

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

Substantive Hearing
Monday, 4 November 2024 – Friday, 8 November 2024
2 Stratford Place, Montfichet Road, London, E20 1EJ

Monday, 11 November 2024 – Thursday, 14 November 2024
Virtual Hearing

Name of Registrant: **Wahab Issoop Lootfun**

NMC PIN 7510307W

Part(s) of the register: Registered Nurse: Sub Part 2
Adult: Level 2 – 30 November 1976

Relevant Location: Newham

Type of case: Misconduct

Panel members: Clara Cheetham (Chair, Lay member)
Elaine Biscoe (Registrant member)
Alyson Young (Lay member)

Legal Assessor: Simon Walsh (4 – 8 November 2024)
Robin Leach (11 – 14 November 2024)

Hearings Coordinator: Dilay Bekteshi

Nursing and Midwifery Council: Represented by Iwona Boeche, Case Presenter

Mr Lootfun: Not present and not represented

Facts proved: Charges 1a) (in part), 1b), 2), 3), 4), 5), 6), 7), 8), 9), 10), 11), 12) and 13)

Facts not proved: 1a) (in part)

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order: Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Lootfun was not in attendance and that the Notice of Hearing letter had been sent to Mr Lootfun's registered email address by secure email on 25 September 2024.

Ms Boesche, 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 venue of the hearing and, amongst other things, information about Mr Lootfun'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 Lootfun 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 Lootfun

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

Ms Boesche referred the panel to the NMC Guidance on '*Proceeding with hearings when the nurse, midwife or nursing associate is absent*' (CMT-8, last updated on 13 January 2023). She submitted that there is a strong public interest in expediting this matter due to

the seriousness of the allegations. Several witnesses are prepared to provide live evidence. Mr Lootfun has not engaged for an extended period; therefore, when considering whether it would be unfair to proceed in his absence, it is important to recognise that his lack of engagement is a result of his own choice. Consequently, Ms Boesche submitted that it is fair and proportionate to proceed without Mr Lootfun. Ms Boesche also stated that there is no reason to believe that an adjournment would secure his attendance 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 Lootfun. In reaching this decision, the panel has considered the submissions of Ms Boesche 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 Lootfun;
- Mr Lootfun has informed the NMC that he has gone abroad and has since disengaged with proceedings;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Four witnesses have been warned to attend the hearing to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the patients who need their professional services;

- The charges relate to events that occurred in 2019;
- 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 Lootfun in proceeding in his absence as 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 Lootfun'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 Lootfun.

Details of charge

That you, a registered nurse, whilst working at the Early Pregnancy Assessment Unit, on dates around February and March 2019:

- 1) When taking Patient A's blood:
 - a) Sat in a way so that your knees touched high on Patient A's upper leg and/or held Patient A's legs between yours when taking Patient A's blood.
 - b) Touched Patient A's legs and/or upper body with your hands.
- 2) Asked Patient A personal questions about her private life.
- 3) Gave Patient A your mobile phone number.

- 4) Made phone calls to Patient A from your personal phone without clinical justification.
- 5) Sent Patient A messages from your personal phone without clinical justification.
- 6) Asked Patient A for her address.
- 7) Visited Patient A's house outside of working hours and/or without clinical justification.
- 8) Asked Patient A to get into a car with you.
- 9) Asked Patient A if you could hug her and/or hugged her.
- 10) Your conduct at charges 4 and/or 5 constituted a breach of patient confidentiality.
- 11) Your conduct in one or more of charges 1 to 9 above was a breach of professional boundaries.
- 12) Your conduct at charges 1 and/or 9 was sexual in nature.
- 13) Your conduct in one or more of charges 1 to 9 above was sexually motivated in that you were in pursuit of a future relationship with Patient A.

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

Background

Mr Lootfun was employed at the Hospital as a staff nurse from 1 September 1998 until 23 March 2022. The Regulatory Concerns ("RCs") arise out of Mr Lootfun's alleged inappropriate conduct towards Patient A.

On 17 March 2022, Patient A raised concerns about Mr Lootfun's behaviour during appointments at the Hospital in February and March 2019. Patient A attended the Early Pregnancy and Gynaecology Unit (EGU) in February and March 2019 and again on 17 March 2022 with suspected ectopic pregnancy and/or miscarriages.

The concerns related to Mr Lootfun inappropriately touching Patient A in the course of taking blood samples, repeated instances of inappropriate communication over the phone and visiting Patient A's home address.

Patient A, when going through treatment for an ectopic pregnancy and subsequent miscarriage, attended the EGU in February and March 2019 and was seen by Mr Lootfun who was the nurse allocated to perform blood-taking (phlebotomy). During the course of Patient A's care before and after the medical procedure, Mr Lootfun allegedly placed his legs around hers, then touched her with his hands on both of her thighs and other parts of her body, and asked her questions about her private life whilst taking her bloods.

Patient A further alleges that Mr Lootfun repeatedly contacted her, after this initial visit at the EGU, via his personal mobile phone, sending messages to her which she believed to be of a sexual/romantic nature.

Patient A also alleges that Mr Lootfun visited her at her home address to deliver some medications and invited her to enter his car at which point Mr Lootfun gave her a hug.

On 18 March 2022, Mr Lootfun was suspended from the Trust pending an internal investigation into the concerns. On 23 March 2022, Mr Lootfun resigned from his role at the Trust and, on 8 April 2022, a referral to the NMC was made.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Boesche under Rule 31 to allow the written statement of Witness 4 into evidence.

Ms Boesche informed the panel that Witness 4 has been on maternity leave since approximately 8 November 2023. She submitted that Witness 4 found participating in the investigation distressing, having herself experienced miscarriages in the past, and expressed her unwillingness to attend a hearing during her maternity leave. Ms Boesche said that Witness 4 would likely be available to provide evidence only in February or March 2025.

Ms Boesche referred the panel to the NMC Guidance '*Evidence*' (DMA-6, last updated on 30 August 2024). She submitted that hearsay evidence is not inadmissible because it is hearsay evidence. However, she submitted that certain circumstances could render it unfair to admit such evidence, particularly if it constitutes the sole and decisive evidence regarding a serious charge and is neither 'demonstrably reliable' nor subject to testing. She submitted that Witness 4's evidence is far from being the only decisive evidence concerning the charges against Mr Lootfun, though it remains relevant and supports the statements of other witnesses.

Further, Ms Boesche told the panel that Witness 4's statement and the accompanying exhibits were obtained during other investigations. She pointed out that the facts outlined in Witness 4's statement are consistent with those provided by Witness 2, who was also present when the incidents were initially reported by Patient A.

Ms Boesche submitted that Mr Lootfun, as a registrant who chose not to attend the panel hearing, would have limited grounds to contest the proceedings conducted in his absence. She made reference to the case law of *R v Jones* (Anthony William) [2002] UKHL 5, [2003] 1 A.C. 1, [2002] 2 WLUK 499.

The panel 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 in regard to Witness 4 serious consideration. The panel noted that Witness 4's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, 'This statement ... is true to the best of my information, knowledge and belief' and signed by her.

The panel considered whether Mr Lootfun would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Witness 4 to that of a written statement.

The panel considered that Mr Lootfun had chosen voluntarily to absent himself from these proceedings, he would not be in a position to cross-examine this witness in any case. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings. The panel considered that the unfairness in this regard worked both ways in that the NMC was deprived, as was the panel, from reliance upon the live evidence of Witness 4 and the opportunity of questioning and probing that testimony.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statement and exhibits of Witness 4, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

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 Boesche 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 from the following witnesses called on behalf of the NMC:

Patient A

Witness 1: Interim Low Risk Care and Community Matron at the time

Witness 2: Band 5 nurse at the time

Witness 3: Clinical Assistant Technician at the time

The panel also considered the hearsay evidence of Witness 4 who was a Band 5 Registered Nurse at the time.

Before making any findings on the facts, the panel accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC, as well as anything provided by Mr Lootfun which comprised of limited email communication with the NMC

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

Charge 1a)

That you, a registered nurse, whilst working at the Early Pregnancy Assessment Unit, on dates around February and March 2019:

1) When taking Patient A's blood:

- a) *Sat in a way so that your knees touched high on Patient A's upper leg and/or held Patient A's legs between yours when taking Patient A's blood.*

The panel found charge 1a) partially proved, specifically that Mr Lootfun sat in a way so that his knees touched high on Patient's upper leg.

The panel considered the evidence, particularly the witness statements provided by Patient A, Witness 1, Witness 4, and the context of the appointments.

In Patient A's evidence, she described the interaction during her appointments, noting that Mr Lootfun sat directly in front of her with his legs positioned between hers. She stated, *"When Mr Lootfun was taking my blood, he sat directly in front of me and placed his legs in between mine. This meant that his knees were touching high on my upper leg."* She further expressed discomfort with his repeated touching of her legs and upper body, and that his hand movements often brought him close to her bikini line and shoulders.

In Patient A's witness statement, she states:

"When Mr Lootfun was taking my blood, he sat directly in front of me and placed his legs in between mine. This meant that his knees were touching high on my upper leg. At the time, I often wore leggings as they were comfortable for me to wear.

Mr Lootfun also moved his hands around as he was talking to me. Although his hands moved, he repeatedly touched my legs while he was talking to me; his hands went as far up as my bikini line. He also touched my upper body and repeatedly touched my shoulders while speaking to me. I do not recall where else on my upper body Mr Lootfun touched when he was speaking to me during these appointments. As his hands moved as he was speaking, it is difficult to recall how long he touched my legs and upper body during these appointments.

...

I do not recall Mr Lootfun's body language while he was touching me (for example, what his face was like), however I do recall that I felt very uncomfortable with Mr Lootfun sitting like this and touching my body in such a way...[sic]."

In oral evidence, Patient A elaborated, confirming that she was seated in a cubicle meant for privacy and that the door was closed. She reiterated that Mr Lootfun's legs were indeed placed between her legs and that he had touched her thighs.

The panel also considered the witness statement of Witness 4. Witness 4 states that Patient A informed her during the appointment in 2022 that, during the 2019 appointment, Mr Lootfun had touched her inappropriately. Witness 4 also states that inappropriate touching could not be explained or excused by the size of the room. In Witness 4's witness statement, she states:

"Patient A went on to explain that she met Mr Lootfun during her previous visit to the Unit due to a miscarriage. During the visit:

- a. Mr Lootfun took her blood and, when he did this, he sat close to her and held her legs in between his and would repeatedly touch her arms. The blood room is small however, there is sufficient room to take a patient's blood without having to inappropriately touch them..."*

The panel also took into account the witness statement of Witness 1, who recalled Patient A informing a nurse about the incident, stating that Mr Lootfun had wrapped his legs around Patient A's and touched her thighs and breast area while taking her blood. In her witness statement, she states:

"Patient A told the female nurse doing their bloods about what had taken place in February 2019. Patient A described how Mr Lootfun closed Patient A's legs once seated and came towards them on another chair wrapping their legs around Patient A's, Mr Lootfun then touched both of Patient A's thighs and their breast areas being taking their bloods."

Additionally, in her oral evidence Witness 1 informed the panel that Mr Lootfun would have been well aware of the proper positioning required for the procedure of phlebotomy.

The panel also took into account the record of a telephone interview between Witness 1 and Patient A on 20 April 2022. The panel noted that Witness 1's interview notes corroborates her witness statement. The interview notes states:

“Patient A stated that she was going through a miscarriage in 2019 and attended EGU where [Mr Lootfun] was the staff nurse assigned to perform phlebotomy on her. Patient A stated that [Mr Lootfun] closed her legs once she was seated and came towards her on another chair having his legs opened which he then closed around hers.”

The panel considered the evidence regarding charge 1a) and found that all the evidence supported that Mr Lootfun's knees touched high on Patient A's upper leg. The panel considered Patient A's evidence, where she stated, "his knees were touching high on my upper leg," as credible and consistent.

While Witness 1 and Witness 4 provided differing accounts as to whether Mr Lootfun's legs were inside or outside Patient A's legs, the panel determined that their discrepancies did not undermine Patient A's reliability. The panel found no evidence suggesting that Patient A fabricated her account. The panel acknowledged the discrepancies regarding the positioning of Mr Lootfun's legs; specifically, whether Patient A's legs were held between Mr Lootfun's or vice versa, which ties into the second half of the charge.

The panel favoured Patient A's version of events. In her witness statement, she described Mr Lootfun having his knees positioned between her legs while sitting. During oral questioning, she reaffirmed this positioning when specifically prompted. In contrast, Witness 1's description stemmed from a later telephone conversation with Patient A in 2022 in which she interpreted Patient A's description, and Witness 4's explanation was

based on her understanding of Patient A's account at the time the incident was reported, during which she acknowledged that Patient A was very distressed and crying.

The panel decided that, despite these inconsistencies, on balance, Patient A's account was more reliable overall. Consequently, the panel found charge 1a) of inappropriate touching proved in that Mr Lootfun's knees made contact with Patient A's upper leg. However, the panel did not find that Patient A's legs were between Mr Lootfun's during the blood-taking, as Patient A explicitly stated otherwise, and this was not part of the charge.

Charge 1b)

That you, a registered nurse, whilst working at the Early Pregnancy Assessment Unit, on dates around February and March 2019:

1) When taking Patient A's blood:

b) Touched Patient A's legs and/or upper body with your hands.

This charge is found proved.

The panel considered Patient A's witness statement, which states:

"Mr Lootfun also moved his hands around as he was talking to me. Although his hands moved, he repeatedly touched my legs while he was talking to me; his hands went as far up as my bikini line. He also touched my upper body and repeatedly touched my shoulders while speaking to me. I do not recall where else on my upper body Mr Lootfun touched when he was speaking to me during these appointments. As his hands moved as he was speaking, it is difficult to recall how long he touched my legs and upper body during these appointments"

The panel also took into account Witness 1's witness statement, which states:

“Patient A described how Mr Lootfun had closed Patient A’s legs once seated and came towards them on another chair wrapping their legs around Patient A’s, Mr Lootfun then touched both of Patient A’s thighs and their breast areas before taking their bloods.”

Additionally, the panel considered Witness 4’s statement, which states:

“Mr Lootfun took her blood and, when he did this, he sat close to her and held her legs in between his and would repeatedly touch her arms. The blood room is small however, there is sufficient room to take a patient’s blood without having to inappropriately touch them.”

The panel noted that Patient A only mentioned being touched on her shoulders and legs, while Witness 1 indicated that Mr Lootfun touched Patient A’s breast area. In contrast, Witness 4 stated that Mr Lootfun repeatedly touched Patient A’s arms.

The panel noted the discrepancies in the accounts regarding the specific areas of Patient A’s upper body. Witness 1 referred to the breast area, but Patient A did not mention her chest or breasts. Witness 4 referred to the arms, while Patient A mentioned her shoulders, legs and upper body. The panel found Patient A’s account to be more reliable, considering that the other two witnesses were reporting their interpretations of what Patient A had said to them either in the course of a telephone conversation or during the very first report when Patient A was in a highly distressed emotional state. The panel also determined that the descriptions of arms and shoulders are not mutually exclusive.

Consequently, the panel found charge 1b) proved.

Charge 2)

That you, a registered nurse, whilst working at the Early Pregnancy Assessment Unit, on dates around February and March 2019:

2) *Asked Patient A personal questions about her private life.*

This charge is found proved.

The only evidence pertaining to this charge comes from the evidence of Patient A. The panel considered Patient A's witness statement, which states:

“Mr Lootfun also asked me about my life, and would ask me questions about my marriage and my husband, where I studied, where I worked and where I lived. I assumed Mr Lootfun asked these questions for a medical reason, however, when I told Mr Lootfun that my husband lived in Bangladesh, he began repeatedly saying that I was all alone and no one was around to help me. He would then say he was happy to help me at home if I wanted it. I did not live alone at the time and lived with my family. Mr Lootfun assumed that I lived alone because my husband was living abroad; I did correct his assumption at one point but I do not recall when this was.”

Additionally, the panel considered the text and WhatsApp messages exchanged between Patient A and Mr Lootfun. The panel noted a tone of communication that suggested a high degree of familiarity, which deviated from standard professional communication. This tone included Mr Lootfun calling Patient A “Bebe” on more than one occasion and sending her pictures of himself partially clothed whilst on holiday. The conversations escalated from what should have remained a clinical dialogue into discussions that had no clinical justification and were personal in nature, raising concerns about the boundaries of their professional relationship.

The panel had no reason to doubt Patient A's credibility and found the nature and content of Mr Lootfun's text and WhatsApp communication to support her account. It concluded that, on the balance of probabilities, Mr Lootfun had asked her personal questions regarding her private life.

Consequently, the panel found charge 2) proved.

Charge 3)

That you, a registered nurse, whilst working at the Early Pregnancy Assessment Unit, on dates around February and March 2019:

3) Gave Patient A your mobile phone number.

This charge is found proved.

In reaching this decision, the panel took into account Patient A's witness statement, which states:

"[Mr Lootfun] gave me his mobile phone number at some stage and told me to give him a call if I needed anything. I do not recall when Mr Lootfun gave me his number other than it was definitely not during the first visit to the hospital. I told him that I did not need his help and did not need him to come to my home. I confirm that I did not call Mr Lootfun but called the hospital if I had any issues outside of my appointments."

In Patient A's oral evidence, she reaffirmed her statement, confirming that Mr Lootfun provided her with his personal mobile number.

Additionally, the panel considered the evidence of text messages and WhatsApp screenshots that featured communications made of a personal nature and using personal numbers.

Given the consistency in Patient A's evidence and the corroborative evidence of personal communications via text and a personal messaging App, the panel accepts Patient A's account that Mr Lootfun gave her his mobile number.

The panel therefore found charge 3) proved.

Charge 4)

That you, a registered nurse, whilst working at the Early Pregnancy Assessment Unit, on dates around February and March 2019:

4) Made phone calls to Patient A from your personal phone without clinical justification.

This charge is found proved.

The panel took into account Patient A's witness statement, which states:

"I did not provide Mr Lootfun with my phone number so I assume he got it from my patient records and that is how he knew what number to contact me on.

...

As previously mentioned, Mr Lootfun called me during this period to tell me when I needed to come in for a blood test. I no longer have a call log on my telephone which documents the number of telephone calls I received from Mr Lootfun; I do not recall the number of times he called but it was a few times. During these telephone calls, he started the call by telling me I needed to come to the Hospital again, but would then move onto discussing his personal life or asking me questions about my personal life. I have described the types of personal questions Mr Lootfun generally asked me above and, given the passage of time, I do not recall what was asked on the phone and what was asked during the appointments.

...

Shortly after my miscarriage (I do not recall the date), I received a telephone call from Mr Lootfun in the morning Mr Lootfun informed me that he was driving to my house as I was unwell with my medication and asked me to confirm my address as he was struggling to find the road I lived on. I told Mr Lootfun that I was okay to collect the medication from the Hospital but Mr Lootfun said he was on his way and

was coming anyway. I had only just woken up so I was not thinking properly, so I agreed to send him my address.”

The panel also considered Witness 2’s witness statement, which states:

“...she said this man [Mr Lootfun] saw her when she had a miscarriage and was supposed to give her tablets. She said what made it awkward was that he came to her house. We said ‘What!?’ He came to your house?’ The lady said that they sat in a car (I can’t remember whose car) and he tried to assault her or molest her – I don’t remember the words she used. I remember she said ‘he put his hands on my thigh.’

The panel considered a text message dated 10 March 2019, in which Patient A sent her address to Mr Lootfun. Patient A testified that Mr Lootfun had called her to request her address in order for him to deliver her medication, which prompted her to send it to him.

The panel noted that while telephone calls may have been clinically justified initially (to update Patient A about blood tests), they developed into personal content that the panel deemed inappropriate and devoid of clinical justification.

After considering the evidence, the panel determined it was more likely than not that Mr Lootfun contacted Patient A using his personal phone. In its decision, the panel has relied upon the oral evidence and written statement of Patient A, as well as the documented evidence of a text message from Patient A, apparently in a reply to a call made from Mr Lootfun’s personal phone, which was in relation to the incident where he drove to Patient A’s house.

Consequently, the panel found that at least one of the phone calls made from Mr Lootfun’s personal phone lacked clinical justification, taking place while he was in his car. The panel inferred that other calls mentioned by Patient A were also likely made from his personal phone rather than from a hospital phone.

As a result, the panel found charge 4) proved.

Charge 5)

That you, a registered nurse, whilst working at the Early Pregnancy Assessment Unit, on dates around February and March 2019:

5) Sent Patient A messages from your personal phone without clinical justification.

This charge is found proved.

The panel considered Patient A's witness statement which details her interactions with Mr Lootfun. Her witness statement states:

"I also received text and WhatsApp messages from Mr Lootfun...I confirm that the exhibited messages is the full set of correspondence between myself and Mr Lootfun. As shown by the messages...Mr Lootfun was saved as "Jo Newham Hospital" in my phone. The reason for this is because he told me his name was Jo and he worked for the Hospital.

...

After Mr Lootfun visited me by my house, he travelled on holiday to Mauritius and he began messaging me regularly. Prior to this, when he had been in London, he had mostly called me.

The messages he sent me while on holiday included pictures of him on the beach and him calling me something like "babe". This made me uncomfortable as I did not want someone who could be my grandfather messaging me like this. I did not like Mr Lootfun messaging me but I thought I should be polite so I occasionally replied to him, but mostly I ignored his messages.

One day (I do not recall when), Mr Lootfun sent me a link to a song over WhatsApp. I have not been able to locate a copy of this message or the link; I do not recall if I deleted the message, so it is possible that Mr Lootfun deleted it. I do not recall the name of the song or the name of the artist, however I recall the lyrics were very sexual. Given the passage of time, I can longer recall the exact lyrics.”

The panel considered the text and WhatsApp messages sent to Patient A from Mr Lootfun’s personal phone. The panel noted the personal and familiar nature of these communications, coupled with the fact that Patient A saved his number under “Jo Newham Hospital”.

The panel concluded that, on the balance of probabilities, Mr Lootfun engaged in personal messaging without any clinical justification. It therefore found charge 5) proved.

Charge 6)

That you, a registered nurse, whilst working at the Early Pregnancy Assessment Unit, on dates around February and March 2019:

6) Asked Patient A for her address.

This charge is found proved.

The panel had already found charge 2) proved, as it accepted Patient A's evidence that Mr Lootfun inappropriately asked her questions about her personal life. Specifically, the panel accepted that Patient A confirmed he requested her address in order to visit her.

Furthermore, the panel noted that in the text messages exchanged between them, Patient A sent a message containing her address, which further supports the claim that Mr Lootfun did ask for her address. As a result, the panel concluded that charge 6) is also proved on the balance of probabilities

Charge 7)

That you, a registered nurse, whilst working at the Early Pregnancy Assessment Unit, on dates around February and March 2019:

7) Visited Patient A's house outside of working hours and/or without clinical justification.

This charge is found proved.

The panel took into account Patient A's witness statement, which states:

"Shortly after my miscarriage (I do not recall the date), I received a telephone call from Mr Lootfun in the morning Mr Lootfun informed me that he was driving to my house as I was unwell with my medication and asked me to confirm my address as he was struggling to find the road I lived on. I told Mr Lootfun that I was okay to collect the medication from the Hospital but Mr Lootfun said he was on his way and was coming anyway. I had only just woken up so I was not thinking properly, so I agreed to send him my address.

I did not want Mr Lootfun coming into my house so, after the call ended, I went outside to meet him. Mr Lootfun was parking his car on the street as I left the house and I approached his car. Mr Lootfun told me to get in the car – I did not want to get in the car and felt uncomfortable, but I agreed as I did not want to cause any issues and wanted him to leave quickly."

The panel also considered Witness 1's witness statement, which states:

"Attending the patient's house was very inappropriate and Mr Lootfun should never have done this. It is normal for nurses to contact patients about medication however Mr Lootfun should have contacted Patient A via a Trust phone, identified themselves and where they were calling from, explained that there was medication

to collect and advise them of the opening times of the Early pregnancy Assessment Unit (“EPAU”).”

Additionally, the panel took into account the witness statement of Witness 2, which states:

“[Patient A] said this man [Mr Lootfun] saw her when she had a miscarriage and was supposed to give her tablets. She said what made it awkward was that he came to her house. We said ‘What!?! He came to your house?’ The lady said that they sat in a car (I can’t remember whose car) and he tried to assault her or molest her – I don’t remember the words she used...”

The panel considered Patient A’s evidence recounting her distressing experience following her miscarriage and recalling a phone call from Mr Lootfun during which he expressed his intention to visit her home as she was unwell. Despite Patient A indicating that she felt well enough to collect her medication from the hospital, Mr Lootfun insisted on visiting her home.

The panel also noted that Witness 1 stated that *“attending the patient’s house was very inappropriate and Mr Lootfun should have never done this.”* Witness 1 explained the correct process for patients who need to collect medication. Witness 1 also stated that communication about medication should be conducted through official channels, stating that Mr Lootfun should have contacted Patient A using a Trust phone.

Witness 2 corroborated Patient A’s evidence and offered insight into the distress caused by Mr Lootfun’s actions. Witness 2 described the inappropriateness of Mr Lootfun’s visit, saying *“What!?! He came to your house?”*.

In considering the evidence, the panel concluded that it is more likely than not that Mr Lootfun visited Patient A’s house outside of working hours and/or without clinical justification. The panel therefore found charge 7) proved.

Charges 8) and 9)

That you, a registered nurse, whilst working at the Early Pregnancy Assessment Unit, on dates around February and March 2019:

- 8) Asked Patient A to get into a car with you*
- 9) Asked Patient A if you could hug her and/or hugged her.*

These charges are found proved.

The panel took into account Patient A's statement, which states:

"I did not want Mr Lootfun coming into my house so, after the call ended, I went outside to meet him. Mr Lootfun was parking his car on the street as I left the house and I approached his car. Mr Lootfun told me to get in the car – I did not want to get in the car and felt uncomfortable, but I agreed as I did not want to cause any issues and wanted him to leave quickly.

Once I got into the car, Mr Lootfun again mentioned that I was living alone and there was no one to take care of me, but that he could come after and look after me. I told Mr Lootfun I was okay, Mr Lootfun then handed me the medication and I started to leave the car. Before I could get out, Mr Lootfun asked me if he could hug me; I did not immediately respond to Mr Lootfun's answer as this was an awkward request and I did not know how to 'no' as I am a shy person. I assume Mr Lootfun took my silence as consent, as he then approached me with his arms and hugged me tightly. I returned the hug as it felt rude not to, however I did not want this hug.

The hug lasted a minute or so. Once Mr Lootfun stopped hugging me, I quickly left the car and went straight back into my home. I do not recall if anything further was said before I left the car – I probably said goodbye to him..."

The panel also took into account the interview conducted by Witness 1 with Patient A dated 20 April 2022, which states:

“Patient A said that [Mr Lootfun] also came to her address with medications which she did not take. Patient A stated that [Mr Lootfun] had asked her to get into his car to retrieve that said medications and have her a hug whilst doing that.”

Based on the evidence presented, the panel found it more likely than not that Mr Lootfun asked Patient A to get into a car with him and requested a hug.

The panel accepted the accounts of Patient A and Witness 1. The panel considered Patient A's evidence detailing her feelings of discomfort and the unwelcome nature of the hug that then ensued. Furthermore, the corroborating evidence from Witness 1 further supports Patient A's evidence. In light of this evidence, the panel determined that charges 8) and 9) were proved on the balance of probabilities.

Charge 10)

9) Your conduct at charges 4 and/or 5 constituted a breach of patient confidentiality.

This charge is found proved.

The panel determined that Patient A was inappropriately contacted by Mr Lootfun using his personal telephone, as outlined in charges 4) and 5). The panel acknowledged that storing patient details on a nurse's personal device would be a breach of patient confidentiality. Additionally, it noted that Patient A did not authorise the disclosure of her phone number to Mr Lootfun other than in the normal process of using the hospital telephone system.

In considering Patient A's witness statement, she stated: *“I did not provide Mr Lootfun with my number, so I assume he got it from my patient records and this is how he knew what*

number to contact me on.” “The panel noted that Mr Lootfun made phone calls and sent messages from his personal phone, implying that he must have accessed Patient A’s personal contact information outside of hospital protocols.

Consequently, the panel found charge 10) proved.

Charge 11)

11) Your conduct in one or more of charges 1 to 9 above was a breach of professional boundaries.

This charge is found proved.

In respect of charges 1a) and 1b), Mr Lootfun's actions of sitting in a manner that caused his knees to touch Patient A’s upper leg, as well as touching Patient A’s legs and/or upper body with his hands. during the procedure of taking blood, were determined by the panel to constitute a breach of professional boundaries. Witness 1 provided evidence that highlighted the standard positioning expected during such a clinical procedure that would have been familiar to Mr Lootfun. In addition, she emphasised that appropriate physical space is essential to maintain professionalism and ensure the patient's comfort. By encroaching upon Patient A’s personal space, Mr Lootfun not only failed to uphold these professional standards but also created an environment that felt uncomfortable for the patient.

In regard to charge 2), Mr Lootfun's enquiry into Patient A’s personal life constituted a breach of professional boundaries. The panel determined that in a clinical setting, discussions should remain focused on the patient’s health and treatment, and inappropriate personal questions blur the lines of professionalism. Such enquiries can create an unprofessional dynamic that shifts the relationship away from clinical care, potentially leading to feelings of discomfort, fear or vulnerability for the patient.

For charge 3), when Mr Lootfun provided his personal mobile number to Patient A, it constituted a breach of professional boundaries. The panel noted that sharing personal contact information can create confusion about the nature of the relationship, as it may suggest inappropriate familiarity or personal interest outside the context of professional care.

In respect of charges 4) and 5), Mr Lootfun's actions of making phone calls to Patient A from his personal number and sending messages without clinical justification constitutes a breach of professional boundaries. The panel determined that the improper use of personal contact methods in a clinical setting is not conducive to maintaining a respectful and professional boundary.

In relation to charges 6) and 7), Mr Lootfun's actions of requesting Patient A's address and subsequently visiting her home outside of working hours without clinical justification represent a breach of professional boundaries. The panel determined that this behaviour not only places the patient in a potentially vulnerable position but also disrupts the professional relationship by crossing into the personal domain.

Concerning charges 8) and 9), when Mr Lootfun asked Patient A to enter his car and enquired about hugging her and then went on to do so, this behaviour constitutes a breach of professional boundaries. Again, there was no clinical justification for such requests, and they created an inappropriate situation that blurred the lines of professionalism and patient care.

Charge 12)

12) Your conduct at charges 1 and/or 9 was sexual in nature.

This charge is found proved in respect of charge 1a), 1b) and 9).

In considering this charge, the panel gave consideration to the Sexual Offences Act 2003, which defines “sexual” as:

“Sexual”

[For the purposes of this Part (except sections 15A [66B to 66D] and 71), penetration, touching or any other activity is sexual if a reasonable person would consider that—

- 1 (a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, or*
- 2 (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.]*

Regarding Mr Lootfun’s positioning during the phlebotomy procedures, where his knees made contact with the upper leg of Patient A, the panel found this conduct to be sexual in nature. The panel noted the absence of a credible explanation for this positioning, along with Witness 1’s evidence highlighting what the appropriate positioning should be and the ample space available. Witness 1 was also clear that Mr Lootfun would have been well aware of what the appropriate positioning should be during this procedure. The panel therefore concluded that a reasonable member of the public would perceive Mr Lootfun’s actions as inappropriate and sexual.

The panel further considered the lack of clinical justification for Mr Lootfun touching Patient A’s legs and upper body. Given the context of the physical contact, the panel concluded that these actions were sexual in nature.

In regard to the instance of hugging while in the car, the panel considered the circumstances surrounding the visit to Patient A’s home, particularly since it occurred without a legitimate reason. The panel therefore found that this behaviour was inappropriate and deemed the hug to be sexual in nature.

Charge 13)

13) *Your conduct in one or more of charges 1 to 9 above was sexually motivated in that you were in pursuit of a future relationship with Patient A.*

The panel considered the specific wording of charge 13 very carefully and noted the charge does not allege sexual motivation for the purpose of sexual gratification. The panel was careful to consider the charge in these terms.

This charge is found proved in respect of charges 1a) (in part), 1b) 2), 3), 4), 5), 6), 7), 8) and 9).

The panel considered Patient A's evidence indicating that Mr Lootfun's enquires were not purely professional. In her witness statement, she states:

"Mr Lootfun also asked me about my life, and would ask me questions about my marriage and my husband, where I studied, where I worked and where I lived. I assumed Mr Lootfun asked these questions for a medical reason, however, when I told Mr Lootfun that my husband lived in Bangladesh, he began repeatedly saying that I was all alone and no one was around to help me. He would then say he was happy to help me at home I wanted it. I did not live alone at the time and lived with my family. Mr Lootfun assumed that I lived alone because my husband was living abroad; I did correct his assumption at one point but I do not recall when this was.

...

Once I got into the car, Mr Lootfun again mentioned that I was living alone and there was no one to take care of me, but that he could come and look after me. I told Mr Lootfun I was okay."

The panel noted that Mr Lootfun's repeated offers to help and support Patient A at her home were made without clinical justification. Moreover, his actions included an unrequested visit and inappropriate physical contact, both in the clinical environment such as touching Patient A's legs and upper body, and outside her home, such as the hugging.

They also included protracted WhatsApp messages of a highly personal nature whilst Mr Lootfun was on holiday. Taken together, these behaviours reveal an intent to establish a personal relationship that transcended the professional boundaries.

Consequently, the panel concluded that the charges are found proved in that Mr Lootfun's actions were part of a deliberate pursuit of a future relationship with Patient A. The panel therefore found charge 13) proved in respect of charges 2), 3), 4), 5), 6), 7), 8) and 9).

After handing down, the panel had the opportunity before hearing submissions on misconduct and impairment to further reflect on the factual allegations and found that it had omitted 1a) and 1b) which, by the reasoning above, should have been included as proved in relation to charge 13).

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 Lootfun'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 suitability to remain on the register unrestricted.

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 Lootfun's can practise kindly, safely and professionally.

Submissions on misconduct and impairment

Ms Boesche referred the panel 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 Boesche 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 Boesche identified the specific, relevant standards where Mr Lootfun’s actions amounted to misconduct.

Ms Boesche 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 Boesche submitted that the question the panel should ask itself is whether Mr Lootfun can practise kindly, safely and professionally.

Ms Boesche submitted that Mr Lootfun’s inappropriate behaviour persisted over time and extended beyond the hospital environment. His actions included sexualised touching, breaches of confidentiality and intrusions into Patient A’s private life. Initially, he enquired about Patient A’s personal matters, shared inappropriate details about his own life, and subsequently contacted her via phone and text. The situation escalated when Mr Lootfun drove to Patient A’s home after obtaining her address. During this visit, he requested and then gave her a hug, which made Patient A feel very uncomfortable.

Ms Boesche made reference to the NMC Guidance, which states:

“To determine whether conduct outside professional practice could impair fitness to practise, we will consider all the facts involved. Examples of important factors include:

- the duration or frequency of the conduct in question*
- the professional’s relationship or position in relation to those involved*
- the vulnerabilities of anyone subject to any alleged conduct.”*

Ms Boesche further referred the panel to Article 3(4) of the Nursing and Midwifery Order 2001:

(4) The over-arching objective of the Council in exercising its functions is the protection of the public.

(4A) The pursuit by the Council of its over-arching objective involves the pursuit of the following objectives—

- (a) to protect, promote and maintain the health, safety and well-being of the public;*
- (b) to promote and maintain public confidence in the professions regulated under this Order; and*
- (c) to promote and maintain proper professional standards and conduct for members of those professions.*

Ms Boesche submitted that by engaging in inappropriate communication with Patient A, sexualised touching, visiting her home, asking her to enter his car, and requesting, and giving, a hug, Mr Lootfun violated all three objectives.

Ms Boesche submitted that some concerns may be easy to put right, for example, it might be possible to address clinical errors with suitable education and training. However, these types of concerns are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.

Moreover, Ms Boesche submitted that there is no evidence that Mr Lootfun has taken steps to ensure that such behaviour will not recur. While he had previously demonstrated some insight by acknowledging his lack of judgment at a local level, his insight appears to have diminished as he denies what he describes as baseless allegations. This lack of accountability suggests that if allowed to practise, he is likely to repeat similar behaviours.

In respect of seriousness, Ms Boesche referred the panel to the NMC Guidance FtP-2a and FtP-3:

“Some concerns are more serious because they may lead to people receiving care or members of the public suffering harm or losing trust and confidence in the professionals we regulate.”

“When assessing whether a concern is serious, we look at what risks are likely to arise if the nurse ... doesn’t address or put the concern right. This could be risks to people receiving care or, in some cases, to the public’s trust and confidence in all nurses, midwives and nursing associates. In some cases, both risks may be present.

Relationships with patients, in breach of guidance on clear sexual boundaries is considered a serious concern which is more difficult to put right.”

Ms Boesche submitted that this is a serious case. Mr Lootfun’s actions had such a profound impact on Patient A that she ultimately chose to seek care at a different hospital. She submitted that this situation does not stem from a simple clinical error but rather indicates a deep-seated attitudinal issue that jeopardised the welfare of a patient under his care and could pose a similar risk to others. This reflects a failure to maintain professional standards and to uphold public confidence in the professions.

Decision and reasons on misconduct

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).

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel was of the view that Mr Lootfun's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Lootfun'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

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

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

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

The panel also noted the NMC Guidance FtP-2a and FtP-3: '*How we Determine Seriousness*'.

The panel considered the charges that were found proved, noting that they involved Mr Lootfun taking advantage of a professional relationship for personal gratification. The panel noted that sexual misconduct is always very serious and breach of professional standards.

The specific charges against Mr Lootfun included sexualised touching of Patient A's thighs and upper body, asking her intrusive personal questions without clinical justification, giving her his personal mobile number, making phone calls to her without clinical justification, sending her text messages unrelated to her care, asking for her home address, visiting her residence outside of work hours without clinical reason, inviting her to get into his car, and requesting and giving Patient A a hug.

The panel concluded that the charges from 1 to 9 constituted significant breaches of professional boundaries, including breaches of patient confidentiality. Mr Lootfun's actions were not only unprofessional but also sexually motivated and aimed at pursuing a personal relationship with Patient A. This conduct represents a significant breach of the trust inherent in the nurse-patient relationship.

The panel recognised that Patient A was in a particularly vulnerable state during her encounters with Mr Lootfun. At the time, she was experiencing her first pregnancy, which had already transformed into a distressing situation due to being informed that her pregnancy was ectopic and therefore not viable. In this context, Mr Lootfun's exploitation of Patient A's vulnerability was particularly serious and in breach of the duty of care expected from a healthcare professional.

The panel considered the witness statements provided, including Patient A's account, which states:

“At the time, I was only recently married and had little knowledge of the topic of pregnancies. I grew up in a conservative family where this topic was a topic that was not discussed. I had not even realised I was pregnant until a friend suggested I

take a pregnancy test as I had told her I had been feeling unwell and my period was late, which was a conversation I had the day I discovered I was pregnant and was the day before I first visited hospital. This was all very new to me and, looking back, I realise I was naïve as I did not know what was going on or what should be happening.”

Further, Witness 2 observed Patient A's profound discomfort during her unexpected interaction with Mr Lootfun in 2022:. In her witness statement, she states:

“Me and Papa Jo [Mr Lootfun] went to the waiting area to call this lady [Patient A]. I could see she looked really uncomfortable. She looked uncomfortable in that she could not hide the shock on her face. She later said she thought he would be retired by now...”

The panel also considered Witness 4's statement, which states:

“As I entered the room, Patient A was talking to [Witness 2] and was very distressed and began crying. She was sitting on the patient chair and was cradling her stomach as she cried. I closed the door and introduced myself to Patient A, saying that I was going to be helping [Witness 2] with the blood tests. As [Witness 2] was observing senior staff, she had not made a start on the blood test at the time I entered the room.”

The panel noted that Mr Lootfun's actions were not isolated incidents but occurred over a prolonged period, escalating from sexualised touching in the clinical environment to the point where he visited Patient A's home and engaged in sexualised physical contact with her in the form of a hug in his car, as well as his ongoing communication of a personal and inappropriate nature. The nature of these communications suggested a deliberate attempt to establish a relationship with Patient A.

Furthermore, the panel noted that due to Mr Lootfun's actions in 2019, Patient A was inhibited in her further access to necessary medical care in that she had felt compelled to seek hospital care elsewhere to avoid further interactions with Mr Lootfun. This was to the extent of refusing to be taken to hospital by ambulance when she had been advised to do so following further miscarriages, as well as not visiting her own mother in the hospital when she was an in-patient. The panel was of the view that this suggests a profound and lasting impact Mr Lootfun's behaviour had on Patient A's mental and emotional well-being.

The panel also noted the impact upon Mr Lootfun's colleagues following their discovery of his behaviour towards Patient A. In her oral evidence, Witness 3 told the panel that she had previously trusted Mr Lootfun, and that this breach of trust had upset her greatly and continues to do so. In addition, the panel noted that Witness 4 had been so upset by the events, this had contributed to her feeling unable to give evidence in person at the hearing. Given these factors, the panel determined that Mr Lootfun's conduct fell far short of the expected standards of nursing practice. His actions, motivated by sexual intent and marked by repeated unwelcome advances over a prolonged period of time, represent a fundamental failure to uphold the integrity of professional nursing standards.

The panel therefore found that Mr Lootfun'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 Lootfun's fitness to practise is currently impaired.

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

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

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

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

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

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

The panel considered that limbs a), b) and c) of Dame Janet Smith's test as set out in the Fifth Shipman Report were engaged by Mr Lootfun's past actions. The panel determined Mr Lootfun's actions put Patient A at unwarranted risk of harm, and that her mental health had been harmed, demonstrated by the extreme measures she took to avoid any further interaction with him, and her profound distress when she did. The panel also determined that Mr Lootfun had caused emotional harm to his colleagues, as outlined above. Mr Lootfun's misconduct had breached the fundamental tenets of the nursing profession identified above, and therefore brought its reputation into disrepute.

The panel went on to consider whether Mr Lootfun was liable in the future to place patients at risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession. In doing so, the panel assessed the available evidence about Mr Lootfun's levels of insight, remorse and remediation. The panel had regard to the factors set out in the case of *Cohen*. The panel noted that the charges are of a sexual nature, which presents more challenges for remediation as they indicate a deep-seated attitudinal issue.

The panel considered Mr Lootfun's response to the allegations submitted to the NMC on 4 May 2022, wherein he described the allegations as "baseless". Additionally, the panel considered Mr Lootfun's most recent response, an email dated 14 December 2022, in which he stated: "*I accept that there was a lapse of judgement on my part in my professional integrity at work.*"

Although the panel acknowledged that Mr Lootfun had accepted a "lapse in judgment", it determined that Mr Lootfun has not accepted any real responsibility and has failed to acknowledge that his behaviour was sexualised and inappropriate. While the most recent evidence of insight is the aforementioned email, the panel noted that it is extremely vague and does not address the specifics of the charges or what he believes the lapse of judgment actually was. Furthermore, he does not come close to addressing the impact of his actions on Patient A, his colleagues, and the public. The panel acknowledged that the colleagues who provided evidence expressed their previous trust in Mr Lootfun, believing

they knew him well and respected him. They were, therefore, shocked by the incident, which significantly impacted them emotionally.

The panel noted that Mr Lootfun's misconduct had involved a deliberate course of sexual misconduct on multiple occasions over a significant period of time which breached fundamental tenets of the profession. In the absence of sufficient evidence of insight and remediation, it considered that there remained a significant risk of repetition. Any repetition of similar misconduct would once again place patients and colleagues at unwarranted risk of harm, breach fundamental tenets of the profession and bring the profession into disrepute. Therefore, the panel 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 considered that in the circumstances of this case, a finding of impairment was also required on wider public interest grounds. It noted that the proven charges and misconduct identified in this case are very serious. It considered that a fully informed member of the public would be concerned by the panel's findings. The panel concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made.

Having regard to all of the above, the panel was satisfied on the grounds of public protection and in the wider public interest that Mr Lootfun'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 Lootfun off the register. The effect of this order is that the NMC register will show that Mr Lootfun 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 Boesche invited the panel to impose a striking-off order, outlining the aggravating features of the case and referring to the NMC Guidance SAN-2. She submitted that Mr Lootfun demonstrated a limited degree of insight by initially acknowledging his lack of judgment at a local level. However, she said that his insight has since diminished as he denies the allegations against him.

Ms Boesche submitted there is a clear risk to the public, making it inappropriate to take no action or impose a caution order. Additionally, Ms Boesche submitted that the concerns presented are attitudinal, as Mr Lootfun exploited the vulnerability of a patient and misused his position as a nurse to attempt to get close to her. Therefore, conditions of practice would not adequately address these issues.

In considering a suspension order, Ms Boesche submitted that it is evident that this situation does not represent a single instance of misconduct. Mr Lootfun has not shown meaningful insight, and there is no evidence of any harmful attitudinal issues being addressed. She submitted that, in any event, according to the NMC Guidance on seriousness, these types of concerns are categorised as more difficult to remedy.

Ms Boesche submitted that the issues at hand raise fundamental questions about Mr Lootfun's professionalism and that a striking-off order is the only sanction sufficient to protect the public and satisfy the public interest.

Decision and reasons on sanction

Having found Mr Lootfun'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.
- Patient A was particularly vulnerable due to her circumstances at the time.
- Mr Lootfun took deliberate steps to facilitate that abuse, including:
 - Making phone calls and sending messages without clinical justification.
 - Mr Lootfun visited Patient A's house.
 - As described by Patient A in her evidence, would take over when another nurse had been assigned to her, ensuring that he conducted her phlebotomy.
- Despite the time that has passed since the incident, Mr Lootfun has not demonstrated any real insight into his failings.
- Mr Lootfun has not engaged with his regulator for an extended period of time. Nor has he engaged with these proceedings.
- A pattern of misconduct over a period of time.
- Conduct which caused Patient A and Mr Lootfun's colleagues to suffer emotional harm.

The panel could not identify any mitigating features in this case.

The panel had regard to the guidance on '*Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels*' produced by the PSA

dated January 2008. It also had regard to the NMC's Guidance 'Considering sanctions for serious cases' SAN-2, which states:

'Sexual misconduct is likely to create a risk to people receiving care and to colleagues as well as undermining public trust and confidence in the professions we regulate. A panel should always consider factors such as the duration of the conduct in question, the professional's relationship or position in relation to those involved and the vulnerabilities of anyone subject to the alleged conduct. Long-term or repeated conduct is more likely to suggest risk of harm, together with conduct involving imbalances of power, cruelty, exploitation and predatory behaviour.

However, as these behaviours can have a particularly severe impact on public confidence, a professional's ability to uphold the standards and values set out in the Code, and the safety of people receiving care, any nurse, midwife or nursing associate who is found to have behaved in this way will be at risk of being removed from the register.'

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.

The panel 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 Lootfun'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 Lootfun'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 Lootfun's registration would be a sufficient and appropriate response.

The panel noted that the charges do not relate to Mr Lootfun's clinical practice. The charges found proved involve sexual misconduct of a kind that, the panel has identified, engaged a deep-seated attitudinal problem that is much more difficult to remediate. The panel noted that Mr Lootfun's lack of insight and attitudinal concerns mean that there are no practical or workable conditions that could be formulated which would address the risks. Furthermore, the panel concluded that the placing of conditions on Mr Lootfun'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 SG states that suspension order may be appropriate where some of the following factors are apparent:

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

However, the panel determined that Mr Lootfun's conduct, as highlighted by the facts found proved, evidenced deep-seated attitudinal problems and a distinct lack of insight, therefore posing a significant risk of repetition and risk of harm to the public. The panel was mindful of the fact that a period of suspension must go towards the purpose of returning a nurse or midwife back into practice at some future date. It was of the view that the serious breach of the fundamental tenets of the profession evidenced by Mr Lootfun's actions is fundamentally incompatible with Mr Lootfun remaining on the register and continuing his practice as a nurse.

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 Lootfun'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 Lootfun's actions were serious and to allow him to continue on the NMC register with a view to returning to practice would undermine public confidence in the profession and in the NMC as a regulatory body.

Given its findings in respect of Mr Lootfun having a deep-seated attitudinal issue and his failure to demonstrate the requisite insight into his breach of professional and sexual boundaries, the panel determined that there is a real risk of repetition of the misconduct and a consequent risk of serious harm to patients and colleagues. The panel determined that a striking off order is therefore the only sanction sufficient to protect patients and the public. Having regard to the effect of Mr Lootfun'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.

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

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

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 Lootfun'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 Boesche. She invited the panel to impose an interim suspension order for 18 months on the basis that it is necessary for the protection of the public and otherwise in the public interest. This would be to ensure that an interim suspension order remains in place in the event that Mr Lootfun lodges an appeal and remains in place until any such appeal has been determined.

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 to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.

This will be confirmed to Mr Lootfun in writing.