

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

**Substantive Hearing  
Monday, 10 February 2025 - Thursday, 13 February 2025**

**Virtual Hearing**

<b>Name of Registrant:</b>	<b>Onyebuchi Sunny Aganoke</b>
<b>NMC PIN</b>	21E0163E
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Adult Nursing (Level 1) – 18 November 2021
<b>Relevant Location:</b>	Essex
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Anthony Griffin (Chair lay member) Lorraine Wilkinson (Lay member) Jane Louise Jones (Registrant member)
<b>Legal Assessor:</b>	Joseph Magee
<b>Hearings Coordinator:</b>	Adaobi Ibuaka
<b>Nursing and Midwifery Council:</b>	Represented by Uzma Khan, Case Presenter
<b>Mr Aganoke:</b>	Not present and unrepresented
<b>Facts proved:</b>	All charges found proved
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Striking-off order</b>
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>

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

The panel was informed at the start of this hearing that Mr Aganoke was not in attendance and that the Notice of Hearing letter had been sent to Mr Aganoke's registered email address by secure email on 6 January 2025.

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

The panel accepted the advice of the legal assessor.

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

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

## **Decision and reasons on proceeding in the absence of Mr Aganoke.**

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

Ms Khan referred the panel to the documentation from Mr Aganoke which included an email dated 10 February 2025, stating that he will not be attending the hearing.

The panel accepted the advice of the legal assessor.

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

The panel has decided to proceed in the absence of Mr Aganoke. In reaching this decision, the panel has considered the submissions of Ms Khan, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* [2002] and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Aganoke;
- Mr Aganoke has informed the NMC that he has received the Notice of Hearing and confirmed he does not wish to attend;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Witnesses have been scheduled to attend today to give live evidence, others are due to attend;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, and the clients who need their professional services;
- The charges relate to events that occurred in 2022 and 2023;
- There is a strong public interest in the expeditious disposal of the case.

In these circumstances, given that Mr Aganoke has voluntarily absented himself from the hearing, the panel has decided that it is fair to proceed in his absence.

## **Details of charge (as amended)**

That you, a registered nurse:

1. On 17 July 2023, sent the messages set out in schedule 1a to Patient X.
2. On or around 31 July 2023, sent the message set out in schedule 1b to Patient X.
3. Your conduct at charge 1 and/or 2 above breached professional boundaries with Patient X.
4. Your action in charge 1 and/or 2 above was sexually motivated in that you intended to pursue a future sexual relationship with Patient X.
5. Obtained Colleague A's work email address without their consent.
6. On 30 December 2022 contacted Colleague A via her work email address and said: 'Hi [Colleague A] How was your shift today at DAU? Am Sunny d night nurse on duty when u came in, came this night to see u but u gone, Please I don't mean to disrespect u, I think I liked yourself and wish to get to know you, Maybe we could hang out for a drink on your day if u don't mind . Will appreciate if u get back to me so I know what u think . Thanks'
7. On an unknown date, obtained Colleague B's personal mobile number without their consent.
8. Having obtained Colleague B's personal mobile number as in charge 7, called them twice and/or sent a text message on or around 17 June 2023.
9. On or around 18 June 2023:

- a. Questioned Colleague B about the complaint they had made
- b. Occupied Colleague B's personal space whilst talking to them

10. Your conduct at any or all of charges 5-9 amounted to:

- a. Unprofessional behaviour
- b. Harassment
- c. Intimidation
- d. Inappropriate behaviour

Schedule 1a (PRIVATE)

[PRIVATE]

Schedule 1b (PRIVATE)

[PRIVATE]

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

**Decision and reasons on application to amend the charges 8-9 and schedules 1a - 1b.**

The panel heard an application made by Ms Khan under Rule 28, on behalf of the NMC, to amend the wording of charges 8 – 9 and [PRIVATE] schedule 1a – 1b.

The proposed amendment was to change the dates on charges 8 and 9 and [PRIVATE] in schedules 1a and 1b. It was submitted by Ms Khan that the proposed amendment would provide anonymity for Patient X and would more accurately reflect the supplementary evidence from the witness statements that provided the correct dates.

The stem of charge 8 currently reads as follows:

*'8. Having obtained Colleague B's personal mobile number as in charge 7, called them twice and/or sent a text message on or around 17 July 2023'*

The proposed amendment to the stem of charge 8 is as follows:

*'8. Having obtained Colleague B's personal mobile number as in charge 7, called them twice and/or sent a text message on or around 17 ~~July~~ **June** 2023'*

The stem of charge 9 currently reads as follows:

*'9. On or around 18 July 2023: a. Questioned Colleague B about the complaint they had made b. Occupied Colleague B's personal space whilst talking to them'*

The proposed amendment to the stem of charge 9 is as follows:

*'9. On or around 18 ~~July~~ **June** 2023: a. Questioned Colleague B about the complaint they had made b. Occupied Colleague B's personal space whilst talking to them'*

The stem of schedule 1a currently reads as follows:

*[PRIVATE]*

The proposed amendment to the stem of schedule 1a is as follows:

*[PRIVATE]*

The stem of schedule 1b currently reads as follows:

*[PRIVATE]*

The proposed amendment to the stem schedule 1b is as follows:

*[PRIVATE]*

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel was of the view that such amendments, as applied for, were in the interests of justice. The panel was satisfied that there would be no prejudice to Mr Aganoke and no injustice would be caused to either party by the proposed amendment being allowed. In the panels view, it was entirely proper that the patient was anonymised throughout both the charge and the schedule. The amendment to the dates in charges 8 and 9 more accurately reflected the evidence and would come as no surprise to Mr Aganoke since the correct dates were contained within Colleague B's supplementary witness statement. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

## **Background**

The charges arose whilst Mr Aganoke was employed as a registered nurse by Southend Hospital (the Hospital).

On December 29 2022, Mr Aganoke allegedly obtained Colleague A's work email address without their permission and sent them an email stating he wished to get to know them and asking them to *"hang out for a drink"*. Mr Aganoke and Colleague A were not acquainted when the email was sent.

On June 17 2023, Mr Aganoke allegedly obtained Colleague B's private phone number and sent them a text message to vent grievances about a complaint lodged by Colleague B regarding Mr Aganoke. He is also alleged to have challenged Colleague B in person during a night shift, speaking in an unprofessional manner and occupying their personal space whilst doing so.

Mr Aganoke allegedly obtained the private phone number of Patient X with the intent of inappropriately communicating with them, breaching professional boundaries. Mr Aganoke consequently on the 17 July 2023 and on or around 31 July 2023 sent Patient X text messages.

On 17 July 2023 the text messages sent stated; *[PRIVATE]*" On or around 31 July 2023 stated in a text message; *[PRIVATE]*

### **Decision and reasons on facts**

At the outset of the hearing, the panel had regard to an email sent on 10 February 2025 from Mr Aganoke, making full admissions to all of the charges stating that;

*"I am writing to formally acknowledge and take full responsibility for the charges levied against me. After careful consideration, I plead guilty to all the charges."*

The panel heard submissions from Ms Khan and had regard to the advice of the Legal Assessor. In accordance with Rule 24(5), the panel finds all charges proved, by way of Mr Aganoke's admissions.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Aganoke's fitness to practise is currently impaired. There is no statutory definition of



fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

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

### **Submissions on misconduct**

Ms Khan referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*' Ms Khan also referred the panel to the terms of '*The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* (the Code) in making its decision.

Ms Khan invited the panel to take the view that the facts admitted to, amount to serious misconduct. Ms Khan also identified the specific, relevant standards within the code, which she submitted Mr Aganoke had breached and identified the relevant standards which amounted to misconduct.

Ms Khan submitted that Mr Aganoke's communication with Patient X, who is deemed to be a vulnerable individual with mental health issues, struggles with substance misuse and frequently visits the Hospital, was concerning and inappropriate.

Ms Khan submitted that the evidence provided demonstrates that Mr Aganoke sent unsolicited personal and sexually suggestive messages to Patient X, an email of a similar nature to Colleague A and a number of unsolicited calls and a text message to Colleague B and later confronted in an intimidating manner at work. She further submitted that Mr Aganoke had not provided a credible explanation for how he had obtained these contact details, which raises serious concerns about data misuse and breach of confidentiality.

Ms Khan stated that the behaviour exhibited by Mr Aganoke is to be deemed as unsafe conduct in a hospital environment, representing a deliberate breach of professional boundaries that are fundamentally incompatible with nursing practice. Mr Aganoke's conduct amounted to a clear violation of confidentiality and data protection obligations showing a disregard for professional boundaries and workplace professionalism as well as, undermining trust and professional relationships in the workplace which creates an unsafe environment for colleagues and submitted that these are all breaches of the NMC Code.

Ms Khan submitted that Mr Aganoke's actions were not isolated incidents and are part of a broader pattern of inappropriate behaviour and these breaches are fundamentally incompatible with nursing practice and constitute a serious breach of professional misconduct.

### **Submissions on impairment**

Ms Khan 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 Khan submitted that the panel is obliged to consider when the registrant poses a risk to patient safety, has breached fundamental tenets of the profession, lacks insight, poses a risk of repetition, or would damage public confidence in the profession if found not impaired.

Ms Khan submitted that Mr Aganoke's behaviour exposed Patient X to a risk of harm due to the crossing of professional boundaries, and that his misuse of confidential information raises concerns about data protection and trustworthiness. Ms Khan further submitted that Mr Aganoke's actions in the workplace created a culture of fear that affected his colleagues and their working environment.

Ms Khan submitted that Mr Aganoke has not demonstrated genuine insight into the seriousness of his misconduct. Ms Khan highlighted to the panel how Mr Aganoke's accounts of how he obtained the information of the patient and his colleagues has changed on multiple occasions.

Ms Khan drew the panel's attention to Mr Aganoke's reflections, stating they were more focused on the impact on his career than on patient safety and public confidence, with limited information on any steps taken to remediate his behaviour. Ms Khan submitted this shows that there is a high risk of repetition.

Ms Khan concluded that Mr Aganoke's fitness to practise remains impaired due to the ongoing risk to the public, lack of genuine insight and the absence of remediation and that a finding of impairment is necessary on public protection and public interest grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance, Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin), *CHRE v (1) NMC (2) and Grant and Cohen v General Medical Council* [2008] EWHC 581 (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 and also the NMC guidance regarding Misconduct and seriousness.

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

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

*To achieve this, you must:*

*1.1 treat people with kindness, respect and compassion*

*1.2 make sure you deliver the fundamentals of care effectively*

### ***5 Respect people's right to privacy and confidentiality***

*5.1 respect a person's right to privacy in all aspects of their care*

### ***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 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), their families and carers*

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was satisfied that Mr Aganoke's conduct, found proved in all charges, was so serious as to amount to misconduct.

The panel determined that with each charge, Mr Aganoke's conduct has fallen short of what is expected of a registered nurse and a fellow registered nurse would be shocked at his significant departure from the standards.

The panel noted that Mr Aganoke's actions were morally culpable, and do not promote trust in the profession. In relation to charges 1-4, the panel determined that Mr Aganoke breached professional boundaries in relation to Patient X on more than one occasion and his conduct was sexually motivated. The panel took the view that any breach of professional boundaries is a serious departure from the expected standards of a registered nurse but the sexually motivated contact identified was particularly serious. Patient X was extremely vulnerable. The contacts that Mr Aganoke made by text messages were in pursuit of a future sexual relationship. The panel determined that this was wholly inappropriate behaviour and caused Patient X distress. The panel concluded that Mr Aganoke's conduct would be regarded by fellow professionals as deplorable.

The panel determined that charges 5-9 demonstrated a breach of professional boundaries with colleagues and shows evidence of a pattern of misconduct as each charge is similar in nature, as Mr Aganoke was accessing personal details for personal purposes, and infringing on the personal boundaries of both Colleagues A and B.

The panel also noted that Mr Aganoke's behaviour would have affected workplace relationships by potentially creating an unsafe working environment, as he was accessing personal details for personal purposes and harassing and intimidating a colleague in a clinical setting. For these reasons, the panel found that Mr Aganoke's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

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

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, and in particular DMA-1, which states:

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

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust,

nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

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

d) ...'

The panel finds limbs a, b and c engaged. That panel determined that Mr Aganoke's misconduct put Patient X at an unwarranted risk of harm and also potentially created an unsafe clinical environment putting other patients at risk.

The panel found that Mr Aganoke's misconduct had breached the fundamental tenets of the nursing profession, and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to breaches of professional boundaries and the pursuit of a sexual relationship with a patient extremely serious given the nature of the charges and also the GDPR issues identified.

The panel have had regard to the NMC guidance FTP DMA-1, on determining the seriousness.

The panel recognised that it had to make a current assessment of Mr Aganoke's fitness to practice, which involved not only taking account of past misconduct but also what has happened since the misconduct came to light.

The panel had regard to the case of *Cohen v General Medical Council* [2008] and considered whether the concerns identified in his nursing practice were capable of remediation, whether they have been remedied and whether there was a risk of repetition of a similar kind at some point in the future.

In considering those issues the panel had regard to the nature and extent of the misconduct and considered whether Mr Aganoke had provided evidence of insight and remorse.

With regards to all charges, the panel took account of the NMC's guidance on impairment (DMA-1) provides that *'there are types of concerns that are so serious that, even if the*



*professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession’.*

As this case involves sexually motivated misconduct this raises fundamental questions about Mr Aganoke’s ability to uphold the values and standards set out in the Code.

The panel determined that the misconduct in Mr Aganoke’s case was extremely difficult to remediate. Whilst some of the issues around breaches of GDPR might be amenable to retraining, the sexual nature of the misconduct and the intimidation and harassment were indicative of a serious attitudinal issue.

The panel had regard to Mr Aganoke’s previous in-depth written reflections, as well as the email he sent on 10 February 2025, admitting to all charges. The panel noted that in his previous reflections Mr Aganoke’s previous insight seemed to have varied, as he seemed to be challenging some of the charges brought against him, however, this stance changed with Mr Aganoke’s recent email, where he admitted all the charges. The panel noted that this was a positive change, which was received on the first day of the hearing. The panel also noted that the reflections of Mr Aganoke were self-focused and did not sufficiently address how his actions impacted patients, colleagues and the profession as a whole. Therefore, it found that Mr Aganoke’s continues to lack sufficient insight.

The panel took into account that Mr Aganoke had obtained two certificates; Data Security and Protection Certificate obtained on 25 January 2024, and the other a Professional Boundaries Certificate obtained on 2 February 2024. The panel was of the opinion that although this could go some way to begin to address the GDPR issues that arose, it did not address them sufficiently, noting there has not been any further reflection on this, nor any further training. The panel also had regard to a number of positive testimonials, although, in light of the seriousness of the case, the panel was of the opinion that these did not have a great deal of weight as only one was from a colleague namely a line manager written in January 2024 and none addressed the sexual nature of some of the

charges brought against Mr Aganoke. The panel therefore questioned whether the referees were fully aware of the seriousness of the charges found proved by admission.

The panel determined that there is a risk of repetition due to a pattern of repeated breaches of professional boundaries with Patient X and Colleagues A and B including the sexually motivated misconduct through texting Patient X. The panel was of the opinion that this showed deep seated attitudinal issues, which Mr Aganoke has not sufficiently addressed. The panel determined Mr Aganoke could not practise safely, kindly or professionally and 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 the public interest is engaged in this case. The public expect nurses to ensure patient safety and to promote professionalism and trust. In the circumstances of this case, the panel determined that public confidence in the profession would be undermined if a finding of impairment was not made given the pattern of unprofessional behaviour demonstrated by Mr Aganoke. Furthermore, the panel concluded that a finding of impairment was required on public interest grounds to uphold and maintain proper professional standards and confidence in the profession and the NMC as the regulator.

Having regard to all of the above, the panel determined that Mr Aganoke's fitness to practise is currently impaired on both public protection and public interest grounds.

## **Sanction**

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

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

## **Submissions on sanction**

Ms Khan invited the panel to impose a striking off order as it found Mr Aganoke's fitness to practise currently impaired. Ms Khan provided the panel with submissions on the sanctions available to the panel, going through the appropriateness and proportionality of each sanction. She submitted that a striking off order is the only order that would be sufficient to protect patients, address the public interest and maintain professional standards.

## **Decision and reasons on sanction**

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

The panel took into account the following aggravating features:

- Mr Aganoke's abuse of a position of trust, as there was a power imbalance due to being a nurse and holding a position of trust over Patient X who was vulnerable.

Furthermore, he had used his role to inappropriately access personal data for unauthorised use;

- Mr Aganoke's showed a lack of insight into his failings, as his written reflections in particular he failed to address the impact of his sexually motivated misconduct had on patients, colleagues and the NMC;
- Mr Aganoke displayed a pattern of misconduct over a period of time, as the facts proved show a number of incidents of misconduct in regard to breaches of professional boundaries;
- Mr Aganoke's conduct put people receiving care and colleagues at risk of suffering harm in that Patient X was caused distress and Colleague A was unsettled by the email, and the behaviour towards Colleague B in a clinical setting had the potential to cause an unsafe working environment;
- Mr Aganoke's behaviour towards Colleague B at work potentially created an unsafe clinical setting which could cause harm to patients by distracting staff from their duties.

The panel was unable to identify any real mitigating features in Mr Aganoke's case.

The panel acknowledged that Mr Aganoke did complete two online courses in early 2024, however, there is no evidence of any learning being put into practice. The panel also acknowledged that before the morning of the hearing Mr Aganoke did admit to all the charges and apologised, however, this falls short of sufficient mitigation due to Mr Aganoke not addressing the seriousness of the charges especially in relation to the sexually motivated misconduct.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not

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

The panel next considered whether placing conditions of practice on Mr Aganoke's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges found proved in this case. The misconduct identified in this case, particularly with regard to the sexually motivated and intimidating or harassing conduct was not something that can be addressed through retraining or supervision and in any event the panel had no evidence that Mr Aganoke would comply with conditions. Furthermore, the panel concluded that the placing of conditions on Mr Aganoke's registration would not adequately address the seriousness of this case and would not protect the public and satisfy the public interest.

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;*

Mr Aganoke has admitted to a number of episodes over a period of time. The panel identified there is an absence of real insight into the harmful nature of misconduct in Mr Aganoke's case and there is a risk of repetition. The panel determined that Mr Aganoke's conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and was bordering on predatory behaviour with Patient X. The panel determined that the serious breaches of the fundamental tenets of the profession evidenced by Mr Aganoke's actions and the harmful deep seated attitudinal issues are fundamentally incompatible with Mr Aganoke remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction nor would it satisfy the public interest.

In considering a striking off order, the panel had regard to the guidance SAN-2 (Considering sanctions for serious cases) and in particular, cases involving sexual misconduct. It noted the definition within that guidance and determined that Mr Aganoke's misconduct could reasonably be interpreted as sexual misconduct.

The panel had particular regard to the following within the guidance of SAN-2:

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

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

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Aganoke's 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 Mr Aganoke in writing.

### **Interim order**

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

### **Submissions on the interim order**

The panel took account of the submissions made by Ms Khan. She submitted that the panel should impose an interim suspension order for a period of 18 months to cover any potential period of appeal and to protect the public.

The panel heard and accepted the advice of the legal assessor and had regard to the guidance documents issued by the NMC.

### **Decision and reasons on interim order**

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months in order to cover any potential period of appeal and to protect the public.

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

That concludes this determination.