApp where Person A immediately told you that they were [PRIVATE] years of age. It is alleged that you were given the opportunity to delete Person A but continued communication stating that you could remain friends.

It is alleged that the [PRIVATE] communication became sexual in nature, and you asked for intimate photographs from Person A. It is further alleged that during your communication you suggested meeting Person A.

On the 28 November 2021, it is alleged that following your communication over [PRIVATE] with Person A, that they, along with other members of CIM, arrived at your house and confronted you. It is alleged that after an approximately 30-minute conversation with you, which was live streamed to Facebook, West Midlands Police ('WMP') were called to your house and arrested you as stated above.

Following a Police investigation, including an interview in which it is alleged you provided a prepared statement and gave a no comment interview, WMP took no further action.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence before it, which included: witness statements from you and Person A, screenshots of the messages between you and Person A, video footage of your interaction with CIM which was live streamed on Facebook, and the submissions of Ms Steels and Mr Santos-Costa.

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 conduct occurred as alleged.

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

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

Charge 1a

'That you, a registered nurse;

1. Between around 24 November 2021 and 29 November 2021, after being informed and/or believing that Person A was [PRIVATE];

a. Engaged in inappropriate electronic communication with Person A, referencing sexual activity;

[...]

[...]

This charge is found proved.

The panel first considered the 'stem' of this charge being that you were *'informed and/or believing'* of Person A's age. It noted that WhatsApp messages, of which you agree sending, show Person A told you twice that they were [PRIVATE] . The WhatsApp messages read as follows:

You: *'Hey'*

[PRIVATE] here'

Person A: *'Heyyyy u look lot older I'm [PRIVATE] I'm [PRIVATE] not out as gay yet tho' (sic)*

You: *'Great'*

[...]

You: *'How old are you?'*

Person A: *[PRIVATE] why'*

You: *'Oh deAr' (sic)*

'I will be in trouble then'

Person A: *'Wats the prob'* (sic)

You: *'The age'*

To this end, the panel were satisfied that you were informed of Person A being [PRIVATE].

Taking into account the messages outlined above, the panel were also of the view that you believed Person A to be [PRIVATE]. It noted that the communication between you and Person A began on an adult dating application and thus you may have started by having a genuine belief that Person A was older; however, this belief then changed when you were immediately informed on the [PRIVATE] chat, as stated, above when Person A restated that they were [PRIVATE] you appear to have acknowledged this by saying:

You: *'How old are you?'*

Person A: *' [PRIVATE] why'*

You: *'Oh deAr'* (sic)

'I will be in trouble then'

Person A: *'Wats the prob'* (sic)

You: *'The age'*

Person A: *'kk ya want me delete ya bud'* (sic)

'I'm discreet cus I'm [PRIVATE] my fam go mad bit if ya think I'm to young I can delete ya' (sic)

You: *'We can be friends'*

The panel noted your explanation in your prepared statement to WMP, dated 29 November 2021, and your witness statement, dated 14 June 2024, that you believed Person A was *'catfishing'* you and did believe them to be over [PRIVATE] years of age; however, your account was not corroborated by any other evidence before the panel. It considered your account against the evidence of the [PRIVATE] messages, but the panel were of the view that, on the balance probabilities, you could not have believed that

Person A was over [PRIVATE] years of age. The panel has determined that both parts of the *'and/or'* stem are satisfied and therefore find that you were informed and believed Person A to be [PRIVATE] years of age.

The panel considered the following evidence in reaching its determination of whether you engaged in inappropriate electronic communication with Person A, referencing sexual activity:

- Your witness statement, dated 14 June 2024, in which you state:

'7. [...] I accept that I sent the messages to Person A as alleged [...]

- The WhatsApp messages between you and Person A, reading:

You: *'Anything fun'*

Person A: *'Like??'*

You: *'Body contact'*

Person A: *'Lol wat ya mean' (sic)*

You: *'Kissing'*

'Anything like that'

[...]

You: *'Any other things youve done to a lad before' (sic)*

'What u wanna try' (sic)

Person A: *'Dunno' (sic)*

You: *'Wanna try' (sic)*

Person A: *'Like wat though' (sic)*

You: *'Sucking'*

'Or anything like that'

Person A: *'Ya mean Like [PRIVATE]?' (sic)*

You: *'Yes'*

Person A: *'I'd prob embarrass myself I've never done that to anyone' (sic)*

You: *'Dont be' (sic)*

'I will show u how' (sic)

Person A: *'U prob laugh I'm nervous never done anything with a guy'* (sic)

You: *'I can show u first if u want'* (sic)

Person A: *'What you want to suck my [PRIVATE]'*

You: *'Yeah'*

It noted that the [PRIVATE] messages were corroborated by other evidence such as the witness statement of Person A, which provided a consistent narrative of the messages.

For these reasons, the panel found that, on the balance of probabilities, between around 24 November 2021 and 29 November 2021, having been informed that Person A was [PRIVATE] years of age, you engaged in inappropriate electronic communication with Person A, referencing sexual activity.

Charge 1b

'That you, a registered nurse;

1. Between around 24 November 2021 and 29 November 2021, after being informed and/or believing that Person A was [PRIVATE];

[...]

b. Asked Person A to send photographs of an intimate nature

[...]'

This charge is found proved.

As noted above under the panel's finding of charge 1a, it determined that you were informed and believed Person A to be [PRIVATE].

The panel considered the following evidence in reaching its determination of whether you asked Person A to send photographs of an intimate nature:

- Your witness statement, dated 14 June 2024, in which you state:

'7. [...] I accept that I sent the messages to Person A as alleged [...]'

- The WhatsApp messages between you and Person A, reading:

You: *'Got any hot pics please'* (sic)

[...]

'On u wearing underwear' (sic)

[...]

'Im waiting for sexier pics' (sic)

'Please'

[...]

'Wearing an underwear' (sic)

'Showing the bulge' (sic)

Person A: *'I aint got a [PRIVATE] to be honest'* (sic)

You: *'How big is it'*

Person A: *'No that big'* (sic)

You: *'Can I see'*

It noted that the [PRIVATE] messages were corroborated by other evidence such as the witness statement of Person A, which provided a consistent narrative of the messages.

For these reasons, the panel found that, on the balance of probabilities, between around 24 November 2021 and 29 November 2021, having been informed that Person A was 15 years of age asked Person A to send photographs of an intimate nature.

Charge 1c

'That you, a registered nurse;

1. Between around 24 November 2021 and 29 November 2021, after being informed and/or believing that Person A was [PRIVATE];

[...]

[...]

c. Suggested meeting with Person A.'

This charge is found proved.

As noted above under the panel's finding of charge 1a, it determined that you were informed and believed Person A to be 15 years of age.

The panel considered the following evidence in reaching its determination of whether you suggested a meeting with Person A.

- Your witness statement, dated 14 June 2024, in which you state:

'7. [...] I accept that I sent the messages to Person A as alleged [...]'
'11. I had no intention to meet up with a [PRIVATE] boy either on 28th November 2021 or otherwise. [...] I was only interested in meeting the person I was communicating with initially in order to discover their true identity.'
- The WhatsApp messages between you and Person A, reading:

You: *'Wanna meet up?'* (sic)
'Can get u a cab if u want' (sic)
Person A: *'Wer ya wana go'* (sic)
You: *'To mine'*
'If u want'(sic)
[...]
Person A: *'Ok tonight I can come I'm nervous though'*
You: *'Cant do tonight bud'* (sic)
Person A: *'Why'*
You: *'Working'*
Person A: *'Wat time'* (sic)
You: *'7 pm'*
'Wanna cone here' (sic)

The panel noted that it is irrelevant whether that meeting was scheduled, or even took place, as the wording of the charge is that you are alleged to have suggested a meeting with Person A. It further noted that the WhatsApp messages were clear in that you suggested meeting Person A in your home. You offered to send a taxi to collect Person A and you had previously provided the name of the street and postcode that you lived on.

For these reasons, the panel found that, on the balance of probabilities, between around 24 November 2021 and 29 November 2021, having been informed that Person A was 15 years of age, suggested meeting with Person A.

Charge 2

'Your conduct at Charges 1a) and/or 1b) and/or 1c) above was sexually motivated in that it was in pursuit of a sexual relationship with Person A.'

This charge is found proved.

The panel carefully considered all the evidence before it, including your explanation of your intention in communicating with Person A, which is contained within your statement, dated 14 June 2024, in particular:

'8. [...] I did not think at any stage that the person I was communicating with on [PRIVATE] was under the age of [PRIVATE], nor did I think the person that I was communicating with on [PRIVATE] was under the age of [PRIVATE] [...]

10. I continued the conversation on WhatsApp in order to try to reveal this person's true identity. I know that in order to use [PRIVATE], you must be 16 years old or over. At no stage during our conversation on WhatsApp did I truly believe that the person I was speaking to was [PRIVATE] years old. The nature of my communication on [PRIVATE] was intentionally challenging, as I wanted to reveal

who I was really speaking to. I was concerned about the intentions of Person A, and I suspected that I was being deceived.

11. I had no intention to meet up with a [PRIVATE] boy either on 28th November 2021 or otherwise. I did not send Person A my house number and I would not have done so. In any event, at no stage did I believe that I was communicating with a [PRIVATE] boy, or anyone under the age of [PRIVATE] for that matter. I was only interested in meeting the person I was communicating with initially in order to discover their true identity

12. It became clear to me that my strategy was not working, and I stopped communicating entirely [...]

It also took into account the case law, provided by the legal assessor, of *Basson v General Medical Council* [2018] EWHC 505 (Admin) which states that “*sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship*”.

The panel considered that the account you have provided in your witness statement, dated 14 June 2024, is not wholly consistent with the prepared statement you provided to WMP on 29 November 2021, which the panel viewed as more contemporaneous. Having considered all the evidence before it, the panel could not find anything that supports your account that the messages from you were of a challenging nature in order to reveal the true identity of Person A. Therefore, it was not sufficiently persuaded by your explanation of your intention.

It noted that you stated in your witness statement, dated 14 June 2024, that messaging stopped as ‘*It became clear to [you] that [your] strategy was not working, and [you] stopped communicating entirely*’. However, the panel were of the view that it is not sufficiently clear from the evidence that daily messaging had in fact stopped, especially

when considering the context and pattern of messaging being sporadic, which could be due to your working patterns at the time.

Therefore, the panel were of the view that, the communication between you and Person A, in sending messages referencing sexual activity, asking Person A to send intimate photographs and in suggesting a meeting with Person A, was sexually motivated as it was in pursuit of a sexual relationship between you and Person A.

For these reasons, the panel found that on the balance of probabilities your conduct at Charges 1a) and/or 1b) and/or 1c) above was sexually motivated in that it was in pursuit of a sexual relationship with Person A.

Decision and Reasons on amending the factual findings

Subsequent to handing down the panel's initial determination of the facts, and having received a written request for clarification from Ms Steels reflecting the parties settled position (as outlined below), the parties made oral submissions and jointly sought clarification. The clarification regarded the issue of the panel's determination of your belief that Person A was [PRIVATE]. The settled position of the parties was as follows:

1. *'Following receipt of the Panel determination on the facts, the parties would seek the following:*
 - a) *Clarification as to whether the Panel have made a finding as to the Registrant's belief about the age of Person A (noting that pg23 states: "As this is an 'and/or' charge the panel did not consider it necessary to determine what your belief was at this stage");*
 - b) *If the Panel have made such a determination, please could it be clarified what the determination is;*

- c) *If the Panel have not made such a determination, please could it be confirmed whether the Panel intend to determine the Registrant's belief as to the age of Person A at a later stage of these proceedings, i.e., at the misconduct/impairment stage? (again given the wording at pg23 states, "at this stage").*
2. *If the Panel have not made a finding as to the Registrant's belief as to Person A being [PRIVATE] at this stage, the NMC would invite the Panel to do so before the hearing moves on to Stage 2.*
3. *The NMC would invite the Panel to give reasons for any determination as to the Registrant's belief regarding the age of Person A, or reasons for any Panel decision not to make such a determination at this stage.*
4. *The parties would invite any legal advice to be given in public session.'*

The panel received further submissions from Mr Santos-Costa, dated 19 June 2024, and received on 20 June 2024, which requested further clarification on the amendments that were made to the panel's determination.

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

For clarification the panel provide the below reasons.

Charge 1 is phrased in the alternative that you were '*... informed and/or believing that person A was [PRIVATE]*'. In its initial determination, the panel's finding read:

'As this is an 'and/or' charge the panel did not consider it necessary to determine what your belief was at this stage.'

It concluded that, on the evidence before them, you were informed of Person A being [PRIVATE]. Although the panel considered the issue of your belief during its initial deliberations, it considered that, because it was satisfied that you had been informed, the stem of charge 1 was made out and handed down its determination on this basis.

Having received legal advice in open session, the panel, in response to the parties' joint request for clarification, amended the determination to include its findings on your belief of Person A's age. The amendments are to be found under 'Charge 1a' and read as follows:

'The panel first considered the 'stem' of this charge being that you were 'informed and/or believing' of Person A's age. It noted that WhatsApp messages, of which you agree sending, show Person A told you twice that they were 15 years of age. The WhatsApp messages read as follows:

You: 'Hey'

[PRIVATE] here'

Person A: 'Heyyyy u look lot older I'm [PRIVATE] I'm [PRIVATE] not out as gay yet tho' (sic)

You: 'Great'

[...]

You: 'How old are you?'

Person A: [PRIVATE] why'

You: 'Oh deAr' (sic)

'I will be in trouble then'

Person A: 'Wats the prob' (sic)

You: 'The age'

To this end, the panel were satisfied that you were informed of Person A being [PRIVATE].

Taking into account the messages outlined above, the panel were also of the view that you believed Person A to be 15 years of age. It noted that the communication between you and Person A began on an adult dating application and thus you may

have started by having a genuine belief that Person A was older; however, this belief then changed when you were immediately informed on the WhatsApp chat, as stated, above when Person A restated that they were 15 years of age you appear to have acknowledged this by saying:

You: 'How old are you?'

Person A: [PRIVATE] why'

You: 'Oh deAr' (sic)

'I will be in trouble then'

Person A: 'Wats the prob' (sic)

You: 'The age'

Person A: 'kk ya want me delete ya bud' (sic)

'I'm discreet cus I'm [PRIVATE] my fam go mad bit if ya think I'm to young I can delete ya' (sic)

You: 'We can be friends'

The panel noted your explanation in your prepared statement to WMP, dated 29 November 2021, and your witness statement, dated 14 June 2024, that you believed Person A was 'catfishing' you and did believe them to be over [PRIVATE]; however, your account was not corroborated by any other evidence before the panel. It considered your account against the evidence of the [PRIVATE] messages, but the panel were of the view that, on the balance probabilities, you could not have believed that Person A was over [PRIVATE]. The panel has determined that both parts of the 'and/or' stem are satisfied and therefore find that you were informed and believed Person A to be [PRIVATE].'

The panel is of the view that this determination now addresses both parties' submissions regarding the settled position and provides the clarification that was sought by the parties.

Decision and reasons on proceeding in the absence of Mr Agcopra

The panel next considered whether it should proceed in the absence of Mr Agcopra. It had regard to Rule 21 and heard the submissions of Mr Santos-Costa who invited the panel to continue in the absence of Mr Agcopra as he has voluntarily absented himself. Mr Santos-Costa informed the panel that Mr Agcopra has indicated to him, in writing, that he is content for the hearing continue in his absence. Mr Santos-Costa stated that Mr Agcopra is aware of the next stage in the proceedings and that he has had sight of the submissions that are going to be made on his behalf. Mr Santos-Costa also stated that Mr Agcopra has said that he does not wish to give evidence at this stage. Therefore, Mr Santos-Costa submitted that it would be entirely fair for the proceedings to continue in his absence.

Ms Steels had no objection to Mr Santos-Costa's application to continue in the absence of Mr Agcopra.

The panel accepted the advice of the legal assessor.

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

- Mr Agcopra is represented and has indicated that he is content for the hearing to proceed.
- This hearing is in the middle of the planned timetable of proceedings.
- An explanation for his absence was provided by Mr Santos-Costa and that it would not be possible for him to join the proceedings.
- Mr Agcopra has voluntarily absented himself.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Agcopra.

Fitness to practise

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

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

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

Submissions on misconduct

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

Ms Steels invited the panel to take the view that the facts found proved amount to misconduct and referred it to standard 20 of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' ('the Code') which states that registrants have a duty to uphold the reputation of the profession at all times. Ms Steels submitted

that Mr Agcopra's behaviour is a serious departure from the Code and falls far short of the standards considered appropriate for the profession.

Mr Santos-Costa said that Ms Steels had correctly set out the law and misconduct was a matter for the panel. However, he stated that the facts found proved took place in Mr Agcopra's private life.

Submissions on impairment

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

Ms Steels submitted that the public expects certain standards of behaviour from registrants and relies on registered nurses to uphold moral and ethical standards such that they can have trust and confidence in the profession. She further submitted that Mr Agcopra breached fundamental tenets of the profession by failing to act ethically and with integrity.

Ms Steels submitted that there is no evidence before this Panel to support any contention that Mr Agcopra is not liable in the future to repeat such conduct. She stated that in his reflective piece, Mr Agcopra does not discuss the allegations or why the conduct contained therein is not acceptable. Therefore, Ms Steels submitted that Mr Agcopra's insight is partial, and he has not demonstrated to the Panel how the behaviour will be avoided moving forward or how he has learned from his misconduct. She submitted that if Mr Agcopra were to repeat this behaviour, it would further damage the reputation of the profession and breach the fundamental tenets.

Ms Steels submitted that Mr Agcopra's behaviour is not remediable and could be said to be an attitudinal failing. She stated that Mr Agcopra's reflective piece sought to blame and deflect attention onto the conduct of CIM, rather than on taking steps to demonstrate a recognition of his own failings and insight into why his conduct could be regarded as problematic.

Ms Steels further submitted that the training Mr Agcopra has undertaken relates, primarily, to his clinical practice, however clinical failings are not the focus of the misconduct in this case. Although he had undertaken safeguarding training, no details of this were provided and this could have had some relevance.

Ms Steels submitted that a finding of impairment is required for the protection of the public.

Ms Steels submitted that a finding of impairment is also in the public interest as a properly informed member of the public would be shocked if they learned that Mr Agcopra's fitness to practice were not considered impaired following a finding of misconduct such as in this case. She said the proper professional standards must be maintained and it would diminish public confidence in the nursing profession and in the regulator if Mr Agcopra's practice was not found to be impaired.

Therefore, Ms Steels submitted that a finding of impairment is required to protect the public and is also in the public interest.

Mr Santos-Costa submitted that Mr Agcopra has not acted in a way that puts patients at an unwarranted risk of harm, nor is he liable to put patients at an unwarranted risk of harm in the future. He stated that Mr Agcopra has an unblemished clinical record, having worked in healthcare since 2013 and being a registered nurse since 2020. He submitted that there is no evidence of concerns with Mr Agcopra's clinical practice. Mr Santos-Costa also brought the panel's attention to the evidence that Mr Agcopra has no criminal convictions and reminded the panel that WMP took no further action in relation to the

matters before the panel. He submitted that these were relevant considerations when determining any future risk of harm to patients.

Mr Santos-Costa submitted that this was an isolated incident in Mr Agcopra's life and submitted that it is unlikely to be repeated. He submitted that Mr Agcopra has demonstrated insight into the misconduct, in spite of his maintenance of innocence, and this is testament to him. Mr Santos-Costa highlighted that in Mr Agcopra's reflective piece he states that he is "*acutely aware of the gravity of these events and their potential consequences*", and that this "*ordeal has served as a profound lesson*" to him. Mr Agcopra also outlines that he recognises that, "*[t]he allegations presented are serious and, without question, fall far below the standards expected of any healthcare professional*", and that "*they strike at the heart of what it means to be a healthcare professional*". Therefore, Mr Santos-Costa submitted that these were examples, from Mr Agcopra's reflective piece, which demonstrate the insight he has into the conduct that was found proved by the panel and show that his conduct is unlikely to be repeated.

Mr Santos-Costa submitted that the training certificates before the panel are evidence of steps that Mr Agcopra has taken to address his behaviour, whilst still maintaining his innocence. He submitted that this further shows that the conduct is unlikely to be repeated as Mr Agcopra has outlined a number of steps to ensure that it never happens again, including continuous education, reflective practice, open communication, and policy adherence.

Mr Santos-Costa further drew the panel's attention to the cooperation of Mr Agcopra in these proceedings, and those of WMP and the Trust.

Mr Santos-Costa submitted that as the misconduct found proved in this case is entrenched within the Registrant's private life, although it calls into question the foundation of his professionalism and it breached the trust the public place in the nursing profession. However, as it does not relate to his clinical practice as a nurse, it cannot be said that he

has breached any of the other fundamental tenets of the nursing profession, other than the maintenance of the profession's reputation.

Mr Santos-Costa therefore submitted that, in light of all the information before the panel, including Mr Agcopra's unblemished record, reflection, insight, remorse, training certificates evidencing remediation, and cooperation, the panel can be satisfied that Mr Agcopra can practice '*kindly, safely, and professionally*' and therefore his fitness to practise is not currently impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *General Medical Council v Meadow* [2007] QB 462 (Admin), *Cohen v General Medical Council* [2008] EWHC 581 (Admin), and *Cheatle v GMC* [2009] EWHC 645 (Admin).

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 and guidance issued by the NMC.

The panel was of the view that, although these actions occurred outside of Mr Agcopra's professional practice, these can still amount to misconduct.

It was of the view that Mr Agcopra's actions did fall significantly short of the standards expected of a registered nurse, and that his actions amounted to breaches of the Code. Specifically:

'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

20.4 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

20.10 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 Mr Agcokra's departures from these parts of the Code were serious as they relate to engaging in sexual communications with a person that he was informed to be, and believed to be, [PRIVATE] years of age. It noted that although it could be considered to have been a single incident, Mr Agcokra engaged with Person A on a number of occasions over a period of three days, even though he was informed early on in the first day that Person A was [PRIVATE] years of age.

Notwithstanding the decision of WMP to take no further action, the panel determined that 20.4 of the Code applied. It was of this view because it found that, on the balance of probabilities, Mr Agcokra was communicating in a sexual manner with a person whom he was informed to be, and believed to be, [PRIVATE] years of age, which is under the legal age of consent in the United Kingdom.

The panel found that Mr Agcokra's actions fell seriously short of the conduct and standards expected of a nurse and, considering the case law of *Nandi* (as cited above), found that the conduct would be seen by other professionals and the public as deplorable and a departure from acceptable standards.

For these reasons, the panel determined that Mr Agcokra's actions amounted to misconduct.

Decision and reasons on impairment

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

The panel bore in mind 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.

In coming to its decision, the panel had regard to the *'Fitness to Practise Committee decision making'* guidance on *'Impairment'* (DMA-1), updated on 27 February 2024, 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.'

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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that limb b of the Grant test was engaged as Mr Agcopra's actions did bring the profession into disrepute and, if repeated, would bring the nursing profession into disrepute again. It was also of the view that limb c of the Grant test was engaged as his actions breached fundamental tenets of the nursing profession. The panel considered that limbs a and d of the Grant test were not engaged.

The panel had regard to the Registrant's bundle, encompassing a reflection, a certificate of good moral character and training certificates. The panel acknowledged that Mr

Agcopra had worked as a Healthcare Assistant from 2013 to 2020, he then worked as a registered nurse from November 2020 for 12 months before the incident occurred.

It considered, although Mr Agcopra's reflection was remorseful, his insight was limited. It was of the view that his reflection did not address the charges or how and why his actions were wrong and the impact they may have on vulnerable young people or the nursing profession. It considered that Mr Agcopra, having accepted to sending the messages, could have reflected on this, whilst maintaining his non-admission to the facts.

In light of the panel's view of Mr Agcopra's insight, it considered whether there is a risk of repetition. It considered that the training certificates before it were insufficient to indicate a decrease in risk of repetition. It noted that the training certificates were dated between 2018 and 2022, and the training undertaken was, in most cases, mandatory. The panel were of the view that Mr Agcopra could have undertaken more learning and development relating, specifically, to the charges and around the issue of safeguarding during this time, whilst still maintaining his non-admissions to the charges. Therefore, the panel concluded that there was insufficient information to indicate a decrease in risk of repetition.

Subsequently, if the misconduct was repeated, there would be a risk of harm to emotional, physical, and/or mental health of the public and vulnerable individuals.

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

The panel determined that a finding of impairment on public interest grounds is required as an informed member of the public would be horrified to learn of Mr Agcopra's misconduct and would be concerned if no finding of impairment was made. It further determined a finding of impairment was needed to maintain and uphold reputation and standards of profession.

The panel was of the view that it is not satisfied that Mr Agcopra can practice professionally and thus, for all the reasons stated above, his fitness to practise is currently impaired.

Mr Agcopra was absent from this part of the hearing but was back in attendance for the hand down of this determination.

These proceedings will now progress to the sanction stage.

Sanction

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

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

Submissions on sanction

Ms Steels informed the panel that in the Notice of Hearing, dated 2 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. She submitted no other sanctions are proportionate and/or would not be appropriate to address the concerns in light of the NMC's overarching objectives.

Ms Steels submitted that a Striking Off Order is appropriate, proportionate and necessary in this case for the following reasons:

- Your misconduct contravened fundamental tenets of the nursing profession in failing to act professionally, and ethically, with integrity, and is

fundamentally incompatible with the nursing profession. It raises fundamental questions about your ability to uphold standards and values set out in the code.

- Your conduct will also negatively impact the public's trust and confidence in the nursing profession. Members of the public to lose faith in the profession such that they might decide not to seek medical assistance and treatment when they need it. Public confidence could not be maintained in the nursing profession if you were not removed from the Register, and striking-off is the only sanction sufficient to maintain professional standards.
- The proven allegations evidence deep-seated attitudinal problems and the Panel has concluded that your insight is limited.
- The NMC must act strongly and decisively to demonstrate the importance of upholding proper professional standards.

Mr Santos-Costa submitted that, given the panel's findings, a suspension order for three to six months is the appropriate sanction and it would mark the seriousness of the misconduct without punishing you unfairly. He said it is conceded that, in this case due to the seriousness of the misconduct found proved, it is likely that the sanction will be one of suspension or striking off. He reminded the panel that the purpose of sanctions is not to punish you for past professional misconduct, rather it is to protect the public; thus, the panel should apply the principle of proportionality and any sanction imposed must go no further than is necessary to achieve that overriding objective.

Mr Santos-Costa drew the panel's attention to the case of *O v NMC* [2015] EWHC 2949, in which, Kerr J outlined at paragraph [77] of his judgment that:

"[...] where there are only two possible candidates for the appropriate sanction, namely suspension or striking-off, it is critical that all the available mitigation is considered at the stage of considering suspension, as well as when considering striking-off."

Mr Santos-Costa submitted that the panel can be satisfied that a suspension order is appropriate in this case for the following reasons:

- You have demonstrated genuine remorse for any distress or harm that your actions may have caused.
- You have demonstrated insight into the misconduct found proved by the panel.
- You understand that these concerns “*call into question the very foundation of [his] professionalism*” and that a breach of the public trust in the nursing profession, “*could lead the public to hesitate in seeking necessary healthcare*” (Quotations from your reflection).
- You have complied with your Duty of Candour, and have engaged fully with these proceedings, as well as the Local Investigation. This also shows you have an appreciation of the gravity of the misconduct proved and the role of your regulator.
- You have undertaken training and you have outlined in some detail a plan, together with a strategy to implement that plan, to ensure that this situation does not happen again.
- You have not engaged in any similar behaviour before this (you have no previous criminal convictions), nor have you engaged in any similar behaviour since the incident in November 2021. Thus, it cannot properly be said that either there is a real risk of repetition in this case, nor that there are any deep-seated attitudinal issues in this case. It truly is an isolated incident in your life.
- You are committed to the nursing profession, and that you have an understanding that his role as a registered nurse and your personal life are intertwined.
- You have been subject to an interim suspension order for over 18 months.
- No concerns have been raised about your clinical practice which has the effect of supporting the submission that you do not represent a risk to patient safety.
- It is in the public interest for competent nurses to continue contributing to society through their practice. Applying the dicta of *Bawa-Garba v General Medical Council* [2018] EWCA Civ 1879 at [93], “*The Tribunal was entitled to take into account, consistently with Bijl v General Medical Council [2001] UKPC 42 at [13], that an important factor weighing in favour of Dr Bawa-Garba is that she is a competent*

and useful doctor, who presents no material danger to the public, and can provide considerable useful future service to society.”

- A well-informed member of the public, with knowledge of all the circumstances around this case would appreciate the imposition of a Suspension Order achieves the overriding objective of public protection while marking the seriousness of the misconduct found proved by the Panel.

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

Decision and reasons on sanction

Having found your fitness to practise is 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 limited insight.
- You have made no attempt to address the concerns specific to the charges.

The panel was of the view that there were no mitigating features in this case.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not

restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’* The panel considered that your misconduct was not at the lower end of the spectrum 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 or workable conditions that could be formulated, given the nature of the charges in this case given that they do not relate to clinical practice, rather professional conduct outside of your practice and attitudinal concerns. Therefore, the panel were of the view that the misconduct identified in this case was not something that can be addressed through retraining or conditions of practice. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

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

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

Taking each of these points in turn, the panel were of the view that the misconduct found proved in this case occurred over a number of days increasing the seriousness of the misconduct.

Further, as noted in the panel's finding of impairment, it was of the view that your reflection demonstrated limited insight and you did not specifically address the concerns as set out in the charges. It was of the view that this could indicate deep-seated personality or attitudinal concern that you have not addressed.

Further, the panel was of the view, as noted above in the panel's finding of impairment, that there is a risk of repetition. It had no evidence before it to show that the concerns have been repeated or that you have sufficient insight into the concerns to mitigate the chance of repetition. The panel reiterate that the evidence of the training you have undertaken is limited, with the latest being dated 2022, and, in most cases, the courses were simply the mandatory training for healthcare workers. Further, it noted that you had undertaken the mandatory level one and two adult and children safeguarding training, but that you had also completed this prior to this incident that is the subject of the charge. Therefore, the panel could not be assured that there was no risk of repetition.

The panel noted that you have been subject to an interim suspension order since 9 September 2022 and there is no evidence to show that you fully appreciate the gravity of the concerns and the impact of the misconduct, or that you have addressed any of the issues that have been identified by this panel.

Therefore, the panel found that none of those factors were applicable and thus would make the imposition of a suspension order inappropriate.

The conduct, as highlighted by the facts found proved and the panel's findings on misconduct and impairment, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the

profession evidenced by your actions is fundamentally incompatible with you remaining on the register.

For these reasons, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction and would not meet the overarching objectives of the NMC to protect the public or uphold public trust and public confidence in the profession.

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

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

The panel addressed each of these questions in turn. The panel was of the view that, as noted above in the panel's findings on misconduct and impairment, that the conduct found proved in this case raises fundamental questions about your professionalism and ability to uphold the standards and duties in the Code.

The panel determined that public trust and public confidence in the profession and the NMC as its regulator would be diminished if a nurse with such finding as those found proved in your case was allowed to remain on the register.

The panel determined that a striking-off order was the only sanction which is sufficient to meet the statutory aims of the NMC in protecting the public and maintain professional standards. The findings in this case relate to sexual misconduct and, if repeated, have the potential for significant harm and abuse of vulnerable young people. The panel had no

information before it to show that since the incident there had been a reduction in risk or a development of meaningful insight. It was of the view that if you were to remain on the register there could be a risk of significant harm and it could impact on access to healthcare as patients may not feel able to disclose information imperative to their treatment. As well as this, the panel were of the view that if a nurse with these findings were to remain on the register it would have a significant impact on the trust and confidence the public place in the profession and the NMC as its regulator.

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

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order.

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

This will be confirmed to you in writing.

Interim order

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

striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

Ms Steels invited the panel to impose an interim suspension order under Article 31 of the Order following the panel's determination on sanction. She submitted that an interim suspension order is appropriate and proportionate in light of the panel's determination on a sanction of striking off and anything less than an interim suspension order would be perverse. She submitted that it was necessary for the protection of the public and would be otherwise in the public interest. She invited the panel to make an interim suspension order for a period of time to cover the 28-day appeal time period and to cover the period of time that the appeal may take.

Mr Santos-Costa did not have any submissions on the interim order.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate 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.

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

That concludes this determination.