

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

**Substantive Meeting  
Monday 10 – Friday 14 October 2022**

Virtual Meeting

**Name of registrant:** Ramnarain Sowky

**NMC PIN:** 76B5518E

**Part(s) of the register:** Registered Nurse  
Mental Health Nursing – December 1976  
Adult Nursing – August 1979

**Relevant Location:** Brighton and Hove

**Type of case:** Misconduct

**Panel members:** Bryan Hume (Chair, lay member)  
Claire Rashid (Registrant member)  
Jan Bilton (Lay member)

**Legal Assessor:** Ian Ashford-Thom

**Hearings Coordinator:** Ruth Bass

**Facts proved:** Charges 1, 2a, 2b, 2c, 3a, 3b, 3c, 4, 6a, 6b, 6c, 7a, 7b, 8a, 8b, 8c, 8d, 9a, 9b, 10a, 10b, 10c, 11, 12a, 12b, 12c, 13a, 13b, 13c, 14, 15a, 15b, 15c, 16, 17, 19, 20, 21a, 21b, 21c, 22a and 22b

**Facts not proved:** Charges, 5a, 5b, 5c, 5d, 18 21d, 22c and 22d

**Fitness to practise:** Impaired

**Sanction:** Strike off

**Interim order:** Interim suspension order – 18 months

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

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Sowky's email address, as recorded on the Nursing and Midwifery Council's (NMC's) Register on 16 August 2022.

The panel took into consideration that the NMC's regulatory legal team had recommended that this case be heard at a meeting as Mr Sowky had not responded to the NMC, was not represented, and although the charges were considered wide ranging, they were not considered complex.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegations, and a time after which the meeting would be conducted, giving Mr Sowky sufficient time to send in any response if he so wished.

In light of all of the information available, the panel was satisfied that Mr Sowky has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was also of the view that the case could properly be dealt with at a meeting. It noted that Mr Sowky was not responding to the NMC, and considered the witness statements to be comprehensive. The panel could see little value in the consideration of this case being conducted by way of a hearing. It therefore was satisfied that the case could properly be dealt with at a meeting.

## **Details of charge**

That you,

- 1) On 18 October 2019, failed to secure Resident C's medication(s).

2) On 8 November 2019, in Relation to Resident B:

- a) Did not administer the full dose of medication, namely 2 tablets of Quetiapine 25 mg;
- b) Recorded that the 2 tablets of Quetiapine 25 mg had been administered when it had not.
- c) Did not record that 1 tablet of Quetiapine 25 mg had been misplaced.

3) On 15 November 2019 used the following words or a gist of words that were similar:

- a) "Who would you kill if you could"
- b) "How would you kill one of these people"
- c) "I'd stab them to kill them, I just want to stab them to death"

4) On 15 November 2019 whilst using the words or a gist of words that were similar to "I'd stab them to kill them, I just want to stab them to death" you made stabbing motions with your arm.

5) On 15 November 2019 made inappropriate comments to other members of staff relating to:

- a) Getting revenge;
- b) Kidnap;
- c) Torture;

d) Murder.

6) Made inappropriate comments to colleagues relating to:

a) Sexual encounter(s)

b) Sexual intercourse at a former work place;

c) Referred to a person who may have contracted HIV as a “f\*\*king b\*\*ch”

7) In relation to Colleague 1: Used the following words or a gist of words that were similar to:

a) “Why do you even work here”;

b) “You might as well quit your job and go on benefits”;

8) On one or more occasions in relation to Colleague 1:

a) Stated Colleague 1 was “useless” and/or “lazy” or used words that were similar;

b) Stated that Colleague 1 had learning difficulties and/or was autistic.

c) Stated “You wouldn’t want to get on the wrong side of me.”

d) During working hours went over to where Colleague 1 was and shook your head.

9) In relation to Colleague 1’s [relative]:

a) Referred to her as a “stuck up b\*\*ch” and/or “stuck up” or used words that were similar;

b) Referred to her as a “slut” or used words that were similar.

10) Used the following words or a gist of words which were similar to Colleague 3:

a) “frigid b\*\*ch”

b) “stuck up b\*\*ch”

c) “You’re just a frigid b\*\*ch”

11) Asked Colleague 3 about her past sexual partners.

12) On one or more occasions acted inappropriately towards female colleagues in that you:

a) Touched Colleague 4, namely by placing your hand(s) on Colleague 4 hip(s);

b) Touched Colleague 5, namely by placing your hand(s) on Colleague 5 hip(s);

c) Pushed your body against Colleague 2 who was seated at the time.

13) In relation to Colleague 2:

a) On or around 2 November 2019 disclosed confidential information, **[PRIVATE]**.

b) On 15 November 2019 referred to Colleague 2 as “**[PRIVATE]**”

c) Used the words “**[PRIVATE]**” or a gist of words that were similar.

14) Used the following words to a male patient “You’ve been f\*\*king the vicar’s daughter” or a gist of words which were similar.

15) On or around 9 January 2020:

a) Was not able to read the medication charts;

b) Did not select the correct medication boxes;

c) Did not inform the Deputy Manager that you required spectacles prior to conducting the medication round.

16) On or around 9 January 2020 did not remove a key from the lock of a medication cupboard.

17) On 1 February 2020, night shift, slept for more than one hour whilst on duty.

18) On 2 February 2020 did not record that Resident A had not received her morning medication, namely Oramorph before 08:00 hrs.

19) On 2 February 2020 in relation to residents that had not received their medication made entries in the communication book for 3 February 2020.

20) In charge 12(a) to 12(c) your behaviour was sexually motivated.

21) Provided the following information, after 26 September 2019, to MacLeod Pinsent Care Homes Limited regarding an ongoing NMC investigation (Ref: **[PRIVATE]**) by stating:

a) That you had been on a break and an agency nurse on duty failed to provide medication to a patient suffering from a personality disorder;

b) That the Nursing and Midwifery Council (NMC) had not followed up or communicated with you;

c) That you had been able to renew your nursing registration without issue;

d) That you were being called as a witness.

22) The information provided in charge 21 (a) to (d) was dishonest in that:

a) In relation to charge 21(a) you knew prior to 26 September 2019, that the NMC had raised regulatory concerns regarding your failures in maintaining staffing levels, medication errors, and record keeping errors;

b) In relation to charge 21(b) you knew you had been informed of 2 regulatory concerns by a letter dated 17 October 2018 and of a further 2 regulatory concerns by a letter dated 9 March 2020.

c) In relation to charge 21(c) you knew that your registration had been continued as you were under investigation by the NMC

d) In relation to charge 21(d) you knew you were not being called as a witness.

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

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

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case.

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 had regard to the written statements of the following witnesses on behalf of the NMC:

- Colleague 6: Registered Manager at Asher Nursing Home
- Colleague 7: Deputy Manager at Asher Nursing Home
- Colleague 1: Healthcare Assistant at Asher Nursing Home
- Colleague 4: Healthcare Assistant at Asher Nursing Home at the time of the allegations
- Colleague 2: Support Worker at Asher Nursing Home
- Colleague 5: Healthcare Assistant at Asher Nursing Home
- Colleague 3: Staff Nurse at Asher Nursing Home at the time of the allegations
- Colleague 8: Home Manager at Downlands Nursing Home

- Colleague 9: Senior Healthcare Assistant  
Downlands Nursing Home
- Colleague 10: Registered Nurse at Downlands  
Care Home
- Colleague 11: Deputy Manager at Downlands  
Nursing Home

## **Background**

On 6 December 2019, the NMC received a referral from MacLeod Pinsent Care Homes Ltd about Mr Sowky.

At the time of the concerns raised in the referral, Mr Sowky was working at Asher Nursing Home (Home 1). Mr Sowky commenced employment at Home 1 on 1 October 2019.

On 18 October 2019, Colleague 7, the Deputy Manager of Home 1, conducted a routine medication audit and found a blister pack in Resident C's room, which should have been locked away. Colleague 7 approached Mr Sowky about this and Mr Sowky told him he had become flustered because Resident C had shouted at him. As a result, Mr Sowky said he must have forgotten to secure the blister pack.

On 11 November 2019, Colleague 7 was approached by Resident B who handed him a 25mg Quetiapine tablet, which he had found on the floor of his bedroom.

Resident C had informed him that Mr Sowky had dropped this tablet the previous Friday (8 November 2019) and neither of them could find it at the time. It is alleged that Mr Sowky had recorded the administration on the MAR chart of 50mg Quetiapine on that date and the stock balance was consistent with Mr Sowky having administered two tablets and not three to replace the one that was lost.

On 19 November 2019 Colleague 6, the Home Manager at Home 1, received an email from Colleague 1, a Health Care Assistant, while Colleague 6 was on holiday. This email set out details of Mr Sowky's alleged inappropriate conduct during a handover on 15 November 2019, which included belittling and criticising Colleague 1. The email triggered a local investigation as Colleague 6 was "*shocked and appalled*" by what had been reported by Colleague 1.

It is alleged that Mr Sowky shared a lot of explicit and sexual information at work, which made employees feel uncomfortable. Colleague 1 reported that Mr Sowky comments then got personal and he felt hurt and offended by them. It is alleged that Mr Sowky would belittle and intimidate Colleague 1 by his use of words. Colleague 1's [relative] was a Registered Nurse who had worked at Home 1 previously. It is alleged that Mr Sowky called Colleague 1's [relative] a "*stuck up b\*\*ch*", "*slut*" and "*frigid*".

It is alleged that at the handover on 15 November 2019, Mr Sowky started talking about kidnap, torture and murder. It is also alleged that Mr Sowky regularly made sexually inappropriate and unsolicited remarks.

**[PRIVATE].**

It is further alleged that Mr Sowky would place his hands on employees' hips to get past them and that this was sexually motivated. Further it is alleged that Mr Sowky started making unsolicited comments about a sexual encounter **[PRIVATE]**.

The majority of these concerns were raised with Mr Sowky at a Probationary Review Meeting on 29 November 2019. Mr Sowky's employment was terminated after the meeting.

During the course of the NMC's investigation, Mr Sowky's employer, Downlands Nursing Home (Home 2), was contacted regarding further concerns identified with Mr Sowky's practice. Mr Sowky commenced his employment at Home 2 on 30 December 2019.

Mr Sowky received an induction and was supervised by the Deputy Manager of Home 2. The Deputy Manager supervised a medication round with Mr Sowky when she allegedly noticed that he kept leaving the master key in the medication cabinets within the residents' rooms despite her reminding him not to do this on more than one occasion.

On 1 or 2 February 2020, Mr Sowky worked his first shift independently without another qualified nurse on duty with him. He worked the shift with a Senior Healthcare Assistant. At around 01:00, Mr Sowky was found asleep in the residents' lounge. It is alleged that Mr Sowky had been asleep for more than one hour. The Senior Healthcare Assistant completed an incident form and reported Mr Sowky to the Home Manager at Home 1.

A Registered Nurse worked the day shift following Mr Sowky's night shift. It is alleged that Mr Sowky provided her with a verbal handover, and although he let her know that several residents had not received their morning medication, this did not include Resident A. In the communication book, which is used to record when this happens as a safety net, Mr Sowky is alleged to have written several room numbers down but had not added Resident A's room to the list. It is further alleged that Mr Sowky had also written the date entry as 3 February 2020, when this entry was incorrect.

Resident A **[PRIVATE]** was prescribed Oramorph PRN (as required medication), as well as other drugs, to help manage their pain. Resident A asked for their morning medication when they woke up later that morning, and the Registered Nurse checked the MAR chart and the controlled drug book and none of her morning medications had been signed for indicating they had not been administered.

The Home Manager at Home 2 notified the Area Manager of these concerns and Mr Sowky was invited to an investigatory interview on 7 February 2020. Mr Sowky denied sleeping any longer than one hour and said that he had written in the communication book all that was required to be handed over to the day shift nurse.

Mr Sowky was asked to attend a disciplinary meeting on 12 February 2020.

However, he tendered his resignation on 10 February 2020, and a safeguarding and Disclosure Barring Service (DBS) referral was made by Home 2.

In March 2018, the NMC received concerns about Mr Sowky's fitness to practise relating to clinical errors, including medication errors and alleged dishonesty relating to information provided in respect of his application for employment at Home 2. It was confirmed by one of the Home Managers at Home 2 that she was aware of Mr Sowky's previous referral and that Mr Sowky had disclosed this on the application form, dated 27 September 2019 and at his interview on 16 October 2019. The interview notes in which it is recorded the reason Mr Sowky gave for leaving Home 1: *"Asher started recently last month, no issues, would like more hours here"*. These interview notes further record the following about Mr Sowky's previous case: *"NMC haven't followed up/communicated conclusively. Raj said he was blamed for nothing as he had delegated to agency nurse. Has union rep. NMC have been renewing his registration without any issues..."*

On 29 March 2021, the DBS decided that Mr Sowky's name should be added to the Adults and Children's Barred List.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the documentary evidence provided by the NMC.

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

### **Charge 1**

*That you,*

- 1) On 18 October 2019, failed to secure Resident C's medication(s).*

**This charge is found proved.**

In reaching this decision, the panel took into account the witness statement of Colleague 7, which states:

*'On 18 October 2019, I was carrying out a medication audit with our Compliance Manager. As we walked in to Resident [C's] bedroom, I saw the blister pack containing Resident [C's] medication on top of the resident's locker. This should have been locked away after the medications had been administered, and should not have been left out. The audit took place early in the afternoon and it would have been after the 12:00 hrs medication round. I halted the audit immediately, removed the blister pack and said to my colleague that I was going to speak to Raj about what I'd found. Raj and I were the only Registered Nurses on duty that day and medication rounds at Asher are always completed by a Registered Nurse. As I had not completed the medication round myself, I knew that it must have been Raj who had completed it and who left the tablets on top of Resident [C's] locker.'*

The panel considered the account in Colleague 7's statement to be very clear setting out that himself and Mr Sowky were the only nurses on duty that day and the only people who were able to undertake the medication rounds.

The panel also considered the statement of Colleague 6 who set out that Colleague 7 and himself had held a formal discussion with Mr Sowky about the incident where Mr Sowky explained that *'he had become flustered as a result of Resident [C] displaying difficult behaviour because her medication was administered later than she liked.'* The witness statement also went on to state the following:

*'Raj apologised for the error and [Colleague 7] emphasised how important it was to maintain safe practices, particularly in respect of medication.'*

The panel noted that, according to Colleague 6's statement, Mr Sowky had apologised for the incident. The panel considered this to have been admission to him leaving the medication out.

The panel next considered the daily care notes for Resident C of 18 October 2019 and had regard to the note made by Mr Sowky at 19:32 which states:

*'[Resident C] was compliant with her medication and became impatient with the staff and shouted a volley of abuse to the staff for not giving her midday medication in time. This was due to the fact that the managerial staff were completing a medicine audit.'*

The panel had regard to the fact that this note confirmed that the '*managerial staff*', which Colleague 7 was, had carried out an audit, and further that Resident C had become difficult. The panel was satisfied that this was consistent with the evidence of both Colleague 7 and Colleague 6.

Based on the evidence before it, the panel was satisfied on the balance of probabilities that Mr Sowky did fail to secure Resident C's medication. It therefore found this charge proved.

## **Charge 2**

*2) On 8 November 2019, in Relation to Resident B:*

*a) Did not administer the full dose of medication, namely 2 tablets of Quetiapine 25 mg;*

*b) Recorded that the 2 tablets of Quetiapine 25 mg had been administered when it had not.*

*c) Did not record that 1 tablet of Quetiapine 25 mg had been misplaced.*

**These charges are found proved.**

In considering these charges, the panel had regard to the witness statement of Colleague 7 dated 8 August 2021, which states:

*'On 11 November 2019, I was approached by Resident [B] who handed me a tablet which he said he had picked up from the floor of his bedroom. The tablet was pink*

*and I was able to identify it as 25mg of Quetiapine. Resident [B] told me that Raj had dropped the tablet when he was administering the medication the previous Friday (8 November 2019). Resident [B] advised that neither he nor Raj had been able to find the tablet at the time'*

The panel also had regard to the witness statement of Colleague 6 dated 18 August 2021 which states:

*'Around 11 November 2019, I was again approached by [Colleague 7] who made me aware of a further incident in respect of medication administration. On this occasion, Resident [B] had approached Colleague 7 directly and handed him a tablet which the resident advised Raj had dropped during his medication round the previous Friday (8 November 2019). Colleague 7 was able to identify the tablet as 25mg of Quetiapine, which is prescribed for residents [PRIVATE]'. Resident [B] is prescribed 50mg (2 x 25mg tablets) of Quetiapine daily, to be administered at 22:00 hrs.*

*Again, Colleague 7 took the lead with this matter and my understanding is that Raj neither recorded the incident in Resident [B's] notes or on the MAR chart, nor verbally reported the matter directly to Colleague 7 the following morning. Raj also signed for administration of a full dose (2 x 25mg tablets) of medication when only a half dose (1 x 25mg tablet) had been administered. [Colleague 7] and I discussed the matter and [Colleague 7] lead the reflective discussion with Raj, however it's something we both spoke to Raj again about during his Probationary Review Meeting on 29 November 2019...'*

The panel found the evidence from both Colleague 6 and Colleague 7 to be compelling in respect of charges 2a, 2b, and 2c. It noted that the incident had been reported by Resident B, and not Mr Sowky. The panel also found the evidence of Colleague 6 and Colleague 7 to be consistent with each other's account, and was satisfied that the accounts were genuine as the incident was raised by them with Mr Sowky in a discussion regarding potential risks and implications of not being able to account for a resident's medication. The panel noted that the incident was again raised with Mr Sowky in a probationary meeting on 29 November 2019, and when asked if Mr Sowky had any further comments he wished to add regarding this concern, he responded 'no'.

In considering Resident B's care notes, the panel further noted that Mr Sowky had not recorded that 1 tablet of Quetiapine 25 mg had been misplaced. But instead had recorded, in respect of Resident B:

*'He complied with his medication which was administered in his room. It was observed when the medication was place (sic) in his right palm from the medicine pot, his palm was slightly inclined thus running the risk of the tablet falling. In the future he will be given the medicine pot with tablets being inside for him to swallow.'*

The panel was of the view that this record in the care notes alluded to the fact that one of the tablets had been dropped.

The panel also had regard to the MAR chart for Resident B which recorded that 2 doses of Quetiapine 25mg tablets had been given to Resident B at 22:00 on 8 November 2019. Having been satisfied by the evidence of Colleague 7 and Colleague 6 that only one tablet had been given to the resident, the panel found that the record of 2 doses having been administered was incorrect.

It was clear to the panel from the witness statements of Colleague 7 and Colleague 6 that the full dose of medication was not given to Resident B. The panel was satisfied from Resident B's MAR chart that two tablets were recorded as being provided to Resident B. It was clear to the panel from the care notes of Resident B that no record had been made by Mr Sowky that one of the tablets had been misplaced. The panel was therefore satisfied from the evidence before it that Mr Sowky did not administer the full dose of medication, namely 2 tablets of Quetiapine 25 mg, did record that the 2 tablets of Quetiapine 25 mg had been administered when it had not, and did not record that 1 tablet of Quetiapine 25 mg had been misplaced. It therefore found charges 2a, 2b, and 2c proved.

### **Charge 3**

*3) On 15 November 2019 used the following words or a gist of words that were similar:*

a) *“Who would you kill if you could”*

b) *“How would you kill one of these people”*

c) *“I’d stab them to kill them, I just want to stab them to death”*

**These charges are found proved.**

In considering these charges the panel had regard to the witness statement of Colleague 4 dated 6 August 2021 which states:

*‘Although I recall being present at a handover on 15 November 2019 when Raj made some highly inappropriate comments, I don’t specifically remember working that day. During the handover, I recall Raj said “how would you kill someone? How would you kill one of these people?” ...I remember the comments made me feel very uncomfortable. They were shocking and not the sort of thing I’d expect to hear at any point, and especially not during a handover. In all the time I’ve been working in the care profession, and throughout my nursing training, I’ve never heard any Registered Nurse, or anyone else for that matter say, make comments like these.’*

The panel noted that this statement was consistent with Colleague 4’s account given to the Operations Manager on 22 November 2019 that *‘Raj appeared really agitated which was out of character. Raj was speaking about how he would kill people and spoke about people from his past and how one was “a bloody f\*king b\*\*ch”.*

The panel also considered the witness statement of Colleague 5 which states:

*‘...Raj regularly spoke off topic during conversations with colleagues but this was the first time I’d ever heard him say anything of this nature. I’d certainly never heard him mention the idea of killing people in the past. If I remember correctly, Raj had experienced some difficulties during the shift on 15 November 2019 and had become quite annoyed with one of the residents...*

*Raj went on to speak in quite graphic detail about the way in which he would murder someone. Again, I can’t remember the exact words Raj used but I remember his description being very graphic. I don’t recall him using specific names, or mentioning specific residents who he wanted to kill. Whilst he was*

*talking, Raj was also mimicking a stabbing motion using his arm. I found both Raj's comments and his actions that day unsettling and upsetting. I felt that his actions in mimicking the stabbing motion were very unprofessional. I'd never witnessed behaviour like this before and it made me feel quite uncomfortable.'*

The panel took note of the fact that this account was also consistent with Colleague 5's written local statement made on 19 November 2019, which states:

*'During the handover Raj started talking off topic, asking inappropriate questions such as "who would you kill if you could?" Raj talked in detail about how he would kill someone and mimicking stabbing someone'.*

The panel had regard to the comments of both Colleague 4 and Colleague 5 and noted the shock and concern raised by both. It considered both of their accounts to be fair to Mr Sowky noting that they had expressed this behaviour was unusual for him. The panel was satisfied that both Colleague 4 and Colleague 5's witness statements were consistent with their own contemporaneous accounts, and also with each other's.

The panel next considered the minutes from the probationary review meeting with Mr Sowky dated 29 November 2019 which states:

*'[Colleague 6] highlighted that there were concerns raised regarding comments made in handover. RS immediately asked what he had said? [Colleague 6] continued that it is alleged that RS made comments about people he would like to murder and that following investigation this had been collaborated by witnesses. RS commented that 'he wasn't a murderer and that [Colleague 6] had seen his 'CRB' and that it was clear.'*

The panel noted that Mr Sowky's response was that *'he wasn't a murderer'* but did not state that he had not made those comments.

Based on the evidence before it, the panel was satisfied on the balance of probabilities, that Mr Sowky had made the comments set out in charges 3a, 3b and 3c. It therefore found these charges proved.

## Charge 4

*4) On 15 November 2019 whilst using the words or a gist of words that were similar to "I'd stab them to kill them, I just want to stab them to death" you made stabbing motions with your arm.*

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

In considering this charge, the panel had regard to Colleague 1's email to Colleague 6 on 19 November 2019 raising concerns about Mr Sowky's behaviour on 15 November 2019. The email stated:

*'During handover on Friday the 15th, Raj unsolicitedly began discussing topics of an unsettling nature, such as kidnap, torture, and murder. This went on for roughly five minutes. Which needless to say, was shocking and completely inappropriate. He went into grotesquely graphic details, erratically expressing his twisted fantasies, whilst imitating stabbing motions in the air and salivating at the mouth with anger.'*

The panel noted that Colleague 6 was so concerned by Mr Sowky's alleged actions that he had taken it upon himself to alert management of his concerns. The panel also had regard to Colleague 6's witness statement dated 18 August 2021 which was consistent with his email to management and states:

*'On Friday 15 November 2019, my shift started at 14:00 hrs and finished at 20:00 hrs. There is always a handover at the start of the shift, at 14:00 hrs, which takes place in the office. I can't recall whether Raj was working during the morning or whether he started at 14:00 hrs. However, as soon as I saw him I could tell by his demeanour that Raj was agitated and angry. He was pacing backwards and forward across the room and then he started talking about people who he felt had wronged him in the past and speaking about getting revenge. Raj then started talking about kidnap and torture and murder. Raj wasn't really focussing on what*

*my colleagues and I were trying to speak about, or what we were meant to be talking about, i.e. the handover. He then started making stabbing motions in the air with his arm.'*

The panel noted that Colleague 1's description was detailed and graphic.

The panel also considered the witness statement of Colleague 4 dated 6 August 2021 who confirmed that she was present at the handover on 15 November 2019 and stated:

*'I also remember him expressing some really negative opinions about some of the residents and I clearly recall him making a stabbing motion with his hand in the air whilst saying "I'd stab them to kill them, I just want to stab them to death." I remember the comments made me feel very uncomfortable.'*

The panel noted that Colleague 4 had also stated, during a meeting with the Operations Manager on 22 November 2019 that *'Raj appeared really agitated which was out of character. Raj was speaking about how he would kill people and spoke about people from his past and how one was "a bloody f\*\*king b\*\*ch"'*.

The panel also considered the witness statement of Colleague 5 which states:

*'...Raj went on to speak in quite graphic detail about the way in which he would murder someone. Again, I can't remember the exact words Raj used but I remember his description being very graphic... Whilst he was talking, Raj was also mimicking a stabbing motion using his arm. I found both Raj's comments and his actions that day unsettling and upsetting. I felt that his actions in mimicking the stabbing motion were very unprofessional. I'd never witnessed behaviour like this before and it made me feel quite uncomfortable.'*

The panel took note of the fact that this account was also consistent with Colleague 5's written local statement made on 19 November 2019, which states:

*'During the handover Raj started talking off topic, asking inappropriate questions such as "who would you kill if you could?" Raj talked in detail about how he would kill someone and mimicking stabbing someone'*

The panel was satisfied that there was clear evidence before it that Mr Sowky had made a stabbing motion when saying words to the effect of *“I’d stab them to kill them, I just want to stab them to death”*. It noted that the account of him making a stabbing motion while speaking of stabbing someone, or murder, was made by 3 different members who were present and all quite alarmed by his actions. The panel was therefore satisfied on the balance of probabilities that this charge is found proved.

## **Charge 5**

*5) On 15 November 2019 made inappropriate comments to other members of staff relating to:*

- a) Getting revenge;*
- b) Kidnap;*
- c) Torture;*
- d) Murder.*

**This charge is found not proved.**

In considering this charge, the panel noted that the only direct evidence came from Colleague 1 who stated in his witness statement dated 27 July 2021:

*‘On Friday 15 November 2019, my shift started at 14:00 hrs and finished at 20:00 hrs. There is always a handover at the start of the shift, at 14:00 hrs, which takes place in the office...as soon as I saw him I could tell by his demeanour that Raj was agitated and angry. He was pacing backwards and forward across the room and then he started talking about people who he felt had wronged him in the past and speaking about getting revenge. Raj then started talking about kidnap and torture and murder. Raj wasn’t really focussing on what my colleagues and I were trying to speak about, or what we were meant to be talking about, i.e. the handover.’*

The panel also had regard to Colleague 1's email to Colleague 6 on 19 November 2019 setting out his concerns that *'raj unsolicitedly (sic) began discussing topics of an unsettling nature, such as kidnap, torture, and murder...'*

The panel had regard to the fact that these comments were alleged to have been made at a handover meeting on 15 November 2019 where Colleague 4 and Colleague 5 had been present and had given accounts of the incidents at the handover. The panel noted that neither Colleague 5 or Colleague 4 had mentioned hearing these comments in their statements and both gave accounts which reflected the words "stabbing" and "killed" as opposed to "murder". The panel was of the view that comments such as *'Getting revenge', 'Kidnap', 'Torture' and 'Murder'* were alarming and would have been noted by others present and reported by Colleague 5 and Colleague 4 when making their statement if said. The panel was therefore not satisfied on the balance of probability, that the comments as set out in charges 5a, 5b, 5c, and 5d had been made by Mr Sowky. It therefore found these charges not proved.

## **Charge 6**

*6) Made inappropriate comments to colleagues relating to:*

*a) Sexual encounter(s)*

*b) Sexual intercourse at a former work place;*

*c) Referred to a person who may have contracted HIV as a "f\*\*king b\*\*ch"*

## **These charges are found proved.**

In considering these charges the panel had regard to the witness statements of Colleague 5, Colleague 4, Colleague 7 and Colleague 1 and noted the following:-

- Colleague 5 stated in her witness statement dated 15 July 2021:

*'Raj talked a lot about his family life and his personal circumstances. Some of the things he said made me feel quite uncomfortable because he spoke openly about sexual relationships he'd had in the past and shared explicit details about these relationships.'*

- Colleague 4, in her witness statement dated 6 August 2021 stated:

*'Raj also talked openly about his sex life – often out of nowhere, he would just start talking [PRIVATE]. I don't remember Raj talking about explicit details but there was a general sexual overtone in his conversations and approach towards everyone at Asher. We all had a bit of banter at Asher and there was a good relationship amongst the staff, but I feel Raj's behaviour just crossed the line.'*

- Colleague 7, in his witness statement dated 20 August 2021 stated:

*'I was present at a handover during which I had to speak very strongly to Raj about comments that he had been making about his personal sexual life... The handover was from nightshift staff to the morning staff and during the handover, Raj started making unsolicited comments [PRIVATE]. I cut Raj off and told him that the nature of his conversation was entirely inappropriate. I was very clear to Raj and said that any conversation of this nature should be taking place outside of the work environment.'*

- Colleague 1, in his witness statement dated 27 July 2021 stated:

*'During the time I worked with him, I recall Raj speaking regularly about one woman [PRIVATE] and he repeatedly called her, "that f\*\*\*ing b\*\*ch." I'm not sure precisely who Raj was talking about because he spoke [PRIVATE].'*

The panel found the witness evidence from Colleague 5, Colleague 4, Colleague 7 and Colleague 1 to all be clear accounts that were consistent in describing sexual conversations had by Mr Sowky whilst at work. It was therefore satisfied on the balance of probabilities that Mr Sowky had made inappropriate comments as set out in charges 6a, 6b, and 6c and therefore found these proved.

The panel found that the phrases alleged to have been used by Mr Sowky in charges 7 and 8 were of a similar nature. It was of the view that as more people had testified to hearing such phrases being used in charge 8, it should consider charge 8 before charge 7.

## Charge 8

8) On one or more occasions in relation to Colleague 1:

a) Stated Colleague 1 was “useless” and/or “lazy” or used words that were similar;

b) Stated that Colleague 1 had learning difficulties and/or was autistic.

c) Stated “You wouldn’t want to get on the wrong side of me.”

d) During working hours went over to where Colleague 1 was and shook your head.

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

In considering this charge the panel had regard to the evidence of Colleague 4, Colleague 2, Colleague 5, and Colleague 1.

- Colleague 4 stated in her witness statement dated 6 August 2021:

*‘On several occasions, I was also present when Raj called Colleague 1 “useless” and “lazy.” For most of the time Raj worked at Asher, he seemed to pick on Colleague 1. Wherever Colleague 1 was, Raj seemed to seek him out and berate him for whatever he was doing, even if it was a task that formed part of his normal duties. At Asher, the chef finishes work in the afternoon and the HCAs prepare supper for the residents. This is usually sandwiches or omelettes or something light. The food is all prepared in the kitchen and then when it’s ready, it’s brought out by the HCAs and served to the residents. It’s usually a task that one or two of the staff will complete together. I remember Raj going into the kitchen on more than one occasion when Colleague 1 was preparing the supper and repeatedly telling Colleague 1 to hurry up and telling him, “You should be out there.” Preparing food was one of Colleague 1’s jobs so Colleague 1 was simply doing his job whilst Raj berated him for it.*

*Raj’s behaviour towards Colleague 1 made the working environment really uncomfortable. I mentioned to [Mr 12] during my conversation with him (**Exhibit CM/1**) that we all knew Colleague 1 had his faults but that he didn’t deserve to be*

*treated the way Raj treated him. [PRIVATE] I felt sorry for Colleague 1 because, in my opinion, Raj bullied and victimised him. In all the time I've been working in the care profession, I've never witnessed behaviour like this and especially not from a Registered Nurse towards a junior member of staff.'*

- Colleague 2 stated in her witness statement dated 27 August 2021:

*'During the time that Raj worked at Asher, I witnessed him being rude and unkind towards Colleague 1. I can't recall the exact date but I recall being in the kitchen one shift with Colleague 1 and another support worker. Raj said to Colleague 1 that he thought Colleague 1 was useless and that he ought to be on benefits.'*

- Colleague 2 also stated in the meeting with the Operations Manager on 22 November 2019:

*'Colleague 7 asked me to speak to Colleague 2 (Care Assistant) as she had approached Colleague 7 with regards to Raj speaking about her personal life to other staff members...*

*Colleague 2 also confirmed that Raj speaks to Colleague 1 in a very negative manner calling him 'useless' suggesting that Colleague 1 should quit and go on benefits. This as (sic) said to Colleague 1 in the kitchen in front of Colleague 2, and [Colleague 5].'*

- Colleague 1 stated in his witness statement dated 27 July 2021:

*'I also recall another time when I was in a resident's room, putting fresh linen on the bed. Raj came in, shut the door behind him and just stood staring at me. I felt like Raj was trying to intimidate me at the time and felt like I couldn't really leave. Raj said something along the lines of, "You wouldn't want to get on the wrong side of me." I asked Raj directly whether he was threatening me and he just raised his eyebrows and shrugged. At the time all of this was happening [PRIVATE] I found Raj's behaviour and his comments quite demoralising and demeaning. Raj also suggested a number of times that I have severe learning*

*disabilities, and alluded to me being Autistic. I feel like Raj wanted to label me as having some sort of learning difficulty and it got to the point where I came to dread going into work.'*

The panel noted from the evidence before it that at least four people had witnessed Mr Sowky saying phrases similar to those listed in charges 8a, 8b, 8c and 8d to Colleague 1.

The panel had particular regard to the evidence of Colleague 4 and noted the context of bullying and victimisation which she had set out.

The panel noted that the evidence of Colleague 4, Colleague 2, Colleague 5 and Colleague 1 had all been consistent in reporting that Mr Sowky had some animosity towards Colleague 1. It considered their evidence to have been clear and consistent with each other's that Mr Sowky was openly unkind towards Colleague 1, and had said the phrases as set out in the charges. The panel was therefore satisfied that Mr Sowky did say phrases similar to those listed in charges 8a, 8b, 8c and 8d to Colleague 1. It therefore found these charges proved on the balance of probabilities.

### **Charge 7**

*7) In relation to Colleague 1: Used the following words or a gist of words that were similar to:*

*a) "Why do you even work here";*

*b) "You might as well quit your job and go on benefits";*

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

In considering this charge the panel had regard to the witness statements of Colleague 1, Colleague 4 and Colleague 5, and the notes from the meeting with Colleague 2 and the Operations Manager on 22 November 2019:

- Colleague 1 stated in his witness statement dated 27 July 2021:

*'Not long after he started working at Asher, Raj started making quite personal comments to me. These comments went on for a while and I was quite hurt and offended by them. I recall a number of occasions where I was working and carrying out my normal tasks and Raj walked over to me, looked at me in a critical way and shook his head. On one occasion, I asked if Raj was okay and he replied, "Why do you even work here? You might as well quit your job and go on benefits."*

- Colleague 4 stated in her witness statement dated 6 August 2021:

*'On several occasions, I was also present when Raj called Colleague 1 "useless" and "lazy." For most of the time Raj worked at Asher, he seemed to pick on Colleague 1. Wherever Colleague 1 was, Raj seemed to seek him out and berate him for whatever he was doing, even if it was a task that formed part of his normal duties...I remember Raj going into the kitchen on more than one occasion when Colleague 1 was preparing the supper and repeatedly telling Colleague 1 to hurry up and telling him, "You should be out there." Preparing food was one of Colleague 1's jobs so Colleague 1 was simply doing his job whilst Raj berated him for it.'*

- Colleague 5 stated in her witness statement dated 15 July 2021:

*'I worked with Raj quite regularly and he always behaved in a professional manner towards the residents. Although I didn't have any concerns in respect of his nursing skills or his clinical practice, I found that Raj's behaviour and attitude towards colleagues could be quite unprofessional.'*

- Colleague 2 stated in the meeting with the Operations Manager on 22 November 2019:

*'Colleague 7 asked me to speak to Colleague 2 (Care Assistant) as she had approached Colleague 7 with regards to Raj speaking about her personal life to other staff members. Colleague 1 had informed her that Raj had said to [Ms 13] [PRIVATE].*

*Colleague 2 also confirmed that Raj speaks to Colleague 1 in a very negative manner calling him 'useless' suggesting that Colleague 1 should quit and go on benefits. This as (sic) said to Colleague 1 in the kitchen in front of Colleague 2, and [Colleague 5].'*

The panel noted that Colleague 1, Colleague 2 and Colleague 4's accounts set out clearly that Mr Sowky had made comments of the nature set out in charges 7a and 7b. The panel was of the view that the accounts given by Colleague 1, Colleague 4 and Colleague 2 were consistent with each other and further noted Colleague 5's comment that Mr Sowky's behaviour and attitude towards colleagues could be quite unprofessional. The panel noted that three employees at Home 1 had heard, or heard of, Mr Sowky using such phrases. The panel was therefore satisfied that the accounts set out above indicated that on the balance of probabilities, Mr Sowky did use the phrases, or similar phrases, set out in charges 7a and 7b. It therefore found these charges proved.

The panel found that the language alleged to have been used by Mr Sowky in charges 9 and 10 were very similar. It was of the view that as more people had testified to hearing such language being used in charge 10, it should consider charge 10 before charge 9.

### **Charge 10**

*10) Used the following words or a gist of words which were similar to Colleague 3:*

*a) "frigid b\*\*ch"*

*b) "stuck up b\*\*ch"*

*c) "You're just a frigid b\*\*ch"*

**This charge is found proved.**

In considering this charge the panel had regard to the witness statements of Colleague 3, Colleague 2, Colleague 4 and Colleague 1:-

- Colleague 3 stated in her witness statement dated 9 August 2021:

*'Although I can't recall the specific date, I do recall being present in a handover with Raj where he called me a "frigid b\*\*ch." During the handover, I'd noticed that a button on the dress I was wearing had become unfastened. Raj pointed this out and then started to move towards me. The way I interpreted his movement was that Raj was coming towards me, intending to help me fasten my dress. I put my hand out and said that it was okay and that I could manage it myself. Raj then made a comment, although I can no longer remember exactly what he said. [PRIVATE] it was at this point that Raj said that I was a "frigid b\*\*ch." Raj's comment didn't particularly bother me and I didn't feel particularly insulted by what he said. I have quite a thick skin however, the comment was inappropriate during the handover.'*

- Colleague 2 stated in her witness statement dated 27 July 2021:

*'...Raj also made some comments about [Colleague 3]..., who previously worked as a Nurse at Asher. I recall Raj said that Colleague 3 was "stuck up" but I don't remember any more specifics about what he said. I'm not sure whether Raj met [Colleague 3] whilst she was working at Asher or if he met her elsewhere.'*

- Colleague 4 stated in her witness statement dated 6 August 2021:

*'During the time he worked at Asher, I witnessed Raj making highly inappropriate comments towards Colleague 3. Unfortunately, due to the passage of time, I can't remember exactly when these comments took place but I do remember Raj calling Colleague 3 "frigid." I specifically recall him using the word "frigid" and I think he might have called her a "frigid b\*\*ch." Raj also asked Colleague 3 outright about her past sexual partners. I recall one incident at work where Colleague 3 had been wearing a dress and the top button had come undone. Colleague 3 was trying to fasten it up and Raj made a comment towards her. I can't remember exactly what Raj said but Colleague 3 did reply and then Raj said, "You're just a frigid b\*\*ch." This exchange took place during a handover and there were other members of staff present.'*

- Colleague 1 stated in his witness statement dated 27 July 2021:

*'...Colleague 3..., is a Registered Nurse and she worked at Asher previously. From what I understand, Raj knew [Colleague 3] and they worked together a number of years ago. Raj seemed to have a lot of animosity towards [Colleague 3] and I recall him specifically calling her a "stuck up b\*\*ch" and he also called her a "slut." I've asked [Colleague 3] whether she remembers Raj but she told me she does not. I'm not sure whether Raj's animosity towards [Colleague 3] clouded his judgement towards me and resulted in him behaving the way he did. I never witnessed nor heard of Raj treating any of my other colleagues in this manner.'*

The panel noted that there were four separate accounts of witnesses identifying inappropriate comments that were directed at Colleague 3, and set out the use of language in charges 10a, 10b, and 10c. The panel considered each account to be clear and unequivocal in stating that such terms were used by Mr Sowky. It was therefore satisfied on the balance of probability that words of this nature were said by Mr Sowky. It therefore found charges 10a, 10b and 10c proved.

### **Charge 9**

*9) In relation to Colleague 1's [relative]:*

- a) Referred to her as a "stuck up b\*\*ch" and/or "stuck up" or used words that were similar;*
- b) Referred to her as a "slut" or used words that were similar.*

**This charge is found proved.**

In considering this charge the panel had regard to the witness statements of Colleague 1 and Colleague 3:-

- Colleague 1 stated in his witness statement dated 27 July 2021:

*'...[Colleague 3], is a Registered Nurse and she worked at Asher previously. From what I understand, Raj knew [Colleague 3] and they worked together a number of years ago. Raj seemed to have a lot of animosity towards [Colleague 3] and I recall him specifically calling her a "stuck up b\*\*ch" and he also called her a "slut."*

- Colleague 3 stated in her witness statement dated 9 August 2021:

*'I remember Raj calling me a "stuck up b\*\*ch" and I found the way that he focussed on my job at [PRIVATE] a bit unusual. I don't remember ever seeing him within the hospital – the only people I really mixed with at [PRIVATE] were the patients and the staff team on the Wards where I worked.'*

The panel noted that, other than Colleague 3, to whom the comment was made, Colleague 1 was the only other person who had witnessed the incident. The panel was conscious of the familial relationship between Colleague 3 and Colleague 1. However, having noted its finding with regard to charge 10, the panel was of the view that the language identified in charge 10 was so similar to that identified in charge 9, and was satisfied on the balance of probabilities, that Mr Sowky did refer to colleagues as set out in charges 9a and 9b. It therefore found charges 9a and 9b proved.

## **Charge 11**

*11) Asked Colleague 3 about her past sexual partners.*

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

In considering this charge the panel had regard to the statement of Colleague 4, which states:

*'During the time he worked at Asher, I witnessed Raj making highly inappropriate comments towards [Colleague 3]...Raj also asked [Colleague 3] outright about her past sexual partners.'*

The panel noted that Colleague 3 did not mention that Mr Sowky had asked her about past sexual partners. However, the panel noted from the evidence before it, that Mr

Sowky had made other comments of a sexual nature, and had attempted to do up a button on Colleague 3's dress. It was therefore of the view that, based on Mr Sowky's over familiar behaviour towards Colleague 3, it was more likely than not on the balance of probabilities, that Mr Sowky had asked Colleague 3 about her past sexual encounters. It therefore found charge 11 proved.

## **Charge 12**

*12) On one or more occasions acted inappropriately towards female colleagues in that you:*

- a) Touched Colleague 4, namely by placing your hand(s) on Colleague 4 hip(s);*
- b) Touched Colleague 5, namely by placing your hand(s) on Colleague 5 hip(s);*
- c) Pushed your body against Colleague 2 who was seated at the time.*

## **These charges are found proved.**

In considering these charges the panel had regard to the witness statements of Colleague 4, Colleague 5 and Colleague 2, who all stated that Mr Sowky had touched them as set out in the charges respectively. The panel noted in particular the following passages from their statements:-

- Colleague 4 stated in her witness statement dated 6 August 2021:

*'...Raj was quite a tactile person and on several occasions when he was passing me in the corridor, he placed his hands on me to get past. He was always just a bit too close. He would place his hands on my hips to get past, rather than simply saying "excuse me." This happened particularly when people were coming in and out of the kitchen. The kitchen is quite small and the fridge is on one side with the counter top on the opposite side. The door opens inwards, so it becomes quite a tight squeeze to get in and out. On quite a few occasions, Raj placed his hands on my hips when he was trying to get past or into the kitchen,*

*rather than giving me time to move out of his way. I also witnessed Raj do this to Colleague 3 however, Colleague 3 was quite an old school nurse and she was very direct and simply told Raj to take his hands off her.'*

- Colleague 5 stated in her witness statement dated 15 July 2021:

*'During the time that I worked with him, I also found that Raj could be quite tactile with female staff members. The kitchen is quite small and on a number of occasions, Raj put both his hands on my hips as he was trying to get past me, instead of simply saying "excuse me" and waiting for me to move out of his way. I didn't really think much of this behaviour at the time or find it untoward but, reflecting on it now, it's something that he did quite a lot.'*

- Colleague 2 stated in her witness statement dated 27 July 2021:

*'Although I don't remember the exact date, I also recall another incident whilst Raj was working at Asher which made me feel really uncomfortable. I was sitting on a chair and working at one of the computers. Raj pushed his body up against the back of the chair I was sitting on. There was plenty of room behind the chair for Raj to get past and I couldn't really understand why he was so close to me. The whole episode just made me feel really uncomfortable and uneasy.'*

Having considered these passages, the panel was of the view that Mr Sowky had a pattern of touching female colleagues in an unprofessional manner, which often made them feel uncomfortable, and made other colleagues who witnessed it feel uncomfortable. The panel noted that three colleagues had confirmed that Mr Sowky had touched them as set out in the charges.

This pattern of behaviour was also noted by Colleague 1 who stated in his witness statement dated 27 July 2021:

*'During the time I worked with him, I witnessed a couple of occasions where I felt Raj's behaviour towards a couple of my female colleagues was quite inappropriate. On the first occasion, one of the other HCAs, [Colleague 2] was sitting in a chair, working at one of the computers. I saw Raj pushing his body up against the back of the chair where Colleague 2 was sitting. There was lots of*

*room behind the chair, so I couldn't see any reason for Raj's actions. It wasn't as if he was having to squeeze past. I don't recall whether Raj touched Colleague 2 but I do recall him holding on to the chair and I remember feeling that he had overstepped the mark a little and was invading Colleague 2's personal space. Colleague 2 mentioned to me privately that she had felt a bit uncomfortable by the incident however I'm not sure whether she reported it to the Home Manager.'*

The panel noted that Colleague 1 had stated that he had seen Mr Sowky exhibit inappropriate behaviour towards female colleagues on more than one occasion.

The panel was satisfied from the accounts of Colleague 4, Colleague 5, Colleague 2 and Colleague 1 that Mr Sowky had, on the balance of probabilities, touched Colleague 4, Colleague 5 and Colleague 2 as set out in charges 12a, 12b, and 12c. It therefore found these charges proved.

### **Charge 13a**

*13) In relation to Colleague 2:*

*a) On or around 2 November 2019 disclosed confidential information,  
[PRIVATE].*

**This charge is found proved.**

In considering this charge, the panel had regard to the evidence of Colleague 2 and Colleague 7.

- Colleague 2 stated in her witness statement dated 27 July 2021:

*'I can't remember the exact date but in November 2019, I was approached by Colleague 1 who told me that he had overheard Raj talking to another Registered Nurse who was working at Asher [PRIVATE].*

*When Colleague 1 told me this, I felt violated. I had no information about what Raj had actually said and no-one would tell me what had actually been said. It made me concerned about what people knew about me after that.*

*During my time at Asher, the Deputy Manager [Colleague 7] has always been very supportive towards me. I was really upset when I found out that Raj had been sharing information about me so I approached Colleague 7 to report what had happened and to seek support. I was then asked to attend a meeting with the Regional Manager, [Mr 12], which took place on 22 November 2019. Colleague 7 came with me for support.'*

**[PRIVATE]**. It therefore found charge 13a proved.

### **Decision on whether to amend to Charge 13b**

In considering charge 13b the panel noted that the evidence before it did not reflect the date set out in the charge. It therefore considered whether to amend the date to reflect the evidence more accurately.

The panel heard and accepted the advice of the legal assessor in this regard.

The panel noted that charge 13b alleged that Mr Sowky had referred to Colleague 2 as "**[PRIVATE]**" on 15 November 2019. However, the evidence before the panel was that the incident had allegedly occurred prior to the handover on 15 November 2019.

The panel was of the view that it would not be unfair or prejudice Mr Sowky if it was to amend the charge to include the words '*or around*' to read:

*'On or around 15 November 2019 referred to Colleague 2 as "**[PRIVATE]**'*

It noted that Mr Sowky had not responded to the charges, and therefore this amendment could not cause any prejudice to a response he had not given. The panel was of the view that the amendment was fair, as the date was not the main issue in

relation to the charge, but what had been said. It determined that the amendment would better reflect the evidence and determined to amend the charge as set out above.

### **Charge 13b and 13c**

*b) On or around 15 November 2019 referred to Colleague 2 as  
“[PRIVATE]”*

*c) Used the words “[PRIVATE]” or a gist of words that were similar.*

### **These charges are found proved.**

In considering this charge the panel had regard to the witness statement of Colleague 1 which states:

*[PRIVATE] I overheard Raj speaking to another Registered Nurse and making some awful remarks about Colleague 2. I can't recall the precise date but it was certainly before the incident at the handover on 15 November 2019. Raj called Colleague 2 “[PRIVATE]” and said “[PRIVATE]”. He wasn't speaking particularly quietly and he didn't seem concerned that there may be other people milling about who could hear him. Colleague 2 has worked at Asher for a long time now and I felt that Raj's comments were highly inappropriate. They showed a complete lack of respect for both Colleague 2 as a person [PRIVATE]’.*

The panel took into consideration the context set out by Colleague 1, in which Mr Sowky had disclosed confidential information about Colleague 2; [PRIVATE].

The panel also took into consideration the fact that Mr Sowky had worked [PRIVATE], and had lied about this to the management at Home 1. The panel was of the view that Mr Sowky was unlikely to have forgotten he had worked [PRIVATE] for a period of some 7 months.

The panel noted that Colleague 1's evidence was the only evidence before it setting out the words used in relation to charges 13b and 13c. However, the panel took into account Colleague 2's statement that she had not been told what Mr Sowky had said about her. The panel considered that it was plausible that Colleague 1 would not have told Colleague 2 what had been said [PRIVATE]. The panel was therefore of the view

that Mr Sowky did make inappropriate comments **[PRIVATE]**, and on the balance of probabilities did say the words as set out in charges 13b and 13c. It therefore found these charges proved.

#### **Charge 14**

*14) Used the following words to a male patient “You’ve been f\*\*king the vicar’s daughter” or a gist of words which were similar.*

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

In considering this charge, the panel had regard to Colleague 1’s statement dated 27 July 2021, which states:

*‘There’s only one occasion where I recall Raj making a comment which I felt was quite inappropriate towards one of our residents. The resident is male **[PRIVATE]**. Raj said to him, “You’ve been f\*\*\*ing the Vicar’s daughter.” I don’t know what Raj actually meant by that comment, or whether there’s an underlying meaning to what he said. I think it was meant as a bit of a joke. **[PRIVATE]** I don’t think he (the resident) took any offence. However, I feel that the comment itself was just highly inappropriate.’*

The panel noted that Colleague 1’s evidence was the only evidence before the panel regarding this charge. However, the panel considered Colleague 1’s account to be fair commenting that he did not believe the resident had taken offence.

The panel also took into account the number of inappropriate and sexual comments Mr Sowky had made to his colleagues, and was of the view that such the nature of conversation could have crossed the line over into his communication with residents. The panel was therefore satisfied on the balance of probabilities, that it was more likely than not that Mr Sowky had used the words as set out in charge 14 to the resident. It therefore found charge 14 proved.

#### **Charge 15**

15) On or around 9 January 2020:

- a) Was not able to read the medication charts;
- b) Did not select the correct medication boxes;
- c) Did not inform the Deputy Manager that you required spectacles prior to conducting the medication round.

**These charges are found proved.**

In considering this charge, the panel had regard to the witness statement of Colleague 11 which states:

*'On the second day of his induction, I was supervising Raj's medication round when I noticed that Raj appeared to be struggling to see and read what was written on the MAR charts and the labels on the medication boxes. Whilst he was completing the medication round, I noticed that Raj was picking up incorrect boxes of medication, which didn't correspond to the medication which was prescribed on the MAR chart. Because I was supervising the medication round, I highlighted these errors to Raj directly and I was able to intervene to ensure that none of the residents received incorrect medication or came to any harm.*

*I recall approaching the Home Manager, [Colleague 8] and raising my concerns with her. [Colleague 8] and I then had another discussion with Raj and during this discussion, Raj told us that he did not have his glasses with him at work. Without his glasses, Raj said that he was struggling to read the MAR sheets and the medication boxes.'*

In considering this passage, the panel noted that this was an observation by a nurse who was supervising Mr Sowky on his second day of induction at Home 2. Having noted that this was only Mr Sowky's second day of induction, the panel was of the view that there was unlikely to have been any animosity towards Mr Sowky from Colleague 11. It was also of the view that Colleague 11 had been conducting a clinical induction, and found her statement to be credible, accepting that Mr Sowky was not able to read the medication charts, did not select the correct medication boxes, and did not inform her

that he required spectacles to conduct a medication round until after he had conducted the medication round, during his discussion with Colleague 11 and Colleague 8. The panel therefore found these charges proved.

### **Charge 16**

*16) On or around 9 January 2020 did not remove a key from the lock of a medication cupboard.*

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

In considering this charge the panel had regard to the witness statement of Colleague 11, and the signed induction forms which confirmed that she did carry out the induction. The witness statement states:

*Whilst I was supervising Raj's medication round on the second day of his induction, I noticed that Raj left the master key in the lock of the medication cabinet door within one of the resident's rooms. It's very important for the medication cabinets to remain locked at all times because this keeps the medication secure and avoids any of the residents coming to any harm. I noticed that Raj had left the keys in the lock so reminded him to remove the keys and not forget about them. I told Raj that it's not safe practice to leave the keys – it was left hanging in the lock with a number of other keys on the outside of the medication cabinet. I explained that if the key was forgotten then anyone could access the medication and this could result in harm. I had to remind Raj about the keys on more than one occasion during the supervised medication round. No harm came to any of our residents because I was there and was able to deal with the issue immediately and prevent any risk.*

*Following the second day of Raj's induction, I wasn't completely happy with Raj's approach and felt that the issues that I'd encountered could compromise the safety of the residents. I was worried that Raj's actions placed our residents at risk of harm and I wasn't really confident in Raj's skills or comfortable allowing*

*him to complete the medication round unsupervised. I decided to continue supervising Raj's practice on the third day of his induction. On this day (14<sup>th</sup> January 2020), Raj had his glasses and was able to read both the MAR charts and the medication labels perfectly. He also seemed to have taken on board what I said about the keys for the medication cabinets and ensured that the cabinets were locked and the keys removed. At the end of the supervised medication round, I felt more comfortable and confident that Raj could complete the medication round safely.'*

The panel noted from Colleague 11's evidence that she took it upon herself to monitor Mr Sowky for a third day as she still had concerns about his practice. The panel considered Colleague 11's evidence to be a detailed account of her concerns regarding Mr Sowky's practice with the keys, and the actions that she took to help rectify his practice to include explaining the risk of what could happen to the medication. The panel noted that Colleague 11 had gone into some detail in explaining the risks and had been fair to Mr Sowky in stating that he had improved by the end of the third day and had taken on board what she had said regarding the keys. The panel had no reason to doubt the credibility of Colleague 11's evidence, noting her fairness in accrediting Mr Sowky as having rectified the issue. The panel therefore found this charge proved on the balance of probabilities.

### **Charge 17**

*17) On 1 February 2020, night shift, slept for more than one hour whilst on duty.*

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

In considering this charge, the panel had regard to the statement of Colleague 8, which states:

*'Raj was working the night shift of 1 February 2020 from 2000 to 2 February 0800 on the night in question. He was found sleeping for between 3-4 hours during this shift by our Senior Healthcare Assistant [Colleague 9], I produce Exhibit*

*GM/01 – Incident Form completed by [Colleague 9] date of incident 1 February 2020. [Colleague 9] had found Raj sleeping in the lounge while she was working on this night shift with him. This had been the first shift Raj had worked on independently without another nurse on duty with him. I was informed by [Colleague 9] on 2 February and she completed the incident form on 3 February. Staff are permitted a 1 hour break during their shift'*

The panel also had regard to the incident form dated 1 February 2020, which records Colleague 9's account of what she witnessed and reported to Colleague 8 as follows:

*'I was working with Raj on the night shift and I found him sleeping in the lounge on the recliner chair. He slept and was snoring for about 3 hours from 1.00 am to 4 am o'clock. He didn't carry out the hourly check on the residents...In this case I do not feel confident to work with him again.'*

The panel noted that this was a contemporaneous note made by Colleague 9 on 1 February 2020, which recorded that she had carried out the resident checks by herself.

The panel also had regard to the investigatory meeting minutes held with Mr Sowky on 7 February 2020 which states:

*'Raj immediately said that as far as he can remember he only slept for 1 hour but may have extended a little. He was asked whether he was aware that staff are only allowed 1 hour break -raj said he had set his alarm and he might have slept a little longer. He was informed that we have an incident record from the staff saying that the carer found him sleeping in the lounge on the recliner chair. He slept for about 3 hour from 1.00 am to 4am. Raj said he had set the alarm to take a break for 1 hour and he may have overslept a little but denied it was 3 hours. He was also informed that the home allows 1 hour paid break per 12 hour shift. The senior carer on duty carried out the hourly checks while he was sleeping and in her incident record she says she doesn't feel confident working with him anymore.'*

The panel had regard to Mr Sowky's acceptance that he may have slept '*a little longer than 1 hour*'. The panel took into account that Colleague 9 had confirmed that she had carried out the resident checks by herself, and had felt concerned enough to report that he had slept for more than one hour as an incident. The panel was therefore satisfied, on the balance of probabilities that Mr Sowky had slept for more than one hour. It therefore found this charge proved.

### **Charge 18**

*18) On 2 February 2020 did not record that Resident A had not received her morning medication, namely Oramorph before 08:00 hrs.*

### **This charge is found NOT proved.**

In considering this charge, the panel had regard to the witness statement of Colleague 8 who records Colleague 9's complaint as follows:

*'In addition to this incident, Raj also failed to handover to staff coming onto the day shift of 2 February that Resident A had not received the morning dose of all her medications including oramorph on 2 February. Oramorph had been prescribed to help alleviate Resident A's pain. Resident A received dosages of oramorph at varied times in the early morning as and when required and had been reliant upon nurses to prompt her to take her medication. It was important for Raj to hand this over to day shift staff so that they had the opportunity to prioritise resident's medication more urgently.'*

The panel noted from this statement that the Oramorph medication had been prescribed on a '*as when required basis*'. The panel had no evidence before it to show that Resident A had requested Oramorph earlier that morning.

Furthermore, the panel had regard to the evidence of Colleague 10 that Resident A was asleep at the time in question. It therefore found that there was no duty for Mr Sowky to give Oramorph to Resident A, and as such there was no obligation for him to have made a record. The panel therefore found this charge not proved.

## **Charge 19**

*19) On 2 February 2020 in relation to residents that had not received their medication made entries in the communication book for 3 February 2020.*

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

In considering this charge, the panel had regard to the supplementary witness statement of Colleague 8 which states:

*'I explained that Raj documented that a number of residents had not received their medication. However, Raj incorrectly documented this in the Communication Book for 3 February 2020, instead of 2 February 2020. The entries on 3 February 2020 (**Exhibit GM/3**) which read "Meds to be given 6, 12, 9, 15, 20, 21" and "Rm 9 [Resident D] was given Tyroxine" were both added by Raj. Both these entries were added to the wrong day. They should have been written on the page for 2 February 2020. Raj wasn't on duty on 3 February 2020.'*

The panel next considered the Communication Book for 2 February 2020 and 3 February 2020. It noted that the entry in relation to residents not having received their morning medication had not been recorded on the 2 February 2020, but mistakenly recorded on page for 3 February 2020 instead. The panel therefore found this charge factually proved.

## **Charge 20**

*20) In charge 12(a) to 12(c) your behaviour was sexually motivated.*

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

In considering this charge, the panel had regard to the evidence of Colleague 2, Colleague 4, Colleague 5 and Colleague 1.

- Colleague 2 stated in her witness statement dated 27 July 2021:

*'Although I don't remember the exact date, I also recall another incident whilst Raj was working at Asher which made me feel really uncomfortable. I was sitting on a chair and working at one of the computers. Raj pushed his body up against the back of the chair I was sitting on. There was plenty of room behind the chair for Raj to get past and I couldn't really understand why he was so close to me. The whole episode just made me feel really uncomfortable and uneasy.'*

- Colleague 4 stated in her witness statement dated 6 August 2021:

*'There are also a couple of other issues which I'd like to raise. Raj was quite a tactile person and on several occasions when he was passing me in the corridor, he placed his hands on me to get past. He was always just a bit too close. He would place his hands on my hips to get past, rather than simply saying "excuse me." This happened particularly when people were coming in and out of the kitchen. The kitchen is quite small and the fridge is on one side with the counter top on the opposite side. The door opens inwards, so it becomes quite a tight squeeze to get in and out. On quite a few occasions, Raj placed his hands on my hips when he was trying to get past or into the kitchen, rather than giving me time to move out of his way. I also witnessed Raj do this to Colleague 3 however, Colleague 3 was quite an old school nurse and she was very direct and simply told Raj to take his hands off her.'*

- Colleague 5 stated in her witness statement dated 15 July 2021:

*'During the time that I worked with him, I also found that Raj could be quite tactile with female staff members. The kitchen is quite small and on a number of occasions, Raj put both his hands on my hips as he was trying to get past me, instead of simply saying "excuse me" and waiting for me to move out of his way.'*

*I didn't really think much of this behaviour at the time or find it untoward but, reflecting on it now, it's something that he did quite a lot.'*

- Colleague 1 stated in his witness statement dated 27 July 2021:

*'During the time I worked with him, I witnessed a couple of occasions where I felt Raj's behaviour towards a couple of my female colleagues was quite inappropriate. On the first occasion, one of the other HCAs, [Colleague 2] was sitting in a chair, working at one of the computers. I saw Raj pushing his body up against the back of the chair where Colleague 2 was sitting. There was lots of room behind the chair, so I couldn't see any reason for Raj's actions. It wasn't as if he was having to squeeze past. I don't recall whether Raj touched Colleague 2 but I do recall him holding on to the chair and I remember feeling that he had overstepped the mark a little and was invading Colleague 2's personal space. Colleague 2 mentioned to me privately that she had felt a bit uncomfortable by the incident however I'm not sure whether she reported it to the Home Manager.'*

From the above accounts the panel noted that Mr Sowky only appeared to have been tactile in this way with his female colleagues. It noted in particular Colleague 5 and Colleague 1's excerpts dealing specifically with this point.

The panel also had regard to its findings in charges 12a, 12b, and 12c that Mr Sowky had placed his hands on the hips of two female colleagues, and pushed his body against another while she was seated. The panel was of the view that there were other more appropriate ways for Mr Sowky to get past his colleagues, such as waiting for them to move, or expressing that he needed to pass. The panel noted that there was no explanation provided by Mr Sowky as to why he had touched his female colleagues in the manner set out in charges 12a, 12b and 12c.

The panel also considered the incident where Mr Sowky attempted to do up a button of Colleague 3's dress. It had regard to Colleague 3's witness statement dated 9 August 2021 which recorded the following:

*'Although I can't recall the specific date, I do recall being present in a handover with Raj where he called me a "frigid b\*\*ch." During the handover, I'd noticed that a button on the dress I was wearing had become unfastened. Raj pointed this out and then started to move towards me. The way I interpreted his movement was that Raj was coming towards me, intending to help me fasten my dress. I put my hand out and said that it was okay and that I could manage it myself. Raj then made a comment, although I can no longer remember exactly what he said. [PRIVATE] it was at this point that Raj said that I was a "frigid b\*\*ch." Raj's comment didn't particularly bother me and I didn't feel particularly insulted by what he said. I have quite a thick skin however, the comment was inappropriate during the handover.'*

The panel found this action of Mr Sowky, similar to those found in 12a, 12b, and 12c. The panel was of the view that these actions were not accidental, and evidenced a pattern of behaviour with female colleagues. They were behaviours which some of his colleagues had reported as making them feel uncomfortable.

The panel considered Mr Sowky's actions within the context of the number of sexual comments he had been found to have made to his colleagues, and was satisfied, on the balance of probabilities, that Mr Sowky's behaviour, as set out in charges 12a, 12b, and 12c were sexually motivated. It therefore found this charge proved.

### **Charges 21a, 21b and 21c**

*21) Provided the following information, after 26 September 2019, to MacLeod Pinsent Care Homes Limited regarding an ongoing NMC investigation (Ref: [PRIVATE] by stating:*

- a) That you had been on a break and an agency nurse on duty failed to provide medication to a patient suffering from a personality disorder;*
- b) That the Nursing and Midwifery Council (NMC) had not followed up or communicated with you;*
- c) That you had been able to renew your nursing registration without issue;*

## **These charges are found proved.**

In considering charges 21a, 21b and 21c, the panel had regard to Colleague 8's witness statement. It noted that Colleague 8's statement stated Mr Sowky was told at an investigatory meeting with Colleague 8, on 7 February 2020, that management had '*...heard from [the] NMC about other incidents at Asher nursing home*'. The panel was satisfied that the investigation meeting took place after 26 September 2019.

The panel also had regard to Colleague 8's written response to the NMC investigation which stated:

*'Can you recall Raj's attitude towards the referrals and whether he said anything about the fact that he had been referred to the NMC?*

*All that he said was that while he was on his break the agency nurse failed to provide medication to a disturbed patient with unstable personality disorder but he had delegated to the agency nurse before he went on his break informing them to look after the patients. He said that NMC hadn't followed up or communicated conclusively and he had been renewing his registration without any issues...'*

The panel noted that this was the response from the Home Manager, in relation to an NMC investigation, where Colleague 8 had set out how Mr Sowky had responded when asked about his referral to the NMC. The panel was of the view that the response provided by Colleague 8 was sufficiently detailed to be able to conclude on the balance of probabilities that such a response was made by Mr Sowky. The panel was therefore satisfied that Mr Sowky did make the statements as set out in charges 21a, 21b, and 21c after 26 September 2019. It therefore found these charges proved.

## **Charge 21d**

*21) Provided the following information, after 26 September 2019, to MacLeod Pinsent Care Homes Limited regarding an ongoing NMC investigation (Ref: [PRIVATE] by stating:*

*d) That you were being called as a witness.*

**This charge is found NOT proved.**

In considering this charge, the panel had regard to the witness statement of Colleague 6 dated 18 August 2021 which states:

*'During the time Raj worked at Asher, he did disclose that he had been involved in an incident which occurred when he was working for The Priory Group. Raj told me that he was being called as a witness following an incident which took place at the hospital where he had worked, but he didn't disclose any additional information about this.'*

The panel noted that Colleague 6's statement did not state when Mr Sowky allegedly told him that he was being called as a witness. In the panel's view this needed to be a specific date after 26 September 2019 for this charge to be made out. The panel had regard to the fact that Colleague 6's statement mentioned that he had interviewed Mr Sowky on 10 September 2019, and that Mr Sowky had started working at Home 1 on 1 October 2019. However, without having been provided with any indication of when Mr Sowky allegedly told Colleague 6 that he was being called as a witness, the panel could not find this charge proved on the balance of probabilities.

**Charge 22a**

*22) The information provided in charge 21 (a) to (d) was dishonest in that:*

*a) In relation to charge 21(a) you knew prior to 26 September 2019, that the NMC had raised regulatory concerns regarding your failures in maintaining staffing levels, medication errors, and record keeping errors;*

**This charge is found proved.**

In considering this charge the panel had regard to the letter from the NMC sent to Mr Sowky dated 12 June 2018 which clearly listed the regularly concerns as follows:

- *'Failure to maintain safe staffing levels resulting in patient harm on 19*

September 2017.

- *Failure to ensure observations were completed 4x hourly on 14 October*

In considering the allegation of dishonesty, the panel noted that the relevant law was set out in the Supreme Court decision of *Ivey v Genting Casinos [2017] UKSC 67*.

In paragraph 74 of his Judgement Lord Hughes said:

*“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”*

The panel was satisfied from having sight of this letter that Mr Sowky had been made aware of the regulatory concerns prior to 26 September 2019. It was satisfied that Mr Sowky knew that these were regulatory concerns as they were titled ‘*Regulatory concerns*’ in bold on the first page of the letter. The panel was therefore satisfied that, by telling Colleague 8, the Manager, that he was not aware of any NMC concerns prior to 26 September 2019, Mr Sowky was seeking to gain an advantage by not telling the care home the truth. The panel was also satisfied that Mr Sowky’s representation, as set out in charge 21a, would be regarded as dishonest by the standards of ordinary decent people. It therefore found charge 22a proved.

#### **Decision on whether to admit the NMC letter dated 13 March 2020 as evidence**

In considering charge 22b, the panel noted that it had not been provided with the NMC letter addressed to Mr Sowky, dated 9 March 2020. It therefore requested a copy of the

same under Rule 25 (b) of the Rules. The panel was informed by an officer of the NMC that there was no letter dated 9 March 2022, but a letter dated 13 March 2022 which was created on 9 March 2022. The panel was informed that charge 22b should have referred to a letter dated 13 March 2022 and not 9 March 2022. The panel was provided with a copy of the letter dated 13 March 2022 and considered whether it should be admitted as evidence.

The panel heard and accepted the advice of the legal assessor in relation to Rule 31.

The panel was satisfied that the letter dated 13 March 2020 was relevant to its finding, as this is the letter that was supposed to have been provided in support of charge 22b. The panel also found that it was fair to admit the letter as Mr Sowky would have seen the document as it had been sent to him. The panel therefore determined to admit the NMC letter addressed to Mr Sowky into evidence.

### **Decision on whether to amend to Charge 22b**

Having seen a copy of the NMC letter dated 13 March 2020, the panel next considered whether to amend charge 22b, by changing '*9 March 2020*' to '*13 March 2020*'.

The panel heard and accepted the advice of the legal assessor in relation to Rule 28.

Having been informed by an NMC Officer that the letter dated 13 March 2020, had been created on 9 March 2020, the panel was of the view that the reference to 9 March 2020 was an administrative error.

The panel was also of the view that there would be no unfairness to Mr Sowky in amending the charge as Mr Sowky would have been sent a copy of the letter dated 13 March 2020. Furthermore, it considered that the amendment would be fair as there was no letter dated 9 March 2020 which could have led Mr Sowky to believe that there were more regulatory concerns.

The panel was satisfied that the date of the letter was not the main issue in relation to the charge, but the content of the letter setting out the regulatory concerns. It therefore was of the view that the amendment could be made without injustice to either party and determined that charge 22b should be amended as follows:

*'In relation to charge 21(b) you knew you had been informed of 2 regulatory concerns by a letter dated 17 October 2018 and of a further 2 regulatory concerns by a letter dated 9 **13** March 2020.*

### **Charge 22b**

*b) In relation to charge 21(b) you knew you had been informed of 2 regulatory concerns by a letter dated 17 October 2018 and of a further 2 regulatory concerns by a letter dated 13 March 2020.*

### **The panel found this charge proved.**

In considering this charge the panel had regard to the NMC letters addressed to Mr Sowky dated 17 October 2018 and 13 March 2020 which it noted that the letters both clearly listed at least two regulatory concerns in each letter, which contained the words '*regulatory concerns*' in bold. It further noted that the letters contained different regulatory concerns.

The panel was satisfied that the regulatory concerns were clearly set out in the respective letters, and that copies had been sent to Mr Sowky. The panel therefore found that Mr Sowky's representation as set out in charge 21b, that the NMC had not followed up or communicated with him, was made with the intention of leading his prospective employers to believe that he was not the subject of concerns by the NMC. The panel was also satisfied that Mr Sowky's conduct in knowingly making this false representation would be regarded as dishonest by the standards of ordinary decent people. It therefore found charge 22b proved.

### **Charge 22c**

*c) In relation to charge 21(c) you knew that your registration had been continued as you were under investigation by the NMC;*

### **This charge is NOT proved.**

In considering this charge, the panel had regard to the NMC letters addressed to Mr Sowky dated 17 October 2018 and 13 March 2020. Having read the letters, the panel noted that there was no information contained therein which notified Mr Sowky that his nursing registration would continue while he was under investigation. Furthermore, there was no evidence before the panel that contained this information. The panel therefore could not be satisfied that Mr Sowky knew that his registration had been continued as a result of him being under investigation by the NMC. It therefore found this charge not proved.

### **Charge 22d**

*'d) In relation to charge 21(d) you knew you were not being called as a witness.'*

With the panel not having found charge 21d proved, charge 22d fell away.

### **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 Sowky's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the

circumstances, Mr Sowky's fitness to practise is currently impaired as a result of that misconduct.

## **Decision and reasons on misconduct**

In coming to its decision 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 (*Roylance*) and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

The panel had regard to the definition of misconduct set out in the case of *Roylance*, namely a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code).

The panel was of the view that Mr Sowky's actions did fall significantly short of the standards expected of a registered nurse, and that his 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...*
- 1.5 respect and uphold people's human rights*

### **8 Work co-operatively**

*To achieve this, you must:*

- 8.2 maintain effective communication with colleagues*

8.7 be supportive of colleagues who are encountering health or performance problems. However, this support must never compromise or be at the expense of patient or public safety

### **10 Keep clear and accurate records relevant to your practice**

*This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.*

*To achieve this, you must:*

10.1 complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

### **13 Recognise and work within the limits of your competence**

*To achieve this, you must, as appropriate:*

**18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations**

*To achieve this, you must:*

18.4 take all steps to keep medicines stored securely

**19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice**

*To achieve this, you must:*

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

**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 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*

*20.4 keep to the laws of the country in which you are practising*

*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*

*20.7 make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way*

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

*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*

***23 Cooperate with all investigations and audits This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.***

*To achieve this, you must:*

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mr Sowky's actions amounted to serious breaches of nursing standards and serious professional misconduct. Mr

Sowky made numerous inappropriate sexual comments to colleagues and a resident, which caused distress to some colleagues, and may have impacted negatively on the resident. Mr Sowky also disclosed **[PRIVATE]** information concerning a colleague, intimidated a junior colleague, and put residents at a risk of harm with regard to his medicine management and record keeping practices. Mr Sowky also displayed serious dishonesty, by purposely not informing potential employees of his ongoing investigations with the NMC.

The panel therefore found that Mr Sowky's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

However, with regard to charge 19, which involved a minor slip in recording a correct date, the panel concluded that the facts were not sufficiently serious to amount to misconduct.

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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/their fitness to practise is impaired in the sense that S/He/They:*

- 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 finds that residents were put at risk as a result of Mr Sowky's misconduct. Mr Sowky's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel had no evidence before it to show that Mr Sowky had developed any understanding of how his actions put residents at a risk of harm, affected his colleagues or impacted negatively on the reputation of the nursing profession. Further, the panel noted that Mr Sowky had not demonstrated any remorse for his actions at the time of the incidents, or to date. The panel was therefore of the view that Mr Sowky had no insight into his misconduct.

The panel was satisfied that the misconduct in relation to record keeping and medicine management was capable of being addressed. It was also of the view that the behaviours demonstrated in respect of professional boundaries, confidentiality, and inappropriate behaviours were potentially remediable, although were much harder to be remedied. However, the panel had regard to the fact that Mr Sowky had: repeated his dishonest behaviour in failing to tell two homes about his ongoing NMC investigation; used inappropriate sexual language towards colleagues and a resident; touched female colleagues with sexual motivation; disclosed **[PRIVATE]** information about a colleague; and repeatedly sought to bully a junior member of staff. In light of Mr Sowky's failure to demonstrate any insight, remorse or evidence of remediation in these areas, the panel is of the view that there is a real risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that a finding of impairment on public interest grounds is required as a member of the public would be concerned if a nurse, who had acted as set out above, was allowed to practise without restriction.

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

Having regard to all of the above, the panel was satisfied that Mr Sowky's fitness to practise is currently impaired.

## **Sanction**

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

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

## **Decision and reasons on sanction**

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

The panel took into account the following aggravating features:

- Abuse of a position of trust in respect of Mr Sowky's behaviour towards junior members of staff
- Wide ranging unprofessional behaviour toward patients and residents to include sexual harassment and bullying
- Vulnerable residents were put at risk
- Lack of insight into failings
- The misconduct took place in two different care homes within a short period of time

- A pattern of misconduct over a short period of time from the commencement of employment

The panel did not find any mitigating factors in this case.

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 Sowky's practice would not be appropriate in the circumstances.

The panel next considered whether placing conditions of practice on Mr Sowky'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 in this case. The panel had regard to the fact some of the misconduct identified in this case related to deep seated attitudinal issues and dishonesty. It was of the view these were not issues that could not be easily addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Sowky's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel found that there was no evidence of the above factors being present in this case. It noted that there were multiple instances of misconduct by Mr Sowky across two care facilities and within a short space of time. Mr Sowky's displayed signs of a harmful deep-seated attitudinal problem, which the panel found evident by his use of inappropriate sexual language towards colleagues and a resident, his inappropriate touching of female colleagues which the panel found to have been sexually motivated, the sustained bullying of a junior member of staff, and his repeated dishonesty. The panel was of the view that in light of the fact that Mr Sowky has not shown any insight, remediation or remorse, there was a significant risk of him repeating the misconduct found. The panel also considered the dishonesty in this case to be serious, noting that Mr Sowky had not informed two potential employers of his ongoing NMC investigations, thereby potentially putting patients at risk of harm.

Mr Sowky's misconduct as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Sowky's actions is fundamentally incompatible with him remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

The panel was satisfied that Mr Sowky's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him

remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Sowky'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 matters it identified, in particular the effect of Mr Sowky's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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 Sowky 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 Sowky's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **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 due to take the current court workload, and the amount of time it may take for any appeal to conclude.

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

That concludes this determination.