

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

**Substantive Hearing
24 - 28 January 2022**

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

Name of registrant: Mr Neil Zosas

NMC PIN: 01D1528O

Part(s) of the register: Registered Nurse- Sub Part 1
RN1; Adult Nurse- 10 April 2001

Area of registered address: St Albans

Type of case: Misconduct

Panel members: Ian Comfort (Chair, lay member)
Sally Underwood (Registrant member)
David Hull (Lay member)

Legal Assessor: Robin Leach

Hearings Coordinator: J.Bernard-Stevenson

Nursing and Midwifery Council: Represented by Louis Maskell, Case Presenter

Neil Zosas: Present and represented by Nicholas Hall

Admissions: You admitted charges 1-7

Facts proved: Charge 8

Facts not proved: N/A

Fitness to practise: Impaired

Sanction: Striking-Off Order

Interim order: Interim suspension order (18 months)

Details of charge

That you, a Registered Nurse:

1. On the 4 September 2017 approached Colleague A and:
 - a. Pointed to his groin; **[PROVED]**
 - b. Said words to the effect of “hey, look at that peanut”. **[PROVED]**
2. On the 2 November 2017 approached Colleague A and:
 - a) Walked behind him; **[PROVED]**
 - b) Touched his behind; **[PROVED]**
 - c) Said words to the effect of “ like you a lot ”; **[PROVED]**
 - d) Said words to the effect of “going to miss you”. **[PROVED]**
3. On the 2 November 2017 approached Colleague A, while he was transferring an unknown patient and:
 - a. Walked behind him; **[PROVED]**
 - b. Touched his behind. **[PROVED]**
4. On an unknown date: **[PROVED]**
 - a. Put your hand, palm up, on an empty seat, when Colleague A was sitting down; **[PROVED]**
 - b. Caused Colleague A to sit on your hand; **[PROVED]**
 - c. Said words to Colleague A, to the effect of “You like that ”; **[PROVED]**
 - d. Put your hand, palm up, on an empty seat, when Colleague A was sitting down; **[PROVED]**
 - e. Caused Colleague A to sit on your hand. **[PROVED]**
5. On one or more unknown dates approached Colleague A and:

- a. Moved behind him; **[PROVED]**
 - b. Put your foot between his legs; **[PROVED]**
 - c. Used your foot to touch his groin; **[PROVED]**
 - d. Brushed closely past him; **[PROVED]**
 - e. Swung your hand down, using the back of your fist to brush past his groin; **[PROVED]**
 - f. Rubbed your groin up and down his leg. **[PROVED]**
6. Your actions at one or more of charges 1 – 5 above breached professional boundaries. **[PROVED]**
7. Your actions at one or more of charges 1 – 5 amounted to harassment of Colleague A in that:
- a. Your conduct was unwanted; **[PROVED]**
 - b. Your conduct related to Colleague A's sex; **[PROVED]**
 - c. Your conduct had the purpose or effect of: **[PROVED]**
 - i. Violating Colleague A's dignity, or **[PROVED]**
 - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A. **[PROVED]**
8. Your actions at one or more of charges 1 - 5 were sexually motivated in that you sought sexual gratification. **[PROVED]**

Background

The charges arose from alleged events which took place whilst you were employed as a Senior Staff Nurse in the surgery theatres at [PRIVATE]. The sole complainant in this matter is Colleague A. At the material time, Colleague A was employed by an external agency as an Operating Department Practitioner (which is a subordinate role to yours). Colleague A was also based at [PRIVATE].

Between 4 September and 2 November 2017, it is alleged that you engaged in a course of conduct which involved making non-consensual contact with intimate parts of Colleague A's body. These incidences of non-consensual contact included:- placing your foot between Colleague A's legs, using your foot to touch Colleague A's groin and rubbing your groin up and down Colleague A's leg. It is alleged that these actions were sexually motivated in that you sought sexual gratification.

In November 2017, Colleague A reported these matters to a senior colleague and an internal investigation was conducted. During this investigation, you admitted that some of the alleged conduct had occurred but you maintained that this conduct was not sexually motivated. Following this investigation, you were formally dismissed from your employment at [PRIVATE].

On 3 July 2018, Person 1 (Chief Nurse at [PRIVATE]) referred this matter to the NMC.

Decision and reasons on application of no case to answer

The panel considered an application from Nicholas Hall, on your behalf, that there is no case to answer in respect of charge 8. This application was made under Rule 24(7).

In relation to this application, Mr Hall submitted that if the panel was properly directed and it took the NMC's case at its highest, it could not find charge 8 proven.

Mr Hall further submitted that this was because:-

- 1) There is a lack of evidence that your conduct was sexually motivated.
- 2) The NMC's case with respect to charge 8 is contradictory in that Colleague A states in his witness statement at paragraph 12 that:

"I never got the impression that he was trying to initiate a relationship with me or try to attract me in any way."

Colleague A further states in the same witness statement at paragraph 14 that:

"There was a core of other staff however who were a bit like him, loud and arrogant."

Mr Hall submitted that in Colleague A's witness statement, he does not describe your behaviour as acting in a sexual manner.

- 3) The incident was reported to the police and Colleague A informed them that he did not feel that he had been assaulted.
- 4) There were no examples of your conduct being accompanied by sexual words and/or language, attraction or flirtation.
- 5) The events were at work while others were present and never in private.
- 6) The local level investigation did not find that your conduct was sexually motivated.

On behalf of the NMC, Mr Maskell submitted that the conduct specified in charges 1-5 is sexual in nature. Mr Maskell further submitted that there was no evidence of any jokes being made towards Colleague A which were of a non-sexual nature. Mr Maskell noted that your conduct was non-consensual.

Mr Maskell submitted that the conduct alleged in charge 2 undermined your claim that the purpose of these interactions was to entertain your colleagues.

In closing, Mr Maskell submitted that your conduct was of a sexual nature. He said that a lack of evidence had been presented of other 'pranks' and that based on the evidence before it, the panel could find that your conduct was sexually motivated. The panel took account of the submissions made and accepted the advice of the legal assessor.

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

The panel was of the view that there had been sufficient evidence (namely the fact that the incidences of non-consensual touching only pertained to intimate parts of the body) to support the charges at this stage. As such, it was not prepared, based on the evidence before it, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Hall who informed the panel that you made full admissions to charges numbered 1-7

The panel therefore finds charges numbered 1-7 proved in their entirety, by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Maskell and Mr Hall.

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 considered the documentary evidence provided.

The panel also heard evidence from you under oath.

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

That you, a Registered Nurse:

Charge 1

1. On the 4 September 2017 approached Colleague A and:
 - a. Pointed to his groin;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- b. Said words to the effect of “hey, look at that peanut”.

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

Charge 2

2. On the 2 November 2017 approached Colleague A and:
 - a. Walked behind him;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- b. Touched his behind;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- c. Said words to the effect of “ like you a lot ”;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- d. Said words to the effect of “going to miss you ”.

This charge is found proved.

In reaching this decision, the panel took into account you admission at the outset of the hearing. Therefore, the panel found this charge proved.

Charge 3

3. On the 2 November 2017 approached Colleague A, while he was transferring an unknown patient and:

- a. Walked behind him;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- b. Touched his behind.

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

Charge 4

4. On an unknown date:
 - a. Put your hand, palm up, on an empty seat, when Colleague A was sitting down;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- b. Caused Colleague A to sit on your hand;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- c. Said words to Colleague A, to the effect of “You like that ”;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- d. Put your hand, palm up, on an empty seat, when Colleague A was sitting down;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- e. Caused Colleague A to sit on your hand.

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

Charge 5

- 5. On one or more unknown dates approached Colleague A and:
 - a. Moved behind him;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- b. Put your foot between his legs;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- c. Used your foot to touch his groin;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- d. Brushed closely past him;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- e. Swung your hand down, using the back of your fist to brush past his groin;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- f. Rubbed your groin up and down his leg.

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

Charge 6

6. Your actions at one or more of charges 1 – 5 above breached professional boundaries.

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

Charge 7

7. Your actions at one or more of charges 1 – 5 amounted to harassment of Colleague A in that:
 - a. Your conduct was unwanted;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- b. Your conduct related to Colleague A's sex;

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- c. Your conduct had the purpose or effect of:

- i. Violating Colleague A's dignity, or

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing. Therefore, the panel found this charge proved.

- ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

This charge is found proved.

In reaching this decision, the panel took into account your admission at the outset of the hearing in relation to creating a humiliating environment for Colleague A. Therefore, the panel found this charge proved.

Charge 8

8. Your actions at one or more of charges 1 - 5 were sexually motivated in that you sought sexual gratification.

This charge is found proved

The panel considered the witness statement of Colleague A and your oral evidence.

During the hearing, Mr Maskell read extracts from Colleague A's witness statements from the local investigation and Colleague A's witness statement from the NMC investigation. This evidence amounted to the fact that over time as Colleague A became a regular member of the team, you began to behave inappropriately towards him. This conduct involved brushing past him closely and brushing past his groin area. Mr Maskell noted that Colleague A was reluctant to complain about your conduct as he feared that he would not be given more shifts.

Mr Maskell also read an extract from Colleague A's witness statement dated 15 August 2019, in which he stated that your conduct was "*intermittent, in the early days*" and that he did not gain the impression that you were trying to 'initiate a relationship with him' or "*try and attract him.*"

In your evidence, you described your conduct towards Colleague A as "*purely banter*" and to relieve tension in a stressful working environment. You stated that your intention was not to harm anyone. You stated throughout your evidence that your intention was not to gain sexual gratification and denied that your conduct towards Colleague A was sexual in nature. You acknowledged that this behaviour had been designed to humiliate Colleague A. You acknowledged that your actions made Colleague A feel uncomfortable and that you should have stopped after Colleague A protested. This being said, you gave evidence that in hindsight you considered your behaviour to be inappropriate.

You gave further evidence that your conduct was normalised in this working environment and that Colleague A made comments about your body also. However, when asked for examples of such comments, the panel noted that you were unable to provide this.

You admitted that you had denied most, if not all, of the allegations during the local investigation and you acknowledged that this denial was inconsistent with the evidence you have given today.

Based on the evidence, the panel determined that the account which you gave regarding the fact that you believed that the conduct amounted to banter was not credible. The panel determined this because:-

- i) Banter is verbal in nature whereas your conduct involved touching
- ii) The incidences of touching amounted to a course of conduct and were not an isolated incident
- iii) The touching was non-consensual
- iv) The touching was exclusively in intimate areas and any reasonable person would consider that it was overtly sexual
- v) The touching was, at times, accompanied with words such as 'like you a lot'.

Therefore, the panel, on the evidence before it, found that the touching was sexual and, in the absence of any reasonable explanation, found on the balance of probability that it was sexually motivated and for your own sexual gratification.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

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

Submissions on misconduct

Mr Maskell invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of The Code: Professional standards of practice and behaviour for nurses and midwives (2015), in making its decision.

Mr Maskell identified specific standards of the code which you had breached and where your actions amounted to misconduct. These standards are:- 1.1) Treat people with kindness, respect and compassion; 2.6) recognise when people are anxious or in distress and respond compassionately and politely; 20.2) act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment; 20.3) be aware at all times of how your behaviour can affect and influence the behaviour of other people and 20.8) act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to.

Mr Maskell further submitted that the charges amounted to misconduct as your actions were serious and fell below what would have been expected of a reasonable and competent nurse. In closing, Mr Maskell submitted that your actions demonstrate a departure from the professional standards required of a registered nurse in that you sexually harassed a colleague.

At the outset of his submissions, Mr Hall informed the panel that you accepted that your behaviour as stated in charges 1-8 amounted to misconduct.

Submissions on impairment

Mr Maskell 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. He referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Mr Maskell submitted that 'impairment' is not defined by the rules, notwithstanding this, he submitted that the NMC has defined 'fitness to practise' as the suitability to remain on the register without restriction.

Mr Maskell went on to state that three of the factors identified in the case of Grant were present in this case. These factors are as follows:-

- i) As Colleague A felt uncomfortable and embarrassed by your behaviour towards him, your conduct put Colleague A at unwarranted risk of psychological harm.
- ii) Your conduct brought the profession into disrepute as it contravened the expectation that nurses should behave professionally and should not engage in bullying and harassing behaviour.
- iii) Your conduct breached the fundamental tenets of the profession.

In closing, Mr Maskell submitted that your conduct continued even after Colleague A had informed you that your conduct made him feel uncomfortable.

Mr Hall asked Witness 1 who is a theatre co-ordinator in the orthopaedic hospital where you currently work, to give evidence on your behalf. In his evidence, Witness 1 confirmed that you have been working alongside him on a full time basis in the capacity of an agency nurse. Witness 1 confirmed that you have retained this role since 2019. During his evidence, Witness 1 gave evidence that since he has been working with you,

he has never observed you behaving inappropriately with colleagues or patients. He further stated that he had no concerns about patient safety.

Witness 1 gave evidence that you were very knowledgeable about your role at the orthopaedic hospital and that it would be difficult to source another member of staff to replace you as they would need between 5-10 years' experience to reach your level of expertise.

At the outset of his submissions, Mr Hall informed the panel that you accepted that your fitness to practise was impaired on public interest grounds. However, Mr Hall contended that your fitness to practise was not impaired on public protection grounds for the following reasons: -

- i) The allegations date back to the end of 2017. Since this time, you have practised unrestricted and without incident.
- ii) The conduct specified in charges 1-8 are on the lower end of the spectrum of sexual misconduct.
- iii) You have been practising since 2000 and since this time, there have been no other referrals to the **NMC**. In light of this, it can be inferred that your conduct in 2017 was out of character and can be considered an error of judgment.
- iv) There is a low risk of repetition. This is evidenced by the fact that there has been no similar incidences of misconduct within the last 4 years and 2 months. This remained the case during the pandemic when stressors (which could have prompted further incidences of misconduct) were present.
- v) You have successfully remediated. This is evidenced by the training courses that you have completed and the fact that you have committed yourself to complete these courses during the Covid 19 pandemic.

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- vi) Your misconduct did not involve interactions with patients and therefore you could not be considered to pose a threat to patient safety.
- vii) You have engaged with the NMC and you have reflected on the incidences of misconduct.
- viii) Witness 1 gave evidence that he had no concerns in relation to your ability to practise safely.

Decision and reasons on misconduct

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. The panel noted that you admitted misconduct.

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

'1: Treat people as individuals and uphold their dignity

1.1: Treat people with kindness, respect and compassion.'

'2: Listen to people and respond to their preferences and concerns

2.6: Recognise when people are anxious or in distress and respond compassionately and politely.'

'20: Uphold the reputation of your profession at all times

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

20.2: Act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment.'

'20.3: Be aware at all times of how your behaviour can affect and influence the behaviour of other people'

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your actions individually and cumulatively did fall far short of the conduct and standards expected of a nurse and amounted to misconduct that was serious

Decision and reasons on impairment

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

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)
- 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)

In considering impairment, 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 finds that Colleague A was put at risk of emotional harm as a result of your misconduct. In your reflective statement you accepted that *'an aggrieved colleague could put clients and staff at risk.'*

Regarding insight, the panel considered that you have demonstrated very limited insight into the actual substance of this charge in that it was a sexually motivated pattern of behaviour. The panel note that you have reflected on your behaviour in general, particularly regarding the impact of the harassment on others. Notwithstanding this, the panel also note that in your reflective statement (dated January 2022) you continue to refer to your behaviour as *'friendly banter'* which it clearly was not. The panel note that you denied most, if not all, of these matters when confronted by your employer and that you continued to deny them for some time.

The panel accepts that where you have denied a charge, it is unlikely that you will be able to demonstrate full insight immediately upon a finding from a panel. However, the panel notes that you completed a reflective statement this year when you were fully aware of the charge of sexual motivation. At this time, you could have reflected on the impact of such an allegation on others and on the reputation of the profession, notwithstanding your denial.

The panel has taken into account the evidence of Witness 1, written testimonials from 5 registrant practitioners (with whom you work) and your certificates of continuing professional development. However, in the absence of insight in respect of the underlying sexual misconduct there is a risk of repetition and associated risk of harm to the public.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

In making this determination, the panel have noted that you have been practising without any further incident. However, this factor is outweighed by the findings the panel have made above.

The panel determined that a finding of impairment on public interest grounds is required because these matters amount to a course of conduct over a period of time towards a more junior colleague. Your conduct was unwanted and had the effect of violating Colleague A's dignity and creating a humiliating environment for Colleague A. Your actions breached a fundamental tenet of the nursing profession and brought the profession into disrepute. Further, those actions were sexually motivated and as such public confidence would be undermined were there not to be a finding of impairment.

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

Sanction

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

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

Submissions on sanction

Mr Maskell informed the panel that the NMC sought the imposition of a striking-off order as the panel has found that your fitness to practise is currently impaired.

Mr Maskell also submitted that the NMC would seek the imposition of an interim order in order to prevent you from practising during the appeal period.

In his submissions, Mr Maskell made reference to the sanction guidance. He identified the following aggravating factors in this case:-

- i) There were several instances of misconduct over a period of time.
- ii) The misconduct was repeated despite Colleague A's protests.
- iii) Colleague A was embarrassed by your behaviour.
- iv) You were in a more senior position than Colleague A.
 - v) Colleague A was an agency worker and feared complaining about your conduct because he was concerned that this would result in him not being offered more shifts.

Mr Hall said that you accepted, in light of the panel's determination on impairment, it was likely that the sanction would be either a period of suspension or a striking-off order. He submitted that a period of suspension was the appropriate and proportionate sanction and that the panel should consider the following points: -

- i) The correct procedure when determining the sanction is to adopt the least serious available sanction.
- ii) Guidance pertaining to cases of sexual misconduct should be considered. In this guidance, the aggravating factors which are listed are not relevant to your case, as these factors pertain to an '*abuse of position*' and/or '*child pornography*'.
- iii) There are other factors which the panel should consider such as the fact that: - i) no patients were harmed in the commission of the misconduct; ii) there is no direct evidence of misconduct which was accompanied by sexual words or sexual acts, iii) the misconduct involved a singular colleague, iv) the misconduct occurred over 4 years ago and since the misconduct there has been no further incident and v) the fact that the panel has found that your conduct put Colleague A at risk of sustaining emotional harm and this finding should lead to the imposition of a suspension order.
- iv) Insight can be demonstrated by changing one's working practices. You have changed your working practices.

v) Witness 1 gave evidence that he does not have concerns about your conduct at work.

vi) The panel ought to impose the lower level sanction (e.g. suspension order) as it is more proportionate and it would ensure public confidence and protect the public.

vii) There is no evidence of repetition. A written warning was issued to you by your employer 5 years ago, however, this warning pertained to non-sexual conduct.

viii) It would not be in the public interest to impose the sanction of striking-off order as this would be unfair to you and deprive the public of a competent and experienced nurse.

Mr Hall further submitted that, it would deprive you of your livelihood, have a detrimental impact on your family as you would be unable to pay your mortgage.

Decision and reasons on sanction

Having found your fitness to practise to be 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.

Taking the facts in their totality, these matters amount to a course of conduct towards colleague A over a period of time which constituted harassment, involved sexual touching and which was sexually motivated for your own sexual gratification.

Therefore, the panel considered your behaviour to be serious as it was sexual harassment.

The panel took into account the following aggravating features:

- The conduct was repeated over a period of time
- Your conduct was non-consensual
- You ignored Colleague A's repeated request to refrain from this behaviour
- You were in a more senior role than Colleague A and this led to his vulnerability through the power imbalance
- You have demonstrated a lack of insight regarding the underlying sexual motivation of your behaviour

The panel also took into account the following mitigating features:

The panel was made aware that you were given a written warning by your employer in December 2016; however, scant information has been provided regarding why this warning was given. The panel was told that it did not relate to sexual misconduct. In the absence of information, the panel has not taken account of this warning when considering sanction.

Mitigating factors:

- There has not been a repetition of this conduct over the past 4 years and 2 months
- You have continued to practise as a registered nurse without further incident
- You have expressed some remorse for your actions
- You have attempted to remediate (e.g. there is some evidence of relevant professional development)
- Testimonials from current work colleagues (although it is noted that the content of the testimonials largely pertain to your competence as opposed to your conduct at work).

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

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated to address the risks associated with the behaviour. The panel is also of the view that as your misconduct arises from attitudinal issues, a conditions of practice order is not appropriate.

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

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- *No evidence of repetition of behaviour since the incident*
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The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel concluded that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register. Whilst it is accepted that there has been no repetition of the behaviour, this was not a singular incident of misconduct; it was a course of conduct over a period of time that amounted to sexual harassment and your lack of insight indicates that there may be a deep seated attitudinal issue.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction to either protect the public or satisfy the public interest.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

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

In light of the panel's findings of fact, it determined that a striking-off order was the only sanction which was commensurate with the seriousness of your misconduct. The panel was concerned that you have demonstrated a lack of insight in respect of the underlying sexual misconduct. The panel determined that the aggravating features in this case, outweigh the mitigating features.

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your

actions were so serious that to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Maskell that an interim suspension order ought to be imposed in order to cover the appeal period.

The panel also took into account Mr Hall's submission that the imposition of an interim suspension order is not opposed.

Decision and reasons on interim order

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

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

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

That concludes this determination.

