

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

**Substantive Hearing
Tuesday, 1 August 2023 – Friday, 4 August 2023
Monday, 7 August 2023**

Virtual Hearing

Name of Registrant:	Samuel Tsaurai Katanda
NMC PIN	13F1020E
Part(s) of the register:	Registered Nurse – Sub part 1 Mental Health Nursing – 26 August 2013
Relevant Location:	Cambridge
Type of case:	Misconduct
Panel members:	Patricia Richardson (Chair, Lay member) Jonathan Coombes (Registrant member) Paul Leighton (Lay member)
Legal Assessor:	Charles Conway (1 August – 4 August 2023) Nigel Pascoe KC (7 August 2023)
Hearings Coordinator:	Stanley Udealor
Nursing and Midwifery Council:	Represented by Matt Cassells, Case Presenter
Mr Katanda:	Not present and unrepresented at the hearing
Facts proved:	Charges 1, 2a, 2b, 3, 4, 5, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 6q, 6r, 6s, 7a, 7b, 7c, 8a, 8b, 9, 10, 11, 12
Facts not proved:	Charge 8c
Fitness to practise:	Impaired
Sanction:	Striking-off order

Interim order:

Interim suspension order (18 months)

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

At the outset of the hearing, Mr Cassells, on behalf of the Nursing and Midwifery Council (NMC), made an application that this case should be held partly in private in that the identity of a witness who is a relative to Patient A should be anonymised as well as the identity of the organisations involved in the care of Patient A. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Cassells submitted that there is a necessity for the witness to be anonymised as Relative B, additionally, that sensitive matters relating to Patient A's health and identity, as contained in the evidence of the witness, should be held in private, in order to protect the privacy and identity of Patient A.

With regards to the organisations, Mr Cassells submitted that there is a danger that the identity of Patient A could be gleaned if the identity of the organisations involved in Patient A's care are not anonymised. This was due to the small size and nature of the organisations involved which provide care to vulnerable young people. He suggested that the organisations should be anonymised as Organisation 1 and Organisation 2 respectively.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to hear this hearing partly in private. It decided that it was appropriate to anonymise the identity of the witness as Relative B to protect the identity of Patient A. The hearing will go into private session as and when matters relating to Patient A's health and identity are raised.

The panel was satisfied that it was appropriate to anonymise the identities of the organisations involved in the care of Patient A as Organisation 1 and Organisation 2 respectively, in order to protect the privacy and identity of Patient A.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Katanda was not in attendance and that the Notice of Hearing letter had been sent to Mr Katanda's registered email address by secure email on 3 July 2023.

Mr Cassells submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

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

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

Decision and reasons on proceeding in the absence of Mr Katanda

The panel next considered whether it should proceed in the absence of Mr Katanda. It had regard to Rule 21 and heard the submissions of Mr Cassells who invited the panel to continue in the absence of Mr Katanda.

Mr Cassells referred the panel to the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162 and submitted that the NMC had done all within its powers to contact Mr Katanda. Mr Cassells drew the panel's attention to the witness statement from Mr Katanda's NMC case coordinator dated 17 July 2023 which stated that Mr Katanda had not responded to emails, telephone calls or letters from the NMC case coordinator with regards to his attendance at the hearing and his engagement with the proceedings.

Mr Cassells submitted that the onus was on registrants to ensure that the NMC had their updated contact details. He submitted that the NMC had done its best to ensure that the Notice of Hearing had been sent to the registered email address of Mr Katanda as contained in the NMC Register.

Mr Cassells referred the panel to the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5 and submitted that there had been no engagement at all by Mr Katanda with the NMC in relation to these proceedings. He submitted that Mr Katanda has voluntarily absented himself and therefore, there was no reason to believe that an adjournment would secure his attendance on a future date. Mr Cassells submitted that there is a strong public interest in the expeditious disposal of the case as the charges relate to events that occurred in 2015. He highlighted that there are three witnesses scheduled to give evidence and an adjournment may affect their ability to recollect the incidents. He therefore submitted that it was fair and in the public interest for the hearing to proceed in the absence of Mr Katanda.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones*.

The panel has decided to proceed in the absence of Mr Katanda. In reaching this decision, the panel has considered the submissions of Mr Cassells and the advice of the legal

assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Mr Katanda has not engaged with the NMC and has not responded to any of the emails, telephone calls and letters sent to him about this hearing;
- Mr Katanda has not provided the NMC with details of how he may be contacted other than his registered email address and registered address;
- Mr Katanda has voluntarily absented himself;
- No application for an adjournment has been made by Mr Katanda;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Three witnesses are scheduled to give live evidence;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2015 and further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Katanda in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to his registered email address, Mr Katanda will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, any disadvantage is the consequence of Mr Katanda's decision to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Katanda. The panel will draw no adverse inference from Mr Katanda's absence in its findings of fact.

Details of charge

That you, a registered nurse:

- 1) On or before 19 June 2015, provided your personal telephone number to Patient A.
- 2) On or before 19 June 2015:
 - a) Hugged Patient A;
 - b) Kissed Patient A.
- 3) Failed to report your actions at Charge 2 above.
- 4) Between 23 June 2015 – 2 August 2015, on one or more occasions, including but not limited to the occasions set out in Schedule 1, contacted Patient A by telephone without clinical justification:
- 5) Between 23 June 2015 – 2 August 2015, on one or more occasions, contacted Patient A by text message without clinical justification:
- 6) Between 23 June 2015 – 2 August 2015, you sent and/or exchanged text messages of a sexual nature with Patient A, including but not limited to:
 - a) I wish I could taste your lips once more;

- b) You body perfectly fits into mine for a warm cuddle;
- c) Am admiring your snap you send and cannot have enough of you;
- d) I need to hold you close to me
- e) and don't let go;
- f) Your breast are so soft;
- g) I was gonna sleep well if we were in the same bed and you head on mine.
Talk of butterflies that is why I want you in the same bed with me;
- h) Would like to hold you and kiss you without being worried of what's going
around;
- i) Just want to give myself to you physically;
- j) I love you too. Would want to spend my night wrapped around you feeling
your heart beat and being warmed by your lovely boobs;
- k) You gave me a glimpse of your chest which I cannot wait long to lay my
hands on;
- l) I will give it to you [in response to outgoing text 'I want a baby'];
- m) Next time you show me your chest;
- n) I want to lay my hands on your tender tits and my lips on your lucious lips;

- o) Lower your quilt more want to see your body;
- p) Remember when you feel horny I also feel horny. Am sure you felt me that day when we kissed and hugged;
- q) I want you close to me so that no air can pass through between us and would like your lips to lock with mine;
- r) I have to be strong so I can carry you in my arms;
- s) I would like to have you in your birthday suit.

7) On 17 July 2015:

- a) Met with Patient A without clinical justification;
- b) Hugged Patient A;
- c) Kissed Patient A.

8) Told Patient A

- a) On 9 July 2015 to delete text messages;
- b) On 20 July 2015, to delete your telephone number;
- c) On or around 20 July 2015, to delete evidence of your communications.

9) Your actions at Charge 8 above were dishonest in that you sought to conceal your relationship with Patient A.

- 10) Your actions at one or more of Charges 1 – 7 breached professional boundaries.
- 11) Your actions at one or more of Charges 2, 6, 7b and 7c were sexual.
- 12) Your actions at one or more of Charges 1 – 7 were sexually motivated in that you sought to pursue a future sexual relationship with Patient A

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

Schedule 1

14 July 2015
15 July 2015
16 July 2015
17 July 2015
18 July 2015
19 July 2015

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr Cassells under Rule 31 to allow the statements made by Patient A, to the witnesses with respect to her relationship with Mr Katanda. He referred to the evidence of Relative B and Witness 2 as contained in their witness statements. Mr Cassells also made an application to the panel to allow the Schedule of Texts as contained in the Final Exhibit Bundle, into evidence. He submitted that this Schedule of Texts originated from a reliable source, namely, the police.

Mr Cassells highlighted that Rule 31 provides that evidence is admissible in these proceedings if it is fair and relevant to the issues in the proceedings. Mr Cassells further

referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin). He submitted that this case laid out the following factors to be considered in admitting hearsay evidence:

- Whether the statements were the sole and decisive evidence in support of the charges:

Mr Cassells submitted that with regards to the charges against Mr Katanda, except charge 8c, the NMC would rely on the evidence of the Disciplinary Hearing Minutes with Mr Katanda at Organisation 2 dated 28 August 2015, Mr Katanda's examination in chief contained in Lewes Crown Court trial transcript dated 22 February 2022 and the Schedule of Texts. Thus, the hearsay evidence of Patient A is not the sole and decisive evidence as it is admitted only to provide detail and context to the relationship between Patient A and Mr Katanda as Mr Katanda has made admissions to the majority of the charges, to his employer and while giving evidence at the Lewes Crown Court.

With respect to charge 8c, Mr Cassells referred the panel to the witness statement of Relative B dated 3 November 2022 where she stated:

'I understand from Patient A that the last contact Patient A and the Registrant had on Whatsapp was on the day or the day after 20 July 2015, in which the Registrant messaged Patient A to ask her to delete all of their correspondence on Whatsapp. I have seen this message on Patient A's phone...'

Mr Cassells submitted that this is direct evidence in support of charge 8c as Relative B would attend the hearing to give evidence to the panel. Although there seems to be an ambiguity as to what Relative B actually saw on Patient A's phone, this would be further explored during the oral evidence of Relative B.

Mr Cassells further referred the panel to the witness statement of Witness 3 dated 16 October 2016 where Witness 3 stated:

'At 11:42 on 21 July 2015 I received a further telephone call from Ms Ward to say that she had received a telephone call from(Relative F)... Ms Ward was informed that the previous night Patient A had told Relatives B and F that Patient A also told them that she had been advised by the Registrant to delete evidence of their communication'

Mr Cassells submitted that the above paragraph is hearsay evidence in support of charge 8c, and it is a matter for the panel to consider whether to allow this hearsay statement into evidence. Mr Cassells further stated that it is not the sole and decisive evidence as it is supported by the direct evidence of Relative B.

- The nature and extent of the challenge to the contents of the statements:

Mr Cassells highlighted that Mr Katanda has not engaged with the NMC despite exhaustive attempts by the NMC to contact him, therefore, any challenge he may have to the hearsay evidence is relatively unknown. Mr Cassells however submitted that the sole challenges by Mr Katanda could be gleaned from his examination in chief contained in Lewes Crown Court trial transcript dated 22 February 2022 where he disputed the allegations that his interactions with Patient A were sexual or sexually motivated and that he told Patient A to delete evidence of their communication.

- Whether there was any suggestion that the witnesses had reasons to fabricate their allegations:

Mr Cassells submitted that there was no reason for Patient A to fabricate the allegations, rather, it can be seen from the witness statement of Relative B dated 3 November 2022 that Patient A was reluctant to reveal her relationship with Mr Katanda. This was supported by Witness 2 in her witness statement dated 14 December 2016 in which she stated that Patient A wanted to protect Mr Katanda.

- The seriousness of the charge, taking into account the impact which adverse findings might have on his career:

Mr Cassells submitted that the charges are extremely serious as they involved alleged inappropriate relationship between Mr Katanda and Patient A, who was a vulnerable young person under his care. He further stated that the NMC had indicated to Mr Katanda that it would request for a striking-off order as the appropriate sanction at these proceedings.

- Whether there was a good reason for the non-attendance of the witness and whether the NMC had taken reasonable steps to secure the attendance of the witness:

Mr Cassells informed the panel that Witness 2 had stated in her witness statement dated 14 December 2016 that Patient A is extremely vulnerable and that Patient A giving evidence in these proceedings [PRIVATE]. This was supported by Relative B in her witness statement in which she stated that the stress and strain of giving a statement to the police about the incidents, caused Patient A to [PRIVATE]. Mr Cassells submitted that in light of the nature of Patient A's mental health condition and her vulnerability, it was reasonable that NMC had not taken steps to secure her attendance at the hearing.

Mr Cassells referred the panel to the witness statement of Ms 1 dated 28 July 2023. He submitted that it is apparent from Ms 1's witness statement that the NMC had done its best to obtain the statements made by Patient A to the Sussex Police in relation to the criminal trial of Mr Katanda. These attempts were made from 27 May 2022 to 25 July 2023 without any success in this regard.

- Whether prior notice had been given that the hearsay statements were to be tendered:

Mr Cassells submitted that adequate notice had been given to Mr Katanda as the NMC had sent the Final Witness Bundle and Final Exhibit Bundle to him, which included the hearsay evidence of Patient A and Mr Katanda has failed to engage with the NMC.

With regards to the admissibility of the Schedule of Texts, Mr Cassells informed the panel that the NMC had sought a statement of service from the Sussex Police, similar to section 9 statement in criminal proceedings. The NMC had requested a statement confirming that the Schedule of Texts forwarded to the NMC, had been recovered by the police from Patient A's phone. The reference to outgoing texts were those of Patient A and incoming texts were from Mr Katanda. However, despite multiple requests for such statement from the police, it has not been provided to the NMC. Mr Cassells referred the panel to the witness statement of Ms 1 dated 28 July 2023.

Mr Cassells submitted that, in considering whether it was fair to admit the Schedule of Texts into evidence, the inference should be drawn that the text messages came from Patient A's phone. He submitted that the texts contained the same information that the police had received from Patient A during the course of its investigation. He submitted that it should be noted that the name "*Sam*" was used throughout the texts, which indicates a connection to Mr Katanda. Mr Cassells further submitted that there has been no challenge from Mr Katanda to the Schedule of Texts which had been sent to him neither did he deny the ownership of the texts.

In conclusion, Mr Cassells submitted that the hearsay evidence is relevant to the charges and there would be no unfairness caused to Mr Katanda if the hearsay evidence is admitted into evidence.

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

The panel considered the hearsay application. It noted that the hearsay evidence of Patient A was not the sole and decisive evidence in support of the charges as there was other evidence which the NMC was relying upon to prove its case which included the evidence of the Disciplinary Hearing Minutes with Mr Katanda at Organisation 2 dated 28 August 2015, Mr Katanda's examination in chief contained in Lewes Crown Court trial transcript dated 22 February 2022 as well as oral evidence of Relative B, Witnesses 2 and 3.

The panel took into account that Witness 2 had stated in her witness statement dated 14 December 2016, that Patient A giving evidence in these proceedings [PRIVATE]. This was supported by Relative B in her witness statement dated 3 November 2022 in which she stated that the stress and strain of giving a statement to the police about the incidents, caused Patient A to [PRIVATE]. Thus, the panel was satisfied that due to the nature of Patient A's mental health condition and her vulnerability, it was reasonable that the NMC had not requested her attendance at the hearing to give evidence.

The panel determined that the hearsay evidence of Patient A was relevant as it provides detail and context to the charges. Having considered the evidence of Witness 2 as to Patient A's reluctance to reveal her alleged relationship with Mr Katanda, the panel was satisfied that there was no reason to suggest that the evidence provided by Patient A to the witnesses had been fabricated.

With regards to the admissibility of the hearsay statement contained in the witness statement of Witness 3 to support charge 8c, the panel decided to admit this hearsay statement into evidence on the basis that it was not the sole and decisive evidence to support charge 8c as it was at this stage, corroborated by the evidence of Relative B as contained in her witness statement.

With respect to the admissibility of the Schedule of Texts, the panel took account of the witness statement of Ms 1 dated 28 July 2023. It noted that a statement of service from the Police to support the authenticity of the Schedule of Texts had not been provided

despite repeated attempts by the NMC through its Solicitor to obtain it. However, the panel took into account that the first names of Patient A and Mr Katanda had been used throughout the texts, the dates of the incidents align with the dates contained in the Schedule of Texts and that the tone of the conversations seems to be consistent with other evidence adduced by the NMC in support of the charges. Consequently, the panel was satisfied that on the face of the information before it, it was reasonable for them to infer that the Schedule of Texts emanated from Patient A's phone and it was relevant and fair to admit it into evidence.

The panel considered that as the NMC had sent the Final Witness Bundle and Final Exhibit Bundle containing the hearsay evidence of Patient A and the Schedule of Texts respectively, to Mr Katanda, and as the panel had already determined that Mr Katanda had chosen voluntarily to absent himself from these proceedings, there was no unfairness to Mr Katanda, in allowing the evidence to be given.

In these circumstances, the panel determined that it was relevant and fair to admit the hearsay evidence of Patient A and the Schedule of Texts into evidence but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Background

The charges arose whilst Mr Katanda was employed as a senior staff nurse at Upper Court (the Ward) in Organisation 2.

Organisation 2 is a mental health inpatient hospital. It deals with a range of mental health conditions. At the material time, the Ward was a high dependency child and adolescent mental health facility. Patient A was transferred to the Ward at Organisation 2 from Organisation 1 on 18 March 2015 when she was seventeen years old and her symptoms had worsened. Patient A was diagnosed as [PRIVATE]. Patient A's multidisciplinary team

believed Patient A's mental health concerns stemmed [PRIVATE] and that Patient A was an extremely vulnerable patient.

Mr Katanda was allocated to be Patient A's primary nurse and was responsible for having weekly meetings with Patient A, updating care plans, writing reports for meetings and reviews and also for liaising with Patient A's family.

Patient A was discharged from Organisation 2 on 19 June 2015 and transferred to Organisation 1. Once Patient A had been discharged from Organisation 2, it was alleged that Mr Katanda had maintained a relationship with Patient A which breached professional boundaries. This relationship allegedly consisted of:

- telephone calls
- text messages
- video calls
- an in-person meeting on 17 July 2015 where Mr Katanda hugged and kissed Patient A.

The NMC alleged that on 20 July 2015, Relative B discovered the relationship by seeing a number of missed calls and text messages from a number she did not recognise. Relative B called the number, and Mr Katanda allegedly answered the phone. Following this incident, it was alleged that Patient A admitted that she had maintained contact with Mr Katanda since her discharge from Organisation 2.

Relative B escalated her concerns regarding Patient A's contact with Mr Katanda to Organisation 2, and a local investigation was commenced at Organisation 2 leading to Mr Katanda's suspension on 21 July 2015. During the local investigation, it was alleged that Mr Katanda accepted that he had breached professional boundaries with Patient A but had maintained that their relationship was merely platonic and not sexual. However, it was alleged that Patient A disclosed that she had been intimate with Mr Katanda but would not elaborate further.

Mr Katanda was reported to the Sussex Police, and he was summarily dismissed from Organisation 2 in August 2015.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Cassells and Mr Katanda's Final Registrant Response Bundle.

The panel has drawn no adverse inference from the non-attendance of Mr Katanda.

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

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

- Relative B: [PRIVATE].
- Witness 2: Systemic and family psychotherapist at Organisation 1 at the time of the incidents;
- Witness 3: Manager of the Child and Adolescent Mental Health Services (CAMHS) and line manager of Mr Katanda at the time of the incidents.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

Charge 1

1. On or before 19 June 2015, provided your personal telephone number to Patient A.

This charge is found proved.

The panel took into account that at the disciplinary meeting at Organisation 2 held on 28 August 2015, when questioned as to how Patient A obtained his telephone number, Mr Katanda had stated that he was not sure and it was a big surprise to him when he first saw her text. However, the panel noted that during Mr Katanda's examination in chief at the Lewes Crown Court as contained in Lewes Crown Court Trial Transcript dated 22 February 2022, he had admitted under oath that '*...on Patient A leaving....I wrote my number into her phone*' and he further stated '*I just felt that since we have been close, I can give you a number*'.

The panel determined that, as Mr Katanda had admitted under oath that on or before 19 June 2015, he had provided his personal telephone number to Patient A, it found charge 1 to be proved.

Charge 2a

2. On or before 19 June 2015:
 - a. Hugged Patient A;

This charge is found proved.

The panel took into account that during Mr Katanda's examination in chief at the Lewes Crown Court as contained in Lewes Crown Court Trial Transcript dated 22 February 2022, he had stated that at the time Patient A was at Organisation 2, he had hugged Patient A on one occasion in the corridor at the communal area of the Ward. Mr Katanda further stated that on another occasion when Patient A had learnt that she would be discharged from the Ward in June 2015, *'she came to me telling me about it and she was excited and that's when I hugged her....'*

The panel took into account the admissions made by Mr Katanda under oath that he had hugged Patient A on more than one occasion during her stay at the Ward before she was discharged on 19 June 2015, which was supported by the texts between Mr Katanda and Patient A when he made reference to hugging Patient A in her room. Accordingly, the panel was satisfied that on or before 19 June 2015, Mr Katanda had hugged Patient A and found this charge proved.

Charge 2b

2. On or before 19 June 2015:
 - a. Kissed Patient A;

This charge is found proved.

The panel took into account that during Mr Katanda's examination in chief at the Lewes Crown Court as contained in Lewes Crown Court Trial Transcript dated 22 February 2022, Mr Katanda had stated that on one occasion when Patient A had learnt that she would be discharged from the Ward in June 2015, Patient A *'came to me telling me about it and she was excited and that's when I hugged her, but during that process she came close to me and our lips touched'*.

The panel also had regard to the texts between Mr Katanda and Patient A, as contained in the Schedule of Texts. On 25 June 2015 at 21:44:38, an incoming text from Mr Katanda stated: *'I wish I could taste your lip once more'*; and on 29 June 2015 at 14:29:30, another incoming text from Mr Katanda stated: *'Why did you make me taste your lips'*.

The panel was of the view that it is reasonable to infer that the phrase *'our lips touched'* would mean a kiss. It noted that the scenario of the lips touching was subsequently referred to as a kiss, during the examination in chief of Mr Katanda without any challenge to such description by him. Also, the panel noted that the texts on 25 June 2015 at 21:44:38 and on 29 June 2015 at 14:29:30, were suggestive that Mr Katanda had kissed Patient A on a previous occasion. It considered that the texts were exchanged within six to nine days after Patient A had been discharged from Organisation 2 on 19 June 2015. Therefore, the panel was satisfied that it was more likely than not that on or before 19 June 2015, Mr Katanda had kissed Patient A. Accordingly, charge 2b is found proved.

Charge 3

3. Failed to report your actions at Charge 2 above.

This charge is found proved.

The panel had regard to the *Professional Relationship Boundaries Policy* (the Policy) at Organisation 2 which provided in article 2.7(i) that:

'...In the event that a current or ex-service user initiates personal contact with a staff member he/she should make no response other than to politely refuse that contact and promptly inform and discuss this with their manager...'

The Policy further provided in article 5.2.1, that if boundaries have been or are suspected to have been broken, *'Staff should let their line manager know what they are doing or intend to do...'*

The panel noted that Witness 3 had stated in his oral evidence to the panel, that if a service user should initiate physical contact with a member of staff at Organisation 2, such staff member should step away and report such contact to the nurse in charge or line manager. Witness 3 further stated that Mr Katanda as a senior nurse at Organisation 2, would be aware of the Policy as this was covered in staff induction and training on professional boundaries at Organisation 2. This was further corroborated by Witness 2 in her oral evidence to the panel.

The panel also took into account that during Mr Katanda's examination in chief at the Lewes Crown Court as contained in Lewes Crown Court Trial Transcript dated 22 February 2022, when asked about the hug and kiss exchanged between Mr Katanda and Patient A, Mr Katanda had stated that:

'...in hindsight I should have reported but that time, being close to her, I just took it something unharmed and that was it and I just went past it. That was it.'

The panel was satisfied that, based on the evidence before it, Mr Katanda was aware of his duty to report the incident in charge 2 and he had admitted under oath that he had not done so. Accordingly, charge 3 is found proved.

Charge 4

4. Between 23 June 2015 – 2 August 2015, on one or more occasions, including but not limited to the occasions set out in Schedule 1, contacted Patient A by telephone without clinical justification

This charge is found proved.

The panel took account of the witness statement of Witness 2 dated 14 December 2016, in which she stated:

'When Patient A first returned to ...(Organisation 1).. in June 2015,she said that she was still in regular contact with the Registrant via face time and texting...'

The panel considered the witness statement of Witness 3 dated 16 October 2016, in which he stated that during the meeting with Mr Katanda at Organisation 2 held on 21 July 2015, Mr Katanda had *'admitted to having contact with Patient A by text message, telephone calls and Facetime.'*

The panel had sight of the Disciplinary Hearing Minutes with Mr Katanda at Organisation 2 held on 28 August 2015, where Mr Katanda admitted to having contacted Patient A via texts and facetime.

The panel noted that at the time of the incident, Patient A had been discharged from Organisation 2 on 19 June 2015 and was no longer under the care of Mr Katanda. It further noted that both Witnesses 2 and 3 had stated in their oral evidence that it was inappropriate for staff to contact service users outside work at Organisation 2 and such contacts should be reported to the line manager or nurse in charge.

The panel was of the view that, as Mr Katanda had admitted that he had contacted Patient A by telephone but did not report such contacts, and these contacts were made after Patient A had been discharged from Organisation 2, it was more likely than not that between 23 June 2015 – 2 August 2015, on one or more occasions, Mr Katanda had contacted Patient A by telephone without clinical justification. Accordingly, charge 4 is proved.

Charge 5

5. Between 23 June 2015 – 2 August 2015, on one or more occasions, contacted Patient A by text message without clinical justification

This charge is found proved.

The panel considered the witness statement of Witness 2 dated 14 December 2016, in which she stated:

'When Patient A first returned to ...(Organisation 1).. in June 2015,she said that she was still in regular contact with the Registrant viatexting...'

The panel took account of the witness statement of Witness 3 dated 16 October 2016, in which he stated that during the meeting with Mr Katanda at Organisation 2 held on 21 July 2015, Mr Katanda had *'admitted to having contact with Patient A by text message....'*

The panel had sight of the Disciplinary Hearing Minutes with Mr Katanda at Organisation 2 held on 28 August 2015, where Mr Katanda admitted to having contacted Patient A via texts

The panel carefully considered the text messages contained with the Schedule of Texts. It took account of the witness statement of Ms 1 dated 28 July 2023 and noted that the Schedule of Texts was forwarded by the Sussex Police to the NMC through its Solicitor. The panel noted that the first names of Patient A and Mr Katanda had been used in the text messages and that the period of time during which Mr Katanda had admitted having contacted Patient A by text message align with the dates contained in the Schedule of Texts, including reference to their meeting on 17 July 2015.

The panel noted that at the time of the incident, Patient A had been discharged from Organisation 2 on 19 June 2015 and was no longer under the care of Mr Katanda. It further noted that both Witnesses 2 and 3 had stated in their oral evidence that it was inappropriate for staff to contact service users outside work at Organisation 2 and such contacts should be reported to the line manager or nurse in charge.

The panel was of the view that, as Mr Katanda had admitted that he had contacted Patient A by texts but did not report such contacts, and these contacts were made after Patient A

had been discharged from Organisation 2, it was more probable than not that between 23 June 2015 – 2 August 2015, on one or more occasions, Mr Katanda had contacted Patient A by text message without clinical justification. Accordingly, charge 5 is found proved.

Charge 6

6. Between 23 June 2015 – 2 August 2015, you sent and/or exchanged text messages of a sexual nature with Patient A, including but not limited to:
 - a) I wish I could taste your lips once more;
 - b) Your body perfectly fits into mine for a warm cuddle;
 - c) Am admiring your snap you send and cannot have enough of you;
 - d) I need to hold you close to me
 - e) and don't let go;
 - f) Your breast are so soft;
 - g) I was gonna sleep well if we were in the same bed and you head on mine.
Talk of butterflies that is why I want you in the same bed with me;
 - h) Would like to hold you and kiss you without being worried of what's going around;
 - i) Just want to give myself to you physically;
 - j) I love you too. Would want to spend my night wrapped around you feeling your heart beat and being warmed by your lovely boobs;
 - k) You gave me a glimpse of your chest which I cannot wait long to lay my hands on;

- l) I will give it to you [in response to outgoing text 'I want a baby'];
- m) Next time you show me your chest;
- n) I want to lay my hands on your tender tits and my lips on your luscious lips;
- o) Lower your quilt more want to see your body;
- p) Remember when you feel horny I also feel horny. Am sure you felt me that day when we kissed and hugged;
- q) I want you close to me so that no air can pass through between us and would like your lips to lock with mine;
- r) I have to be strong so I can carry you in my arms;
- s) I would like to have you in your birthday suit.

This charge is found proved.

The panel took account of the witness statement of Ms 1 dated 28 July 2023 and noted that the Schedule of Texts was forwarded by the Sussex Police to the NMC through its Solicitor. The panel noted that the first names of Patient A and Mr Katanda had been used throughout the texts and that the period of time during which Mr Katanda had admitted having contacted Patient A by text message align with the dates contained in the Schedule of Texts. The panel was satisfied that the Schedule of Texts was obtained from a credible source.

The panel then carefully considered each and every subsection of this charge. It was satisfied that each text message, from charges 6a to 6s, was contained in the Schedule of Texts and that they were all of a sexual nature. Based on the evidence before it, the panel

concluded that the text messages from charges 6a to 6s were sent by Mr Katanda to Patient A. It therefore found charges 6a to 6s proved.

Charge 7a

7. On 17 July 2015:

- a. Met with Patient A without clinical justification;

This charge is found proved.

The panel took into account the witness statement of Relative B, dated 3 November 2022, in which she stated:

'Patient A admitted that she had met up with the Registrant on 17 July 2015 but then she said to me "please don't tell anybody".'

The panel considered the witness statement of Witness 3 dated 16 October 2016, in which he stated that during the meeting with Mr Katanda at Organisation 2 held on 21 July 2015, Mr Katanda *'...admitted that he had driven from Maidstone to Cambridge to meet ...(Patient A)... on Friday 17 July 2015...'*

The panel also had regard to the Disciplinary Hearing Minutes with Mr Katanda at Organisation 2 held on 28 August 2015, where Mr Katanda stated that:

'...(Patient A)... sent a text that she had been allowed home leave and that could I just see her. I should have just maintained phone contact, it's my fault, and I should have stood my ground. I agreed to see her for an hour and I met with her on 17/07/15.'

The panel noted that Mr Katanda had confirmed, during his examination in chief at the Lewes Crown Court as contained in Lewes Crown Court Trial Transcript dated 22 February 2022, that he had met Patient A on 17 July 2015.

The panel took into consideration that at the time of the incident, Patient A had been discharged from Organisation 2 on 19 June 2015 and was no longer under the care of Mr Katanda. It further noted that both Witnesses 2 and 3 had stated in their oral evidence that it was inappropriate for staff to contact or meet service users outside working hours at Organisation 2 and such contacts should be reported to the line manager or nurse in charge. The panel further noted that the meeting took place in Cambridge, a one and half hour drive from Mr Katanda's home.

The panel was of the view that, as Mr Katanda had admitted that he had met Patient A on 17 July 2015, but did not report such meeting, and this meeting was held after Patient A had been discharged from Organisation 2, it was more likely than not that on 17 July 2015, Mr Katanda had met Patient A without clinical justification. Accordingly, charge 7a is found proved.

Charge 7b

7. On 17 July 2015:
 - a.
 - b. Hugged Patient A;

This charge is found proved.

The panel took account of the witness statement of Witness 3 dated 16 October 2016, in which he stated that during the meeting with Mr Katanda at Organisation 2 held on 21 July 2015, Mr Katanda had:

'...admitted that he had driven from Maidstone to Cambridge to meet(Patient A)... on Friday 17 July 2015 and he admitted to a physical relationship with her, but said that "it was just hugs".'

The panel also had regard to the Disciplinary Hearing Minutes with Mr Katanda at Organisation 2 held on 28 August 2015, where in response to the question whether there was any hugging or kissing at Mr Katanda's meeting with Patient A on 17 July 2015, Mr Katanda stated that '*there was hugging...*'

Based on the evidence before it, the panel was of the view that it was more probable than not that on 17 July 2015, Mr Katanda had hugged Patient A. Accordingly, charge 7b is found proved.

Charge 7c

7. On 17 July 2015:
 - a.
 - b.
 - c. Kissed Patient A;

This charge is found proved.

The panel considered the Disciplinary Hearing Minutes with Mr Katanda at Organisation 2 held on 28 August 2015, where in response to the question whether there was any hugging or kissing at Mr Katanda's meeting with Patient A on 17 July 2015, Mr Katanda stated that '*there was hugging and I kissed her on the cheek...*'

The panel noted that Mr Katanda had admitted that he kissed Patient A when he met her on 17 July 2015 and Mr Katanda had not refuted his admissions till date. The panel was therefore satisfied that it was more likely than not, that on 17 July 2015, Mr Katanda had kissed Patient A. Accordingly, charge 7c is found proved.

Charge 8a

8. Told Patient A
 - a) On 9 July 2015 to delete text messages;

This charge is found proved.

The panel carefully considered the text messages contained with the Schedule of Texts. It noted that on 9 July 2015 at 17:59:23, an incoming text from Mr Katanda stated: *'Delete these messages as soon as'*.

The panel took account of the witness statement of Ms 1 dated 28 July 2023 and noted that the Schedule of Texts was forwarded by the Sussex Police to the NMC through its Solicitor. The panel was satisfied that the Schedule of Texts was obtained from a credible source. It noted that the first names of Patient A and Mr Katanda had been used in the text messages and that the period of time during which Mr Katanda had admitted having contacted Patient A by text message align with the dates contained in the Schedule of Texts, including the date of their meeting on 17 July 2015.

The panel was therefore satisfied that it was more likely than not, that on 9 July 2015, Mr Katanda had told Patient A to delete text messages. Accordingly, charge 8a is found proved.

Charge 8b

8. Told Patient A
 - a)
 - b) On 20 July 2015, to delete your telephone number;

This charge is found proved.

The panel carefully considered the text messages contained with the Schedule of Texts. It noted that on 20 July 2015 at 8:48:11, an incoming text from Mr Katanda stated: *'Good morning, please delete my number from your phone. Will xplain later'*. sic

The panel having been satisfied as to the authenticity of the Schedule of Texts for the reasons set out in its consideration of charge 8a, determined that it was more likely than not, that on 20 July 2015, Mr Katanda had told Patient A to delete his telephone number. Accordingly, charge 8b is found proved.

Charge 8c

8. Told Patient A
 - a)
 - b)
 - c) On or around 20 July 2015, to delete evidence of your communications.

This charge is found Not proved.

The panel considered the witness statement of Relative B, dated 3 November 2022, in which she stated:

'I understand from Patient A that the last contact Patient A and the Registrant had on Whatsapp was on the day or the day after 20 July 2015, in which the Registrant messaged Patient A to ask her to delete all of their correspondence on Whatsapp. I have seen this message on Patient A's phone...'

The panel took account of the witness statement of Witness 3 dated 16 October 2016 where he stated:

'...Patient A also told them that she had been advised by the Registrant to delete evidence of their communication...'

The panel noted that when asked about these statements as contained in their witness statements respectively, Relative B and Witness 3 in their oral evidence, both stated that

they may have been mistaken as to whether the text message related to deletion of communication as opposed to deletion of Mr Katanda's telephone number.

The panel also gave little weight to the account of the evidence of Witness 3 because it was based on double hearsay. Moreover, the word 'communication' may have been a reference only to telephone number.

The panel noted that in the Schedule of Texts, there was only a reference to deletion of the telephone number. The messages on or around 20 July 2015 only made reference to deletion of the telephone number which is the subject of charge 8b.

Accordingly, charge 8c is found not proved.

Charge 9

9. Your actions at Charge 8 above were dishonest in that you sought to conceal your relationship with Patient A.

This charge is found proved.

The panel first considered the state of mind of Mr Katanda in telling Patient A to delete his text messages and his telephone number. It noted that Witness 3 had stated in his oral evidence, that Mr Katanda as a senior nurse at Organisation 2, would be aware of the Policy as this was covered in staff induction and training on professional boundaries at Organisation 2. This was corroborated by Mr Katanda during his disciplinary hearing at Organisation 2 held on 28 August 2015 as contained within the Disciplinary Hearing Minutes with Mr Katanda at Organisation 2 dated 28 August 2015.

Therefore, the panel was of the view that the only reason that Mr Katanda requested Patient A to delete his text messages and telephone number was, in the circumstances of this case,

to conceal his relationship with Patient A and his actions in charge 8a and charge 8b were dishonest. Accordingly, charge 9 is found proved.

Charge 10

10. Your actions at one or more of Charges 1 – 7 breached professional boundaries.

This charge is found proved.

The panel had regard to the Policy of Organisation 2 which provided in article 2.2 (c) that in working with service users:

'A professional relationship should be maintained at all times'

The Policy of Organisation 2 also provided in article 2.11 that:

'Befriending/Counselling: Staff should never overstep professional boundaries and confuse befriending with friendship.'

The panel took account of the Disciplinary Hearing Minutes with Mr Katanda at Organisation 2 held on 28 August 2015, where the following question was posed to Mr Katanda:

'We are not our patient's friends but we can be friendly. From the records within the management report, I can see that you have had supervision, attended safeguarding training, aware of the professional boundary policy?' sic

Mr Katanda had responded: *'Yes I have and I do apologise.'*

Mr Katanda also stated during his disciplinary hearing at Organisation 2 held on 28 August 2015, that

'I have been reflecting and I should have let ...(Witness 3)... know and sought support and I have learnt my lesson not to become emotionally attached to patients...'

The panel further noted that both Witnesses 2 and 3 had stated in their oral evidence that it was inappropriate for staff to engage in physical contact, such as hugs and kisses, with service users and it was also inappropriate for staff to contact service users outside work hours at Organisation 2. They asserted that such contacts should be reported to the line manager or nurse in charge.

The panel noted that Mr Katanda had admitted that he was aware of the duty to maintain professional boundaries with service users especially vulnerable young persons, as contained in the Policy at Organisation 2. The panel was therefore satisfied that, based on the evidence before it and the Policy at Organisation 2, Mr Katanda's actions at one or more of charges 1 – 7, had breached professional boundaries. Accordingly, charge 10 is found proved.

Charge 11

11. Your actions at one or more of Charges 2, 6, 7b and 7c were sexual.

This charge is found proved.

The panel considered Mr Katanda's actions at charges 2, 6a – 6s, 7b and 7c. It was satisfied that Mr Katanda's actions in charges 2, 6a - 6s, 7b and 7c were sexual and it found charge 11 to be proved.

Charge 12

12. Your actions at one or more of Charges 1 – 7 were sexually motivated in that you sought to pursue a future sexual relationship with Patient A.

This charge is found proved.

The panel carefully considered Mr Katanda's actions at charges 1 - 7. It noted that Mr Katanda had denied the allegation that his contacts with Patient A were sexually motivated. However, the panel was of the view that Mr Katanda's actions at charges 1 – 7 were sexual. It noted that Mr Katanda was aware that Patient A was a vulnerable minor who was placed under his care at Organisation 2. He had also admitted during his disciplinary hearing at Organisation 2 held on 28 August 2015 as contained within the Disciplinary Hearing Minutes at Organisation 2 dated 28 August 2015, to have engaged in hugs and kisses with Patient A.

The panel also took into consideration that the texts between Mr Katanda and Patient A, as contained in the Schedule of Texts, were sexual in nature and with the intention of pursuing a sexual relationship with Patient A and amounted to grooming. Accordingly, charge 12 is found proved.

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 Katanda'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 Katanda's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Cassells made reference to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Mr Cassells further referred the panel to the case of *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), which defines misconduct as conduct considered '*deplorable by fellow practitioners.*' Mr Cassells drew the attention of the panel to the oral evidence of Witness 3 in which he stated that he was so shocked and appalled at Mr Katanda's actions, that he struggled to control his emotions during the meeting with Mr Katanda at Organisation 2 held on 21 July 2015. Mr Cassells submitted that if the litmus test for misconduct was whether the conduct was considered deplorable by fellow professionals, the oral evidence of Witness 3 who is also a registered nurse, satisfied the test.

Mr Cassells submitted that Mr Katanda's actions fell short of the acceptable standards required from a registered nurse and they breached 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' ("the Code"). He submitted that Mr Katanda had breached the following paragraphs of the Code: 1.1, 20.1, 20.2, 20.5 and 20.6

Mr Cassells submitted that, given the vulnerability of Patient A, Mr Katanda's actions were an abuse of the trust placed in him by Patient A, her family and his colleagues. He submitted that his actions posed a risk of harm to Patient A's health and may potentially affect her future relationship with others and especially with the healthcare sector. He concluded that there was no doubt that Mr Katanda's actions amounted to serious professional misconduct.

Submissions on impairment

Mr Cassells moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin)

Mr Cassells referred the panel to the test formulated By Dame Janet Smith in the *Fifth Shipman Report*, quoted in the case of *Grant* which provides:

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

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

Mr Cassells submitted that all four limbs were engaged in this case. He also referred the panel to the case of *Cohen v GMC* [2008] EWHC 581 (Admin), where the court addressed the issue of impairment with regard to the following three considerations:

- a. *'Is the conduct that led to the charge easily remediable?'*
- b. *'Has it in fact been remedied?'*
- c. *'Is it highly unlikely to be repeated?'*

Mr Cassells submitted that Mr Katanda's conduct is so grievous that it could not be remedied. He submitted that even if Mr Katanda had provided before the panel, an extensive reflection, deep insight or advanced training on professional boundaries, such would not be sufficient to remedy the damage that his actions have done to the reputation of the nursing profession. He highlighted that there was no evidence to suggest that Mr Katanda had taken any steps to try to remediate his actions and he has failed to engage with the NMC. Mr Cassells asserted that Mr Katanda has not provided any evidence of insight or recent training as the only information before the panel are two "*historic*" training certificates in the Final Registrant Response Bundle.

Mr Cassells suggested that a question which could assist the panel in making its decision on impairment was '*Can the nurse/midwife/nursing associate practise kindly, safely and professionally?'*' He submitted that in this case, the answer is in the negative. Mr Cassells submitted that there was no information before the panel to suggest that if Mr Katanda were allowed to practise without restrictions, he would not repeat his actions in the charges as found proved. In light of this, he submitted that Mr Katanda's fitness to practise is currently impaired on the grounds of public protection.

Mr Cassells submitted that a fully informed member of the public, aware of the proven charges in this case, would be appalled at Mr Katanda's actions. He submitted that Mr Katanda's actions were so serious that any extensive efforts by Mr Katanda to strengthen

his nursing practice would be insufficient to remedy the negative impact of his actions on the reputation of the nursing profession. Mr Cassells therefore submitted that Mr Katanda's fitness to practise is currently impaired on the grounds of public interest.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Decision and reasons on misconduct

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

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

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

17.3 have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people

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*

20.5 *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'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel noted that Mr Katanda had admitted during his disciplinary hearing at Organisation 2 held on 28 August 2015 that he was aware of the duty to maintain professional boundaries with service users especially vulnerable young persons, as contained in the Policy at Organisation 2. It considered that Mr Katanda had admitted during his examination in chief at the Lewes Crown Court and in his disciplinary hearing at Organisation 2, that he had contacted Patient A outside work hours and engaged in hugs and kisses with her.

The panel was concerned that Mr Katanda, who was aware that Patient A was a vulnerable minor placed under his care at Organisation 2, exploited her vulnerability to engage in sexually motivated interactions with her. The panel considered Mr Katanda's actions to be extremely serious and that they would be seen as deplorable by other members of the profession and members of the public. It considered that these actions constituted a breach of fundamental aspects of professional conduct and behaviour that a

registered nurse is expected to maintain. It determined that Mr Katanda had failed to maintain professional boundaries with Patient A and that to characterise Mr Katanda's conduct as anything other than misconduct would send the wrong message about the nursing profession.

The panel noted that Mr Katanda had attempted to conceal his inappropriate relationship with Patient A by telling her to delete his text messages and telephone number. The panel considered honesty, integrity and trustworthiness to be the bedrock of the nursing profession and, in being dishonest, it found Mr Katanda to have breached a fundamental tenet of the nursing profession. Therefore, the panel was in no doubt that Mr Katanda's actions in being dishonest amounted to misconduct.

Consequently, having considered the charges individually and as a whole, the panel determined that Mr Katanda's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

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

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

The panel found that all limbs of the Grant test are engaged in this case. At the time of these incidents, Mr Katanda's misconduct placed Patient A at unwarranted risk of harm, brought the nursing profession into disrepute and breached fundamental tenets of the

nursing profession, relating to professional boundaries and honesty. It noted that Mr Katanda's conduct in attempting to conceal his inappropriate relationship with Patient A was dishonest.

The panel is aware that this is a forward-looking exercise and accordingly, it went on to consider whether Mr Katanda's misconduct was remediable and whether he had strengthened his nursing practice.

Regarding insight, the panel was of the view that Mr Katanda has shown limited insight into his failings. It noted that Mr Katanda had made partial admissions to his misconduct during his examination in chief at the Lewes Crown Court and in his disciplinary hearing at Organisation 2, and also tendered a general apology. However, Mr Katanda did not acknowledge the sexual nature of his actions, he tried to provide excuses and at various occasions, sought to minimise the seriousness of his actions.

The panel noted that Mr Katanda has failed to demonstrate any insight on the impact of his conduct on Patient A, Resident B, his colleagues and the nursing profession. The panel was concerned that Mr Katanda did not demonstrate sufficient understanding of the seriousness of his misconduct and did not provide detailed steps he would take to prevent such situation in future.

In considering whether Mr Katanda had strengthened his nursing practice, the panel was of the view that the concerns were difficult to remediate due to the seriousness, nature and impact of his actions on Patient A, a vulnerable minor at the time of the incidents. It took into account the Final Registrant's Response Bundle which contained a training certificate on Professional Boundaries V2 dated 2 October 2015 and a training certificate on Safeguarding Everyone- Protecting Children, Young People and Adults at Risk V2 dated 4 October 2015. However, the panel attached limited weight to these documents as there had been no further engagement by Mr Katanda with the NMC and there was no further evidence to indicate that Mr Katanda had strengthened his nursing practice in the areas of concern.

In light of this, this panel determined that there is a risk of repetition of Mr Katanda's misconduct and there remains a risk of harm to the public. 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 had regard to the serious nature of Mr Katanda's misconduct and determined that public confidence in the profession, particularly as it involved dishonesty and sexual interactions with a vulnerable minor, would be undermined if a finding of impairment were not made in this case. For this reason, the panel determined that a finding of current impairment on public interest grounds is required. It was of the view that a fully informed member of the public, aware of the proven charges in this case, would be very concerned if Mr Katanda were permitted to practise as a registered nurse without restrictions.

Having regard to all of the above, the panel was satisfied that Mr Katanda'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 Katanda off the register. The effect of this order is that the NMC register will show that Mr Katanda 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.

Submissions on sanction

Mr Cassells reminded the panel that in considering sanction, the panel should have regard to its purpose as sanction is not intended to be punitive, although it may have that effect. The purpose of any sanction is to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator.

Mr Cassells highlighted that, in general terms, the panel should first consider whether the sanction with the least impact on the nurse would be sufficient to achieve public protection, if not, the panel should then consider escalation until it arrives at the most appropriate sanction necessary to protect the public and otherwise in the public interest. He however submitted that the realistic approach in this case is that, due to its seriousness and nature, the only possible sanctions available are suspension order and striking-off order. Mr Cassells submitted that it is the NMC's position that a striking-off order is the most appropriate sanction in this case. He informed the panel that in the Notice of Hearing, the NMC had advised Mr Katanda that it would seek the imposition of a striking-off order if it found his fitness to practise currently impaired.

Mr Cassells referred the panel to the SG and submitted that the criteria for a striking-off order has been met in this case. He submitted that this case involved serious dishonesty and the SG provides that there is a greater likelihood for a striking-off order where the dishonesty involves misuse of power. He submitted that Mr Katanda was in the position of power over Patient A as he was responsible for her care at Organisation 2 and Mr Katanda abused that power and his position of trust at a time that Patient A was in a mental health crisis. Mr Cassells stated that the dishonesty in this case was very serious as the charges had arisen as a result of the discovery of the inappropriate relationship between Mr Katanda and Patient A by Relative B. He submitted that the text sent by Mr Katanda to Patient A informing her to delete the text messages and his telephone number, suggested that Mr Katanda had wanted to conceal his inappropriate interactions with Patient A. Mr Cassells highlighted that Mr Katanda had been inconsistent in his accounts of his interactions with Patient A and this demonstrates serious dishonesty on his part.

Mr Cassells stated that the SG also provides that a case involving sexual misconduct is considered as particularly serious. He submitted that this case contains both dishonesty and sexual misconduct, as such, this is a serious case that required a more serious sanction imposed on Mr Katanda's registration.

Mr Cassells submitted that in considering whether a suspension order was appropriate in this case, the relevant factors to be considered by the panel as provided by the SG are:

- *'A single instance of misconduct but where a lesser sanction is not sufficient;'*

Mr Cassells submitted that this is not a single incident of misconduct but a lengthy course of misconduct only brought to an end by the discovery of Mr Katanda's inappropriate interactions by Relative B.

- *'No evidence of harmful deep-seated personality or attitudinal problems;'*

Mr Cassells submitted that Mr Katanda was dishonest and took advantage of a vulnerable minor for his sexual gain, thus, there are deep-seated attitudinal problems.

- *'No evidence of repetition of behaviour since the incident;'*

Mr Cassells submitted that although there has not been a repetition of behaviour by Mr Katanda, this was only because he had been discovered and there was an investigation in the matter.

- *'The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;'*

Mr Cassells submitted that there was no evidence before the panel to suggest that Mr Katanda has developed any insight into his misconduct.

Mr Cassells submitted that there was nothing to suggest that a suspension order is appropriate and proportionate in this case. He stated that the most appropriate sanction in this case is a striking-off order. He referred the panel to the key factors to be considered in imposing a striking-off order as provided by the SG in the following:

- *‘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?’*

Mr Cassells submitted that the most important aspect of professionalism in mental health care is the maintenance of professional boundaries, which Mr Katanda has failed to maintain. He submitted that the nature of Mr Katanda’s misconduct could send a shiver down the spine of family members who needed to place their loved ones into mental health care, therefore, public confidence could only be maintained in the nursing profession if Mr Katanda is removed from the register. He concluded that a striking-off order is the only sufficient sanction to protect the public, maintain public confidence and professional standards in the nursing profession.

Decision and reasons on sanction

Having found Mr Katanda’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 position of trust.
- The incidents occurred over a long period of time.
- Mr Katanda's lack of insight on the impact of his actions on Patient A.
- Sustained dishonesty
- Mr Katanda's lack of remorse.
- Actual harm caused to Patient A's mental health and wellbeing

In the absence of any engagement by Mr Katanda in these proceedings and evidence provided to this panel being limited to two certificates on safeguarding and professional boundaries completed in October 2015, the panel was unable to identify any mitigating features 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 Katanda's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Katanda's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the serious nature and continuing risk of harm that Mr Katanda's misconduct poses. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

'Conditions may be appropriate when some or all of the following factors are apparent:

- *no evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *.....;*
- *.....;*
- *.....;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force;*
and
- *Conditions can be created that can be monitored and assessed.'*

The panel was of the view that the misconduct identified in this case could not be addressed through retraining and was difficult to remediate. The panel has identified deep-seated attitudinal problems in this case including serious dishonesty on Mr Katanda's part. It determined that given the seriousness of the concerns, Mr Katanda's attitudinal concerns and his lack of insight into the impact of his misconduct on Patient A and the public, there are no practical or workable conditions that could be formulated. Accordingly, a conditions of practice order would not address the risk of repetition and this poses a risk of harm to patients' safety and the public. Consequently, the panel decided that any conditions of practice order would not protect the public nor be in the public interest

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 determined that Mr Katanda's actions constituted a serious breach of fundamental aspects of professional conduct and behaviour that a registered nurse is expected to maintain. It further determined that Mr Katanda's actions pose a real risk of harm to patients' safety and seriously undermine the public confidence. It noted that Mr Katanda had shown limited insight into his misconduct and has failed to demonstrate any insight as to the seriousness of his actions and the impact on Patient A, her family and the nursing profession. It considered that this was not a single instance of misconduct but rather a sustained pattern of behaviour over a long period of time towards a young highly vulnerable patient under his care. The panel was of the view that Mr Katanda's actions amounted to as serious breach of his position of trust. It noted his lack of remorse, his limited insight, his limited attempt to strengthen his nursing practice and his serious dishonest conduct, all of which indicate deep-seated attitudinal problems which heightens the significant risk of repetition.

The panel was of the view that the serious breach of the fundamental tenets of the profession evidenced by Mr Katanda's actions is fundamentally incompatible with Mr Katanda remaining on the register.

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

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 of the view that all of the criteria as set out above, are met in this case. It noted that Mr Katanda’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 Katanda’s actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Katanda’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 Katanda 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 Katanda's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Cassells. He submitted that given that the panel had determined that Mr Katanda's misconduct poses a continuing risk to patients and that his conduct is fundamentally incompatible with him remaining on the register, it would be inconsistent if Mr Katanda were allowed to practise without restrictions during the 28-day appeal period.

Mr Cassells submitted that as the panel has determined that a striking-off order is appropriate in this case, an interim suspension order for a period of 18 months is necessary in order to protect the public and otherwise in the public interest, to cover the 28-day appeal period.

Decision and reasons on interim order

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

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

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

That concludes this determination.