

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

**Substantive Hearing
Tuesday 30 January 2024 – Thursday 1 February 2024
Monday 24 – Friday 28 June 2024**

Virtual Hearing

Name of Registrant: Tyne Gora

NMC PIN 19A02630

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – January 2019

Relevant Location: Clackmannanshire

Type of case: Misconduct

Panel members: Deborah Jones (Chair, Lay member)
Allwin Mercer (Registrant member)
David Boyd (Lay member)

Legal Assessor: Graeme Sampson (30 January 2024 & 1
February 2024)
Cyrus Katrak (31 January 2024 and 24 – 28
June 2024)

Hearings Coordinator: Shela Begum (30 January – 1 February 2024)
Tyrena Agyemang (24 June – 28 June 2024)

**Nursing and Midwifery
Council:** Represented by Katie Mustard and
Leesha Whawell (28 June 2024 only), Case
Presenters

Mr Gora: Not present and unrepresented

Facts proved: All found proved

Facts not proved: N/a

Fitness to practise:

Impaired

Sanction:

Striking off order

Interim order:

Interim Suspension Order (18 months)

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

At the outset of the hearing, Ms Mustard made a request that parts of this case be heard in private on the basis that there will be reference to matters which are personal to one of the witnesses. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Mustard informed the panel that proper exploration for the reasons of the non-attendance of Colleague B at this hearing during the current scheduled dates involves making reference to their personal matters.

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

The panel heard that there will be reference to matters which are personal to Colleague B. The panel determined to go into private session as and when such issues are raised.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Gora was not in attendance and that the Notice of Hearing letter had been sent to Mr Gora's registered email address by secure email on 20 December 2023.

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

The panel accepted the advice of the legal assessor.

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

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

Decision and reasons on proceeding in the absence of Mr Gora

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

Ms Mustard referred the panel to the email from Mr Gora to the NMC dated 22 January 2024 in which he states:

"I would like to notify you that I will not be attending the hearing.

You may go ahead with it for academic purposes but I closed that chapter a long time ago.

I am focussing on my new life and positive experiences instead of being taken back to the worst period in my lifetime."

Ms Mustard submitted that, in the light of this email, the panel could conclude that Mr Gora does not intend to engage with the NMC in these proceedings. She further submitted that an adjournment of these proceedings would serve no useful purpose. She informed the

panel that there are currently two live witnesses warned to attend this hearing and not proceeding could potentially adversely affect their ability to recall events at a later date.

The panel accepted the advice of the legal assessor.

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

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

- No application for an adjournment has been made by Mr Gora;
- Mr Gora has informed the NMC that he will not be attending this hearing and has indicated that he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Two witnesses have been warned to attend this hearing to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that date back to 2016;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and

- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Gora in proceeding in his absence. Although the evidence upon which the NMC relies has been sent to him at his registered email address, he has made no response to the allegations. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Gora's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

Details of charge

'That you, a registered nurse:

- 1) Between May 2016 and March 2020 in respect of Colleague A:
 - a) On 16 December 2019;
 - i) Stood close to them.
 - ii) Did not move when they requested you to do so.
 - iii) Stated to them "You're rubbing your bum all over me, you're going to give me an erection" or words to that effect.
 - b) In or around October 2019 stated in relation to their daughter:
 - i) " So she is ripe for me" or words to that effect.

- ii) "She is ripe for me to have her, you could be my mother-in-law" or words to that effect.
 - c) On unknown date/s on one or more occasion said to them "stay with me, you look beautiful especially your bum/boobs" or words to that effect.
 - d) On unknown date/s on one or more occasions touched their arm and/or hand.
 - e) On unknown date/s on one or more occasion said to them "Your bum and boobs are beautiful, come sit here with me" or words to that effect.
 - f) On dates unknown on one or more occasion attempted to touch their bottom.
- 2) Your conduct at any/or all of charge 1 above:
 - a) Was motivated by the pursuit of sexual gratification and/or of a sexual relationship.
 - b) Created an intimidating and/or hostile and/or degrading and/or humiliating and/or offensive environment for Colleague A and amounted to harassment.
- 3) In or around October 2019 stated "women in my country do what men tell them" or words to that effect.
- 4) Your conduct at charge 3 above was discriminatory.
- 5) On an unknown date stated to Colleague A in respect of an unknown resident "Do as I say, you get him up" or words to that effect.
- 6) On 4 June 2020 in respect of Colleague B;
 - a) Said to them "You and me are going to have a fight" or words to that effect.
 - b) Poked and/or pushed your finger into their chest.
 - c) On one or more occasion pushed them.
 - d) Pushed them or hit them to the back.

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

Background

The charges arose whilst Mr Gora was employed as a registered nurse by Marchglan Care Centre (the Home).

On 16 December 2019, Colleague A was working alongside Person 1 assisting a resident in the Home who had a tracheostomy for which the dressing needed changing and therefore a nurse was required. Using the nurse bell in the resident's room, a nurse was requested and Mr Gora was the nurse who attended. Upon arrival into the resident's room Mr Gora advised Colleague A and Person 1 that he would return after the resident's personal care was finished being carried out by both colleagues. However, Mr Gora returned to the room prior to the personal care having been finished and Colleague A requested if Mr Gora could wait until the resident was dressed.

Colleague A was at the side of the bed assisting the resident with getting dressed and Mr Gora allegedly stood at the same side of the bed, to the right-hand side of Colleague A, invading her personal space and almost touching her. Colleague A asked Mr Gora to move but it is alleged that Mr Gora ignored this. Colleague A subsequently said that if Mr Gora did not move, she would end up bumping into him, but it is alleged that Mr Gora further ignored these comments and did not move himself.

Whilst dressing the resident, Colleague A bumped into Mr Gora due to the close proximity in which they were standing and it is alleged that Mr Gora made the comment "You're rubbing your bum all over me, you're going to give me an erection".

The incident was reported to a senior health care assistant at the Home. The Home Manager, Witness 1, was made aware of the incident and Mr Gora accepted making a comment but did not accept the exact wording suggested by Colleague A.

It is alleged that in or around October 2019 on several instances Mr Gora made inappropriate comments about both Colleague A and her daughter.

In June 2020, it is alleged that Colleague B found a resident on the floor who required assistance. Mr Gora attended and a discussion between him and Colleague B took place about how the resident would be lifted onto the bed. Colleague B alleges that a comment made by him appeared to trigger or anger Mr Gora and he subsequently came up to him and said "You and me are going to have a fight". It is alleged that Mr Gora made this comment twice and walked away. Colleague B later spoke with Mr Gora in the medication room on the unit and it is alleged that Mr Gora shoved his finger into the chest of Colleague B and pushed him back. Colleague B went to report this to the Witness 1 in the manager's office and when his back was to the door it is alleged that Mr Gora pushed him to the back causing him to fall.

Decision and reasons on application to admit exhibits as hearsay evidence

The panel heard an application made by Ms Mustard under Rule 31 to allow an exhibit produced by Witness 1 into evidence. The application related to exhibits of a local statement given by Person 1 during the Home's internal investigation and supporting documentation.

Ms Mustard submitted that in terms of the admission of hearsay evidence, the Courts have reiterated on a number of occasions that the important factor to consider throughout is one of fairness. She referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) which sets out the factors to be considered when deciding whether or not to admit hearsay evidence as follows:

- '(i) whether the statements were the sole or decisive evidence in support of the charges;*
- (ii) the nature and extent of the challenge to the contents of the statements;*
- (iii) whether there was any suggestion that the witnesses had reasons to fabricate their allegations;*
- (iv) the seriousness of the charge, taking into account the impact which adverse findings might have on the Appellant's career;*
- (v) whether there was a good reason for the non-attendance of the witnesses;*
- (vi) whether the Respondent had taken reasonable steps to secure their attendance; and*
- (vi) the fact that the Appellant did not have prior notice that the witness statements were to be read.'*

Ms Mustard submitted that in applying these factors to this case, she pointed out that the panel has wide powers under the Rules to admit evidence in a range of circumstances and from a range of sources, and that admissibility of hearsay in these types of proceedings is not subject to the same types of restrictions as in, for example, criminal courts or proceedings. She submitted that it comes down to this core element of relevance and fairness.

Ms Mustard submitted that it is noted that the weight that can be attached to this evidence is an important factor. She submitted that this evidence, if admitted, could not be tested in the same way that other evidence in the case has been where witnesses have come and therefore subjected themselves to questioning under Oath. However, Ms Mustard submitted that this has perhaps less relevance in a case such as this, where the registrant has voluntarily absented themselves from the proceedings and thereby doing so has forfeited their opportunity to challenge witnesses directly in cross examination or even indirectly, because in this case the registrant has not provided specific response to the allegations or charges.

In relation to the reasons for the non-attendance of Person 1, Ms Mustard referred the panel to the email from her to the NMC dated 25 August 2022 in which she states:

“As I have already emailed saying I am not interested, I would appreciate it if you would stop emailing me, I already have told you I am not doing any interview or being any whiteness ... ” [sic]

Ms Mustard informed the panel that the NMC did pursue the matter further and referred Person 1 to the fact that adjustments could be made, and support could be put in place to assist her as a witness. However, she submitted that due to Person 1’s responses, the NMC respected her wishes, and it is not the NMC’s intention to harass individuals who have clearly communicated their views on future engagement. She submitted that whether or not this is a good or cogent reasons for Person 1’s non-attendance is a matter for the panel’s judgement.

Ms Mustard submitted that there is nothing which undermines the evidence as set out in the exhibits. She further submitted that this evidence is not sole and decisive on any of the charges that are before the panel. She submitted that the panel has had the benefit of hearing Colleague A’s evidence, testing it and being able to compare it to any and all of the written documentation that forms part of the exhibits.

Ms Mustard submitted that there is less prejudice to the registrant in admission of this evidence, bearing in mind that Person 1’s evidence really is limited to the comment that she overheard him making to Colleague A. She submitted that there has been no dispute from the registrant that a comment was made and that he accepted during the Home’s local level investigation that he had made a comment and furthermore, during the disciplinary hearing he accepted that it was something that was not considered professional.

Ms Mustard submitted that there is a disparity or a dispute between what Colleague A alleges the words of that comment were and what the registrant says were the words he

used. Colleague A alleges the word 'erection' was used and Mr Gora claims he used the word 'reaction'. She submitted that Person 1's local statement does clearly make reference to the word 'erection', and that that is also what Person 1 says to the investigator at a local meeting, which can be seen from the minutes of that meeting.

Ms Mustard reminded the panel that it has heard evidence from Witness 1 and it will have noted that he said during his own discussions with Person 1, he felt she was going to say Mr Gora used the word 'reaction' before then, saying 'erection'. She submitted that the fact there is some level of disparity and there is some suggestion that on one of the occasions Person 1 may have said something which is actually of benefit to the registrant and accords with what he says. She submitted that this goes to the point that that there is less prejudice in admitting this evidence.

In closing, Ms Mustard submitted that in all of these circumstances, it would be fair to admit this statement as hearsay evidence.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application serious consideration. The panel noted that the exhibits related to the Home's local investigation and had been produced by way of reference to those documents in Witness 1's written statement.

The panel considered whether Mr Gora would be disadvantaged by the admission of the hearsay evidence. It noted that despite knowledge of the nature of the evidence, Mr Gora made the decision not to attend this hearing. The panel considered that as Mr Gora had been provided with all of the exhibits the NMC intends on relying upon and, as the panel had already determined that Mr Gora had chosen voluntarily to absent himself from these

proceedings, he would not be in a position to challenge the evidence at this hearing in any case.

The panel noted that there was no real prejudice to Mr Gora if the exhibits were admitted as hearsay evidence and on this basis decided that there was no lack of fairness to Mr Gora. Further, the panel determined that there was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, the panel came to the view that it would be fair and relevant to accept the exhibits as hearsay evidence but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Application to adjourn this hearing due to the non-availability of Colleague B

On day two of the hearing, after hearing evidence from Colleague A and Witness 1, Ms Mustard made an application to adjourn this hearing. She informed the panel that due to exceptional personal circumstances Colleague B was not available to attend this hearing on the current dates but he has indicated that he would be able to attend in due course.

Ms Mustard submitted that Colleague B is a key witness who speaks to some of the charges in this case and therefore it is important for the panel to hear directly for him. She highlighted that this is not a situation where the witness has expressed an unwillingness to give evidence, and to the contrary, he is still engaged and keen to participate. She submitted that for good reason, and for unforeseen circumstances, he is unable to attend but that there is little prejudice to Mr Gora given his decision to absent himself from this hearing.

Ms Mustard also highlighted that the panel has already heard from two live witnesses and Colleague B is the only remaining live witness so a delay in proceedings will not have an impact on the other witnesses.

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

The panel has taken into account the submissions from Ms Mustard.

The panel noted the sensitive nature of the reasons for Colleague B's non-attendance at this hearing during the current scheduled dates. Further, the panel took into account that Colleague B has indicated to the NMC that he would be able to attend a future hearing to give evidence.

The panel noted that Colleague B is an important witness who speaks to a number of the charges and took the view that it was necessary for him to attend this hearing so that his evidence could be tested. The panel determined that there was not any unfairness caused to Mr Gora as a result of the adjournment given his decision not to attend this hearing.

In all of the circumstances, the panel has decided to adjourn this hearing.

Resuming Hearing Monday 24 June 2024

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Gora was not in attendance and that the Notice of Hearing letter had been sent to Mr Gora's registered email address by secure email on 10 April 2024.

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

The panel accepted the advice of the legal assessor.

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

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

Decision and reasons on proceeding in the absence of Mr Gora

The panel next considered whether it should proceed in the absence of Mr Gora. It had regard to Rule 21 and heard the submissions of Ms Mustard who invited the panel to continue in the absence of Mr Gora.

Ms Mustard submitted that there had been no further engagement by Mr Gora with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

Ms Mustard again reminded the panel of the email from Mr Gora dated 22 January 2022, in which he states, he has happy for the hearing to proceed, but he will not attend. She told the panel that there has been no further contact from Mr Gora since.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*'.

The panel has decided to proceed in the absence of Mr Gora. In reaching this decision, the panel has considered the submissions of Ms Mustard, the representations from Mr Gora, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones (Anthony William)*_(No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Gora;
- Mr Gora has informed the NMC that he has received the first Notice of Hearing and confirmed he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- A witness has attended today to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2016;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Gora in proceeding in his absence. Although the evidence upon which the NMC relies will have already been sent to him at his registered address and he has made no response to the allegations. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Gora's

decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

Decision and reasons on facts

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

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

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

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

- Colleague A: Care support worker at Marchglen Care Centre.
- Witness 1: Home Manager at Marchglen Care Centre and Interim Regional Manager.
- Colleague B: A former carer at Marchglen Care Centre and work Colleague

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

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

Charges 1ai and 1aii

- 1) Between May 2016 and March 2020 in respect of Colleague A:
 - a) On 16 December 2019;
 - i) Stood close to them.
 - ii) Did not move when they requested you to do so.

These charges are found proved.

The panel considered these two charges together as they related to a single incident. In reaching this decision, the panel took into account Colleague A's local statement, her letter dated 19 December 2019, which details all her concerns, her email dated 9 January 2020 to Unison and her oral evidence.

The panel noted the consistency of Colleague A's evidence throughout and during her oral evidence. She was clear throughout that Mr Gora was standing too close to her and when asked to move, he ignored her.

The panel acknowledged that Colleague A had encountered inappropriate incidents like this from Mr Gora prior to raising these concerns that had seemingly not been dealt with sufficiently or at all and that this is the reason why she escalated her concerns to her union.

Notwithstanding Mr Gora's absence the panel noted his seeming acceptance that an incident did take place, and that as a result of him not moving when requested Colleague A did bump into him. The panel noted Colleague A's witness statement that she did not want any dealings with him due to his inappropriate behaviour towards her after the incident and that she was disgusted by it. The panel noted Colleague A's additional concern of Mr Gora's inappropriate behaviour in front of the service user and this was also reported.

The panel considered the evidence of Colleague A to be consistent, reliable and cogent. Therefore, it finds charges 1ai and 1aai proved on the balance of probabilities.

Charge 1aiii

- 1) Between May 2016 and March 2020 in respect of Colleague A:
 - a) On 16 December 2019;
 - iii) Stated to them "You're rubbing your bum all over me, you're going to give me an erection" or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account Colleague A's local statement, her letter dated 19 December 2019, her email dated 9 January 2020 to Unison and her oral evidence.

The panel took into consideration its findings at charges 1ai and 1aai, it also considered Mr Gora's seeming acceptance in the papers that the incident did take place, although he stated that it was "*reaction*" and not "*erection*" that was said.

The panel considered that this incident is widely reported in Colleague A's evidence and that her reaction to the incident was disgust. Further the panel noted that even when questioned at the time, Colleague A's version of events did not waiver.

The panel also considered the contemporaneous report of Person 1 who corroborates the incident. The panel accepts this evidence is hearsay, but it is consistent with the evidence of Colleague A.

The panel found the evidence of Colleague A to be cogent, consistent and reliable and therefore preferred the evidence of Colleague A in relation to this charge. It therefore finds this charge proved on the balance of probabilities.

Charges 1bi and 1bii

- 1) Between May 2016 and March 2020 in respect of Colleague A:
 - b) In or around October 2019 stated in relation to their daughter:
 - i) "So she is ripe for me" or words to that effect.
 - ii) "She is ripe for me to have her, you could be my mother-in-law" or words to that effect.

These charges are found proved.

The panel considered these two charges together as they related to a single incident. In reaching this decision, the panel took into account Colleague A's witness statement, her letter dated 19 December 2019, her email dated 9 January 2020 to Unison, the meeting notes on 31 January 2020 and her oral evidence.

The panel noted that Mr Gora was not questioned locally in relation to this incident and that therefore there is no response from him.

The panel acknowledged that there is no other evidence before it to corroborate these charges. However, the panel noted the consistency throughout Colleague A's evidence and that she told others what had been said to her. It noted its earlier findings that Colleague A was frustrated with management and how her complaints had been dealt with therefore the panel acknowledged that this incident had also been reported to her union.

The panel considered that Colleague A was clear about what Mr Gora had said to her and that he had made inappropriate comments to her prior to this. Therefore, on the balance of probabilities, it finds these charges proved.

Charges 1c, 1d and 1e

1) Between May 2016 and March 2020 in respect of Colleague A:

- c) On unknown date/s on one or more occasion said to them "stay with me, you look beautiful especially your bum/boobs" or words to that effect.
- d) On unknown date/s on one or more occasions touched their arm and/or hand.
- e) On unknown date/s on one or more occasion said to them "Your bum and boobs are beautiful, come sit here with me" or words to that effect.

These charges are found proved.

The panel considered these three charges together. In reaching this decision, the panel took into account Colleague A's witness statement, her letter dated 19 December 2019, her email to Unison and her oral evidence.

In the papers Mr Gora said that there was no intentional touching.

The panel acknowledged that these incidents are documented in all Colleague A's documentary evidence. The panel considered that Colleague A was consistent and clear in her oral evidence about each one.

The panel in preferring the evidence of Colleague A, concluded that on the balance of probabilities, it was more like than not that Mr Gora did state those words or words to that effect. These charges are therefore found proved.

Charge 1f

1) Between May 2016 and March 2020 in respect of Colleague A:

1f) On dates unknown on one or more occasion attempted to touch their bottom.

This charge is found proved.

In reaching this decision, the panel took into account Colleague A's witness statement and her oral evidence.

The panel acknowledged that this incident is documented in Colleague A's documentary evidence and that she is also consistent and clear in her oral evidence. It also noted Colleague A maintained throughout her evidence that Mr Gora did not make physical contact with her but had attempted to touch her inappropriately.

The panel considered Mr Gora's response as in charges 1c, 1d and 1e, that there was no inappropriate touching.

The panel in preferring the evidence of Colleague A, concluded that on the balance of probabilities, it was more like than not that Mr Gora did attempt to touch Colleague A's bottom. This charge is therefore found proved.

Charge 2a

2) Your conduct at any/or all of charge 1 above:

a) Was motivated by the pursuit of sexual gratification and/or of a sexual relationship.

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it. It considered the language used by Mr Gora and the state of mind of Colleague A as a result.

The panel considered the wording of Mr Gora's comments to be sexually explicit using language such as: *"erection"*, *"She is ripe for me to have her, you could be my mother-in-law"*, *"stay with me, you look beautiful especially your bum/boobs"* and *"Your bum and boobs are beautiful, come sit here with me"*.

In the 20 December 2019 meeting notes Mr Gora is informed about two complaints against him regarding comments he has made. It is noted that he describes the comments as a *"joke"* and *"jest"*.

The panel also considered Colleague A's reaction to comments and noted that she used terms such as *"That is not appropriate behaviour"*, *"I did not want to work with Tyne"*, which demonstrated the comments were not invited or welcomed.

Based on all the information before it, the panel finds that Mr Gora's conduct was motivated by the pursuit of sexual gratification and/or of a sexual relationship.

Charge 2b

2) Your conduct at any/or all of charge 1 above:

- b) Created an intimidating and/or hostile and/or degrading and/or humiliating and/or offensive environment for Colleague A and amounted to harassment.

This charge is found proved.

There is nothing in the papers as to Mr Gora's response to this allegation.

In reaching this decision, the panel took into account Colleague A's evidence and considered the following from Colleague A's witness statement:

I was really anxious about being in the Home while Tyne was still there, as I had reported it and I did not know how he was going to react towards me. I was also angry as I got no support from the Home and felt that I was not getting listened to. It really did affect my mental health, I was off work for about six months due to it. It affected my anxiety and I had panic attacks and could not sleep. I did not want to leave the house. Any time I left the house and saw a car like Tyne's, I would panic in case it was him; it was horrendous. I had to get my medication increased and I think I had to get new medication, as I was not sleeping.

The panel considered the power dynamic between Colleague A being a junior member of staff to Mr Gora, the impact his actions and comments had on Colleague A and that in her oral evidence she repeatedly stated that it made her sick. The panel also acknowledged that Colleague A was on sick leave and then never returned as a result of Mr Gora's conduct.

Further the panel considered the period of time over which the incidents occurred and that it was prolonged and not a one off. It also noted that there were a number of concerns raised with no action being taken to reprimand Mr Gora. The panel concluded that the repeated inappropriateness would have created a hostile environment and made Colleague A feel intimidated.

In light of this, the panel finds that Mr Gora's conduct created an intimidating and/or hostile and/or degrading and/or humiliating and/or offensive environment for Colleague A and amounted to harassment. Therefore, this charge is found proved.

Charge 3

3) In or around October 2019 stated "women in my country do what men tell them" or words to that effect.

This charge is found proved.

There is nothing in the papers as to Mr Gora's response to this allegation.

In reaching this decision, the panel took into account of the numerous amounts of contemporaneous evidence recorded at the time of this incident and Colleague A's witness statement, which states:

"Tyne passed a comment that women in his country do what men tell them. He said this in the Unit with staff around, I do not know if they heard it or not."

The panel in preferring the evidence of Colleague A, concluded on the balance of probabilities, it was more like than not that Mr Gora did state "women in my country do what men tell them" or words to that effect to Colleague A. This charge is therefore found proved.

Charge 4

4) Your conduct at charge 3 above was discriminatory.

This charge is found proved.

There is nothing in the papers as to Mr Gora's response to this allegation.

In reaching this decision, the panel took into account all the evidence before it. The panel considered that Mr Gora had made that statement in front of other women and that it was more of a statement than a joke.

The panel considered that a person's sex is a protected characteristic and statements like this aimed at women are discriminatory and intimidating. The panel also noted that there were no male staff present at the time.

The panel was therefore satisfied that using terms like this, is discriminatory against women and therefore, this charge is found proved.

Charge 5

5) On an unknown date stated to Colleague A in respect of an unknown resident "Do as I say, you get him up" or words to that effect.

This charge is found proved.

There is nothing in the papers as to Mr Gora's response to this allegation.

In reaching this decision, the panel took into account Colleague A's evidence, who was quite clear on the circumstances of this incident. The panel referred to Colleague A's witness statement which states:

"You could not speak to Tyne as he would argue with you. It was his way or no way. Tyne would tell us that we need to get the gentleman in room five up, showered and in the chair. The resident could tell us his choice using eye movement, as we had a board. However, Tyne would say "Do as I say, you get

him up”, when the resident did not want this.”

Colleague A was clear that the resident could communicate with the staff, but nonetheless Mr Gora would disregard his wishes.

The panel in preferring the clear and consistent evidence of Colleague A, concluded on the balance of probabilities, it was more like than not that Mr Gora did state to Colleague A in respect of an unknown resident, *“Do as I say, you get him up”* or words to that effect.

This charge is therefore found proved.

Charge 6a

6) On 4 June 2020 in respect of Colleague B;

a) Said to them *“You and me are going to have a fight”* or words to that effect.

This charge is found proved.

There is nothing in the papers as to Mr Gora’s response to this allegation.

In reaching this decision, the panel took into account Colleague B’s documentary and oral evidence, who was fair in telling the panel that he did not like Mr Gora. The panel accepted his admission that his comment towards Mr Gora at the time, may not have been helpful and was the catalyst for the events that followed. However, the panel was satisfied that Colleague B’s evidence was clear and cogent on the wording Mr Gora used.

The panel found Colleague B’s evidence to be consistent and credible. Therefore, the panel determined on the balance of probabilities, Mr Gora had said to Colleague B *“You and me are going to have a fight”* or words to that effect.

The panel finds this charge proved.

Charge 6b and 6c

- 6) On 4 June 2020 in respect of Colleague B;
 - b) Poked and/or pushed your finger into their chest.
 - c) On one or more occasion pushed them.

These charges are found proved.

There is nothing in the papers as to Mr Gora's response to these allegations.

The panel considered these two charges together. In reaching this decision, the panel took into account Colleague B's documentary evidence, including his Police statement dated 4 June 2020 and his oral evidence.

The panel considered the evidence before it, the consistency of Colleague B's evidence and that it was corroborated by the police statement, taken after the event. There is no denial that there was some sort of altercation between Mr Gora and Colleague B on this date although the accounts of those present differ.

The panel acknowledged Colleague B's evidence as to why the Police were involved, for the same reasons Colleague A had escalated her concerns to her union. Colleague B was concerned that the incident with Mr Gora would have been swept under the carpet and therefore he chose to make it formal.

The panel determined on the balance of probabilities, Mr Gora had poked and/or pushed his finger into Colleague B's chest and on one or more occasion pushed him. These charges are found proved.

Charge 6d

- 6) On 4 June 2020 in respect of Colleague B;
d) Pushed them or hit them to the back.

This charge is found proved.

There is nothing in the papers as to Mr Gora's response to this allegation.

In reaching this decision, the panel took into account the oral and documentary evidence of Colleague B, his statements dated 2 April 2022, the Police report dated 4 June 2020 and the Accidents and Incidents form, dated 4 June 2020. The panel also took into account Witness 1's written and oral evidence.

The panel appreciated that there was a difference in evidence between Colleague B and Witness 1, in that Witness 1's evidence was that Colleague B and Mr Gora entered the room together and were squaring up to each other. His evidence was that Mr Gora pushed Colleague B in the chest and that Colleague B stumbled over a chair.

Colleague B's evidence was that he had entered the room alone and was in the process of shutting the door behind him when he was catapulted across the room over a chair, landing on the floor by Witness 1's desk. Colleague B told the panel that he had no idea that Mr Gora had followed him from the medication room. He told the panel that he had no idea how he had been thrown across the room, but that the blow had been to his back. Colleague B stated that he became aware that Mr Gora was standing just inside the door of the office and he heard Witness 1's say "*Tyne you can't do that*".

The panel noted that the incident had been reported to the police as an assault and that they attended and interviewed all parties.

The panel considered Colleague B's evidence that he did not know what happened exactly only that he was hit from the back and went over a chair, as being consistent throughout the contemporaneous evidence, his witness statement and oral evidence.

Witness 1's account was put to Colleague B during questioning and he strongly refuted being pushed in the chest. He maintained that he had no idea what had hit him.

The panel considered all the evidence as set out above, as being supportive of Colleague B's evidence that he was hit from behind.

The panel considered that Witness 1's evidence was at times contradictory and inconsistent. The panel also noted that Witness 1's accepts that he said "*you cant do that*" to Mr Gora during the incident.

The panel was satisfied that something took place that resulted in Colleague B requiring medical attention as set out in the Accidents and Incidents form and the police statement.

The panel preferring the evidence of Colleague B, determined on the balance of probabilities that Mr Gora pushed Colleague B or hit him to the back.

This charge is therefore found proved.

Fitness to practise

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

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

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mr Gora'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 Mustard invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision.

Ms Mustard submitted that the conduct found proved in this case is sufficiently serious to attract a finding of misconduct and would suggest that the conduct that has been found proved could be categorised into four categories. She told the panel that the first category is inappropriate sexualized comments and behaviours which relates to charges one and two. Secondly, discriminatory conduct, which relates to charge charges three and four.

The third category she submitted is related to not ensuring that a service user or resident's wishes are followed, which relates to charge 5. Lastly, the final category is along similar themes to the first topic, around inappropriate conduct and behaviour, particularly towards

colleagues, however the difference is the evidence of aggression, aggressive comments and actions which is relevant to charge 6 and to Colleague B.

Ms Mustard identified the specific, relevant standards where Mr Gora's actions amounted to misconduct. She took the panel through the parts of the Code the NMC say Mr Gora's conduct breached for the panel's consideration.

Ms Mustard submitted that Mr Gora's breaches of the Code clearly fell below the expected standards of a registered nurse. The concerns with Mr Gora's misconduct is in breach of the fundamental basic requirements and therefore are sufficiently serious that they should amount to misconduct.

Submissions on impairment

Ms Mustard 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 NMC Guidance on Impairment (DMA-1) dated 27 February 2024 and the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Bolton v The Law Society* [1994] WLR 512.

Ms Mustard submitted that the panel, having considered DMA-1, should find that Mr Gora cannot practise kindly, safely and professionally, and therefore a finding of current impairment should be made.

Ms Mustard referred the panel to the case of Grant and the questions included in that judgement which are as follows:

- 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.'*

Ms Mustard submitted that the first three questions can be answered in the affirmative. She submitted that Mr Gora put residents at unwarranted risk of harm and he has brought the profession into disrepute by breaching fundamental tenets of the profession. Further she submitted that due to Mr Gora's lack of insight and lack of remediation, there remains a risk of repetition in the future, which may also give rise to further breaches of the same concerns.

Ms Mustard submitted that Mr Gora's actions at charge 5, relating to the resident who he directed to be got up despite the resident's own wishes, had the potential of putting that resident at risk of harm. The action of physically moving that vulnerable individual, only suited Mr Gora's own agenda and what he thought was best, as opposed to taking the resident's wishes into account, or perhaps looking at the situation more holistically.

Ms Mustard reminded the panel that a number of inappropriate and unprofessional comments made by Mr Gora took place in front of residents, which could place those residents at the risk of emotional harm.

Ms Mustard submitted that all of the conduct that has been found proved is conduct liable to bring the profession into disrepute, because the majority of the concerns are attitudinal

with Mr Gora displaying behaviours that are fundamentally incompatible with those expected standards of a registered nurse.

Ms Mustard submitted that the first sub paragraph of the Code talks about treating people kindly with respect compassionately and clearly. However, in this case, Mr Gora has failed to display that type of behaviour, not just towards colleagues, but also towards residents. Ms Mustard referred the panel to Mr Gora's responses to the allegation put to him during the Trust's investigation and his responses ranged from either denials, calling it banter, or suggesting it was nothing more than a joke.

Ms Mustard addressed the panel in relation to the facts found proved at charge 6. She submitted that these concerns arose whilst Mr Gora had already been subject to a written warning about his previous conduct.

Ms Mustard told the panel that even a written warning in relation to his conduct involving Colleague A, did not result in a change in Mr Gora's behaviour or a change in his attitude which therefore demonstrates this is entrenched behaviour and there has been a pattern shown over a considerable period of time.

Ms Mustard submitted that at no point throughout the local investigation did Mr Gora demonstrate any insight, remorse or contrition about any of these concerns. Therefore, the risk of repetition is high. Given Mr Gora's limited engagement with his regulator and his voluntary absence from these proceedings, there is no evidence of insight in this case. She told the panel that a number of the concerns are attitudinal in nature and therefore difficult to put right.

Ms Mustard therefore invited the panel to find current impairment on the ground of public protection and also on the grounds of public interest. She submitted that Mr Gora's actions are so serious that a finding of current impairment is required to maintain public confidence in the profession and to declare and uphold proper professional standards.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Meadows v GMC* [2007] EWCA Civ 1390, *Cheatle v General Medical Council* [2009] EWHC 645 (Admin), *Cohen v GMC* [2008] EWHC 581 (Admin), *Roylance v The General Medical Council* [2000], *Ahmedsowida v GMC* [2021] EWHC 3466 (Admin), *Schodlok v. GMC* [2015] EWCA Civ 769, *CHRE v NMC and Paula Grant* [2011] EWHC 927, *Nicholas-Pillai v GMC* [2009] EWHC 1048 Admin and *Yeong v General Medical Council* [2009] EWHC 1923 (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.

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

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

2.5 respect, support and document a person's right to accept or refuse care and treatment, and

8 Work cooperatively

To achieve this, you must:

8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate

8.2 maintain effective communication with colleagues

9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues

To achieve this, you must:

9.3 deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times, and

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

20.7 make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that view that Mr Gora's misconduct feel far below the standards expected of a registered nurse.

The panel considered each charge and whether it amounted to misconduct.

Charge 1a

The panel considered charge 1a in total as it related to a single incident. The panel considered the charges 1ai and 1aii do not amount to misconduct when considered individually. However, it considered charge 1aiii does amount to misconduct.

Taken together, the panel was of the view that this incident having taken place whilst a resident was being given personal care was highly inappropriate and unprofessional behaviour and therefore amounts to misconduct.

Charge 1b

The panel considered charge 1bi and 1bii individually. It noted that Mr Gora was referring to Colleague A's daughter in a sexualised context, which the panel considered highly inappropriate conduct. The panel considered the power imbalance between Mr Gora and Colleague A and that she was left shocked, offended and sickened.

The panel was of the view that a male nurse talking to junior colleague about her daughter in such a way was not appropriate. Further, the panel considered that this is not the expected behaviour of a registered nurse and was highly unprofessional. Therefore, both these charges amount to misconduct.

Charge 1c

The panel considered this to be a sexual comment and therefore not appropriate between a male nurse and a junior female colleague.

The panel considered the impact of Mr Gora's comments on Colleague A and that she felt humiliated, degraded and uncomfortable. The panel considered that this is not the expected behaviour of a registered nurse and was very inappropriate and unprofessional. Therefore, this charge amount to misconduct.

Charge 1d

The panel considered this charge and was of the view that a male nurse touching a female junior colleague on the hand could be inappropriate, but it was not satisfied that this charge alone amounts to misconduct.

Charge 1e

The panel considered this to be a sexual comment and therefore not appropriate between a male nurse and a junior female colleague.

The panel considered the impact of Mr Gora's comments on Colleague A and that she felt humiliated, degraded and uncomfortable. The panel considered that this is not the expected behaviour of a registered nurse and was very inappropriate and unprofessional. Therefore, this charge amounts to misconduct.

Charge 1f

Although the panel found charge 1d did not amount to misconduct, it considered this charge to be different, as it involves a more intimate part of the body. The panel considered this behaviour to be wholly inappropriate and unprofessional and has no place in the workplace. It determined that this charge amounts to misconduct.

Charge 2a

The panel considered this charge to amount to misconduct in a workplace environment. It considered the impact of Mr Gora's actions on Colleague A and the distress that they caused her.

The panel considered this behaviour to be wholly inappropriate and unprofessional. It determined that this charge amounts to misconduct.

Charge 2b

The panel considered Colleague A's evidence that she suffered from anxiety and the impact of this environment resulted in a worsening of her condition and led to her taking time off work for a period of six months. It noted that this was not an isolated incident, but prolonged over a period of time.

The panel determined that Mr Gora should not have created an environment of this kind anywhere let alone in a workplace setting with vulnerable residents. The panel therefore concluded that this charge amounts to misconduct.

Charge 3

The panel considered this charge and was of the view that on its own, this charge does not amount to misconduct. It considered the comment to be unpleasant and inappropriate, however, it was not satisfied that this charge amounted to misconduct.

Charge 4

The panel was of the view that this charge amounts to misconduct. It considered the context and that Colleague A wanted to get away from Mr Gora, but he wanted her to stay. Furthermore, the comment was made in front of other female staff. The panel considered this comment to be discriminatory and amounted to misconduct.

Charge 5

The panel considered this resident and that he could only communicate using his eyes. It was clear the other staff had ascertained the resident's wishes, but Mr Gora chose to disregard them to suit himself.

The panel considered this treatment to be wholly inappropriate and unprofessional. It has no place in the workplace or whilst caring for vulnerable residents. It determined that this charge amounts to misconduct.

Charge 6a

The panel considered this charge to amount to serious misconduct as this behaviour is not acceptable in the workplace or from a registered nurse. The panel took account of the power imbalance between Mr Gora as the nurse in charge and Colleague B being a junior member of staff. The panel also noted that this took place in front of a resident.

The panel considered this behaviour to be wholly inappropriate and unprofessional. It determined that this charge amounts to misconduct.

Charge 6b

The panel considered this charge and concluded that it was highly unprofessional and inappropriate to behaviour in an aggressive manner towards a colleague.

This charge therefore amounts to misconduct.

Charge 6c

The panel considered this charge and concluded that it was highly unprofessional and inappropriate to behaviour in an aggressive manner towards a colleague. It therefore determined that this charge amounts to misconduct.

Charge 6d

Lastly, the panel considered charge 6d. The panel considered that Mr Gora displayed aggression in the workplace, which on its own is unacceptable. However, together with hitting Colleague B to the back is highly inappropriate, unacceptable and unprofessional behaviour in the workplace.

The panel considered the clear evidence that Colleague B was hit with such force that he required medical attention afterwards.

The panel is clear; this type of behaviour has no place in the workplace and therefore this charges amounts to misconduct.

Having considered each charge and determining all but two amounted to misconduct, the panel finds that Mr Gora's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

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

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

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

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

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

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d) ...'

The panel determined that limbs a, b and c of the test as set out above are engaged in this case.

The panel finds that residents and members of staff were put at risk of emotional harm and Colleague B suffered actual harm as a result of Mr Gora's misconduct. Mr Gora's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel had nothing before it to demonstrate Mr Gora has demonstrated an understanding of how his actions put the residents at a risk of harm, an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. Mr Gora has not apologised for his misconduct nor has he demonstrated how he would behave differently in the future.

The panel was satisfied that the misconduct in this case would be difficult to address given that it may be attitudinal in nature. However, it might be capable of being addressed through, for example, training in professional boundaries and then personal reflection. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Gora has taken steps to strengthen his practice. However, the panel had nothing before it from Mr Gora to demonstrate any remediation or strengthening of his practice.

In light of this, the panel is of the view that there is a risk of repetition based on lack of insight, remediation and remorse and the absence of any strengthening of Mr Gora's

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

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

The panel determined that a finding of current impairment on public interest grounds is required as a member of the public, aware of all the circumstances in this case would be concerned that the nurse against whom such concerns were found proved, was allowed to practise unrestricted.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Gora's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Gora's fitness to practise is currently impaired.

Sanction

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

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

Submissions on sanction

Ms Mustard informed the panel that in the Notice of Hearing, dated 20 December 2023, the NMC had advised Mr Gora that it would seek the imposition of a strike off if it found Mr Gora's fitness to practise currently impaired.

Ms Mustard provided written submissions for the panel's consideration. She submitted that when considering sanction, the panel should have regard to their purpose. Sanctions are not intended to be punitive, although they may have that effect, but rather they are intended to protect the public.

Ms Mustard submitted that public protection is defined as three strands which are as follows:

- *protect, promote and maintain the health, safety and wellbeing of the public*
- *promote and maintain public confidence in the nursing and midwifery professions*
- *promote and maintain proper professional standards and conduct for members of the nursing and midwifery professions.*

Ms Mustard submitted that considering the panel's findings on impairment, all limbs of public protection are engaged in this case. She told the panel that it must also consider proportionately when considering sanction, and the panel should balance the interests of the public against those of Mr Gora.

Ms Mustard set out the NMC's submissions as to the aggravating and mitigating features in this case for the panel's consideration.

Ms Mustard also addressed the panel on the sanctions available to it today, starting at the least restrictive and making her way up to a strike off order. She referred the panel to the NMC guidance documents on *Seriousness* (FTP-3) and the two sub sections on '*sexual misconduct*' and '*discrimination, bullying, harassment and victimisation*'.

Ms Mustard submitted that that given the sustained nature of the serious misconduct in this case, particularly the physical altercation with Colleague B, which took place when Mr Gora was subject to a warning from his employer, anything less than removal from the NMC register would not adequately protect the public or address the wider public interest.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Abuse of a position of trust;
- Lack of insight into failings;
- Sexual and discriminatory misconduct;
- Non-engagement with these proceedings;
- A pattern of misconduct over a period of time; and
- Conduct which put patients at risk of suffering harm.

Taking everything into account and notwithstanding Mr Gora's lack of previous regulatory findings, the panel could not find any mitigating features in this case.

The panel took into account the character references provided by Mr Gora. However, it noted that they were all dated in February and March 2021, which is over three years ago

and there is also no indication that the referees were aware of the specific allegations at the time of writing.

Therefore, the panel decided to give them limited weight.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Gora's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Gora's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Gora's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining due the attitudinal nature of the concerns.

The panel also considered due to Mr Gora's disengagement from these proceedings, it was not confident that he would comply when any conditions placed on his registration.

Furthermore, the panel concluded that the placing of conditions on Mr Gora's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Gora's actions is fundamentally incompatible with Mr Gora remaining on the register.

The panel considered the following aspects of this case to be particularly serious:

- Disregarding patient's wishes in regard to their own care;
- The physical aggression and assault towards Colleague B; and
- Sexual harassment towards a female colleague, such that she suffered emotional harm.

Therefore, in this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

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

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

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

This will be confirmed to Mr Gora in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Whawell. She submitted that as the striking off order cannot take effect until the end of the 28-day appeal period, the panel is invited to impose an interim suspension order for a period of 18 months.

Ms Whawell submitted that interim suspension order is necessary and proportionate to adequately protect the public and otherwise in the public interest over the statutory appeal period. Further, she submitted it would also be consistent with the decision that the panel has determined regarding sanction.

Ms Whawell submitted that in the absence of such an order and in the event of an appeal, Mr Gora would be allowed to practise without restriction, pending the outcome of the appeal. She therefore invited the panel to impose an interim suspension order for 18 months.

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, nor according to its decision on sanction. The panel therefore imposed an interim suspension order for a period of 18 months, due to the public protection and public interest concerns in this case.

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

That concludes this determination.