

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

**Substantive Hearing  
30 September – 4 October and 9 - 11 October 2024**

Virtual Hearing

Nursing and Midwifery Council  
2 Stratford Place, Montfichet Road, London, E20 1EJ

<b>Name of Registrant:</b>	<b>Robin George</b>
<b>NMC PIN</b>	7810057W
<b>Part(s) of the register:</b>	Registered Nurse – Sub part 1 RN3: Mental health nurse, level 1 (24 July 1984) RN5: Learning disabilities nurse, level 1 (4 December 1981)
<b>Relevant Location:</b>	Isle of Wight
<b>Type of case:</b>	Misconduct and Caution
<b>Panel members:</b>	Greg Hammond (Chair, Lay member) Jillian Claire Rashid (Registrant member) Asmita Naik (Lay member)
<b>Legal Assessor:</b>	Peter Jennings
<b>Hearings Coordinator:</b>	Tyrena Agyemang
<b>Nursing and Midwifery Council:</b>	Represented by Brittany Buckell, Case Presenter
<b>Mr George:</b>	Present and unrepresented Craig Barlow, Special Counsel, conducted cross-examination of Colleague A
<b>Facts proved:</b>	Charges 1 in its entirety Charge 2 (in relation to 1a and 1c; and to 1d and 1e in relation to being sexual in nature only) Charge 3 (in relation to 1a and 1c)

<b>Facts proved by admission:</b>	Charge 4
<b>Facts not proved:</b>	Charge 2 (in relation to 1b; and to 1d and 1e being sexually motivated) Charge 3 (in relation to 1b, 1d and 1e)
<b>Fitness to practise:</b>	Impaired (on public interest grounds alone)
<b>Sanction:</b>	Suspension order for 12 months without a review

## **Decision and reasons on Notice of Hearing**

The panel had regard to the Notice of Hearing letter which had been sent to your registered email address by secure email on 27 August 2024 and noted that charge 4 was not in the copy of the letter provided to the panel. Although you are present at the hearing, the panel wished to be satisfied that the NMC had given you adequate notice and made you aware of all the charges alleged against you.

Ms Buckell, on behalf of the Nursing and Midwifery Council (NMC), submitted that you are aware of the fourth charge as you had self-referred to the NMC on 25 March 2022 and you have also sought to address this charge in your documentation and reflections before the panel. Accordingly, she submitted that you are aware of all the charges. You informed the panel that you were aware of all four charges.

The panel accepted the advice of the legal assessor.

The panel took into account that you were present in the hearing, that you had confirmed you were aware of charge 4 and that you had addressed it in your documentation. It also noted, in relation to charge 4, that the NMC is aware of the caution because you self-referred to your regulator on 25 March 2022.

In the light of all of the information available, the panel was satisfied that you are aware of all the charges in this matter and that it is appropriate for the hearing to proceed.

## Details of charge

That you, a registered nurse

1. In relation to Colleague A:
  - a) On 14 November 2019 kissed her after she had said she did not want you to kiss her.
  - b) Between 1 May 2019 and 13 November 2019 touched her on the bottom.
  - c) Between 1 September 2019 and 31 October touched her on the thigh.
  - d) Between 1 May 2019 and 13 November 2019 told her that she looked sexy or words to that effect.
  - e) On an unknown date or dates you made inappropriate comments about not looking at her bottom.
2. And your actions as specified in charge 1a) and/or 1b) and/or 1c) and/or 1d) and/or 1e) were sexual in nature and/or sexually motivated in that you sought sexual gratification.
3. And your actions as specified in charge 1a) and/or 1b) and/or 1c) and/or 1d) and/or 1e) amounted to sexual harassment in that they created an intimidating, hostile, degrading, humiliating or offensive environment.
4. On 10 March 2022 you received a conditional caution for harassment without violence in respect of colleague B.

AND in light of the above, your fitness to practise is impaired by reason of your misconduct in respect of charges 1 – 3 and by reason of your caution in respect of charge 4.

The panel heard advice from the legal assessor in relation to Rule 29(2) of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules). The panel accordingly decided to consider the facts and, if necessary, misconduct in respect of charges 1, 2 and 3 before returning to consider charge 4. It would consider impairment in respect of all the charges together if this stage was reached.

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

At the outset of the hearing, Ms Buckell made a request that parts of this case be held in private on the basis that proper exploration of your case involves references to the private life of Colleague A. The application was made pursuant to Rule 19 of the Rules.

You did not object to the application.

The panel also had regard to your reflective statement dated 8 September 2024, in which you stated:

*I believe my case should be held privately. This is a case of two individuals and their private affairs which did not hinder high professional standards or cause concern to public confidence. .... The core values of our profession were always upheld and in managing this hearing in public would not show that such events are taken seriously but in fact negativity would be imparted on the trust of our nursing group.*

You told the panel that you originally thought that this case should be heard in private, as details of the charges could cause distress to the nursing profession. However, you explained that you had raised this argument at the NMC Preliminary Meeting on 19 August 2024 and you conceded that the hearing should be held in public. Therefore, you no longer wish to pursue this 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 references to Colleague A's private life, the panel determined to hold those parts of the hearing in private in order to preserve the confidential nature of those matters.

The panel was satisfied that these considerations justify that course, and that this outweighs any prejudice to the general principle of hearings being in public.

## **Background**

The charges arose whilst you were employed as a registered Band 6 nurse at Isle of Wight NHS Trust, 'the Trust' on the dementia unit. On 25 March 2022, you self-referred to the NMC in relation to a conditional caution you had received from Hampshire Constabulary on 10 March 2022 for harassment without violence, with the condition to attend two workshops delivered by Hampton Trust, which were to be completed by 30 June 2022.

The caution was imposed as a result of your sending numerous emails to your ex-partner, Colleague B, despite her clear message that she did not want any further contact with you. It was reported to the NMC that you were trying to obtain a statement from Colleague B to support your case at an employment tribunal in relation to the matter involving Colleague A.

You stated that Colleague B was a key witness to your tribunal case, but the employment tribunal said it would make contact with Colleague B itself, and therefore you had no reason to contact her directly. Notwithstanding this, you took it upon yourself to send Colleague B further emails and messages, asking if she would provide a statement.

When she did not respond, you decided to email her at work, using her work email address, which you now accept was wrong and amounted to harassment of Colleague B.

During its enquiries in relation to your caution, the NMC received information from the Trust that previous concerns had been raised in 2019 by Colleague A, a Band 2 Support Worker. You were Colleague A's supervisor. Two incidents occurred whilst working on the unit when you allegedly touched Colleague A on the bottom and when you allegedly said that she looked sexy in her uniform. The other alleged incidents took place outside work in your car whilst giving Colleague A lifts home, during which she was allegedly subject to an unwanted kiss, touching of her thigh and inappropriate comments about not looking at her bottom.

You were suspended by the Trust during the internal investigation and were later allowed to return to work, but you resigned on 7 April 2021 advising that your position was untenable.

### **Decision and reasons on facts in relation to charges 1, 2 and 3**

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 Buckell on behalf of the NMC and by you.

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 oral evidence from the following witnesses called on behalf of the NMC:

- Colleague A: Associate Practitioner/Support Worker in the Dementia Outreach Team; and
- Witness 2: Associate Director of Clinical Effectiveness, Clinical/Corporate Mortality Lead and Clinical Research Director and the Disciplinary Panel Chair for the Trust investigation.

The panel also heard evidence from you under oath.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor who advised it as to the principles which should inform its approach.

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

### **Charge 1a**

1. In relation to Colleague A:
  - a) On 14 November 2019 kissed her after she had said she did not want you to kiss her.

**This charge is found proved.**

In reaching this decision, the panel took into account the oral and documentary evidence in support of this charge.



The panel first considered the evidence before it. You both agreed that a kiss took place and that Colleague A did say 'no', before the kiss took place. She said that you put your tongue into her mouth.

The panel considered Colleague A's email dated 19 November 2019 (five days after the event), in which she states:

*'...When we got to brading downs there is a viewpoint over looking sandown and Robin told me 'I am going to pull over'. I panicked and said what are you doing, and he pulled over. He said 'I cant believe I am doing this'. Robin stopped the car and turned the engine off, I felt panic and looked out the other window. I turned to Robin and said no, I have a boyfriend and you have a girlfriend, I feel awful'. He looked at me and said yes your right, we definitely shouldn't. 'I said no, take me home'. He looked at me and asked 'how do we get out of here' and I pointed to the way out. As we approached the way out Robin slammed the breaks on, grabbed my coat before I could say anything and put his tongue down my throat. I didn't know what to say or do and after he tried to hold my hand. I was in shock. I barely spoke on the way home. As I got out of the car he said 'pretend that never happened' and I went inside. I didn't know what to do [sic]'*

Your evidence on the other hand was that, although Colleague A said "no", she leaned towards you and put her tongue into your mouth.

The panel had regard to the broader context in this case, in which it heard that you were both engaged in a flirtatious relationship and spent a lot of time together, including your regularly giving Colleague A a lift in your car to and from work.

The panel noted that, in relation to charge 1a, it was unnecessary for it to decide the disputed question of who put whose tongue into whose mouth. The panel considered that

you admitted in your oral evidence that Colleague A had said 'no' prior to the kiss although her actions and language implied the opposite to you. However, the panel preferred Colleague A's evidence. It considered Colleague A's account to be consistent and that she had provided a rationale as to why the kiss was not acceptable or wanted.

Based on the evidence before it, the panel finds this charge proved.

### **Charge 1b**

1. In relation to Colleague A:

b) Between 1 May 2019 and 13 November 2019 touched her on the bottom.

**This charge is found proved.**

In reaching this decision, the panel took into account your admission during your oral evidence that you did touch Colleague A's bottom. The panel accepted that the descriptions of how you touched her have varied from a slap or hit to a touch. Your own account at one point described the touch as near her lower back. However, the panel acknowledges that both you and Colleague A are now agreed that you did touch her bottom.

The panel therefore finds this charge proved.

### **Charge 1c**

1. In relation to Colleague A:

c) Between 1 September 2019 and 31 October touched her on the thigh.

**This charge is found proved.**

In reaching this decision, the panel took into account your admission during your oral evidence that you touched each other and that you may have touched Colleague A's thigh. This partly corroborates Colleague A's account.

The panel again had regard to the broader context in this case, in which it heard that you both were engaged in a flirtatious relationship and that you said you would touch each other out of *'fondness'*.

The panel acknowledged Colleague A's consistent evidence in relation to this charge. It noted that you initially said that you could not recall this incident. However, you later confirmed in your oral evidence that there was some touching which may have been on Colleague A's thigh.

Based on all the evidence before it, the panel finds that you did touch Colleague A on the thigh.

### **Charge 1d**

1. In relation to Colleague A:

- d) Between 1 May 2019 and 13 November 2019 told her that she looked sexy or words to that effect.

### **This charge is found proved.**

In reaching this decision, the panel took into account the wider context regarding the staff uniform in relation to this charge. It acknowledged your admission during your oral evidence, that you did tell Colleague A that she looked sexy in her uniform.

The panel considered Colleague A's consistent evidence in relation to this charge. The panel accepted your evidence that there had been comments about your own uniform which made you feel uncomfortable. Your evidence was that the change from t-shirts to tunics was introduced for non-nursing staff at Colleague A's request and that there were numerous jokes made about the uniform in the unit.

Based on all the evidence before it and your admission in your oral evidence, the panel finds this charge proved.

### **Charge 1e**

1. In relation to Colleague A:

- e) On an unknown date or dates you made inappropriate comments about not looking at her bottom.

### **This charge is found proved.**

In reaching this decision, the panel took into account the oral and documentary evidence in relation to this charge. You agreed that you made the remarks. The panel considered your closing submissions, in which you stated:

***“Looking at her bottom***

*remarks usually said when leaving the car usually with me looking the other way to make her laugh which it did as part of our final good bye of the day. ..”*

The panel considered the broader context in this case of your flirtatious relationship with Colleague A.

The panel considered that, absent any particular context which would explain why the remark was made for some other reason, any conversation about the bottom is

inappropriate, even if you are not looking at that part of a person. It further considered that you were Colleague A's supervisor, a Band 6 nurse and that she was a Band 2 support worker, and that in your mind it was a light-hearted joke between friends. However, the panel acknowledged Colleague A's evidence that the comments were unwanted and that, in her view, they crossed the line of acceptable behaviour.

The panel also bore in mind that these comments were said outside of work, in your personal time, but it was of the view that you should have been aware of the need to stay professional whilst engaging with a work colleague, particularly a junior one. The panel therefore found your comments to be inappropriate.

Based on all the information before it and your admission in your oral evidence, the panel therefore finds this charge proved.

## **Charge 2**

2. And your actions as specified in charge 1a) and/or 1b) and/or 1c) and/or 1d) and/or 1e) were sexual in nature and/or sexually motivated in that you sought sexual gratification.

**This charge is found proved in full in relation to charges 1a and 1c.**

**In respect of charges 1d and 1e, it is found proved that they were sexual in nature but not that they were sexually motivated.**

**The charge is found not proved in respect of charge 1b.**

In reaching this decision, the panel considered each individual charge and whether it was sexual in nature and/or sexually motivated for your sexual gratification.

## Charge 1a

The panel considered Colleague A's evidence in relation to charge 1a. She stated the following in her witness statement:

*"...he grabbed the front of my coat and pulled me towards him. He then put his tongue in my mouth."*

Colleague A's email of 19 November 2019 was essentially to the same effect.

The panel was of the view that Colleague A had not described a peck on the cheek, but a sexual type of kiss. Having already found that you had initiated the kiss, the panel determined that this type of kiss was sexual in nature and that there was no reasonable explanation for your motivation other than sexual gratification.

Therefore, this charge in relation to charge 1a is found proved as both sexual in nature and sexually motivated.

#### Charge 1b

In relation to charge 1b, the panel considered the context of this incident and that there were others present. The panel accepted your evidence that this was meant to be a prank and was not sexual in nature and/or sexually motivated, and it noted that the event took place in an open office where it was seen by others. It was the evidence of both Colleague A and you that the incident began when the manager (not you) hugged Colleague A.

The panel also took into consideration Witness 2's oral evidence, where she stated that there were some poor professional practices and behaviours in the unit at the time. The panel regards this action as inappropriate, but it is not persuaded that your touching Colleague A's bottom was either sexual in nature or sexually motivated.

Therefore, this charge in relation to charge 1b is found not proved as either sexual in nature or sexually motivated.

### Charge 1c

The panel noted Colleague A's witness statement which described the nature of the touch to her thigh as follows:

*"... the registrant started to touch my leg in the car, he touched the top of my thigh, with his fingers it was a light stroke. He then said 'I crossed a line there'; he did this a few times."*

The panel considered your admission in response to panel questions that this was sexual in nature. It also considered that the touching of the thigh is not automatically a sexual act. However, it took into consideration the manner in which Colleague A described the touch and accepted that you said *'I crossed the line'* after touching her thigh and that the act took place when you were both alone in your car. The panel could not find any motivation for touching a person's thigh in this manner other than for sexual gratification.

Therefore, this charge in relation to charge 1c is found proved as both sexual in nature and sexually motivated.

### Charge 1d

The panel had regard to the culture of the unit and accepted that light-hearted jokes of this nature were common amongst staff regarding the new uniform.

The panel determined that your comments were sexual in nature in so far as you used the word *'sexy'*, which brought sex into the conversation unnecessarily for a conversation in the workplace. However, in having regard to the nature of the culture, it did not find that the comments were sexually motivated in that you sought sexual gratification from them.

Therefore, this charge in relation to charge 1d is found proved in relation to being sexual in nature, but not sexually motivated.

### Charge 1e

The panel had regard to the nature of your relationship with Colleague A.

Charge 1e does not allege that you were looking at Colleague A's bottom, but it relates to your remarks that you were not doing this. The panel determined that your comments were sexual in nature, as you referred to Colleague A's bottom without any other reason for doing so. However, the panel took into account the nature of your conversations and your explanation that these were light-hearted words said in humour as Colleague A left the car. Therefore, it did not find that the comments were said for sexual gratification because the panel accepted your evidence that you were making a joke, albeit an inappropriate one.

Therefore, this charge in relation to charge 1e is found proved in relation to being sexual in nature, but not sexually motivated.

### **Charge 3**

3. And your actions as specified in charge 1a) and/or 1b) and/or 1c) and/or 1d) and/or 1e) amounted to sexual harassment in that they created an intimidating, hostile, degrading, humiliating or offensive environment.

**This charge is found proved in relation to charge 1a and 1c and not proved in relation to 1b, 1d and 1e.**

In approaching this charge, the panel had regard to the evidence, about which you and Colleague A were broadly in agreement, that the relationship between the two of you was close, and in some ways, flirtatious. In Colleague A's email of 19 November 2019,



following her complaint, she stated *'Robin and I have always been really close, joined at the hip. We have a lot of banter and do flirt sometimes and it has always been harmless, we have a laugh with each other'*. You agreed in your evidence that you would often share private and personal information with each other.

The panel kept in mind that personal relationships can develop between work colleagues and there is no charge alleging that such a relationship was improper in itself, in the way it would be if it were a relationship between a nurse and a patient. The panel also bore in mind that the difference in standing between Colleague A, as a Band 2 support worker, and you, as a Band 6 nurse who was her supervisor, may have affected her readiness to speak out about matters which she did not like. It also bore in mind that Colleague A was in practice, dependent on you to provide her with a lift to work. However, that would also mean that if, as you told the panel, you thought that Colleague A had feelings for you, the fact that she needed you to take her to work would have made it difficult to bring the arrangement to an end. The panel had regard to the background of the culture at work, which it has already described in this determination, [PRIVATE].

### Charge 1a

The panel accepted that the nature of your relationship may have led you to believe that the kiss was acceptable. However, this was not the same for Colleague A. As the panel indicated in its decision on charge 1a, it accepted Colleague A's evidence that she did not want you to kiss her. Further it acknowledged the aftermath in which she then reported the incident the following Monday and did not return to work at the unit.

The panel was therefore of the view that, although it may not have been your intention, your actions as set out in charge 1a did amount to sexual harassment in that they were unwanted sexual conduct which created an intimidating, degrading, humiliating or offensive environment for Colleague A.

This charge is found proved in respect of charge 1a.

### Charge 1b

In light of the panel's decision at charge 2, it went on to consider whether the touching of Colleague A's bottom amounted to sexual harassment. The panel accepted Colleague A's evidence that after the incident she outwardly laughed it off, but that she was not happy with what had occurred.

Taking into account the culture of the unit, the nature of your relationship and its findings in respect of charge 2, the panel was of the view that the touching of Colleague A's bottom was a prank and therefore did not amount to harassment of a sexual nature.

This charge is found not proved in relation to charge 1b.

### Charge 1c

The panel had regard to its decision at charge 2. Further it considered Colleague A's evidence regarding the effect of your touching her thigh and her oral evidence that she felt degraded and that, after the incident involving the kiss, she had to report the matter.

While this incident occurred outside of work, the panel considered your role in the unit and that Colleague A was a work colleague and a junior member of staff whom you supervised. It was of the view that touching a colleague's thigh in this manner was inappropriate and that it created a degrading environment for Colleague A which amounted to sexual harassment.

Therefore, this charge is found proved in relation to charge 1c.

### Charge 1d

The panel took into consideration the context in relation to this charge and its acceptance of your evidence that joking comments about the uniform were common in the unit. While such comments would have been better avoided, the panel was not satisfied that the remark amounted to sexual harassment in the sense of being unwanted sexual conduct which created an intimidating, hostile or similar environment.

Therefore, this charge is found not proved in relation to charge 1d.

#### Charge 1e

The panel again took into consideration the context in relation to this charge. It bore in mind that the action in question was a denial that you were looking at Colleague A's bottom. The panel was not persuaded that this amounted to sexual harassment.

Therefore, this charge is not proved in relation to charge 1e.

#### **Misconduct**

Having reached its determination on the facts of this case in respect of charges 1, 2 and 3, the panel then moved on to consider whether the facts found proved amount to misconduct. 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.

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.*'

#### **Submissions on misconduct**

Ms Buckell invited the panel to take the view that the facts found proved amount to misconduct.

Ms Buckell identified the specific, relevant standards where she contended that your actions amounted to misconduct. She submitted that you breached several areas of The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code), including 1, 1.1, 1.2, 1.5, 20, 20.1, 20.2, 20.3 and 20.8. Ms Buckell submitted that your actions as found proved are serious enough to amount to misconduct in this case.

You submitted that you have read the determination and are disappointed to hear that the panel have found charges proved. You went on to state that this is not the first time that you have been unsuccessful at convincing a panel that the facts did not occur as alleged.

You did not offer any submissions as such in relation to misconduct.

### **Decision and reasons on misconduct**

When determining whether the facts found proved amounted to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code, specifically the following:

#### ***'Promote professionalism and trust***

*You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care,*

*other health and care professionals and the public.*

***20 Uphold the reputation of your profession at all times***

*To achieve this, you must:*

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

*20.2 ...treating people...without... harassment*

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It considered each of the charges found proved individually and took into account all of the information before it.

The panel was of the view that your actions in charges 1a and 1c fell far below the standards expected of a registered nurse, particularly when you were in a senior position, and it determined that this behaviour would be considered deplorable by fellow professionals within the field. The panel was of the view that you took advantage of the vulnerabilities of a junior staff member and that this demonstrates a significant breach of professional conduct.

The panel noted its previous findings that your actions in charges 1a and 1c were sexual in nature and sexually motivated and that they amounted to sexual harassment. In the panel's judgement, sexual harassment itself amounts to a sufficiently serious breach to constitute professional misconduct.

The panel was of the view that your actions in charge 1b also fell far below the standards expected of a registered nurse. It took into account the apparent culture that was present within the work environment, but determined that whilst certain behaviours were tolerated, it does not make them acceptable or align with the standards expected. The panel was of

the view that cultural norms, particularly those that allow inappropriate behaviour, should not have been perpetuated, particularly by someone in a senior position, as you were. It was of the view that it was your shared responsibility to challenge or break this chain of culture.

The panel determined that, whilst it did not find sexual harassment in relation to charge 1b, for a senior member of staff to engage in a joke involving physical contact between your hand and the bottom of a colleague, particularly a junior one, was inappropriate. It determined that such behaviour represents a serious breach of professional boundaries and amounted to misconduct.

The panel was of the view that your actions in relation to charges 1d and 1e do not amount to misconduct in this case. It determined that, whilst the comments made were inappropriate, they did not reach the threshold of seriousness necessary to constitute misconduct.

Accordingly, the panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct in relation to charges 1a, 1b and 1c.

#### **Decision and reasons on facts in relation to charge 4**

The panel then went on to address charge 4. You said that you admit charge 4 and therefore the panel finds charge 4 proved, by way of your admission.

#### **Impairment**

The panel heard further evidence from you under oath.

You told the panel that you do not accept your conduct was inappropriate and you stand by your account. You explained that you will continue to deny the allegations in respect of charges 1, 2 and 3 as you do not believe Colleague A's evidence to the panel. You outlined that your only objective was to make the unit a fun and happy place to work for all and that included helping Colleague A with her personal issues. You stated that you did have a flirtatious relationship with Colleague but it was reciprocated and never for your sexual gratification.

On reflection you recognise that you were a "*people pleaser*". You have decided to take a step back at work, be more professional and not engage in your colleagues' personal lives. You explained in response to panel questions regarding your conduct, that you are unable to accept your conduct was anything other than trying to lighten the mood at work and be supportive and helpful to colleagues.

### **Submissions on impairment**

Ms Buckell addressed the panel on the issue of impairment in relation to the charges found proved and addressed it on the need to have regard to protecting the public and the wider public interest. This included the need to declare and uphold proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. She made reference to the cases of *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Buckell referred the panel to your reflective account in which you described your conduct as humorous, friendly and naïve. She submitted that despite the panel's decision, you still consider your inappropriate conduct in the same light. She submitted that, while you have found this process hard, you have not considered the impact of your actions on Colleague A or the wider profession.

Ms Buckell submitted that your conduct in respect of the charges has brought the profession into disrepute and as the concerns are attitudinal and not related to your clinical practice they are not easily remediable, nor have you fully remediated the concerns.

Ms Buckell invited the panel to have regard to Dame Janet Smith's 'test'. She submitted that limb d of the test is not engaged in this case, but limbs a, b and c are, as your conduct has in the past brought and/or is liable in the future to bring the medical profession into disrepute and you have in the past breached and/or are liable in the future to breach one of the fundamental tenets of the medical profession.

Ms Buckell therefore submitted that your failings are serious, a breach of acceptable professional conduct and sexual in nature and in light of this, a finding of current impairment on both grounds is necessary to protect the public and declare and uphold proper standards.

You told the panel that after deciding to end your career in 2021 and take the Trust to an employment tribunal for '*slanderous remarks*', you made repeated efforts to contact Colleague B in desperation to act as a witness on your behalf and the consequences of your trying to get support from her resulted in the Police Caution.

You told the panel that it is not correct that members of the tribunal offered to make contact with Colleague B and so the email from the Police dated 28 April 2022 is inaccurate and wrong. You explained that you do not agree with the decision regarding messages from Facebook and not being able to put them before the panel, as you believe the messages to be vital evidence to your case.

You explained that the events resulting in the caution, much like your interactions with Colleague A, were never for sexual gratification.



You told the panel that you believe your '*illustrious nursing career*' is over, despite numerous positive references from colleagues attesting to your work ethic and good character.

You said that you do not agree with the findings that your actions amounted to misconduct and harassment. You stated that the relationship between you and Colleague A was consensual and the nature of the environment in which you worked at the time was a '*jolly place*' to work.

Finally, you stated that the working relationship you had with Colleague A assisted in making her happy and was not the negative one outlined in the charges.

### **Decision and reasons on impairment**

The panel next went on to decide whether, as a result of the misconduct and your Caution, 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.'*

The panel accepted the advice of the legal assessor as to the principles which it should have in mind in its approach to impairment.

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant*. In 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 ... [or] caution ... show that his/her/ fitness to practise is impaired in the sense that S/He:*

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the [medical] profession into disrepute; and/or*

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

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

The panel carefully considered each of these four limbs as outlined above and its relevance to this case. It found that limbs a and d of the 'test' are not applicable in this case as none of the charges in this case involve risk of patient harm or dishonesty. The panel considered that substituting the word '*colleague*' for '*patient*' in limb a of the 'test', as it inferred from the NMC's submission, would stretch the case law beyond its meaning. Furthermore, no indirect risk to patients was alleged as a result of your actions. However, it was of the view that limbs b and c are applicable and it went on to consider its findings in relation to this.

## **Public Protection**

### Charges 1, 2 and 3

In relation to charges 1, 2 and 3, the panel finds that Colleague A suffered emotional and psychological harm as a result of your misconduct. Your misconduct brought the nursing profession into disrepute and breached the fundamental professional tenet of treating people without harassment and not taking advantage of them.

The panel accepts that you deny the charges and that you have been consistent in this throughout these proceedings. Regarding insight, the panel considered that in relation to charges 1, 2 and 3 your insight did not come across as fully developed. The panel considered that, although you deny the charges which you are entitled to do, you could have demonstrated a greater understanding of how this type of misconduct may have put colleagues at a risk of harm, of why this type of misconduct is wrong and of how this could

impact negatively on the reputation of the nursing profession. However, in considering the significance of this, the panel took account of the fact that you are not represented and that you may not have expressed yourself as clearly as might have been the case had you been professionally advised.

The panel also considered carefully the evidence before it in determining whether or not you have taken steps to strengthen your practice in this respect.

The panel took into account the CARA course you completed as a condition of your Police Caution and your reflection that at first you could not see the relevance of the course to the concerns as it focused on domestic violence. However, as the course went on, you were able to gain some understanding of your failings, apply the learning and gain some tools to help you recognise how you overstepped the boundaries with Colleagues A and B. The panel also considered the changes you have made to your conduct at work and accepted your statement that you are not trying to “*people please*” anymore. It also had regard to the changes you have made in taking a step back from getting involved personally with staff and that you are now strictly professional with colleagues.

The panel was satisfied that, although the misconduct in this case is attitudinal in nature, remediation, while not easy, is possible. It considered the context in this case, including the culture of the unit, in terms of poor professional practices and behaviours. Furthermore, there is contemporaneous evidence from Colleague A herself, corroborated by one of your testimonials, that supports your contention that the flirtatious conduct was reciprocated. Moreover, it considered these events to be a single episode in a nursing career of 44 years, with no other complaints raised of a similar nature. The panel decided in light of all the evidence before it that you are highly unlikely to repeat the misconduct found proved.

The panel finds that, given all of the above, your fitness to practise is not currently impaired on the grounds of public protection in respect of charges 1, 2 and 3.

#### Charge 4

The panel bore in mind that this incident did not relate to any kind of sexual misconduct, but rather to your excessive attempts to obtain a witness statement from Colleague B whom you considered to be your '*star witness*' in support of your employment tribunal claim. The panel finds that your conduct in respect of charge 4 had brought the nursing profession into disrepute and breached the fundamental professional tenets of respect for the law and treating people without harassment.

Regarding insight, the panel considered that you have reflected on your actions and made an admission to the charge. It considered that you have been able to demonstrate a clear understanding of how what you did was wrong and how this impacted negatively on Colleague B and the reputation of the wider nursing profession. The panel considered your apology to Colleague B and your expression of remorse. The panel was satisfied that you have sufficiently demonstrated how you would handle the situation differently in the future. The panel further accepted your submission that you were desperate and that you appreciate that you overstepped the boundaries when trying to contact Colleague B.

The panel was satisfied that the conduct in this case, although attitudinal in nature, was capable of being addressed. It carefully considered the evidence before it and the steps you have taken to strengthen your practice. The panel took into account the CARA course you completed and the clear change in your attitude. The panel was satisfied that you understood Colleague B's perspective and that you showed genuine remorse for your actions.

The panel accepted your concessions that you were '*foolish*' and '*deeply sorry*' as you had 'tunnel vision' in trying to obtain the witness statement from Colleague B and got carried away.

The panel was of the view that this was a singular incident in particular circumstances and that in light of your insight and remediation, it is highly unlikely to be repeated.

The panel finds that, given all of the above, your fitness to practise is not currently impaired on the grounds of public protection in respect of charge 4.

### **Public interest**

The panel bore in mind that the overarching objectives of the NMC are not only to protect, promote and maintain the health, safety, and well-being of the public, fellow professionals and patients, but also to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required in respect of all the charges. The panel considered a member of the public, aware of all the circumstances in this case and nature of the findings, which include sexual misconduct as well as conduct which resulted in the imposition of Police Caution for harassment without violence, would be concerned if a nurse against whom such concerns were found proved were not found to be impaired.

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

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired, but on the grounds of public interest alone.

## **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. As a result of this order the NMC register will show that your registration has been suspended.

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.

## **Submissions on sanction**

Ms Buckell informed the panel that in the Notice of Hearing, dated 27 August 2024, the NMC had advised you that it would seek a striking-off order if the panel found your fitness to practise currently impaired. She suggested aggravating and mitigating factors for the panel's consideration and referred it to the NMC guidance on *Considering sanctions for serious cases (SAN-2)* and *How we determine seriousness (FtP-3)*.

Ms Buckell submitted that the panel must consider the sanctions from the least restrictive up to a striking-off order. She took the panel through each sanction and submitted that a sanction less restrictive than a striking-off order would not be sufficient. She submitted that behaviour of this kind can have a severe impact on members of the public and therefore cases involving sexual misconduct and a Police Caution impact on the public's confidence in the nursing profession.

Ms Buckell submitted that this is not a case that could be addressed by the imposition of a caution order or with no action being taken due to the sexual nature of the facts found proved and your conduct which led to the imposition of a Police Caution.

Ms Buckell submitted in relation to a conditions of practice order that there is no evidence of concerns which relate to your clinical practice. The concerns are attitudinal in nature,

and the concerns in relation to both Colleagues A and B were not isolated and occurred over a period of time. She submitted that there are no suitable conditions that could be formulated to address the concerns in this case and therefore a conditions of practice order would not be appropriate.

Ms Buckell then addressed the panel in relation to imposing a suspension order. She submitted that this is not a single episode but involves two separate colleagues, which is evidence of a risk of repetition. She submitted that your conduct in relation to Colleague B was serious enough to warrant a Police Caution. Furthermore, she submitted that there is evidence of harmful behaviour, and an abuse of your position as a senior member of staff. She said that there is a risk of repetition as the concerns are attitudinal in nature. She submitted that a suspension order would not be appropriate.

Ms Buckell submitted that before the panel considered what sanction to impose it must have regard to the following questions set out in the guidance:

- *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?*

Ms Buckell submitted that these concerns, which include sexual misconduct, raise serious questions about your conduct and professionalism. She submitted that public confidence in nurses could not be maintained if you remained on the register and therefore a striking-off order is the only sanction which would be sufficient to protect patients and members of the public, and to maintain professional standards.



Further, Ms Buckell submitted that the harassment of Colleague B was serious enough to require a Police Caution and that must be taken into consideration. She submitted that this conduct is fundamentally incompatible with your remaining on the register.

The panel also bore in mind your submissions. You told the panel that these proceedings started five years ago and since the incident you have had two years of good practice and no other concerns of this nature have been raised about you. You admitted that you failed to uphold good practice and as a result you have made changes to your conduct at work.

You told the panel that you have shown insight and that there is no chance you would repeat conduct of this kind. You told the panel that you have learnt your lesson and therefore a “*warning*” would be sufficient.

You submitted that a conditions of practice order would not be workable or appropriate as there are no concerns with your clinical practice. Furthermore, you stated that a suspension or a striking-off order would be disproportionate in light of your reflection and insight. You therefore suggested that the panel impose a “*warning*” as you have learnt your lesson.

### **Decision and reasons on sanction**

Having found your fitness to practise currently impaired on public interest grounds, 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 decision on sanction is a matter for the panel independently exercising its own judgement.

The panel heard and accepted the advice of the legal assessor who advised it as to the principles which should inform its approach regarding sanction and which, if any, order it should impose on your registration.

The panel took into account the following aggravating features:

- Abuse of a position of trust, in that there was an age gap and a power imbalance between Colleague A, a Band 2 support worker, and you, a Band 6 nurse who was her supervisor; and
- Conduct which took place over a period of time in relation to both Colleagues A and B.

The panel also took into account the following mitigating features:

- Full insight and admissions in relation to the Police Caution;
- Sufficient insight into the behaviour that led to charges 1-3 and efforts you have made to remediate, in amending your conduct at work, to satisfy the panel that it is highly unlikely to be repeated;
- Contextual matters namely your mutually close and flirtatious relationship with Colleague A as well as the evidence of wider poor behaviour on the unit;
- Positive character testimonials; and
- Evidence of remorse and regret, and subsequent apologies.

The panel took note of your engagement throughout these proceedings, your previous good character and your nursing career of 44 years. The panel also noted the positive references about your clinical practice including the evidence of Colleague A.

The panel took account of the NMC Guidance on *Considering sanctions for serious cases*. In relation to sexual misconduct, it determined that, whilst there was an abuse of a position of trust by you, none of the other factors that could indicate increased seriousness was present. The panel also took account of the evidence of mutual flirting between you and Colleague A. In these circumstances, while sexual misconduct is always serious, in the panel's view your misconduct was not at the top end of the scale. In relation to the guidance on criminal convictions or cautions, it noted that this was a caution, not a

conviction, and was for an incident of a different kind from those in charges 1-3. It noted that the course required by the caution had been completed and that you had demonstrated learning from it.

The panel first considered whether to take no action. The panel concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that, in light of the nature of the concerns and the Police Caution, it would not be appropriate to take no action.

The panel then considered the imposition of a caution order. It took into account that this was effectively your suggested sanction. However, the panel determined that, due to the seriousness and nature of the concerns in this case, this order 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 and your Police Caution were not at the lower end and that a caution order would not be appropriate to address the public interest in view of the circumstances of this case.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*

- *Conditions can be created that can be monitored and assessed.*

The panel agreed with your submission that there are no practicable or workable conditions that could be formulated, given the non-clinical nature of this case. The misconduct was of a sexual nature and there was a separate Police Caution for harassment. The panel had already decided that you are highly unlikely to repeat the matters found proved and therefore conditions of practice are neither necessary nor appropriate. In any event, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not adequately mark the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel had regard to the SG which states that a suspension order may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a registered nurse. The following factors may help with the decision:

- *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;*

There has been no repetition of this behaviour since the incidents, and the panel was satisfied that the risk of repetition was low for the reasons previously stated.

The panel took into consideration the context of your relationship with Colleague A and the culture of the unit in which you both worked. Further it considered that the flirting was mutual between both you and Colleague A. The events involving Colleague B which led to the Police Caution were of a different kind. In the panel's view these were incidents arising out of their own particular circumstances. The

panel did not consider your misconduct and Police Caution to amount to a pattern of misconduct, but rather to be an episode of poor judgement in a long career without any previous regulatory concerns.

The panel had regard to your remediation, remorse and regret and the steps you have taken to change your conduct. In all these circumstances, the panel was not of the view that your behaviour crossed the bar to evidencing a harmful, deep-seated personality or attitudinal problem.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction to mark the public interest. The panel was satisfied that, in this case, the misconduct was not fundamentally incompatible with your remaining on the register.

The panel noted the hardship such an order will inevitably cause you. However, in the panel's judgement, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to maintain public confidence in the profession, and to declare to the public and the profession the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for the maximum period of 12 months was appropriate in this case to mark the seriousness of the misconduct and the Police Caution. It was satisfied that this period was proportionate.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation identified, the panel concluded that it would be disproportionate. The panel determined that it was not necessary to impose a striking-off order to maintain public confidence in the nursing profession and uphold professional standards. The panel decided that your misconduct and Police Caution were not fundamentally incompatible with your remaining on the

register. The panel also had regard to the public interest in retaining an otherwise good nurse on the register. In the panel's view, it would be unduly punitive in your case to impose a striking-off order.

In accordance with Article 29 (8A) of the Order the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary.

The panel bore in mind that it had determined there were no public protection concerns arising from its decision. It had found your fitness to practise impaired on the grounds of public interest alone.

The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the nursing profession as well as the NMC as the regulator. Further, the substantive order will declare and uphold proper professional standards. Accordingly, the current substantive order will expire, without review, 12 months after it takes effect.

This will be confirmed to you in writing.