

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

**Substantive Hearing
Monday, 22 April 2024 – Thursday, 25 April 2024
Monday, 29 April 2024 – Tuesday, 30 April 2024
Tuesday, 28 May 2024 – Friday 31 May 2024**

Virtual Hearing

Name of Registrant: Lee Rennie

NMC PIN 13H0256E

Part(s) of the register: Registered Nurse – Adult
Effective – 16 October 2013

Relevant Location: London

Type of case: Misconduct

Panel members: Paul Grant (Chair, Lay member)
Timothy Kemp (Registrant member)
Alex Forsyth (Lay member)

Legal Assessor: Charlene Bernard

Hearings Coordinator: Monsur Ali (Monday 22 April 2024)
Amanda Ansah (Tuesday 23 April 2024 –
Thursday 25 April 2024)

Nursing and Midwifery Council: Represented by Jemima Lovatt, Case Presenter

Mr Rennie: Present and unrepresented

Facts proved by admission: Charges 1a, 1b, 1c, 1d, 2, 8

No case to answer: Charge 4

Facts proved: Charges 5 (in respect of 1b, 1d and 2), 6a (in respect of charges 1b, 1d, and 2), 6b(i) (in respect of charges 1b, 1d, and 2) and 6b(ii) (in respect of charges 1b, 1d, and 2)

Facts not proved:	Charges 3a, 3b, 7a and 7b
Fitness to practise:	Impaired
Sanction:	Strike-off
Interim order:	Interim Suspension Order (18 months)

Details of charges

That you, a nurse

1. On or around February/March 2022 sent messages of a sexual nature to colleagues as follows
 - a. A
 - b. B
 - c. C
 - d. D
2. On or around March 2022 sent sexually explicit photos to Colleague B
3. In respect of Colleague C remarked that she could
 - a. Give you a blow job
 - b. Sit on your face
4. In respect of Colleague E showed photos of topless woman whilst she was trying to shower a patient
5. Actions specified in charges 1, **and/or** 2, **and/or** 3 and/or 4 were sexually motivated in pursuit of and/or to obtain sexual gratification
6. Actions specified in charges 1, **and/or** 2, **and/or** 3 and/or 4 above harassed **female** Colleagues B, **and/or** C, **and/or** D and/or E
 - a. It was unwanted conduct of sexual nature
 - b. Your actions had the purpose or effect of:
 - i. Violating Colleagues B, **and/or** C, **and/or** D, and/or E dignity
 - ii. Creating an intimidating hostile, degrading, humiliating or offensive environment for Colleagues B, **and/or** C, **and/or** D, and/or E
7. On 6 April 2022 confronted Colleague D in an intimidating manner in front of a Patient A by
 - a. Demanding if they had stated they did not want to work with you
 - b. Stating 'fuck this I'm leaving', or words to that effect
8. On 6 April 2022 left an allocated shift without authorisation

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

At the outset of the hearing, Ms Lovatt made a request that parts of this case be held in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You indicated that you supported the application [PRIVATE].

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 decided [PRIVATE] to protect your privacy and that this outweighed any prejudice to the public interest.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Lovatt under Rule 31 to allow the following documents into evidence:

- JB/01 Appendix 5 (p.16)
- JB/01 Appendix 6 (p.17-31)
- JB/01 Appendix 8 (p.32-33)
- JB/01 Appendix 9 (p.34)
- JB/01 Appendix 10 (p.35)
- JB/01 Appendix 14 (p.36)
- AB/02 (p.40-41)
- AB/03 (p.42-43)
- Witness statement of Colleague D

Ms Lovatt submitted that none of these items are in themselves the sole and decisive evidence in support of any one charge. In some cases, they corroborate each other and

are supported by evidence for which the panel will hear live evidence. She said that none of the disputed charges rely on a single piece of evidence and that there is no suggestion that any of the witnesses have fabricated their allegations.

Ms Lovatt submitted that the NMC could not secure Colleague B's attendance despite making various attempts. Colleague C cited personal circumstances and directed the panel to her e-mail correspondence with the NMC.

Ms Lovatt submitted that Colleague D also cited personal circumstances in her witness statement for her non-attendance and that the NMC has taken reasonable steps to secure this witness's attendance.

Ms Lovatt submitted that it is clear that witnesses will not be attending and where they have suggested personal circumstances, it certainly would have been unreasonable to push any further, given the sensitive nature of the charges. Further, she said that the panel will have an opportunity to test the person, Witness 2, who has exhibited the appendices as he is coming to give live evidence. She submitted that it is in the interest of justice for this evidence to be admitted. The evidence is relevant and on balance, it is fair to admit it.

You objected to the statements being admitted into evidence and submitted that you would like to have been able to question the witnesses, but they are not in attendance. You also stated that anyone can make a statement about anything.

The panel accepted the legal assessor's advice on the issues it should take into consideration in respect of this application, which included reference to *Thorneycroft, NMC v Ogbonna [2010] EWCA Civ 126* and *R (Bonhoeffer) v GMC [2011] EWHC 1585 (Admin)*. 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 noted that Appendix 5 and 6 relate to Colleague B and determined to admit this into evidence as they are not the sole and decisive evidence. The panel noted that

you have been aware of these allegations for a long time, and it was addressed to you at the local investigation where you made generalised admissions but on your Case Management Form (CMF) you made specific admissions in relation to the allegations raised by Colleague B. The panel was of the view that Colleague B's reason for non-attendance is not a good one but decided to admit this into evidence because of the wider context and determined that you can receive a fair hearing in relation to those charges to which these documents relate.

The panel determined to admit Appendix 8 (pages 32-33), AB/02 (p.40-41) and the witness statement of Colleague D (with the exception of paragraph 12) into evidence for the same reasons as for Appendix 5 and 6. Further, Witness 1 will be in attendance, and you will be able to ask questions and cross-examine him in relation to what had taken place. Paragraph 12 of Colleague D's witness statement was excluded as it would be secondary hearsay, would be the sole and decisive evidence in relation to charge 4, given the panel's decision to exclude Appendix 10 (see later), and had the potential to be highly prejudicial to your case.

In relation to Appendix 9, the panel decided to admit this document into evidence (with the exclusion of paragraph 3). Most of this statement relates to charge 1c which you have admitted to and therefore, it is not the sole or decisive evidence in relation to this charge and it would be fair to admit this document. However, paragraph 3 relates to charge 3 and would be the decisive evidence. The panel noted that you have always strongly denied this charge. Further, Colleague C has not provided a formal witness statement. She emailed the NMC on 14 November 2022 stating that she wished to 'retract my witness statement' and no good reason for her non-attendance has been provided. In these circumstances, it would be highly prejudicial and unfair to your case to admit paragraph 3 into evidence.

In relation to AB/02, the panel decided not to admit paragraph 3 as it would be untested hearsay which had the potential to be highly prejudicial to your case.

In relation to Appendix 14 the panel decided to admit this into evidence as it is not the sole and decisive evidence in relation to charge 7, and there is a live witness who was present during the incident and will give evidence.

In relation to Appendix 10, the panel determined not to admit this into evidence as it is the decisive evidence in relation to charge 4 and the panel noted that this is a serious allegation which you have always denied. Further, no good reason has been provided as to why Colleague E could not attend the hearing. Therefore, the panel determined that it would be unfair to admit this evidence.

Decision and reasons on application of no case to answer

The panel considered an application from you that there is no case to answer in respect of charge 4. This application was made under Rule 24(7).

In relation to this application, you submitted that due to Appendix 10 being excluded, there is no further evidence to be heard regarding charge 4 so it should be dropped. In these circumstances, it was submitted that this charge should not be allowed to remain before the panel.

Ms Lovatt submitted that the NMC did not oppose the application as the evidence it sought to rely on has now been excluded. She submitted that the panel should make a decision as to whether charge 4 should be dropped at this stage or be dealt with at the facts stage.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it. The panel was solely considering whether sufficient evidence had been presented such that, taking the evidence at its highest, it could find charge 4 proved and whether you had a case to answer in relation to it.

Panel's decision

The panel took account of the submissions made by you and Ms Lovatt and accepted the advice of the legal assessor.

The panel considered the application carefully in respect of charge 4. The panel had regard to all the evidence adduced by the NMC both written and oral. The panel was mindful of the test in considering such applications, as set out in the judgment of Lord Lane LCJ in *R v Galbraith* [1981] 1WLR 1039.

The panel was mindful that it was not deciding whether the disputed charge was proved, only whether, applying the *Galbraith* test to the NMC evidence, it could find the charge proved. In regulatory proceedings, the panel should ask itself the question “is there any evidence upon which a properly directed panel could find the alleged facts proved?”. If the answer is “yes it could”, (not that it would), then the panel should proceed to hear your case.

The panel was of the view that, taking account of all the evidence before it, there was not a realistic prospect that it would find the facts of charge 4 proved. The panel determined that the only evidence the NMC could rely on had been excluded. You denied the charge, and the NMC have not provided any other evidence that the panel could rely on to find this charge proved at the facts stage.

The panel therefore finds that there is no case to answer in respect of charge 4.

Background

The charges arose whilst you were employed as a registered nurse by Fryers House (the Home), which is part of the Leonard Chesire Disability Trust (the Trust). You entered the NMC register on 21 September 2013 and worked at the Trust from 2017. A referral was made to the NMC on 12 April 2022, following reports from staff members that they had received Facebook messages from you of a sexually explicit nature with pornographic images and pictures of what was alleged to be your penis. It was also alleged that on 6 April 2022, you entered a resident’s room and confronted a colleague who expressed an intention not to work with you in an intimidating manner. You

allegedly then swore, threw down your clinic room keys and left the service. This left the service at risk of being short-staffed.

As a result, you were suspended from work on 7 April 2022 and following an internal investigation dismissed from the home on 6 May 2022.

Decision and reasons on facts

At the outset of the hearing, you made full admissions to charges 1a, 1b, 1c, 1d, 2 and 8.

The panel therefore finds charges 1, 2 and 8 proved in their entirety, by way of your admissions.

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

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 under affirmation from the following witnesses called on behalf of the NMC:

- Witness 1: Administration Assistant at Fryers House.
- Witness 2: Former Service Manager at Fryers House.
- Witness 3: Registered Nurse at Fryers House.

The panel also heard evidence from you under affirmation.

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

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

Charges 3a and 3b

3. "In respect of Colleague C remarked that she could:"
 - a. Give you a blow job
 - b. Sit on your face

These charges are found NOT proved.

In reaching this decision, the panel noted that these allegations were made by Colleague C as part of the local investigation. The panel further noted that Colleague C did not attend the hearing to give evidence and there was no hearsay evidence from Colleague C in relation to this charge upon which the panel could rely. The panel did not have any other evidence apart from the second-hand hearsay evidence that was provided by Witness 3. The panel noted that Colleague C had been given more than one opportunity to provide a statement and it had not been given any reason for her non-attendance at the hearing. As noted earlier, Colleague C had emailed the NMC on 14 November 2022 stating her wish to 'retract my statement'. The panel determined that these were serious allegations, and it is unfair that you have attended, given evidence, and been cross-examined, but Colleague C has not and can therefore not be cross-examined in the same way. The panel determined that you have been consistent in your denial of the charges.

The panel noted that the burden of proof is on the NMC and determined that the NMC has not discharged its burden of proof in relation to this charge. The panel determined that any doubt should be in your favour and given the absence of further evidence and the limited weight it placed on the hearsay evidence, the panel could not find these charges proved.

The panel therefore finds these charges not proved on the balance of probabilities.

Charge 5

5. "Actions specified in charges 1, **and 2**, ~~and/or 3 and/or 4~~ were sexually motivated in pursuit of and/or to obtain sexual gratification."

This charge is found proved in respect of charges 1b, 1d and 2.

In reaching this decision, the panel took into account the submissions made by Ms Lovatt, and your oral evidence. It also considered the documentary evidence in respect of charges 1a, 1b, 1c, 1d and 2 in turn. As the panel did not find charge 3 proved and found no case to answer in respect of charge 4, it did not consider them in respect of this charge.

The panel had regard to Ms Lovatt's submission that there could be no other plausible explanation for your actions other than sexual motivation. The panel also had regard to your oral evidence in which you stated that your actions were as a result of your drunkenness and that they were due to you being "*stupid and drunk*", and you did not seek to enter into any form of sexual relationship with your colleagues outlined in charges 1a to 1d. You did confirm however that you had a brief sexual relationship with Colleague E and explained the circumstances around that. However, you could not give the panel a clear explanation as to what motivated your actions in sending these messages.

In respect of charge 1a, the panel noted that the messages sent to Colleague A were confined to a period of one hour on one evening. Further, Colleague A attended the

hearing and gave evidence that she took the messages as a joke, which is supported by the content of her responses to your messages. The panel also noted Colleague A's evidence that you apologised the next day, and she did not seem to be concerned about them. However, the panel were of the view that this, in and of itself, does not mean that the messages were not sexually motivated. When the panel looked at the messages sent to Colleague A, it determined that they were inappropriate, however, it was not satisfied that, given the context of the messages, there was sufficient evidence to support the notion that your actions were sexually motivated. The panel determined that the messages sent to Colleague A were crude and sexually explicit, but it was not satisfied that you were seeking sexual gratification.

In respect of charge 1b, the panel determined that there was no other plausible reason for your actions other than sexual motivation in pursuit of and/or to obtain sexual gratification. You sent sexually explicit messages to Colleague B that went beyond humour. You were soliciting the prospect of some sexual interaction with Colleague B and sending material that was sexually explicit in nature. You then followed this with what is alleged to be a picture of your penis and despite Colleague B messaging you to state that your messages were 'Bordering harassment...', you still continued and went on to send other explicit pornographic images. The panel noted that in your oral evidence you explained that you were drunk, your actions were "stupid" and you thought you were flirting. However, you did not provide any other explanation for these actions. The panel was not satisfied that your drunkenness was a valid excuse for your actions or explained your motivation in sending those messages and images. It determined that being drunk and stupid does not mean that you were not seeking sexual gratification in sending those messages. The panel determined that this was the only reasonable and obvious inference to be drawn, in the absence of you providing an alternative plausible explanation for your actions.

The panel therefore determined that your actions in relation to charge 1b in respect of Colleague B were sexually motivated in pursuit of and/or to obtain sexual gratification.

In respect of charge 1c, the panel noted that the messages that were sent to Colleague C had been deleted by both you and Colleague C. Therefore, the panel had no direct

evidence regarding the content of the messages other than a local statement from Colleague C alluding to the messages being inappropriate. The panel noted that you gave evidence that you could not remember the content of these messages. The panel was of the view that your actions may have been sexually motivated, but as it did not have sight of the messages, it could not reach a judgement as to the context in which they were sent or the likely motivation for you sending them. The panel further noted that you accept that you sent the messages, however on the balance of probabilities, in the absence of direct evidence of these messages, the panel determined that the NMC had not discharged its burden of proof in respect of this charge.

The panel therefore determined that it could not be satisfied that you were seeking sexual gratification when you sent the messages to Colleague C.

In respect of charge 1d, the panel determined that you sent text messages to Colleague D explicitly requesting a sexual act to take place. You used provocative language and the panel determined that there is no other obvious motivation other than seeking sexual gratification. Although the conversation was shut down by Colleague D, it was initiated by a sexual motivation from you given the nature of the language. The panel further determined that it would have developed further if it had not been shut down by Colleague D. The panel was not satisfied that your drunkenness was a valid excuse for or explanation of your motivation in sending these messages. It determined that being drunk and stupid does not mean that you were not seeking sexual gratification in sending those messages. The panel determined that this was the only reasonable and obvious inference to be drawn in the absence of you providing an alternative plausible explanation for your actions.

The panel therefore determined that your actions in relation to charge 1d in respect of Colleague D were sexually motivated in pursuit of and/or to obtain sexual gratification.

In respect of charge 2, the panel had regard to its rationale when looking at charge 1b. It determined that there was no other plausible reason for your actions other than sexual motivation in pursuit of and/or to obtain sexual gratification. In charge 1b, you were soliciting the prospect of some sexual interaction with Colleague B and sending material

that was sexually explicit in nature. You then followed this with what is alleged to be a picture of your penis and other pornographic images. You failed to provide an explanation for your actions other than the fact that you were drunk, which the panel did not accept undermined the notion that your actions were sexually motivated.

The panel therefore determined that your actions in relation to charge 2 were sexually motivated in pursuit of and/or to obtain sexual gratification.

Charge 6a

6. "Actions specified in charges 1, **and/or** 2, ~~and/or~~ 3 ~~and/or~~ 4 above harassed **female** Colleagues B, **and/or** C, **and/or** D ~~and/or~~ E
 - a. It was unwanted conduct of sexual nature."

This charge is found proved in respect of charges 1b, 1d, and 2.

In reaching this decision, the panel first considered whether your actions in charges 1 and 2 harassed female Colleagues B, C, and D. As the panel found no case to answer in respect of charge 4, it did not consider Colleague E in respect of this charge.

In respect of charges 1b and 2, the panel determined that your actions harassed Colleague B as the conduct was unwanted and was of a sexual nature. The panel noted that within these text messages, Colleague B asked you to stop, on more than one occasion however you continued to send the messages and images. This was unwanted behaviour in that regard and amounted to harassment.

In respect of charge 1c, the panel determined that the NMC did not discharge its burden of proof as the messages had been deleted. Therefore, the panel could not see if the messages were encouraged or unwanted. It could not be satisfied that you harassed Colleague C in light of this. The panel therefore did not consider charges 6a and 6b in respect of this charge.

In respect of charge 1d, although you stopped sending messages after Colleague D had implicitly asked you to do so, after taking into account the content of the messages as well as Colleague D's local statement and witness statement, the panel determined that your conduct was unwanted. The panel noted that Colleague D asked if you were drunk and also stated that she would not "*ask nicely twice*". Therefore, the panel was satisfied that your actions amounted to harassment in respect of Colleague D.

Charge 6b(i)

6. "Actions specified in charges 1, **and/or** 2, ~~and/or~~ 3 ~~and/or~~ 4 above harassed **female** Colleagues B, ~~and/or~~ C, **and/or** D ~~and/or~~ E
 - b. Your actions had the purpose or effect of:
 - i. Violating Colleagues B, ~~and/or~~ C, **and/or** D, ~~and/or~~ E dignity

This charge is found proved in respect of charges 1b, 1d, and 2.

In reaching this decision, the panel determined that as it had found that your actions amounted to harassment in respect of Colleagues B and D only, it would only consider these two colleagues in respect of this charge.

The panel then considered whether your actions had the purpose of violating Colleagues B and D's dignity. The panel noted that Colleague B asked you to stop sending messages on more than one occasion and yet, you continued to do so, and this had the effect of violating her dignity. Although Colleague D did not explicitly ask you to stop sending the messages, her wish for you to do so was clear and she shut the conversation down before it could develop any further. Therefore, the panel determined that your actions had the effect of violating Colleague D's dignity. However, the panel was not satisfied that the NMC had discharged its burden of proof in respect of demonstrating that your actions had the purpose of violating Colleague B and D's dignity.

Charge 6b(ii)

6. “Actions specified in charges 1, ~~and/or 2, and/or 3 and/or 4~~ above harassed **female** Colleagues B, ~~and/or C, and/or D and/or E~~
- b. Your actions had the purpose or effect of:
- ii. Creating an intimidating hostile, degrading, humiliating or offensive environment for Colleagues B, ~~and/or C, and/or D, and/or E~~

This charge is found proved in respect of charges 1b, 1d, and 2.

In reaching this decision, the panel considered the statements provided by Colleague B and Colleague D. Taking Colleague B’s statement first, the panel noted that she did not go into detail regarding the impact your actions had on her or how your behaviour made her feel. However, the panel noted that in her statement, Colleague B did describe your actions as “borderline harassment” and when she asked you to stop sending the messages, you escalated your behaviour by sending pornographic images. Based on this evidence, the panel determined that your actions had the effect of creating a hostile, degrading, humiliating, or offensive environment for Colleague B because of your persistence and the nature of the messages and images sent. The panel also took into account the potential impact your actions could have had on Colleague B’s work environment given that you work in the same place although the messages did stop after that night.

The panel did not find that your actions had the purpose of creating a hostile, degrading, humiliating, or offensive environment for Colleague B. It was also not satisfied that there was enough evidence to determine that Colleague B was intimidated by your behaviour.

Taking Colleague D’s statement next, the panel determined that your actions had the effect of creating a degrading and humiliating environment for Colleague D. The panel looked at the context of the messages and the fact that they were much shorter in terms of length compared to the messages that were sent to Colleague B. The panel noted that you had stopped when you were asked to and there were not any pornographic images either of yourself or in general. The panel also took into account Colleague D’s local statement and witness statement in which she expressed that she was not happy

with the messages. The panel determined that she was clearly offended by your actions and therefore found that they had the effect of creating an offensive environment.

Charges 7a and 7b

7. “On 6 April 2022 confronted Colleague D in an intimidating manner in front of a Patient A by
 - a. Demanding if they had stated they did not want to work with you.”
 - b. Stating ‘fuck this I’m leaving’, or words to that effect.

These charges are found NOT proved.

In reaching this decision, the panel first considered whether you confronted Colleague D in an intimidating manner. It took into account Colleague C’s written statement and Colleague D’s internal investigation statement and witness statement. The panel also took into account Colleague C’s local statement and Witness 3’s contemporaneous note about the incident, her witness statement and her oral evidence provided in the hearing.

The panel noted Colleague D’s internal investigation statement in which she said, *“I felt very intimidated as he was standing over me shouting and I said ‘it’s none of your business, fuck off”*. In her witness statement, Colleague D said *“he was shouting at me telling me he was in charge which I found very intimidating. [Witness 3] was trying to deescalate the situation at which point [you] said, ‘f this I’m going home’.*” In Colleague C’s local statement, she states:

“Lee came up to Pt A room with out knocking the door and said are you one of the Girls that does not want to work with me and Why? [Colleague D] said she does not have to Lee anything and to leave her alone. [Witness 3] then said that Lee should leave as not appropriate. Lee took his keys out of his pocket chucked them at [Colleague D] and said Fuck this I’m leaving.”

The panel noted the contradictions in the various written statements. Witness 3 did not mention intimidation in her written statement or oral evidence. Witness 3 in her written statement, stated that *“[you] came into the room, asked [Colleague D] if she had complained about him. [Colleague D] replied by saying it was none of his business and he should f off. [You] asked [her] if [she] thought this was professional”*. The panel determined that this account was consistent with your version of events in your oral evidence. The panel also noted that when asking Witness 3 whether she thought you were confrontational or being intimidating, Witness 3 answered no. Witness 3 also said that you were visibly very upset but remained professional, and did not mention anything about you standing over Colleague D or throwing your keys at her.

The panel also noted that during Witness 3’s oral evidence, when she was cross-examined by you and asked what the first inappropriate comment was during the incident, she answered that this was made by Colleague D when she said, *“f off”*. The panel determined that Witness 3’s evidence aligned with your oral evidence in contradiction to that of Colleague D’s and Colleague C’s written evidence. Neither Colleague C or Colleague D attended the hearing to give live evidence and be cross-examined. The panel placed greater weight on the written and live evidence provided by Witness 3, your live evidence, your written evidence in the internal investigation, and your case management form.

The panel determined that on the balance of probabilities, you did not confront Colleague D in an intimidating manner. Therefore, charges 7a and 7b fall away and are found not 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 your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant’s ability to practise kindly, safely and professionally.

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

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

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 Lovatt 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 Lovatt submitted that, your conduct in having sent messages of a sexual nature, including sexually explicit photos for your own sexual gratification, directly fails to uphold the reputation of the nursing profession. She submitted that your actions amounted to harassment and violated both Colleague B and Colleague D’s dignity, and created an intimidating, hostile, degrading, humiliating, and offensive environment for both of these colleagues.

Ms Lovatt identified the specific, relevant standards where your actions amounted to misconduct. She submitted that your misconduct has breached the NMC Code of Conduct, in that you failed to prioritise people, preserve safety, and promote

professionalism. Ms Lovatt submitted that your conduct has breached the following rules of the Code: Rule 4, Rule 20, Rule 20.2, and Rule 24.

Ms Lovatt further submitted that, in relation to Charge 8, you left an allocated shift early without authorisation. Your leaving in this manner created unwarranted risk of harm, in that you could not have known what was to happen as a result of leaving without the optimal number of nurses that were booked to be present. Consequently, this charge can also be found to amount to misconduct.

Submissions on impairment

Ms Lovatt 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 cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Lovatt submitted that your inability to act in the best interests of all people at all times, and failure to respond to any complaints made against you professionally, leads to your impaired practice. Ms Lovatt submitted that impairment needs to be considered as of today's date, and the panel must consider the NMC guidance. Consequently, the panel must question whether or not you, as a registered nurse, are able to practice kindly, safely and professionally.

Ms Lovatt referenced Dame Janet Smith and the 5th Shipman Report which included guidance on criteria to be taken into account when considering the question of impairment. She submitted that the second of these criteria applies as you have brought the nursing profession into disrepute through the sending of messages of a sexual nature to colleagues. In particular, Ms Lovatt noted that you had sent a sexually explicit photo to Colleague B with a sexual motivation. Therefore, this criterion applies as you have failed to promote professionalism and trust at work, in particular, by acting in a way that amounted to harassment and violated your colleagues' dignity.

Ms Lovatt did acknowledge your engagement with these proceedings and accepted that you have shown remorse in relation to some of the charges. However, she highlighted that, although you have assured the panel that you are a reformed man, there is no factual evidence to support this. She submitted that there is no evidence of remediation since your dismissal in 2022, and therefore, there remains a risk to the public.

Ms Lovatt submitted that there is a need to maintain public confidence through a finding of impairment, and therefore, invited the panel to find that the charges accepted and found proven in this matter amount to misconduct, and that you are impaired as of today's date.

You submitted that since these incidents have occurred, you have shown remorse and have always been '*open and honest*' in your responses. You submitted that you are married and have now deleted all of your social media platforms. [PRIVATE]

You submitted that when these incidents occurred, it was a '*bad time*' in your life, and that you were trying to manage yourself, having made the management team aware that you were [PRIVATE].

[PRIVATE] You submitted that you are '*not the man that you were at the time of these incidents.*'

You submitted that you deeply regret everything that you have done and highlighted the witness testimonies regarding the quality of your nursing and your commitment to your work, with no concerns relating to your practice.

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), and [General Medical Council v Meadow \[2007\] QB 462 \(Admin\)](#).

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

‘The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates’

4) Act in the best interests of people at all times;

20) Uphold the reputation of your profession at all times;

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

20.2) act with [...] integrity at all times, treating people fairly and without discrimination, bullying or harassment;

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

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

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

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

24.2) use all complaints as a form of feedback and an opportunity for reflection and learning to improve practice.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your actions fell well short of what is expected of a registered nurse.

The panel determined that your actions are shocking and caused a sense of harassment of a sexual nature, alongside discomfort for your colleagues. The panel took note of the fact that you were senior to your colleagues within the workplace, and although these charges are not matters relating to work, this is an important consideration.

The panel noted that your conduct was repeated with two individuals involving a significant number of messages; therefore, the charges against you do not relate to an isolated incident. Consequently, your actions in Charges 1a, 1b, 1c, 1d, 2, 4, 5, 6a, 6b(i) and 6b(ii) amount to serious professional misconduct.

In relation to Charge 8, the panel determined that you could have taken steps to mitigate any possible risks before removing yourself from your shift. The panel noted that you explained that you were [PRIVATE], which could be considered a mitigating factor. However, as a registered nurse, the panel considered that you had a responsibility to your patients and colleagues not to leave your shift without authorisation. The panel noted that you said that the shift was adequately staffed, as three nurses remained on shift after your departure. However, the panel was of the view that there was a reason that four nurses were assigned per shift, and this was to ensure optimal care for patients. The panel also noted that the home manager was due in to work at 9am, and you could have waited until his arrival to discuss your concerns. Taking all of the circumstances into consideration, the panel determined, that your conduct in this instance fell well below the standards expected of a registered nurse and had the potential to undermine the quality of care being provided. Consequently, Charge 8 amounts to serious, professional misconduct.

The panel found that your 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, your fitness to practise is currently impaired.

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

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

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

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

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

In 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'*

The panel finds that patients were put at risk of harm as a result of your misconduct. It determined that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel also determined that your conviction for assault occasioning actual bodily harm, has brought the reputation of the profession into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges of sexually motivated behaviour towards colleagues, and your conviction for assault occasioning actual bodily harm, extremely serious.

Regarding insight and remediation, the panel considered the fact that [PRIVATE]. The panel also took into consideration the evidence of your colleagues in relation to the quality of your nursing practice, your commitment to nursing, and the evidence of your wife with regards to your behaviour towards her.

However, the panel is of the view that there is a risk of repetition based on the nature of the charges against you, the deficient insight presented by you. The panel took note of the fact that you have not completed any CPD, however, the charges were not related

to the quality of your nursing practice. More importantly, the panel was concerned that it has not seen enough evidence that you have fully reflected on and come to terms with your sexually motivated misconduct which it found amounted to harassment of colleagues. The panel accepted and acknowledged your early admissions to some of your conduct and the steps you have taken to improve [PRIVATE]; however, it determined that there is not sufficient evidence of remediation in relation to your misconduct. The panel determined that you are lacking insight into the nature of your behaviour in sending messages of a sexual nature to colleagues, and on the impact of your behaviours on your colleagues.

Consequently, the panel determined that the misconduct in your case has not been remedied and therefore, there still remains a risk of repetition.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection in relation to your misconduct. The panel also considered the nature and circumstances of your conviction. Whilst it concluded that members of the profession and the public would be shocked by your conduct, which led to the conviction, the panel concluded that this was an isolated, albeit very serious, incident in the context of a very volatile relationship. The panel noted that written in evidence of Witness 2 who corroborated your evidence that you had told him, prior to the incident that led to your conviction, of your desire to leave your previous relationship and how you felt you were the subject of [PRIVATE].

The panel therefore determined that it was highly unlikely that you would repeat the conduct that led to your conviction and hence it did not represent a risk with regards to public protection.

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

The panel determined that a finding of impairment on public interest grounds is required both in relation to your misconduct, where the panel has found the risk of repetition, as well as in relation to your conviction where the 18-month suspension of the 15-month custodial sentence imposed upon you, does not expire until 25 February 2025. The panel considered that, in these circumstances, a nurse who has committed such misconduct and has been convicted of a serious assault, would be expected, by a fully informed member of the public, to have their fitness to practice found to be impaired. Failing to find impairment would undermine public confidence in the profession and would not maintain and promote proper standards of behaviour within the profession.

Therefore, the panel also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel has considered this case 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 Lovatt informed the panel that in the Notice of Hearing, dated 7 March 2024, the NMC had advised you that it would seek the imposition of a strike-off order if the panel found your fitness to practise currently impaired.

Ms Lovatt submitted that the aggravating factors in this case are as follows:

- You abused your position of power;
- You have presented a lack of insight;
- There is a risk of repetition arising from the pattern of your misconduct;
- You have presented deep-seated attitudinal issues.

Ms Lovatt submitted that the mitigating factors in this case are as follows:

- You have presented partial admissions of sending messages to some colleagues;
- You have apologised to some of your colleagues after the event.

Ms Lovatt submitted that the NMC are seeking a striking-off order.

Ms Lovatt submitted that any sanction below a strike-off would not properly acknowledge or manage the risks involved in your case, nor would it satisfy a well-informed member of the public. She submitted that the concerns in your case show evidence of harmful, deep-seated personality and attitudinal concerns. She submitted that only a strike-off order would adequately address the concerns in this case, which are, fundamentally, incompatible with remaining on the register. Ms Lovatt submitted that your actions are evidence of your inability to uphold the Code of Conduct, expected to be followed by a registered nurse.

Ms Lovatt submitted that your conduct is repetitive over a period of time, and not an isolated incident, and therefore, there remains a concern of repetition. She submitted that there has been limited insight into your actions [PRIVATE]. Ms Lovatt further submitted that nurses occupy a trusted position, and that this is a privilege. She highlighted that your behaviour disregards this trust, and calls into question the standards of the profession.

Ms Lovatt submitted that a conditions of practice order would not uphold the proper standards of practice expected of a nurse, whilst a suspension order would not be

appropriate as the conduct was one of a sexual nature and breached professional boundaries.

Ms Lovatt submitted therefore that your actions are incompatible with remaining on the register, and therefore, the NMC submit that a strike-off order is most appropriate.

You submitted that you propose that you should be suspended until the end of your probation on 25 February 2025.

You submitted that you are deeply remorseful for your actions and have taken the necessary steps to address them. [PRIVATE]

[PRIVATE]

[PRIVATE]

You submitted that you cannot bear to read the messages, and have been remorseful since sending them, submitting that you are embarrassed and upset that your actions caused distress to others.

You submitted that your actions were outside of work and there was never any preferential treatment from you, towards colleagues, within the workplace. [PRIVATE] [you...] highlighted that there were never any inappropriate messages before these events occurred, or since they have occurred.

You submitted that in relation to Charge 8, you acknowledge that you should not have left your shift without authorisation from the manager and highlighted that this was an isolated incident. You noted that this has never occurred before this specific event and will never occur again.

[PRIVATE]

You submitted that during your time as a nurse, you would go '*over and above*' for your patients and would love to return to being a nurse. You submitted that you have put a lot of effort into improving yourself so that you can one day return to work as a nurse again. You stated, 'I love nursing' and emphasised that you are proud to call yourself a nurse.

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

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- You abused your position of trust;
- You have presented a lack of full insight and reflection;
- There is a risk of repetition arising from the pattern of your misconduct;
- You have presented attitudinal concerns.

The panel also took into account the following mitigating features:

- You made early admissions to sending messages to colleagues;
- You have apologised to some of your colleagues after the event;
- [PRIVATE]
- [PRIVATE]

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 adequately protect the public or address 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, alongside your criminal conviction, is not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical 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, particularly when considering the attitudinal concerns involved in your case. 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 or satisfy the wider public interest. The panel was also mindful that the 18-month suspension of your 15-month custodial sentence does not expire until 25 February 2025. The panel was of the view that, in the absence of any exceptional circumstances, it would be inappropriate to allow you to return to practice, even with restrictions, in such circumstances.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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;*

- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

Your conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse both in relation to your conviction and your misconduct. Whilst the panel did not consider that the attitudinal issues underpinning your conduct were deep seated, it concluded that the serious breaches of the fundamental tenets of the profession evidenced by your actions are fundamentally incompatible with your remaining on the register. Whilst the panel recognised and acknowledged your remorse for your actions and the steps you have taken to improve [PRIVATE], the panel concluded that a suspension order would not be sufficient to maintain public confidence in the profession or uphold proper standards of conduct, and that your behaviour is incompatible with remaining on the register.

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?*

Your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register.

Whilst the panel do accept that you are a highly competent nurse with evidence provided that you have a history of providing high quality patient care, it determined that the reputation of the profession is more important than the fortunes of any individual.

The panel took into consideration the seriousness of your conduct and the criminal conviction against you, and that it had found that there is a risk of repetition in relation to your misconduct.

The panel was of the view that the findings in this particular case demonstrate that your actions were so serious that 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. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of the nursing profession 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 regarding the standards of behaviour required of a registered nurse.

This will be confirmed to you in writing.

NMC application for an interim order

Ms Lovatt made an application for an interim suspension order for a period of 18 months, in order to cover the 28-day appeal period of this case.

Ms Lovatt submitted that given the serious nature of the misconduct that the panel have found proven, an interim suspension order is necessary to protect the public and is otherwise in the public interest.

Ms Lovatt submitted that given the findings in this case, it would be inappropriate for you to remain on the register if you were to pursue an appeal.

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

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 in order to cover the 28-day appeal period of this case.

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.