# Nursing and Midwifery Council
# Fitness to Practise Committee

## Substantive Hearing

**Monday 20 May 2024 – Friday 25 May 2024**
**Tuesday 28 May 2024 - Thursday 30 May 2024**
**Monday 19 August 2024 – Wednesday 21 August 2024**
**Monday 11 November 2024 - Thursday 14 November 2024**

Virtual Hearing

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| **Name of Registrant:** | **Emakpor Marvin Ogo** |
| **NMC PIN:** | 14J0318E |
| **Part(s) of the register:** | RNMH: Mental Health Nurse (Level 1)<br>18 September 2015 |
| **Relevant Location:** | Luton |
| **Type of case:** | Misconduct |
| **Panel members:** | Ashwinder Gill (Chair, lay member)<br>Janet Fitzpatrick (Registrant member)<br>Lorraine Wilkinson (Lay member) |
| **Legal Assessor:** | Tim Bradbury<br>John Donnelly (12 - 14 November 2024) |
| **Hearings Coordinator:** | Samara Baboolal (20 - 30 May 2024)<br>Sophie Cubillo-Barsi (19-21 August 2024)<br>Samara Baboolal (11-14 November 2024) |
| **Nursing and Midwifery Council:** | Represented by Beverley Da Costa, Case Presenter |
| **Mr Ogo:** | Present and represented by Dr Mary-Teresa Deignan, (Royal College of Nursing) |
| **Facts proved:** | **Charges 1 a), b), c), i), ii), d), e), f), g), h), l), i), ii), iii), iv, v), vi), vii), viii, 2 and 3** |
| **Facts proved by admission:** | **Charge 4 a) and b)** |
| **Facts not proved:** | **Charge 5** |

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| **Fitness to practise:** | **Impaired** |
| **Sanction:** | **Striking-off order** |
| **Interim order:** | **Interim suspension order (18 months)** |

**Details of charge**

That you, whilst employed as a Mental Health Nurse at Luton and Dunstable Hospital;

1. On 7 January 2016;

    a. Cuddled/hugged Patient A

    b. Kissed Patient A

    c. Placed your hand down;

        i) Patient A's pyjama bottoms

        ii) Patient A's top

    d. Touched Patient A's bottom

    e. Touched/digitally penetrated Patient A's vagina

    f. Touched Patient A's clitoris

    g. Touched Patient A's breast/chest

    h. Asked Patient A about her previous relationships

    i. Spoke to Patient A using words to the effect;

        *i)'Do you want me to have sex with you*'

        ii) '*I love you'*

        iii) '*Have you ever been in love*'

        iv) '*Would you go out with a black person*'

        v) '*I will be thinking about you when I am home in bed'*

        vi) '*Show me your pussy*'

        vii) '*Sit on the bed and open your legs'*

        viii) '*Will you touch my dick*'

2. Your actions in one or more of the above charges 1 A) 1 B), 1 C), 1 D), 1 E), 1 F), 1 G) & 1 I) vi), vii) and viii) were sexually motivated in that you sought

sexual gratification from such conduct.

3. Your actions in on or more of the above charges 1 H), 1 I) i), 1 I) ii), 1 I) iii), 1 I) iv) and 1 I) v) were sexually motivated, in that you sought to pursue a future sexual relationship with Patient A.

4. Between 20 January 2017 and 6 August 2018, did not inform your regulator that you had been charged with;

    a. Assault on a female 13 and over by penetration with part of the body/ a thing – Sexual Offences Act 2003.

    b. Sexual assault on a female.

5. Your actions in one or more of charges 4 a) & 4 b) above were dishonest, in that you sought to conceal your criminal charges from your regulator

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

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

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

Ms Da Costa indicated that she supported the application.

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.

Having heard that there will be reference to [PRIVATE], the panel determined to rule on whether to go into private, if and when matters relating to [PRIVATE] arise.

**Decision and reasons on application to admit hearsay evidence**

The panel heard an application made by Ms Da Costa under Rule 31 to allow the hearsay testimony of Patient A into evidence. Despite numerous attempts, the NMC had not been able to obtain a signed, written statement from Patient A. Ms Da Costa submitted that the panel should have before it; Patient A's video recorded evidence with the police, also referred to as Achieving Best Evidence (ABE), the transcript of this ABE, and a transcript of the evidence given by Patient A at Luton Crown Court during your criminal trial on 5 September 2017. She submitted that Patient A has not provided a witness statement to the NMC and is not being called as a live witness. Ms Da Costa submitted that the hearsay evidence is highly relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the criminal proceedings.

Ms Da Costa submitted that the NMC is seeking to adduce this evidence in relation to all the charges under Charge 1. She submitted that this is the only evidence that the NMC relies on to prove these charges, with the exception of Charges 1E and 1F for which the NMC will also rely on the supporting evidence of Witness 1, a forensic scientist who gives expert evidence relating to DNA analysis.

Ms Da Costa submitted that the NMC made some attempts to contact Patient A and obtain a witness statement. She submitted that the last time that the NMC was in contact with Patient A was on 21 May 2020, where the NMC sent a text message to Patient A. She reminded the panel that whilst an important factor to take into account, the absence of a good or cogent reason for the absence of a witness should not automatically result in the exclusion of hearsay evidence.

Ms Da Costa submitted that Patient A's account is not only relevant but is also crucial to the matters to be decided by the panel. She further submitted that Patient A's account cannot be challenged in these proceedings. She submitted that it had been challenged in the criminal proceedings at the Luton Crown Court, which would have had a higher standard of proof. Ms Da Costa submitted that Patient A's responses to this cross examination will be available for the panel to read, consider, and compare against her ABE videos.

Ms Da Costa referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) (Thorneycroft), that:

> *'i. The admission of the statement of an absent witness should not be regarded as a routine matter and the Fitness to Practise (FTP) rules require the Panel to consider the issue of fairness before admitting the evidence.*
>
> *ii. The fact that the absence of the witness can be reflected in the weight to be attached to their evidence is a factor to weigh in the balance, but will not always be a sufficient answer to the objection to admissibility.*
>
> *iii. The existence or otherwise of a good and cogent reason for the non-attendance of the witness is an important factor. However, the absence of a good reason does not automatically result in the exclusion of the evidence.*
>
> *iv. Where such evidence is the sole or decisive evidence in relation to the charges, the decision whether or not to admit requires the Panel to make a careful assessment, weighing up the competing factors. The assessment should involve a consideration of the issues in the case, the other evidence to be called and the potential consequences of admitting the evidence and the Panel must be satisfied having undertaken this assessment that, either the evidence is demonstrably reliable or that there is some means of testing its reliability.'*

Ms Da Costa submitted that against the guidance outlined in Thorneycroft, Patient A was previously cross examined in the Crown Court criminal trial, and her responses will be available for the panel to assess, and that her account can be tested against the expert witness's account. She submitted that the panel will be able to assess the weight of all evidence before it throughout the hearing and will be able to decide how much weight it determines to place on statements that the NMC seeks to rely on. Ms Da Costa submitted that the reason that Patient A is not in attendance is not through the fault of the NMC or you.

Ms Da Costa further submitted that the evidence from Patient A is not the sole or decisive evidence in relation to Charges 1E and 1F. She submitted that the panel will have live evidence from Witness 1, an expert witness, to assist in determining the charges. Ms Da Costa submitted that Witness 1's evidence can be tested through cross examination on your behalf. Ms Da Costa submitted that in relation to the rest of the charges under Charge 1, Patient A's account is the sole and decisive evidence and therefore, the panel will be required to undertake a careful assessment and consideration.

Ms Da Costa referred the panel to the case of *El Karout* [2019] EWHC 28 (Admin) in considering the admissibility of sole and decisive evidence. She submitted that the quality of the evidence, in relation to that which Patient A said, was good given that it comprised a video recording of an interview with the police and a transcript of a recording of patient A's evidence respectively given during a formal police investigation and a criminal trial. She submitted that, to this extent, the case was distinguishable from *El Karout* where the quality of the record of what had been said was poor.

Ms Deignan submitted on your behalf that you are opposing the application to adduce the hearsay evidence of Patient A. Ms Deignan submitted that the NMC made the decision not to contact Patient A but has not disclosed evidence relating to that decision being taken. She referred the panel to an email dated 25 February 2020 from Patient A's social worker to the NMC. The email says:

> *'As she expressed that she wants to pursue the investigation, I suppose you can try another forms (sic) of communication with her. She seems to be more settled in her mental health at the moment. Also you can send her a letter providing her a time frame in which she can respond.'*

Ms Deignan reminded the panel that no attempt to contact Patient A has been made by the NMC since 21 May 2020, despite the possibility of using a tracing service or contacting her through her local health service.

Ms Deignan submitted that Patient A's credibility may be called into question, as she may have motive to fabricate the evidence. She submitted there is evidence that *"Patient A finds it difficult when professionals try to set boundaries"*, and also that Patient A was in Ward A, and wished to be moved to Ward B.

Ms Deignan submitted that there were matters upon which she would have wanted to cross-examine Patient A had she been called to give evidence and that being deprived of that opportunity through the admission of hearsay evidence would create unfairness. She submitted that there were matters which were now known to the defence which were not known to the defence team at trial. The first of these matters related to a suggestion from a Lead Nurse that Patient A had made a previous allegation of rape by an ex-boyfriend. The second related to a reference to Patient A having a diagnosis of an Emotionally Unstable Personality Disorder and finding it difficult when professionals attempted to set boundaries. The third related to the first report of alleged sexual misconduct by the complainant's father which, submitted Ms Deignan, raised questions of inconsistency which she would have wished to put to the witness had she been in attendance at the hearing. Ms Deignan also drew attention to the impact that the lengthy delay that the case preparation has had upon you.

In the light of Thorneycroft, Ms Deignan submitted that the NMC had not provided a good or cogent reason for the non-attendance of the witness. She submitted that the impact of charges was severe and that the extent of the challenge to the evidence was significant. She submitted that the evidence was sole and decisive in respect of all the charges with the exception of Charges 1 E and 1F. She submitted that it would not be fair, in all the circumstances, to admit the hearsay evidence.

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

The panel gave the application in regard to Patient A careful consideration. In its deliberations, the panel considered relevance of the evidence, fairness, and the considerations set out in Thorneycroft.

Relevance:

The panel determined that the ABE recording of 26 January 2016 and its corresponding transcript, and the transcript of Patient A's evidence at the Crown Court trial of 5 September 2017 were highly relevant to the issues in this hearing as they represented Patient A's account given initially to the police and her evidence under oath at the trial in relation to the matters which are the subject of the allegations in this case in that you were charged with sexual assaults arising from the incidents which are the subject of Charges 1, 2 and 3 of the allegation.

Whether there was a good reason for non-attendance and whether NMC has taken reasonable steps the secure the witnesses attendance:

The panel noted that the NMC had made several attempts to contact Patient A, including by letter on 17 February 2020 which was signed for by Patient A, and an email from Patient A's social worker on 25 February 2020 which confirmed that Patient A wished to '*pursue the investigation*'. The panel noted that the last time that Patient A was contacted by the NMC was on 21 May 2020, where a text message was sent to Patient A's mobile number and no response was received. Patient A has not responded to the NMC. The panel acknowledged that the NMC has not given a reason as to why no attempts were made to contact Patient A since the 21 May 2020. The panel considered that the NMC's failure to make any further attempts to contact patient A following 21 May 2020 was unacceptable. The panel determined that there was no good or cogent reason provided for Patient A's non-attendance. Furthermore, the panel recognised that although steps had been taken initially to secure Patient A's attendance it concluded that more efforts could have been made. However, the panel noted that the absence of good and cogent reasons does not automatically result in the exclusion of evidence.

Sole and decisive evidence:

The panel next considered whether the proposed hearsay evidence reflected the sole and decisive evidence in relation to Charges 1,2 and 3. In her submissions, Ms Da Costa appeared to concede that the evidence was sole and decisive in relation to all charges except 1E and 1F. In relation to charge 1F, Ms Da Costa submitted that the allegations made by Patient A were also supported by the DNA evidence provided by Witness 1, and which was capable of supporting the allegation that you had touched Patient A's vagina and digitally penetrated it, and touched Patient A's clitoris.

The panel did not agree that the concession made on behalf of the NMC was properly made and it considered that it was artificial to regard the allegations contained within Charges 1,2 and 3 as entirely separate and isolated incidents. In reality, Charges 1,2 and 3 related to an alleged course of conduct involving you behaving in a sexually inappropriate way towards Patient A and without her consent. The panel considered that if the evidence of Witness 1 was capable of supporting charges 1F and 1E to the extent that it supports the suggestion that you had sexually touched and/or penetrated Patient A's vagina with your finger and touched her clitoris, then if accepted, at the very least, this would be capable of demonstrating a propensity or tendency towards acting in a sexually inappropriate way towards Patient A without her consent. This could therefore be capable of supporting the remaining allegations at Charges 1, and by logical extension, 2 and 3.

The panel determined that the evidence of Witness 1 was independent evidence capable of supporting the allegations made by Patient A and therefore the proposed hearsay evidence could not be regarded as being the 'sole and decisive evidence' in the case. Albeit the panel determined that the evidence of Patient A was highly important in relation to proving the specific allegations you dispute, and the allegations could not be pursued without such evidence. Accordingly, the panel considered that it should give particularly careful consideration to the admission of this evidence specifically with regard to the reliability of Patient A's account and/or the extent to which it could be challenged.

Nature and extent of the challenge:

The panel noted that the allegations made by Patient A have been strongly denied by you throughout the police investigation, your Crown Court trial where you were acquitted of all charges and in these proceedings and you deny that the incidents described by Patient A occurred.

The proposed hearsay evidence is not only in written form but there is also an ABE which the panel would be able to use to make an assessment of Patient A's reliability in conjunction with the transcript of her cross examination. Albeit the panel acknowledged that there is no visual recording of the cross examination. The panel did not consider that it would be unduly disadvantaged in assessing Patient A's reliability by not hearing live evidence in this hearing. Furthermore, the panel did not find anything on the face of the documentation before it which gave rise to a concern as to Patient A's reliability.

With regard to the nature and extent of the challenge the panel considered that the proposed hearsay evidence which included a transcript of Patient A's cross examination demonstrated that Patient A's account had been thoroughly and extensively challenged during the course of the criminal trial by competent counsel. The panel noted that there are areas that Ms Deignan would wish to question Patient A which she submitted were not known at the time of the trial and therefore is deprived of the opportunity to ask those questions of Patient A. Furthermore, Ms Deignan relied upon three matters which she suggested were now known which were not known at the time of the criminal trial. Therefore, they did not feature in the evidence of the criminal trial. Ms Deignan submitted she would wish to explore with Patient A in the event that Patient A were present to give evidence at this hearing. Firstly, Ms Deignan, whilst acknowledging that Patient A's reliability could not be challenged on the basis of Patient A's mental health at the relevant time, she submitted that there was reference within the medical records to a personality disorder including an inability to respond when professionals seek to set boundaries. Ms Deignan submitted that this trait, coupled with interactions she had had with you at the relevant time, could have had a bearing on Patient A's attitude towards you and provided a potential motive for fabrication.

The panel considered the fact that Patient A had a personality disorder that included a difficulty in responding to attempts by professionals to enforce boundaries was a tenuous basis for suggesting that this might afford Patient A a reason or motive to invent an allegation of sexual assault against you. However, even if this might be relevant in establishing a possible motive for Patient A to lie, the panel were of the view that it could take this into account by reference to the record itself together with any evidence given by you, should you choose to give evidence. The panel noted that the medical records disclosed showed that at the relevant time of the allegation that Patient A was mentally stable for some time and was in receipt of anti-depressants.

Secondly, Ms Deignan relied upon a record of a first disclosure from Patient A which was recorded in the Safeguarding Risk Assessment. The document indicates that Patient A's father had reported to a member of staff that Patient A had been the victim of sexually inappropriate behaviour and that a member of staff had looked at her inappropriately. Ms Deignan submitted that this record did not appear to indicate that anything had initially been disclosed by Patient A to suggest an allegation of sexual touching. However, the panel noted that in the same record in response to the question *'what is the nature of the alleged abuse?',* the answer was recorded as *'sexual'*. The panel considered that the record was open to a number of interpretations, not all of which would suggest that Patient A had been inconsistent. Furthermore, given the document was a record prepared by someone else reportedly recording what Patient A's father had said, the panel did not consider that Patient A would be likely to be able to assist in relation to any alleged inconsistency.

Thirdly, Ms Deignan submitted that a previous allegation of rape was made by Patient A relating to a former partner and which she submitted was not disclosed until after the criminal trial.

With regard to the alleged previous allegation of rape by another, the panel did not consider, based on all the material before it, that this evidence would be either relevant or admissible. In order for it to be potentially admissible, there would have to be at the very least, an evidential basis for suggesting that the previous alleged

allegation was false, otherwise it could have no evidential value whatsoever. The panel concluded that there was no evidence before it to suggest that this allegation, if made, was false.

In conclusion the panel considered that the matters which Ms Deignan identified as being those which she would have wished to explore with Patient A were, at best, of limited relevance and would be peripheral to the issues that the panel would have to resolve and which were comprehensively covered in the ABE interview and transcript of cross examination from the criminal trial.

Whether witness has reason to fabricate:

Ms Deignan invited the panel to consider the suggested motives for Patient A to fabricate her allegations. It considered her desire to move to Ward B to be with Patient B who moved to that ward. You had also confronted Patient A when you saw Patient B sitting on the sofa on Patient A's lap and you challenged the appropriateness of this. The panel considered that these potential motives had already been put to Patient A in the course of her cross examination at the Crown Court trial and had therefore been tested. The panel determined that it could take these matters into consideration in its deliberations.

Seriousness of the charge:

The panel noted that you have denied the allegations from the outset, and it is clear that this evidence is challenged by you. The transcript shows that Patient A's account was tested in cross examination, and the panel can take account of what she said in response. The panel accepts that the charge is very serious and the impact upon your career could be significant if these charges were found proved. The panel has therefore conducted a careful balancing exercise taking into account a range of competing factors.

Fairness:

The panel acknowledged that the admission of this hearsay evidence should not be regarded as a routine matter and carefully considered the issue of fairness to both the NMC and you. The panel undertook a careful balancing exercise taking account of all of the issues in the case, any disadvantage to you and the potential consequences of admitting the hearsay evidence.

The panel determined that although there would be some disadvantage to you in admitting the hearsay evidence, there is a public interest in allegations of this nature being heard given the potential impact on public safety, provided that you are not deprived of a fair hearing. In the panel's view, having regard to the totality of the evidence and the extent to which Patient A's account was explored in the criminal trial, you would not be deprived of a fair hearing by the admission of this hearsay evidence.

In these circumstances, the panel came to the view that the hearsay evidence was relevant and that it would be fair and relevant to admit into evidence the hearsay evidence of Patient A in the form of the ABE, transcript of the ABE and the transcript from the Crown Court trial. The panel determined that it would give what it deemed appropriate weight once it had heard and evaluated all the evidence before it.

**Application for an adjournment**

On day 7 of the hearing, Ms Da Costa made an application to adjourn the hearing until 14:00 in order to make inquiries with the NMC and the Trust regarding the existence of a DATIX document, which was instigated by the panel on the previous day. In the course of panel questions, you had made reference to a DATIX which you said recorded the use of a breakaway technique used by you on Patient A. It had been put forward on your behalf that the use of this breakaway technique might account for the presence of Patient A's DNA on your fingertip and fingernail swabs. The panel had, of its own volition, directed that inquiries be made as to whether this DATIX had ever been disclosed and if not, whether it had ever been requested. Ms Da Costa submitted that the inquiries were both relevant and fair in the circumstances.

Ms Deignan opposed the application and submitted that enough time had lapsed to progress this case. She submitted that there has been a significant delay on part of the NMC to bring this case and focused on the period of August 2018 to May 2024. She submitted that the consequences of not hearing submissions this morning meant that there was a risk that the hearing would not conclude its first stage by tomorrow. She reminded the panel that the burden of proving the case is on the NMC, and that there is no burden on you to disprove the allegations. Ms Deignan submitted that it would not be fair to adjourn and delay the case further.

The panel accepted the advice of the legal assessor.

The panel carefully considered the representations made by the NMC and Ms Deignan. It considered that the information that related to the DATIX was first brought to the panel's attention when you were giving your evidence and responding to questions. You informed the panel that after you used the breakaway technique with Patient A, you informed another nurse who then completed the DATIX documentation.

The panel bore in mind the case of *PSA v NMC & Jozi* [2015] EWHC 764 (Admin) and considered that this material was potentially highly relevant to the issues to be determined. The panel determined that inquiries should be made to ascertain whether this document was in existence and if possible, to obtain copies of this DATIX in the interests of justice and fairness to both the NMC and you.

The panel, in granting the adjournment, was mindful that it could result in the hearing being unable to conclude tomorrow and the case going part heard. However, in the panel's judgement, it was highly probable that the case would be adjourned in any event given the number of charges to consider, and the stage at which the hearing had reached before being alerted to the potential existence of the DATIX and the fact that you have admitted to two charges, meaning that moving to the next stage of regulatory proceedings was inevitable.

At 14:00 an update was provided by Ms Da Costa and she made an application for a further adjournment to give her time to secure the documents, as correspondence was being received from the Trust further to those inquiries. The application was opposed by Ms Deignan.

The panel bore in mind that the Trust was engaging and that the DATIX would be held on a standalone system which should be relatively easy to access. It determined that the evidence was potentially highly relevant and that, as a proactive panel, it should ensure that where possible, relevant material was placed before it before hearing closing submissions or making a determination on facts.

The panel determined to extend the time, in the first instance, until 16:30 to facilitate this.

A further application was made by Ms Da Costa at 16:30, to adjourn until 10:00 the next morning.

Ms Deignan opposed this application and submitted that the delay in this matter is becoming "*oppressive*". She invited the panel to consider hearing closing submissions and deliberating on facts that afternoon.

The panel accepted the application for the adjournment for the reasons above, namely that the Trust was engaging and that the DATIX would be held on a standalone system which should be relatively easy to access. It determined that the evidence was potentially highly relevant and that, as a proactive panel, it should ensure that where possible, relevant material was placed before it before hearing closing submissions or making a determination on facts.

**Submissions on interim order**

The NMC made no application for an interim order. Ms Da Costa submitted that you were previously subject to an interim order which was then revoked, and you have

not been subject to an interim order for some years. Ms Da Costa submitted that the NMC makes no application at this stage.

Ms Deignan submitted that it is accepted that, as this matter is going part heard, the panel should consider an interim order. She informed the panel that you were previously subject to an interim order which was revoked on 9 April 2020. It is your position in the case management form of November 2022 that you accepted charges 4(a) and 4(b). Ms Deignan submitted that this is not a material change in circumstances as you have always accepted the matters in 4(a) and 4(b). She submitted that the matters admitted are not of such gravity to impact your ability to practise without restriction.

On 30 May 2024, the Trust reported to the NMC that following an interrogation of their systems, they had not located a DATIX relating to the use of 'breakaway techniques' on 7 January 2016. The Trust has also reviewed Patient A's clinical notes in this regard, and no documented incidents of 'breakaway techniques'.

**Decision and reasons on interim order**

The panel accepted the advice of the legal assessor and exercised its own independent judgment on the necessity of an interim order.

The panel took into account all of the evidence that it has heard and that it is required at this stage to carry out a risk assessment. The panel considered that this matter is going part heard. The panel has not completed the facts stage of this matter, however, in light of the information before it and the evidence that it has heard, which includes your evidence, and the seriousness of the allegations against you, it found that there is sufficient evidence to support the concerns and in the event of a repetition of the alleged behaviour, the risk of harm to patients would be considerable if you were to practise without restrictions. The panel therefore determined that an interim order was necessary for the protection of the public.

The panel also determined that a member of the public would be very concerned if, being aware of the evidence that this panel has heard, you were allowed to practise

without restriction given the seriousness of the allegations against you. Therefore, the panel determined that an interim order was also necessary on the ground of public interest.

The panel noted that you have been practising unrestricted since 2020 without further complaint and the panel considered that the least restrictive interim order sufficient to protect patients and the public interest would be an interim conditions of practice order that limited your practice to the provision of care to only male patients and which the panel noted you have been doing in your current employment. In these circumstances the panel considered that an interim order in these terms would not be unduly onerous and would be proportionate with the need to protect the public and/or public interest.

The panel concluded that the only suitable interim order would be that of a conditions of practice order for a period of 6 months. As such it determined that the following conditions were proportionate and appropriate:

> ‘For the purposes of these conditions, ‘employment’ and ‘work’ mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, ‘course of study’ and ‘course’ mean any course of educational study connected to nursing, midwifery or nursing associates.
>
> 1. You must limit your practice to Chadwick Lodge Hospital. You must not work for an agency.
>
> 2. You must restrict your provision of care as a registered nurse to men only.
>
> 3. You must keep the NMC informed about anywhere you are working by:
>    a) Telling your case officer within seven days of accepting or leaving any employment.

b) Giving your case officer your employer's contact details.

4. You must keep the NMC informed about anywhere you are studying by:
   a) Telling your case officer within seven days of accepting any course of study.
   b) Giving your case officer the name and contact details of the organisation offering that course of study.

5. You must immediately give a copy of these conditions to:
   a) Any organisation or person you work for.
   b) Any employers you apply to for work (at the time of application).
   c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

6. You must tell your case officer, within seven days of your becoming aware of:
   a) Any clinical incident you are involved in.
   b) Any investigation started against you.
   c) Any disciplinary proceedings taken against you.

7. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
   a) Any current or future employer.
   b) Any educational establishment.
   c) Any other person(s) involved in your retraining and/or supervision required by these conditions

That concludes this determination.

**Resumption of hearing – 19 August 2024**

**Background**

The charges arose whilst you were employed as a psychiatric nurse on the Crystal Ward (the Ward) at Luton and Dunstable Hospital (the Hospital).

It is alleged that on 7 January 2016, you approached Patient A initially to have a discussion with her. Patient A disclosed to you that she was feeling down and had not eaten. Patient A agreed to drink some water and returned to her room to do so. It is alleged that you attended Patient A's room, opened the door and leant in the door way. Whilst speaking to Patient A, including asking questions about Patient A's private life, it is alleged that you sexually assaulted her as detailed within the charges.

You were subsequently charged with assault by penetration and sexual assault on 20 January 2017. A criminal trial was held at Luton Crown Court and on 12 September 2017 you were acquitted of both offences by a jury.

It is alleged that you did not inform the NMC about the criminal proceedings until 6 August 2018 and that your failure to do so was dishonest.

**Decision and reasons on facts**

At the outset of the hearing, the panel heard from Ms Deignan who informed the panel that you made full admissions to charges 4 a) and b), namely:

> *'4. Between 20 January 2017 and 6 August 2018, did not inform your regulator that you had been charged with;*

a. *Assault on a female 13 and over by penetration with part of the body/ a thing – Sexual Offences Act 2003.*

b. *Sexual assault on a female.'*

The panel therefore finds charges 4 a) and b) 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 the submissions made by Ms Da Costa on behalf of the NMC and those made by Ms Deignan on your behalf.

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

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

- Witness 1: Forensic Scientist.

The panel also heard evidence from you under oath.

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

Before making a decision in relation to the specific charges in your case, the panel considered the inconsistencies regarding your account of events. It noted that during your interview with the police on 8 January 2016, when asked whether you had any issues with Patient A, it is recorded as you saying that you *'had not and said he did not have issues with any other patients.'.* However, you did go on to describe how you had previously confronted Patient A, after you had challenged the

appropriateness of Patient A lying on a couch with Patient B, and that this could be a reason for Patient A to fabricate the charges you face. You did not mention the other explanations which you have since raised, such as Patient B's upset at being moved from the Ward and Patient A's desire to move to a different unit. The panel did not consider you to be a reliable or credible witness in this regard.

You described Patient A's presentation, at the time of your one-to-one meeting, as 'normal' and 'quiet'. The panel was provided with evidence that she was stable at that point, although on her own account she was upset and tearful.

You initially described the interaction between you and Patient A as a handshake and 'pat on the back' before moving to a position where you described using your hand to help her up. You did not raise the use of the breakaway technique until the criminal trial and again raised it in these proceedings. During your examination in chief you stated the following:

> *'…And I didn't want to upset her because any little thing can upset her, and then she would say, I don't want to drink water anymore…So I now use a breakaway tactics, a breakaway tactics to remove my hand from her hands…We do PMVA prevention and management of aggression and then break away. Break away… It when somebody grabs you. The skills for you to remove yourself.'*

The panel noted that, from your own account, Patient A was not presenting in an aggressive manner but that her mood was 'unpredictable' and 'unstable'. You stated that 'any little thing could upset her'. The panel determined that this was inconsistent with your earlier description of Patient A.

You did not document the breakaway technique in the patient notes and neither was there evidence of a DATIX having been completed. You suggested that you did not make a record of the breakaway technique because you were not her allocated nurse, although you accepted that anyone could, and should, detail any patient care given in the nursing notes. The panel did not accept your explanation that the

breakaway technique was necessary in the circumstances and, if it had been determined that such an incident would have been recorded. Your oral evidence was that it was the first time you had used this technique on any patient so it would not have been a routine matter for you. The panel concluded that if this incident had occurred in the manner you described in evidence, you would not have failed to report or record it at the time, or otherwise mention it when you were later interviewed by the police.

The panel considered it more likely than not that you fabricated the defence as a way of accounting for Patient A's DNA under your fingernails after you had received the results of the forensic scientist's DNA tests. In all the circumstances, the panel considered it was right to draw an adverse inference from your failure to mention, when questioned in your police interview, something which you later relied upon to account for the DNA results.

The panel bore in mind that the evidence of Patient A was hearsay evidence and therefore approached it with caution. However, it was of the view that the evidence was of high quality. The panel was able to view a video recorded police interview, recorded very soon after the alleged incidents. It also had a transcript of Patient A's examination in chief and cross-examination at the subsequent Crown Court trial. It also took into account the recent complaint made by Patient A to her father and to Patient B.

The panel also had regard to the supporting evidence from Witness 1, the forensic expert, which provided very strong support for the proposition that digital penetration of Patient A (and by logical extension, intimate touching) had occurred. Whilst it was very readily conceded by Witness 1 that the DNA results could be attributable to the use of a breakaway technique, the panel did not find this to be a credible explanation for the reasons set out above.

In light of the significant evidence surrounding Patient A's DNA, the panel determined that it would be most appropriate to consider charge 1 e) and f) first and made the following findings:

**Charge 1 e)**

1. On 7 January 2016:
e. Touched/digitally penetrated Patient A's vagina

**Charge found PROVED**

When considering this charge, the panel had before it the transcript of Patient A's video-recorded interview with the police on 26 January 2016. Patient A is recorded as stating:

> *'…and then he brought his hand round to the front of my trousers, like my pyjama bottoms and like inside my pants and then put his finger inside me, and started like moving it about, and like, again, I was just thinking, oh. Like by this point like I think I had gone into like shock a little bit and I was like, a bit like, oh. I don't know what to do, I don't know what to do, like. I don't know how to sort of get out of the situation…'*

When questioned, Patient A further states:

> *'…PC [REDACTED]: Okay. Where did he put his fingers, specifically? Patient A: In my vagina and the front part of it.'*

In the course of the criminal trial, Patient A was not asked specifically about the details in cross-examination or supplementary questions but she did confirm that you had touched her in places you should not have. Patient A was consistent as to the position you were standing in at the time.

The panel noted that during your interview with the police on 8 January 2016, when asked whether you had touched Patient A's vagina, you responded stating '*I did not, no'.*

The panel also considered the expert report of Witness 1, dated 14 April 2016 who stated that it was her opinion that *'the laboratory findings from Emakpor OGO's hand swabs provide very strong support for the view that Emakpor OGO digitally penetrated [Patient A's] vagina.'*

The panel noted that when carrying out her report, two propositions were put to Witness 1 for her to consider and Witness 1 came to the following conclusion when considering those two propositions:

- *' Empakor OGO has digitally penetrated [Patient A's] vagina, as alleged.*

*If this were true, I may expect to detect DNA matching that of Patient A on the finger swaps and under the fingernail swabs taken 10 hours following digital penetration. Therefore, in my opinion the findings, in particular the relative amounts of DNA detected on these samples, are what I might expect if this were true.*

- *Emakpor OGO did not digitally penetrate [Patient A's] vagina, but he was in her company and patted on her back and shook her hand*

*If this were true, then in my opinion I would have an extremely low expectation of detecting DNA that could have come from [Patient A's] on the samples recovered from under the fingernails and a low expectation of detecting DNA that could have come from [Patient A] on the finger swabs from Emakpor OGO. Furthermore, had any DNA transferred to Emakpor OGO's hands I would have an expectation for most if not all DNA transferred to have been lost in the intervening 10 hours.'*

Your case during your trial, and at these proceedings, is that your DNA was found due to you performing a 'breakaway technique' on Patient A. During your oral evidence and examination in chief, you described the following:

*'OGO: It when somebody grabs you. The skills for you to remove yourself…So my right Palm was under her right hand. Was on top my right arm.*
*DEIGNAN: But just pause there as I described earlier, your right hand is under is your palm is turned up, her right hand is down, her palm is down on yours.*
*OGO: Yes. And then her grip. She grips my right hand.*
*DEIGNAN: And again as described earlier, you have you have culled your left hand fingers over your right palm.*
*OGO: And then what I did was I move my fingers onto her palm…I'm using my 4 fingers. On her palm…And then I rotate. My hand towards her…To release the grip and then I removed my hands.*
*…*
*DEIGNAN: And just to describe that you rotated your hand towards patient A's thumb to release her grip.*
*OGO: Yes.'*

This third proposition of DNA being obtained via the 'breakaway technique' was put to Witness 1 when she gave evidence. Witness 1 conceded that the technique could account for the level of DNA that was found under your finger nails.

Having already drawn an adverse inference from your failure to mention, when questioned in your police interview, something which you later relied upon to account for the DNA results, the panel determined that your account in this regard lacked credibility. Only after the DNA results were obtained did you raise the issue of a 'breakaway technique'. Despite your assertion that this technique was used, you made no record of it and did not raise it in your interviews. Further, it is your case that the 'breakaway technique' is used to manage aggression but in your evidence, you conceded that Patient A was not acting in an aggressive manner.

The panel preferred and accepted the account of Patient A. It acknowledged that the evidence relied upon is hearsay evidence and therefore exercised caution. However, the hearsay evidence comprises of a video recording of Patient A's ABE interview with the police and a transcript of her cross-examination during the criminal trial, at which time Patient A's evidence was tested, on your behalf, by counsel. In light of

this, the panel determined that the hearsay evidence in the particular circumstances of this case, could, and should, be given greater weight than other types of hearsay evidence. The panel was of the view that Patient A's evidence is credible, consistent and reliable.

The panel therefore concluded on the balance of probabilities, that it was more likely than not that on 7 January 2016, you touched/digitally penetrated Patient A's vagina.

**Charge 1 f)**

1. On 7 January 2016:
   f) Touched Patient A's clitoris

**Charge found PROVED**

When considering this charge, the panel had before it the transcript of Patient A's video-recorded interview with the police on 26 January 2016. Patient A is recorded as stating:

> *'PC [REDACTED]: Okay. Where did he put his fingers, specifically?*
> *Patient A: In my vagina and the front part of it.*
> *PC [REDACTED]: Okay. When you say "the front part of it" what do you mean?*
> *Patient A: The clit.*
> *PC [REDACTED]: Okay. And what fingers did he use?*
> *Patient A: Oh. Either -- either this one, the middle one.'*

The panel noted that during your interview with the police on 8 January 2016, you denied touching Patient A's vagina and/or stimulating her.

Whilst Witness 1 was not asked specifically about the touching of Patient A's clitoris, the panel determined, by way of its findings, that her evidence was capable of providing support that you touched Patient A's clitoris as part of a course of conduct

of sexual touching. The panel again, rejected your account of events that your DNA was present because of you performing the ‘breakaway technique’ because it lacked credibility.

Having previously found Patient A’s evidence to be credible, consistent and reliable, the panel preferred and accepted the account given by Patient A. It determined that it was more likely than not that you behaved in the way described within the charge, namely that on 7 January 2016, you touched Patient A’s clitoris.

**The panel then went onto consider the remaining disputed charges and made the following findings:**

**Charge 1 a)**

That you, whilst employed as a Mental Health Nurse at Luton and Dunstable Hospital;

1. On 7 January 2016;
    a. Cuddled/hugged Patient A

**Charge found PROVED**

When considering this charge, the panel had before it the transcript of Patient A’s video-recorded interview with the police on 26 January 2016. Patient A is recorded as stating:

> *‘…So, he put his arm round me and I just sort of stood there because I was a little bit uncomfortable and because obviously I'm aware that the staff aren't supposed to touch us and I was just like, you know, I didn't want to sort of cause him any problems, and he was -- then he sort of said, "why aren't you cuddling me back" and I was, like, oh, okay, like I'm supposed to be responding like. Like I didn't think about that. So, I sort of put my arm around*

*like his back. So, my arm was -- he's in the doorway and like so his arm is around me and so I put my arm around his back. So obviously my hand obviously went out the door, so obviously, so he was like: "No, no, no. Bring your arm back in. Like I don't -- I don't want other people to see", and when he said that I kind of thought, oh, that's not okay. He doesn't want people to see…'*

The panel also considered the transcript of Patient A's cross examination during the criminal proceedings at Luton Crown Court. When questioned, Patient A states:

*'Q. Just pause a moment. So he asked – he asked you to give him a hug back.*
*A. Mmm.*
*Q. And when – when you did, he said? And use – use the precise words that he said.*
*What – what did he say exactly?*
*A.I put – I put my arm around his back so my arm was obviously outside the door, so he said, "No, no, no, move it back, so – so people can't see." So I put my hand back into the room.*
*Q. And then did the hugging continue or not?*
*A. He kept his arm around me for a couple of seconds longer but I brought mine back to my side because obviously he'd asked me not – to bring it back in so other people couldn't see…'*

When considering the context within which the charges arose, the panel noted the inconsistencies of your evidence highlighted in its findings at charge 1 e) and f). Despite your assertions that this allegation is fabricated, the panel determined that any potential reasoning for fabrication on Patient A's behalf is tenuous at best.

The panel noted that during your interview with the police on 8 January 2016, you denied having hugged Patient A and in your oral evidence at these proceedings, whilst not asked specifically about this aspect of her evidence, you denied that anything untoward had occurred.

Whilst the panel acknowledged that the evidence before it is hearsay evidence, it determined that weight could, and should, be placed on Patient A's evidence given both during her interview with the police and her cross examination during the criminal proceedings. The panel found Patient A's evidence to be consistent, credible and reliable. She was able to accurately recall evidence as to how, what, where and when the alleged behaviour occurred. Patient A acknowledged when she could not remember something. She was balanced in her account, describing you as having been one of the nicer members of staff and accepting that initially, she may have 'overreacted' to your attentions before rationalising that the behaviour was inappropriate.

Having previously accepted the evidence of Witness 1 at charges 1 e) and f), the panel determined that her evidence was also capable of providing supporting evidence at this charge, as to your tendency to act in a sexually inappropriate manner towards Patient A, without her consent. The panel did not regard the charges as entirely separate and unrelated incidents.

Finally, despite your evidence as to why you thought Patient A may have made up this allegation (as well as others), the panel did not find that there was any credible evidence of Patient A having a motive to make a false complaint shortly after the event initially to Patient B, then her father and thereafter the police. For all these reasons, the panel preferred and accepted the account given by Patient A. It determined that it was more likely than not that you behaved in the way described within the charge, namely that on 7 January 2016, you cuddled/hugged Patient A.

**Charge 1 b)**

1. On 7 January 2016;
    b. Kissed Patient A

**Charge found PROVED**

When considering this charge, the panel had before it the transcript of Patient A's video-recorded interview with the police on 26 January 2016. Patient A is recorded as stating:

> *'…He's like: "Okay. Okay. I'll let you have a shower and I'll come back", and I was like, okay, and as he went to leave he sort of -- he leant forward and kissed me and like stuck his tongue like in my mouth, which was just like, okay, and then I didn't respond…'*

The panel noted that during your interview with the police on 8 January 2016, when questioned you stated that you '*didn't kiss her'.* When giving evidence to the panel, you denied that anything inappropriate had happened with Patient A.

Despite your denial in this regard, the panel determined for the reasons previously stated that there was no credible explanation or evidence before it to explain why Patient A would make a false complaint against you. Having previously accepted the evidence of Witness 1 at charges 1 e) and f), the panel determined that her evidence was also capable of providing supporting evidence to this charge, as to your tendency to act in a sexually inappropriate manners towards Patient A, without her consent. The panel did not regard the charges as entirely separate and unrelated incidents because the conduct was entirely consistent with the sexually inappropriate behaviour found proved at charges 1 e) and f).

Having previously found Patient A's evidence to be credible, consistent and reliable, the panel preferred and accepted the account given by Patient A. For all these reasons, the panel preferred and accepted the account given by Patient A. It determined that it was more likely than not that you behaved in the way described within the charge, namely that on 7 January 2016 you kissed Patient A.

**Charge 1 c) i)**

1. On 7 January 2016;
   c. Placed your hand down;
   i) Patient A's pyjama bottoms

**Charge found PROVED**

When considering this charge, the panel had before it the transcript of Patient A's video-recorded interview with the police on 26 January 2016. Patient A is recorded as stating:

> *'Like, you know, and then he brought his hand round to the front of my trousers, like my pyjama bottoms and like inside my pants and then put his finger inside me, and started like moving it about, and like, again, I was just thinking, oh.*
> *…*
> *Because obviously I don't want him to then get angry at me like because I don't know how he's going to react to that, and he, like, then he put his hand back down my trousers, like down my pyjama bottoms and started doing like -- moving his finger about like doing what he did before…'*

The panel also considered the transcript of Patient A's cross examination during the criminal proceedings at Luton Crown Court. When questioned, Patient A states:

> *'A. When he touched me, he put his arm around me and then put his hands under my*
> *clothing.*
> *Q. Sorry. So – so whilst standing in the doorframe ---*
> *A. He was sort of – yeah, he was half in and half out. (Inaudible) out of the door going across the corridor into (inaudible) my room.*
> *Q. So whilst standing there, half in – half in and half out, "He put his arm around me",*
> *did you say?*
> *A. Yeah.*
> *Q. And – and did what? And what else happened at that point?*

*A. When he put his hands under my clothes and touched me in places that he shouldn't have.'*

The panel noted that during your interview with the police on 8 January 2016, when asked whether you had moved your hands into her pants, you stated *'no'.*

Whilst not direct evidence to this charge, the panel considered the evidence of Witness 1 in relation to charges 1 e) and f), namely that Patient A's DNA was found under your fingernails. It is your case that Patient A's DNA was present due to you performing the 'breakaway technique'. For the reasons previously given, the panel did not accept your explanation in this regard. Having previously found charges 1 e) and f) proved, the panel determined that, by implication, it is inevitable that your hands would have been down Patient A's pyjama bottoms.

Having previously found Patient A's evidence to be credible, consistent and reliable, the panel preferred and accepted the account given by Patient A. It determined that it was more likely than not that you behaved in the way described within the charge, namely that on 7 January 2016, you did place your hand down Patient A's pyjama bottoms.

**Charge 1 c) ii)**

1. On 7 January 2016;
   c. Placed your hand down;
   ii) Patient A's top

**Charge found PROVED**

When considering this charge, the panel had before it the transcript of Patient A's video-recorded interview with the police on 26 January 2016. Patient A is recorded as stating:

*'…And he sort of -- so he sort of moves his hand down to like where my scars are and like strokes them and sort of says, "what are these from", because*

*like I self-harm as well and I think he maybe assumed that that's probably what it was from…And I just sort of said: "Oh, when I was younger, I had like two surface piercings there and I was like 16/17 and they've left scars. That's it." …'*

The panel also noted the transcript of Patient A's cross examination during the criminal proceedings at Luton Crown Court. When questioned, Patient A states:

*'DEPUTY JUDGE…: Again, I'm sorry – I'm sorry, I just want to clarify one thing in that connection. Just – I hope you don't mind telling us, but where are these scars that you're talking about? Where are they on your body?*
*A. Oh, they were on my chest area here.'*

The panel noted that during your interview with the police on 8 January 2016, when asked whether you had placed your hand down Patient A's top, your response was recorded as inaudible. However, it is your position that you deny this charge.

Despite your denial in this regard, the panel determined for the reasons previously stated that there was no credible explanation or evidence before it to explain why Patient A would make a false complaint against you. Having previously accepted the evidence of Witness 1 at charges 1 e) and f), the panel determined that her evidence was also capable of providing supporting evidence to this charge, as to your tendency to act in a sexually inappropriate manners towards Patient A, without her consent. The panel did not regard the charges as entirely separate and unrelated incidents because the conduct was entirely consistent with the sexually inappropriate behaviour found proved at charges 1 e) and f).

Having previously found Patient A's evidence to be credible, consistent and reliable, the panel preferred and accepted the account given by Patient A. It determined that it was more like than not that you behaved in the way described within the charge, namely that on 7 January 2016, you placed your hands down Patient A's top.

**Charge 1 d)**

1. On 7 January 2016;
    d. Touched Patient A's bottom

**Charge found PROVED**

When considering this charge, the panel had before it the transcript of Patient A's video-recorded interview with the police on 26 January 2016. Patient A is recorded as stating:

> *'…then he kind of put his hand underneath my top, and then he put his hand, like, down, like -- like -- the elastic bit, like down -- down the back of the pyjamas underneath my knickers and then put his hand on my bum, and like obviously by this point I was like, yeah, this is clearly not okay…'*

The panel noted that during your interview with the police on 8 January 2016, when asked whether you had 'touched Patient A's bum', you responded as saying *'I didn't'.* Whilst you were not taken to this charge directly during these proceedings, it is your case that you deny this charge.

Despite your denial in this regard, the panel determined for the reasons previously stated that there was no credible explanation or evidence before it to explain why Patient A would make a false complaint against you. Having previously accepted the evidence of Witness 1 at charges 1 e) and f), the panel determined that her evidence was also capable of providing supporting evidence to this charge, as to your tendency to act in a sexually inappropriate manners towards Patient A, without her consent. The panel did not regard the charges as entirely separate and unrelated incidents because the conduct was entirely consistent with the sexually inappropriate behaviour found proved at charges 1 e) and f).

Having previously found Patient A's evidence to be credible, consistent and reliable, the panel preferred and accepted the account given by Patient A. It determined that it

was more likely than not that you behaved in the way described within the charge, namely that on 7 January 2016, you touched Patient A's bottom.

**Charge 1 g)**

1. On 7 January 2016;
   g. Touched Patient A's breast/chest

**Charge found PROVED**

When considering this charge, the panel had before it the transcript of Patient A's video-recorded interview with the police on 26 January 2016. Patient A is recorded as stating:

> *'…So, like, he's like stroking both of them and then like once I sort of answered him, he then move his hand into my top and feels both my breasts and like rubs my nipples, with his forefinger and thumb, like still right hand, still down there.'*

The panel noted that during your interview with the police on 8 January 2016, when asked whether you had 'played with Patient A's right breast', your response was recorded as inaudible. Nevertheless, it is your case that you deny this charge.

Despite your denial in this regard, the panel determined for the reasons previously stated that there was no credible explanation or evidence before it to explain why Patient A would make a false complaint against you. Having previously accepted the evidence of Witness 1 at charges 1 e) and f), the panel determined that her evidence was also capable of providing supporting evidence to this charge, as to your tendency to act in a sexually inappropriate manners towards Patient A, without her consent. The panel did not regard the charges as entirely separate and unrelated incidents because the conduct was entirely consistent with the sexually inappropriate behaviour found proved at charges 1 e) and f).

Having previously found Patient A's evidence to be credible, consistent and reliable, the panel preferred and accepted the account given by Patient A. It determined that it was more likely than not that you behaved in the way described within the charge, namely that on 7 January 2016, you touched Patient A's breast/chest.

**Charge 1 h)**

1. On 7 January 2016;
    h. Asked Patient A about her previous relationships

**Charge found PROVED**

When considering this charge, the panel had before it the transcript of Patient A's video-recorded interview with the police on 26 January 2016. Patient A is recorded as stating:

> *'…And he asked me about, like, previous relationships. He was like, "what happened like with your like previous relationship", and I just explained, you know, I was in -- with my ex for 2 years. You know…'*

The panel noted that during your interview with the police on 8 January 2016, when asked whether you had asked Patient A about her last relationship, you denied that you had done so.

Despite your denial in this regard, the panel determined for the reasons previously stated that there was no credible explanation or evidence before it to explain why Patient A would make a false complaint against you. Having previously accepted the evidence of Witness 1 at charges 1 e) and f), the panel determined that her evidence was also capable of providing supporting evidence to this charge, as to your tendency to act in a sexually inappropriate manners towards Patient A, without her consent. The panel did not regard the charges as entirely separate and unrelated incidents because the conduct was entirely consistent with the sexually inappropriate behaviour found proved at charges 1 e) and f).

Having previously found Patient A's evidence to be credible, consistent and reliable, the panel preferred and accepted the account given by Patient A. It determined that it was more likely than not that you behaved in the way described within the charge, namely that on 7 January 2016, you asked Patient A about her previous relationships.

In relation to Charge I and its relevant sub-sections, the panel was of the view that it would be most appropriate to set out the evidence for each subsection and then provide its determination.

**Charge 1 i) i)**

1. **On 7 January 2016:**

   **I)Spoke to Patient A using words to the effect;**

   **i)'Do you want me to have sex with you'**

The NMC's evidence for this charge includes the transcript of Patient A's video-recorded interview with the police on 26 January 2016, which was videoed. Patient A is recorded as stating:

> *'…he was asking me when I last had sex, and I said I don't know -- like, I don't know. I haven't like marked the date times. I said, "I don't know", and he sort of said, "do you want me to have sex with you" and I was like, "no. No. No. That's not okay", and by this point I was like: I need to get out of this.'*

During your interview with the police on 8 January 2016, when asked whether you had asked Patient A if she wanted to have sex with you, you responded '*oh my God. I did not.'*

**Charge 1 i) ii)**

1. **On 7 January 2016:**

   **I)Spoke to Patient A using words to the effect;**

**ii) ‘I love you’**

The NMC’s evidence for this charge includes the transcript of Patient A’s video-recorded interview with the police on 26 January 2016, which was videoed. Patient A is recorded as stating:

> *‘…and then as he left he was like, "Oh, I love you", and I was like, okay. He said, "Are you not going to say it back", and I was just like, "I love you", like just -- because by this point I was like, he's going. Just let him go. Like, don't give him any more reason to stay. Just let him go. He was like, "Okay. I will come back after you shower"…’*

During your interview with the police on 8 January 2016, when asked whether you had told Patient A that you loved her, you responded ‘*…I did not tell her I loved her.’*

**Charge 1 i) iii)**

1. **On 7 January 2016:**

**I)Spoke to Patient A using words to the effect;**

**iii) ‘Have you ever been in love’**

The NMC’s evidence for this charge includes the transcript of Patient A’s video-recorded interview with the police on 26 January 2016, which was videoed. Patient A is recorded as stating:

> *‘Asking me if I loved him. Have I ever been in love. Did I love him and, you know, so I was just like, "I don't know. Maybe I thought I did. Maybe I do." Like, again, that's not something I've really dealt with. Like -- like with my ex.’*

You were not asked about this allegation during your police interview on 8 January 2016. Further, you were not taken to this charge directly during these proceedings. However, the panel notes that you deny this allegation.

**Charge 1 i) iv)**

1. **On 7 January 2016:**

**I)Spoke to Patient A using words to the effect;**

**iv) 'Would you go out with a black person'**

The NMC's evidence for this charge includes the transcript of Patient A's video-recorded interview with the police on 26 January 2016, which was videoed. Patient A is recorded as stating:

*'…And just, erm, at one point he asked me, he was like, "would you ever date a black person", and like I laughed because, I don't know. I just thought -- I don't know why I thought it was funny, but I was just like okay, like, because at this point like the conversation was obviously getting a little bit weird, but I kind of still was maybe thinking this is, like, him trying to be, like, more -- trying to make me look at him as less -- like less like a nurse so maybe I'd open up to him a little bit more.'*

During your interview with the police on 8 January 2016, when questioned as to whether you had asked Patient A if she would date a black person, your response was recorded as inaudible. However, the panel noted that you deny this charge.

**Charge 1 i) v)**

1. **On 7 January 2016:**

**I)Spoke to Patient A using words to the effect;**

**v) 'I will be thinking about you when I am home in bed'**

The NMC's evidence for this charge includes the transcript of Patient A's video-recorded interview with the police on 26 January 2016, which was videoed. Patient A is recorded as stating:

*'…He was like, again, like saying, "do you want me to be that person to like be there for you" and he's like, "you know, I want you to know that, you know, there's always somebody thinking about you, like, even if I'm not on the ward and I'm at home and I'm in bed, like, I am at home, I'm think -- and there is always somebody thinking about you."…'*

During your interview with the police on 8 January 2016, when asked whether you said that you would be thinking of Patient A off the ward and when you were in bed, you stated '*Jesus Christ'.* The rest of your response was recorded as inaudible. The panel noted that you deny this charge.

**Charge 1 i) vi)**

1. **On 7 January 2016:**

**I)Spoke to Patient A using words to the effect;**

**vi) 'Show me your pussy'**

The NMC's evidence for this charge includes the transcript of Patient A's video-recorded interview with the police on 26 January 2016, which was videoed. Patient A is recorded as stating:

*'…I said, "I'm not gonna get you into trouble", and he was like, "Okay", and then he was like -- he sort of like he stood there looking at me and he said, "Show me your pussy", and I was like: no, I don't feel – I don't really feel comfortable doing that, so I'm not gonna to do that…'*

During your interview with the police on 8 January 2016, when asked whether you had requested to see Patient A's 'vagina area', you stated '*No I didn't say that'.*

**Charge 1 i) vii)**

1. **On 7 January 2016:**

**I)Spoke to Patient A using words to the effect;**

**vii) ‘Sit on the bed and open your legs’**

The NMC’s evidence for this charge includes the transcript of Patient A’s video-recorded interview with the police on 26 January 2016, which was videoed. Patient A is recorded as stating:

> *‘…He pulled like my like pyjama bottoms and knickers open so he could sort of see down, and he asked me to go and sit on the bed and spread my legs so he could see everything while he's stood in the doorway, and I said: "No. I'm not doing that. I don't feel comfortable doing that."*

During your interview with the police on 8 January 2016, when asked whether you had asked Patient A to sit on the bed and spread her legs so that you could see her vagina, your response is recorded as inaudible. However, the panel noted that you deny this charge.

**Charge 1 i) viii)**

1. **On 7 January 2016:**

**I)Spoke to Patient A using words to the effect;**

**viii) ‘Will you touch my dick’**

The NMC’s evidence for this charge includes the transcript of Patient A’s video-recorded interview with the police on 26 January 2016, which was videoed. Patient A is recorded as stating:

> *‘…What's happening isn't okay, and I just sort of probably nodded, like, maybe just because I wanted him to stop and like I didn't know what to do. He asked me to touch his penis by -- at one point. When his hand was down my trousers he asked me to touch his penis… I'm pretty sure it was something really crude like, "will you touch my dick", and I was sort of very reluctant to. I was like I really don't want to do that and he was like, "please just touch it"…’*

During your interview with the police on 8 January 2016, when asked whether you had asked Patient A to stroke your penis, your response was recorded as inaudible. However, the panel noted that you deny this charge.

The panel acknowledged that the evidence relied upon is hearsay evidence and therefore exercised caution. As previously observed, the hearsay evidence comprises of a video recording of Patient A's ABE interview with the police and a transcript of her cross-examination during the criminal trial, at which time Patient A's evidence was tested, on your behalf, by counsel. The panel noted that the subject matter of these charges did not directly relate to the criminal charges and that Patient A was therefore not cross-examined on these specific details. The panel determined, however, that the hearsay evidence in the particular circumstances of this case, could, and should, be given greater weight than other types of hearsay evidence. Further, the panel considered the fact that shortly after the allegations arose, the matters were reported by Patient A's father, providing a near-contemporaneous account that something of a sexually inappropriate nature had occurred. The panel acknowledged that Patient A's complaint was not recorded in the same terms or detail as she was later to describe to the police. However, the panel did not consider this to be significant given that patient A was making a disclosure to her father (which in interview she described as 'difficult') and additionally, the manner in which this disclosure was subsequently recorded, namely a brief note in a safeguarding report.

Both in relation to these charges and throughout the panel's deliberations, the panel had regard to the guidance given on the assessment of witness testimony in *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin). The panel avoided making assessments based upon Patient A's demeanour and sought to consider, whenever possible, other available evidence that either supported or undermined her account.

In relation to Patient A's recollection of conversations with you, the panel found them to be detailed, credible and consistent with the context in which Patient A said that the events had occurred. For example, it found that the subsequent sexual touching

was unlikely to have occurred in isolation, without any previous conversation. The panel did not have any evidence before it to undermine the evidence before it that you spoke to Patient A in the manner alleged within Charge I and therefore found Charge I proved in its entirety on the balance of probabilities.

**Amendment of charge 2**

Before considering charge 2, the panel noted an administrative error within the charge, namely that charge I had been omitted. The panel, of its own volition, determined that in order to ensure clarity and accuracy, it would be in the interests of justice to remove charge 1 h) and amend the following:

> *'Your actions in one or more of the above charges 1 A) 1 B), 1 C), 1 D), 1 E), 1 F), 1 G) & ~~1 H) vi, 1H) vii) & 1 H) viii),~~* ***1 I) vi), vii) and viii)*** *were sexually motivated in that you sought sexual gratification from such conduct.'*

The panel determined that no injustice would be caused to either party in making the amendment.

**Charge 2**

> **2) Your actions in one or more of the above charges 1 A) 1 B), 1 C), 1 D), 1 E), 1 F), 1 G) & 1 I) vi), vii) and viii) were sexually motivated in that you sought sexual gratification from such conduct.**

**Charge found PROVED**

When considering charge 2, the panel had particular regard to charge 1 a), namely that you had cuddled/hugged Patient A. It determined that, taken in isolation, a hug may be considered an innocent act of kindness by a nurse to a patient. However, during Patient A's cross examination at Luton Crown Court, she states:

*'…I put my arm around his back so my arm was obviously outside the door, so he said, "No, no, no, move it back, so – so people can't see." So I put my hand back into the room… He kept his arm around me for a couple of seconds longer but I brought mine back to my side because obviously he'd asked me not – to bring it back in so other people couldn't see, which is when I realised that, you know, I was probably not in a (inaudible) situation because he'd asked me to (inaudible) and just that I (inaudible) not right.'*

The panel was of the view that the evidence provided by Patient A demonstrates that you knew the way in which you were behaving would not be considered appropriate by others. To the contrary, Patient A describes during her interview with the police how your behaviour made her feel uncomfortable.

The panel was of the view that charge 1 a), taken in isolation, may be considered less serious than the other charges, which the panel deemed to be extremely serious. However, when considered collectively and given the context of your case, the panel determined that there was no other reasonable explanation for your motivation as to the way in which you behaved, other than for sexual gratification.

**Charge 3**

Your actions in on or more of the above charges 1 H), 1 I) i), 1 I) ii), 1 I) iii), 1 I) iv) and 1 I) v) were sexually motivated, in that you sought to pursue a future sexual relationship with Patient A.

**Charge found PROVED**

The panel considered the fact that when the behaviour arose, you were the nurse and Patient A was a patient for whom you were providing care. You were in a position of trust and Patient A was considered vulnerable. In this regard the panel determined that your behaviour was inappropriate and a clear breach of professional boundaries. The language used demonstrated a desire to pursue Patient A in a sexual manner. Having previously found that you sought sexual gratification from the

way in which you behaved, and given the context of the case and the evidence before it, the panel was satisfied that your behaviour set out at charges 1 H), 1 I) i), 1 I) ii), 1 I) iii), 1 I) iv) and 1 I) v) were sexually motivated, in that you sought to pursue a future sexual relationship with Patient A.

**Charge 5**

5. Your actions in one or more of charges 4 a) & 4 b) above were dishonest, in that you sought to conceal your criminal charges from your regulator

**Charge found NOT proved**

When making a decision in relation to this charge, the panel considered the case of *Ivey v Genting Casinos UKSC 67 (UK) Ltd T/A Crockfords.*

The panel noted that you were charged by Luton police on 20 January 2017. The NMC received a referral on 3 August 2018 from the Royal College of Nursing on your behalf. The panel also noted Code 23.2 of the 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code), which states:

> *'23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)'*

It is the NMC's case that as a newly qualified nurse, the requirements under the Code would have been known to you, particularly given the seriousness of the allegations you were charged with. The NMC submitted that it cannot be said that you were 'simply mistaken'.

During your oral evidence you described how you had 'no real knowledge' of the Code. You stated that during your training you were made aware of the Code but that you had not read it. [PRIVATE]. You stated that you did not realise you needed

to make a referral to the NMC given that you were acquitted. You reminded the panel that the Trust knew about the allegations when they were made. During cross examination, it was put to you by the NMC that you made a conscious choice not to disclose the charges and you stated that this was not true.

The panel noted that within your reflective piece, you state the following:

> *'…did not disclose the charges to the NMC until August 2018. I did not disclose my charges and self-refer to the NMC at the time because I did not know about my duty to self-refer under the Code and that I should have informed the NMC as soon as possible at the time. I should have known the NMC code and its requirements as a nurse. Had I have known of my obligation under the Code I would have acted differently and self-referred even ahead of the police investigation to avoid this situation. Regrettably I also did not refer to the NMC code as a guide which was what I should have done.*
>
> *I understand that my action of failing to inform the NMC immediately or as soon as possible of the criminal charges until August 2018 could be considered as dishonest as Section 23.2 of the NMC code is clear about what is expected and required. As nurses, we need to be open, honest, and transparent with our regulators and employers. It was a serious error that I did not check the NMC Code regarding any obligation following the police charges however I deny that my not informing the NMC of criminal charges immediately was dishonest. I wasn't intentionally hiding my circumstances and the police charges from my regulator the NMC. My employer, East London NHS Foundation Trust, and TXM agency that I worked for were aware of the police charges. If I had consulted the Code as I accept I should have informed the NMC immediately but regrettably I did not.'*

The panel was of the view that as a registered nurse you should have known that you needed to declare the allegations to the NMC. However, the panel was not

provided with evidence as to how much emphasis was placed upon the Code during your training as a nurse. It noted your admissions to your failure and that you acknowledged how you should have responded differently. The panel accepted your evidence that you were extremely busy as a newly qualified nurse. In the circumstances of this case, the panel could not be satisfied that you acted deliberately in order to conceal the criminal charges from the NMC. Considering your state of knowledge or belief at the time, the panel was not satisfied that you acted dishonestly. The panel concluded that the NMC had not discharged its burden at charge 5 and therefore finds this charge not proved.

**Decision and reasons on interim order**

After handing down its decision on facts, the panel heard an application by Ms Deignan to revoke the current interim conditions of practice order. She reminded the panel that the charges, which have now been found proved, arose in January 2016. Ms Deignan submitted that for the past eight and a half years there has been no suggestion that you have behaved in a similar manner, despite practising with the same client group and the same associated risks. She referred the panel to an updated reference from your current employer, which confirms that you are able to practise well and safely. Ms Deignan submitted that a member of the public would have before it enough information to know that you have practised, and continue to practise without any professional conduct issues arising. She highlighted the fact that you were previously made subject to an interim conditions of practice order on May 2019 and that the order was revoked in April 2020. Ms Deignan stated that the current order is punitive and effectively, a sanction for matters which are now considered historical.

Ms Da Costa submitted that, given the panel's findings on facts, the current interim conditions of practice order should be replaced with an interim suspension order. She highlighted the fact that the charges found proved are serious, involving the sexual assault of a vulnerable patient. Ms Da Costa stated that conditions no longer address the risk identified in your case.

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

The panel considered the updated reference before it, dated 20 August 2024, from your current Line Manager, which states:

> *'I am aware of the details of NMC allegations having been provided and read schedule of charges.*
> *…*
> *My general observation of Emakpor practice is someone who continues to demonstrate professional ability to work as expected by his employer and maintains professional boundaries. Apart from becoming overly sensitive to complaints, I have not observed any matters in relation to the NMC allegations.*
> *From my observation Emakpor is of a good character in his work with patients, colleagues and other multidisciplinary team members. He receives positive feedback from his colleagues describing him as caring and a hard worker. He presents with awareness of patients' needs and organise himself to meet these needs while balancing individual needs to that of others.*
> *Like I mentioned above, with the pending NMC charges and working in a very complex and environment that poses challenges he at times has presented as overly sensitive but has responded well to this feedback during his supervision session with me and demonstrated ability to adjust himself as a professional.*
> *I am aware and he gave me a copy of interim order/conditions imposed on him.*
> *He continues to be employed by Elysium Healthcare and works at Chadwick Lodge. He works on a men ward and in case of a need to cover other wards he will only be allocated to cover on a men ward.*
> *There has been no investigation or disciplinary proceedings against him, and he has not been involved in any clinical incident.'*

Despite the positive reference, the panel was of the view that an order remains necessary for the protection of the public and that an order is otherwise in the public

interest, particularly in light of the panel's findings on facts. It next considered whether the current interim conditions of practice order should be continued. The panel noted the submission that your behaviour has not been repeated over the past eight and a half years. However, the panel determined that the allegations found proved are not trivial, but rather extremely serious, relating to a vulnerable patient in your care, involving, amongst other behaviours, a penetrative sexual assault of her. Additionally, at this stage, you have not demonstrated any insight into your conduct for the panel to be satisfied that the risk of repetition in your case is no longer present.

The panel was therefore of the view that the current interim conditions of practice order was no longer workable nor proportionate in order to meet the public protection and significant public interest concerns in your case. It therefore concluded that an interim suspension order was now the appropriate and proportionate order and decided to replace the current interim conditions of practice order with an interim suspension order.

**Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to 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 Da Costa invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The NMC code of professional conduct: standards for conduct, performance and ethics (2004)' (the Code) in making its decision.

Ms Da Costa identified the specific, relevant standards where your actions amounted to misconduct. She submitted that your conduct fell short of what is proper of the expected standards of nursing and has breached the following sections of the Code: 1, 1.1, 4, and 20.

Ms Da Costa submitted that a vulnerable patient was sexually assaulted by you when you were entrusted with their care and in a position of trust. She submitted that through your conduct, you have breached fundamental tenets of the profession.

Ms Deignan submitted that you accept the findings made but that you do not accept the conduct. She referred the panel to your reflection, submitted at this stage of the hearing, which says in relation to charges 1, 2 and 3:

> *'While I do not agree or accept that I acted as has been found proven, I acknowledge the panel's findings and intend to consider their significance, including ensuring justice for the affected victims as well as the need for the nurse to face the consequences for their actions to reassure the public of their safety when in the hospital and attended to by a nurse.'*

Ms Deignan further submitted that although you have admitted to charge 4, you do not accept that there was misconduct, and referred the panel to your reflection in relation to this charge:

*‘Regarding charges 4 a) and b), I accept my failure to disclose the criminal charges and self-refer to the NMC. This was due to the fact that at the time I did not know about my obligation to self-refer under the Code and that I should have informed the NMC as soon as possible. I understand and accept that it is my responsibility as a nurse to be familiar with the NMC code and its requirements. In the event that I had been aware of my obligation under the Code, I would have acted differently and self-referred even prior to the police investigation in order to avoid this situation. Unfortunately, I did not refer to the NMC code as a guide, which was what I should have done. As soon as I became aware, I immediately self-referred. Since becoming aware of my obligations under the NMC code, I have changed the way I practice by consulting the NMC code, my hospital's policies, and any regulations guiding my practice when in doubt in order to ensure that my practice is evidence-based and that I do not repeat this error.’*

Ms Deignan referred the panel to the case of *Yusuff v General Medical Council* [2018] EWHC 13 (Admin). She submitted that it would be inconsistent if you were, in your case, to adopt an acceptance of facts which you have denied at the start of these proceedings and continue to deny. She submitted that this does not mean that you lack insight into the nature of the concerns found proved.

**Submissions on impairment**

Ms Da Costa 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 Da Costa submitted that your actions put a patient at risk of harm. She referred the panel to NMC guidance FTP-3, relating to seriousness and sexual misconduct.

She submitted that you failed to protect a vulnerable patient who was in your care and that the charges are serious.

Ms Da Costa submitted that there is a strong public interest in this matter and referred the panel to the test established in Grant. She submitted that the first three of the four limbs in Grant are engaged. Ms Da Costa submitted that you have acted in such a way that put patients at an unwarranted risk of harm. She submitted that you have brought the profession into disrepute given the seriousness of the conduct and that you have breached the fundamental tenets of the nursing profession. Ms Da Costa submitted that there is a need to maintain public trust in the profession and a finding of impairment would meet this public interest and protect the public from the risk of harm.

Ms Deignan submitted that there are seven years of actual remediation in your case where you have practised without any further incident or concerns being raised. She submitted that there is evidence of remediation, and the risk of repetition has therefore been reduced. Ms Deignan submitted that you have completed training courses and referred the panel to certificates that you have provided as evidence of this. Ms Deignan submitted that you have reflected on your conduct and demonstrated insight, and in light of this, you have the potential to practise risk-free. Ms Deignan further referred the panel to 12 positive testimonials provided on your behalf and submitted that this speaks to your previous safe practice.

The panel accepted the advice of the legal assessor which included reference to *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 first considered whether your actions in charges 1, 2 and 3 amounted to misconduct.

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 breaches of the Code. Specifically:

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

*1.1 Treat people with kindness, respect and compassion*

*1.2 Make sure you deliver the fundamentals of care effectively.*

***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 […] 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*

*20.6 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),[…]*

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 in charges 1, 2 and 3 amounted to misconduct.

The panel examined misconduct in charge 4 separately. The panel was of the view that as a registered nurse, you are obligated under the Code to disclose any investigations or charges to the NMC and that it was your responsibility to ensure that you disclosed this information to your regulator. The panel accepted that this was a mistake on your part, but concluded that your conduct in charge 4 was capable of undermining the system of regulation that exists to protect the public. The panel concluded that your action in charge 4 was a breach of the Code, namely:

> ***'23 Cooperate with all investigations and audits***
>
> *This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.*
>
> *23.2 Tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)'*

The panel determined that this breach of the Code was serious enough to amount to misconduct.

The panel found that your actions in charges 1, 2, 3 and 4 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. Nurses 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 examined charges 1, 2 and 3 and concluded that limbs a), b) and c) of the Dame Janet Smith test were engaged. The panel finds that a patient was put at risk by your misconduct, and that Patient A was caused emotional harm as a result of your misconduct.

The panel took into account the video recorded police interview with Patient A, dated 26 January 2016:

*‘I felt uncomfortable at times […] Because it was a staff member, and by that point I can't remember, I wasn't really sure what was going on, it kind of did make me feel really uncomfortable. […]*

*I was really scared […]*

*[…] I do find -- I don't feel, especially on the ward, like I didn't feel 100*

*per cent safe. Obviously because -- and I know he wasn't there -- but you know, it still happened. So, I hadn't felt really that safe, and obviously, like, I don't know where he is. […] It is making going out a little bit difficult and, like I said, like, it does make me worry about going back into hospital in the future, and just -- and like I do worry about being around men at the moment.'*

The panel determined that your misconduct had breached the fundamental tenets of the nursing profession including prioritising people and promoting professionalism and trust. Your actions therefore brought the reputation of the profession into disrepute, and if repeated, is liable to bring the profession into disrepute in the future.

The panel took into account the reflective piece provided by you, which does acknowledge the panel's findings on the charges and details the impact of your behaviour on the profession and the public. It considered that you have reflected on the concerns and completed courses and have provided some relevant training certificates as well as numerous positive testimonials.

The panel acknowledged that whilst the misconduct in this case may not be impossible to address, sexual misconduct is incredibly difficult to remediate. The panel took into consideration the NMC Guidance FTP-3(a) which outlines seriousness:

*'We will consider each case on its facts in order to decide if a matter is serious enough to impair fitness to practise. Important factors will include the duration or frequency of the conduct in question, the professional's relationship with or position in relation to those involved, and the vulnerabilities of anyone subject to the alleged conduct.*

*Some behaviours are particularly serious as they suggest there may be a risk to people receiving care; examples include:*

- *…*
- *sexual misconduct*
- *…*

- *misconduct otherwise involving cruelty, exploitation or predatory behaviour, such as abuse or neglect of children and/or vulnerable adults.'*

The panel considered this guidance and further took into account your role as Patient A's registered nurse, that Patient A was a vulnerable inpatient who was admitted on the ward voluntarily, that your actions have impacted her confidence and trust in the profession and in particular, in men, and that you were in a position of trust at the time of the conduct, responsible for Patient A's care. The panel took into account that your conduct was on the higher end of seriousness and involved sexual touching of intimate areas and digital penetration. The panel determined that the conduct was very serious and therefore difficult to remediate.

While these matters are capable of remediation, the panel took into account that sexual misconduct invariably involves an attitudinal issue which cannot readily be dismissed as an isolated or one-off incident. A registered nurse who can commit serious sexual misconduct is capable of repeating it, unless there is a change in attitude. Whereas the panel took account of the fact that you have not repeated the conduct for a number of years, it was of the view that this was not determinative of an absence of risk of repetition without full or complete insight. The panel determined that you have not sufficiently recognised the seriousness of your misconduct. In light of the above, the panel is of the view that there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because, notwithstanding the positive testimonials that you provided and the evidence of training, a member of the public fully appraised of the evidence

before this panel would be very concerned if you were allowed to practise without a finding of impairment, given the extremely serious nature of the charges which relate to sexual misconduct involving a vulnerable patient.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

The panel examined your conduct in charge 4. The panel did not find you impaired on charge 4. It determined that, although the charge is serious, it is remediable, and you have demonstrated sufficient insight. It took into account that your conduct in charge 4 has not breached any fundamental tenets and that the limbs of the Dame Janet Smith test are not engaged. The panel considered that, while your conduct in charge 4 did amount to misconduct, the panel accepted that your failure to report was a genuine mistake as opposed to a dishonest course of conduct and when having regard to the extent to which you have demonstrated that what you have done is wrong, you have reflected on the incident and shown that you are resolved not to repeat it. The panel accepted that the risk of repetition was low in relation to this charge and that the public interest did not require a finding of impairment in relation to charge 4.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired in relation to charges 1, 2 and 3.

**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 Da Costa informed the panel that in the Notice of Hearing, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired. She submitted that you were a mental health nurse who was entrusted with caring for a vulnerable patient and abused this position of trust.

Ms Da Costa directed the panel to the NMC Guidance on striking-off orders, namely SAN-2 and SAN-3e. She submitted that there are three key considerations before imposing this order:

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

Ms Da Costa submitted that the first question's answer is affirmative given the serious nature of your conduct which involved sexual misconduct against a vulnerable patient, clearly breaching professional boundaries.

Ms Da Costa submitted that the second question's answer is no, as the charges involve a sexual assault on a vulnerable patient who has made it clear that she was not comfortable with the events and has lost confidence in the nursing profession itself.

Ms Da Costa submitted that the answer to the final question is affirmative, as this is a serious case which has resulted in emotional harm to Patient A.

Ms Da Costa submitted that a striking-off order is the only appropriate order in this case.

The panel also bore in mind Ms Deignan's submissions. Ms Deignan submitted that a suspension order would sufficiently meet the concerns raised in this matter.

Ms Deignan submitted that, in relation to the accounts of Patient A, no one has heard from her since the criminal trial in 2018 and the only evidence before the panel relating to how she felt was from the police interview in 2016. Ms Deignan submitted that caution should be exercised in taking into account anything specific about Patient A post 2016.

Ms Deignan submitted that the panel should consider where, on the spectrum of sexual misconduct, your actions fall. She invited the panel to consider both aggravating features and mitigating features.

Ms Deignan referred the panel to the Professional Standards Authority (PSA) guidance on sexual boundaries and the NMC Guidance on Serious Professional Misconduct. A full copy of this PSA guidance was provided to the panel.

Ms Deignan submitted that many of the aggravating features listed in the PSA guidance are not present in your case. She submitted that your sexual misconduct is not at the higher end of the spectrum. In regard to mitigation, Ms Deignan submitted that this was an isolated incident, that there were no prior incidents, and that you have had no further incidents. She also reminded the panel of the many positive testimonials provided by you.

Ms Deignan submitted that a suspension order would provide you with time to increase your insight, provide an additional year to the seven years already passed, and would sufficiently meet the public protection and public interest concerns raised by the panel.

The panel accepted the advice of the legal assessor which included reference to *Kamberova v NMC* [2016] EWHC 2955 (Admin).

**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:

- Serious emotional harm caused to Patient A
- Vulnerable patient who was a voluntary inpatient on a mental health ward
- Abuse of position of trust

The panel also took into account the 2016 video recorded police interview with Patient A, in considering the aggravating features, namely abuse of a position of trust against a vulnerable patient. The Panel noted that you initially had a 1:1 session with Patient A in order to encourage her to eat and drink. However, during this 1:1 session inappropriate comments were made by you to Patient A and professional boundaries were breached verbally. Patient A recounted:

> *'Then he sort of just started…asking questions…did I feel like I was like this because I had nobody in my life, like a partner … he was like, "do you want me to be that person in your life to sort of like be there for you and stuff like that,"… He was like, "what happened like with your like previous relationship", and I just explained, you know, I was in -- with my ex for 2 years. You know. It was abusive…He was like, "oh, you don't deserve that", you know, "I would never do that"…he's like, "don't see me as a professional. See me as," he's like, "I'm taking my professional side off now. He's like, "see me as like just someone else". He's like, you know, "I'm gonna," he's like, "see me as someone you can be really close to", and he's like, "sometimes I try and help people but like I go a bit too far and I get into trouble"[…]'*

Patient A goes on to say:

*‘[A]t one point he asked me to sort of stand up and so he could look at me. So, he asked me to sort of stand up and like turn around and sit back down again, like, so he could like have a full look at me.*

*[…] [H]e asked me, he was like, "would you ever date a black person".*

*[…] [H]e was like, again, like saying, "do you want me to be that person to like be there for you" and he's like, "you know, I want you to know that, you know, there's always somebody thinking about you, like, even if I'm not on the ward and I'm at home and I'm in bed, like, I am at home, I'm think -- and there is always somebody thinking about you."’*

Patient A stated that this conversation made her feel uncomfortable.

Following the 1:1 session, you went to Patient A’s bedroom, which was locked, and you unlocked it with your key. It is at this point that the sexual misconduct took place, and professional boundaries were further breached. Patient A describes going into ‘shock’ at being digitally penetrated, following which she states:

*‘…he was like, "oh, you're angry at me. You're angry at me. You're gonna get me into trouble." And I was like, "no, no, no". I said: "I'm not angry. I won't tell anyone. It's fine…You know. I said, "I'm not gonna get you into trouble", and he was like, "Okay"… and he said, "Show me your pussy"’*

Following this conversation, the sexual misconduct continued to include intimate touching of Patient A’s breasts. Patient A describes further conversation:

*‘[T]hen he sort of again said, "oh, you're angry with me". And I was like, "no, no. I'm not. I'm not gonna get you into trouble. I'm not. Because obviously I don't want him to then get angry at me like because I don't know how he's going to react to that, and he, like, then he put his hand back down my trousers”’*

The panel determined that there were repeated and escalating breaches of trust during the 1:1 meeting and incident in Patient A's bedroom. It determined that the breach of trust was structured and deliberate. You took the opportunity to unlock Patient A's bedroom with your keys where you engaged in sexual misconduct.

The panel placed weight upon the video recorded police interview of Patient A which was recorded around the date of the incident. The panel was mindful that there has been no further account from Patient A since she gave evidence at the criminal trial in 2018. However, the panel relied on the weight of the evidence within the 2016 recorded police interview and the panel inferred that there may be a risk that the emotional harm is likely to be enduring for Patient A.

The panel looked at the NMC guidance and the PSA guidance as invited and put the weight it deemed appropriate on the PSA guidance.

The panel also took into account the following mitigating features:

- Engagement with the NMC from the outset
- Twelve positive testimonials

The panel noted that you have had seven years of good practice without further referrals.

The panel considered that little weight can be placed on your mitigating features as engagement with the NMC is expected from a registered nurse. Whilst the panel recognised that the testimonials were extremely positive in your case, it bore in mind the PSA guidance regarding good character and sexual misconduct, which says*:*

> *'FtP panels need to be aware of certain critical factors when adjudicating cases involving sexual boundary breaches. These include the following:*
>
> - *Contrary to stereotypes, healthcare professionals who abuse patients may be personable and charismatic, highly regarded by their colleagues and held in high esteem by other patients'*

The panel weighed all of the aggravating and mitigating features in this case and determined that your sexual misconduct, which involved inappropriate touching, digital penetration, and deliberate and repeated breaches of trust was at the higher end of the spectrum.

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

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

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel bore in mind the serious nature of the sexual misconduct in this case, your incomplete insight, and the repeated breaches of trust. It was of the view that the manner in which professional boundaries were repeatedly breached demonstrates that there are significant attitudinal concerns.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you 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?*

The panel considered the NMC Sanction Guidance in relation to sexual misconduct, which outlines:

> *'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.'*

The panel took into account your reflection which demonstrated some insight. However, it noted that this insight did not sufficiently reduce the risk of repetition.

The panel considered that the sexual misconduct in this case was serious and involved digital penetration and inappropriate touching of a vulnerable patient in a mental health ward. It was of the view that this was a significant departure from the standards expected of a registered nurse, and that your conduct breached fundamental tenets of the nursing profession.

The panel took into account that there was significant emotional harm caused to Patient A, as evidenced by her police interview. It determined that sexual misconduct demonstrates a significant attitudinal concern, and the nature of the conduct suggests a risk of repetition.

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

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate

sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to you in writing.

**Interim order**

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

The panel accepted the advice of the legal assessor.

**Submissions on interim order**

The panel took account of the submissions made by Ms Da Costa who submitted that an interim suspension order is appropriate in order to protect the public and meet the public interest in this case.

Ms Deignan submitted that you do not actively oppose this application.

**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 protect the public and meet the public interest during any potential appeal period.

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.