Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 27 February 2023 – Friday 3 March 2023
Monday 6 March 2023 – Thursday 9 March 2023
Wednesday 26 July 2023 – Thursday 27 July 2023
Thursday 28 September 2023
Monday 18 December 2023- Wednesday 20 December 2023

Virtual Hearing

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

Name of Registrant:	**Paul Turnbull**
NMC PIN	00C0262E
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nursing – (April 2003) Nurse Independent/Supplementary Prescriber Nurse Prescribing – (June 2013)
Relevant Location:	Wakefield
Type of case:	Misconduct
Panel members:	Anthony Griffin (Chair, Lay member) Mark Gibson (Registrant member) Barry Greene (Lay member)
Legal Assessor:	Sean Hammond (27 February 2023 – 3 March 2023, 6 March 2023–9 March 2023, 26 July 2023 – 27 July 2023) Tracy Ayling KC (28 September 2023, 18 December 2023- 20 December 2023)
Hearings Coordinator:	Charis Benefo (27 February 2023 – 9 March 2023) Jumu Ahmed (26 July 2023)

	Jennifer Morrison (27 July 2023) Zahra Khan (28 September 2023) Samantha Aguilar (18 December 2023-20 December 2023)
Nursing and Midwifery Council:	Represented by Case Presenter, Claire Stevenson (27 February 2023 – 3 March 2023, 6 March 2023–9 March 2023, 26 July 2023 – 27 July 2023), Rebecca Paterson (18 December 2023- 20 December 2023)
Mr Turnbull:	Present and represented by Laura Herbert, Counsel instructed by Thompsons Solicitors
No evidence offered:	Charge 3 (and Charge 10)
Facts proved by admission:	Charges 13a, 13b)i, 13b)ii, 13b)iii, 14, 15, 16, 17, 18b (only in relation to charge 13), 19b (only in relation to charge 13)
No case to answer	Charge 13b)iv
Facts proved:	Charges 1a, 1b, 4a, 6, 7a, 7b, 8, 11, 12a, 18b, 18c, 19b, 20
Facts not proved:	Charges 2a, 2b, 4b, 5, 9, 12b, 13b)v
Fitness to practise:	Impaired
Sanction:	**Suspension order (6 months)**
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on application to amend the charge and offer no evidence on charge 3

The panel heard an application made by Ms Stevenson, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charges 1, 10, 18 and 19.

The first proposed amendment was to merge charges 1 and 10 as the only difference between the two charges was the date. Ms Stevenson submitted that the two dates could be included in the stem of charge 1, with an amendment to charge 1a. She submitted that no additional evidence was being introduced, but that this amendment would "*tidy up*" the charges.

The next proposed amendment was to include an additional preamble for charges 14 to 17. She stated that the preambles for charges 1 to 13 related to your alleged conduct during your employment at 4:Thought/Mindspace and Wakefield CAMHS. However, charges 14 to 17 related to alleged conduct which took place outside of your employment. Ms Stevenson submitted that this amendment would clarify the position in relation to charges 14 to 17.

Ms Stevenson proposed to remove charge 18a in order to remove any duplicity. She submitted that the "*mischief*" in that charge could be dealt with in charge 18b and the other remaining charges. Further, she proposed to reduce the number of charges referenced in the stem of charge 18 in order to narrow the scope of charges it could be applicable to and avoid duplicity.

Ms Stevenson then proposed to remove charge 19a as '*the pursuit of sexual gratification*' (captured by charge 19b) fell under the stem of being '*sexually motivated*' (captured by charge 19a).

It was submitted by Ms Stevenson that the proposed amendments would avoid duplicity, neaten the format of the charges, provide clarity and more accurately reflect the evidence.

Ms Stevenson invited the panel to bear in mind the overarching objective of the NMC to protect the public. She submitted that the proposed amendments could be made fairly and without unjust cause.

"That you, a Registered Nurse employed at 4:Thought / MindSpace:

1) On **20 March 2017 and/or** an unknown date in November 2016, told and / or said in the presence of Colleague A:

a) that ~~you would put her in your "wank bank"~~ **she was in your "wank bank" or words to that effect**;

b) that she "had a good pair of tits" or words to that effect;

…

~~10) On 20 March 2017 told Colleague A that:~~

~~a) she "was in your "wank bank" or words to that effect; and~~

~~b) That it was because she "had a good pair of tits" or words to that effect;~~

…

That you, a Registered Nurse

14) …

18) Your conduct at any and/or all of charges **1, 2, 4, 5, 6, 7, 8, 9, 11, 12 and 13** above was:

a) ~~Inappropriate~~;

b) In breach of professional boundaries;

c) Intended to intimidate, degrade, humiliate and/or offend those individuals referred to in the respective charges in relation to their protected characteristics

19) Your conduct at any and/or all of charges 1, 2, ~~3~~, 8, ~~10~~, 11 and 13 above was **done**:

a) ~~sexually motivated~~;

b) in pursuit of sexual gratification;

…

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

Ms Stevenson also informed the panel that the NMC would be offering no evidence on charge 3. She submitted that this charge had not been particularised and had been too broadly worded. She submitted that the evidence in respect of this charge had been provided by:

- One witness who could not attend this hearing to give live evidence and was the subject of a hearsay application that she was due to make;
- Another witness who had made broad comments about the allegation in the charge;

and

- Local statements which would be subject to hearsay rules.

Ms Stevenson submitted that further particularisation would be required in order to proceed with charge 3.

The panel heard submissions from Ms Herbert on your behalf, who indicated that she did not oppose the proposed amendments. Ms Herbert submitted that the NMC would have to formally offer no evidence on charge 10 as it no longer existed, having been merged with charge 1.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules), as well the NMC's guidance on offering no evidence.

The panel was of the view that such amendments, as applied for, were in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendments being allowed. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

In relation to charge 3, the panel took into account the NMC guidance in relation to its role when considering an application to offer no evidence in respect of one of the charges. The panel was satisfied that the NMC had good reason to offer no evidence. It noted that charge 3 had not been particularised, was vague, and related to potential hearsay evidence. The panel was further satisfied that if it were to allow the NMC to offer no evidence in relation to charge 3, that the remaining charges adequately particularised your alleged conduct. The panel noted that the general nature of the allegation in charge 3 was reflected within a number of the other charges around alleged sexual language, for example charges 1, 2, 8 and 11. Accordingly, the panel acceded to the NMC's application to offer no evidence on charge 3.

In light of the panel's above decisions, the panel noted that charges 18 and 19 required amendment to delete reference to charges 3 and 10, and amended these charges accordingly.

Details of charge (as amended)

That you, a Registered Nurse employed at 4:Thought / MindSpace:

1) On 20 March 2017 and/or an unknown date in November 2016, told and / or said in the presence of Colleague A:

    a) that she was in your *"wank bank"* or words to that effect;

    b) that she *"had a good pair of tits"* or words to that effect;

2) On an unknown date:

    a) gave Colleague B a hug;

    b) during the course of a hug, told Colleague B that you could *"feel her tits pressing up against"* or words to that effect;

3) On various dates unknown made one, or more, inappropriate and /or sexualised comments in to / in the presence of your colleague(s);

4) On 11 November 2016, in relation to disabled Asian service user:

    a) referred to the service user as *"shitter"* or words to that effect;

    b) offered sweets to the service user, knowing that she was disabled and that she would have difficulty unwrapping the sweet offered to her;

5) On an unknown date in, or around, November or December 2016, said to / in the presence of Colleague C, that gay men are *"weak and pathetic"* or words to that effect;

6) On an unknown date, in or around November or December 2016, told colleagues that you masturbate in bed while [PRIVATE] is asleep beside you, or words to that effect;

7) In December 2016:

   a) pretended to be Colleague B's husband by imitating a [PRIVATE] accent;

   b) referred to a sex act involving a [PRIVATE];

8) On 20 March 2017, said that you would put Colleague D was in your *"wank bank"*, or words to that effect;

9) In February 2017, gestured and/or told colleagues that the chair that Colleague B had been seated on *"stank of shit"* or words to that effect**;**

10) …

   a) …

   b) …

11) In, or around, February or March 2017, said that Colleague E was in your *"wank bank"*, or words to that effect;

12) On 1 August 2017, in relation to the mother of a child being supported by the service said:

   a) that the mother *"needed a good seeing to"* or words to that effect;

b) that due to the [PRIVATE], she *"only had sexual intercourse to procreate"* or word to that effect;

Whilst employed as a Registered Nurse at Wakefield CAMHS, you:

13) On 27 June 2019, said to Colleague F:

a) *"I find you really attractive, does that embarrass you? So much so that I went home and did something whilst thinking about you"* or words to that effect;

b) wrote the following on a piece of paper provided to / in view of Colleague F:

i) *"embarrassed?";*

ii) *"repulsed?";*

iii) "impressed?";

iv) *"I'll do it again"*;

v) *"every day until 19 July"*;

That you, a Registered Nurse:

14) On a date unknown you sent an unsolicited message to Colleague G via Facebook;

15) On a date unknown in February 2020 you sent multiple friend requests to Colleague G via Facebook;

16) Between 11 February 2020 and 13 February 2020 sent unsolicited messages to Colleague F via Facebook;

17) Sent one, or more, unsolicited messages to Colleague C:

    a) On 24 August 2020;

    b) On 20 September 2020;

18) Your conduct at any and/or all of charges 1, 2, 4, 5, 6, 7, 8, 9, 11, 12 and 13 above was:

    a) …;

    b) In breach of professional boundaries;

    c) Intended to intimidate, degrade, humiliate and/or offend those individuals referred to in the respective charges in relation to their protected characteristics

19) Your conduct at any and/or all of charges 1, 2, 8, 11 and 13 above was done:

    a) …;

    b) in pursuit of sexual gratification;

20) Your conduct at any and/or all of charges 14, 15, 16 and 17 intended to bully and/or intimidate the recipient of your message(s)

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

At the outset of the hearing, the amended charges were put to you, and Ms Herbert informed the panel that you made admissions to charges 13a, 13b)i, 13b)ii, 13b)iii, 14, 15, 16, 17, 18b (only in relation to charge 13) and 19b (only in relation to charge 13).

The panel therefore found charges 13a, 13b)i, 13b)ii, 13b)iii, 14, 15, 16, 17, 18b (only in relation to charge 13) and 19b (only in relation to charge 13) proved, by way of your admissions.

Concerns in relation to the documentary evidence

On day two of the proceedings, Ms Herbert raised concerns that the NMC had provided the panel with documentary evidence that had not been agreed by your representatives at Thompsons Solicitors prior to the start of this hearing. She stated that your representatives had sent its proposed redactions to the NMC on 20 February 2023, but that the NMC, knowing it had received the proposed redactions, sent unredacted versions of this documentary evidence to the panel on 24 February 2023. Ms Herbert submitted that she was raising this issue as a concern as it was inappropriate to put matters before the panel, knowing that some material had been fundamentally disagreed, which the panel would now have to put out of its mind.

Ms Stevenson indicated that as external Counsel instructed by the NMC, she had not been involved in the process of providing documentary evidence to the panel prior to the start of this hearing. She stated that she did not know the full timeline of events so as to respond to Ms Herbert's concerns.

The panel heard and accepted the advice of the legal assessor.

The panel took into account Ms Herbert's concerns about the documentary evidence. In the panel's view, it was regrettable that the documentary evidence was not provided to the panel in an agreed form prior to the hearing. The panel noted that this caused unnecessary delay to the commencement of the hearing.

On day two of the proceedings, the panel was provided with the updated documentary evidence which included the redactions submitted by your representatives. Neither party

applied for the panel to recuse itself as a result of it having previously seen the unredacted material. Furthermore, the panel was satisfied that there was no reason for it to do so. As a professional panel, it could proceed with this case, putting out of its mind any information which did not form part of the documentary evidence in this case, that it had seen prior to the start of the hearing.

Background

You first entered onto the NMC's register on 1 April 2003 as a Mental Health Nurse.

The NMC received a referral in respect of you on 13 July 2019 from Wakefield Child and Adolescent Mental Health Services (CAMHS) at the South West Yorkshire Partnership NHS Foundation Trust (the Trust).

You were employed as a Mental Health Nurse at the Trust's 4:Thought (which was later renamed MindSpace) service from August 2016 to March 2018. This service provided mental health support to children and also offered supportive counselling to parents of children who were receiving support.

From March 2018, you moved to Wakefield CAMHS at the Trust as a Band 6 Community Practitioner in adult mental health.

The allegations in this case are that whilst you were in these two positions at the Trust, you failed to maintain professional boundaries by acting inappropriately towards, and in the presence of your colleagues, and you intimidated and bullied colleagues.

Decision and reasons on application to admit Colleague A's hearsay evidence and Colleague B's written statement

The panel heard an application made by Ms Stevenson under Rule 31 to allow the hearsay evidence of Colleague A, which comprised of evidence which was taken as part

of the Trust's local investigation, into evidence. The panel also heard an application from Ms Stevenson under Rule 31 to allow the written statement of Colleague B, taken by the NMC as part of its investigation, into evidence.

Colleague B was not present at this hearing and, whilst the NMC had made sufficient efforts to ensure that this witness was present, she was unable to attend today [PRIVATE]. The panel was provided with email correspondence between Colleague B and the NMC dated from 13 February 2023 to 26 February 2023, which detailed the nature and effects of Colleague B's [PRIVATE]. The panel was also provided with a [PRIVATE] dated 27 January 2023.

In relation to Colleague A, the panel had been provided with her local statement dated 18 October 2017 from the Trust's investigation report, as well as the notes from Colleague A's interview at the Trust dated 6 December 2017. The NMC had made numerous attempts, but it had not been able to obtain a signed, written statement from her. The panel had regard to the email correspondence dated September 2020 from the solicitors instructed by the NMC to conduct the investigation of your case. In an email dated 16 September 2020, the NMC was informed by the investigating solicitors that Colleague A '*would be happy to assist with the investigation and provide information in the form of a witness statement but she would not be willing to attend a hearing*' and reasons were provided for her reluctance. In an email dated 29 September 2020, the NMC was informed that Colleague A '*was quite firm that she does not want to be involved in the investigation (regardless of whether she would be asked to attend a hearing or not)*' and that she had no interest in being put into contact with the witness liaison team for support. Colleague A was contacted by the NMC and the investigating solicitors again in October 2020, but did not respond.

Ms Stevenson referred the panel to her written submissions in respect of this application.

The written submissions stated that:

‘*10. The case of El Karout v NMC (2020) EWHC 3079 adopts the principles of Ogbonna (2010) EWCA Civ 1216 and Thorneycroft, and makes clear the need for a Panel to undertake a careful balancing exercise before admitting hearsay evidence, especially in a case where the evidence is the sole or decisive evidence on an allegation. The key issue in all cases is one of “fairness”.*

11. If the Panel decide to admit the hearsay evidence, then the Panel can determine what weight to attach to that evidence. As per the case of The Professional Standards Authority v (1) The Nursing and Midwifery Council (2) Jozi [2015] EWHC 764 (Admin), hearsay statements will usually carry less weight than oral evidence because it cannot be tested. Hearsay evidence may also be inadmissible where the weight which could be given to it in the circumstances of the case is zero, even where there is other evidence that could ‘corroborate’ (or support) it.’

Colleague A

Ms Stevenson’s written submissions stated:

‘*3. Before turning to the crux of this application, the NMC submit they have put the Registrant on notice of witness difficulties and by doing so have gone above and beyond what it required because how the regulator, the NMC, gets its witness(es) to a hearing is a matter for the regulator. If the witness(es) does not attend then the NMC can make a hearsay application. Therefore, the NMC submit there has been no unfairness caused to the Registrant as to keeping them informed regarding the difficulties with this witness.*

…

12. The NMC wish to rely on the evidence of Colleague A in order to pursue the NMC's statutory objective, balancing the same with the important public interest in progressing hearings as expeditiously as is fairly possible.

13. Whilst there is evidence of Colleague A reference throughout the bundle which also applies to this application, the evidence in particular is

i. Appendix 5 of DR/01 – local statement of Colleague A - Page 330

ii. Appendix 13 of DR/01 - Interview notes with Colleague A - Page 341- 344

14. Firstly, it is submitted that the evidence is relevant as it goes towards Charges 1, …, 4, 7, 8, …, 11 and 12.

15. Secondly, the NMC submit it would be fair to admit the evidence.

16. At paragraph 56 of Thorneycroft, there are a number of factors for the Panel to take into account when deciding on admitting evidence:…

17. Dealing with each of those factors in turn:

i. This evidence is not the sole or decisive evidence in support of the charges referred to in paragraph 13. In relation to Charge 1 in particular, of which Colleague A is the alleged victim, there is also evidence from Colleague C. The Panel are invited to refer to the evidence matrix as to other evidence which goes to the NMC's charges.

ii. Whilst it is known that the Registrant disputes the charges, it is unclear as to what extent the Registrant disputes and challenges the content of the evidence. The NMC submit that the Registrant's representative can address the Panel further as to this point. In any event, Colleague A's evidence is contested.

iii. It has not been clearly articulated that there is a suggestion that Colleague A has a reason to fabricate their allegations.

iv. The charges are serious in that there are inappropriate, sexually motivated, bullying and intimidation concerns.

v. As the Panel will see from the contact log (…) there has been no good reason provided as to the non-attendance of Colleague A. She had engaged with the NMC initially however she stated that she would not be willing to attend a hearing. In an email from the external paralegal investigating this matter to the NMC at PDF page 5 states that Colleague A said "The internal hearing was [PRIVATE] *and she does not want to go through it again". That Colleague A said that the "process was* [PRIVATE] *with attending a hearing again". She also said that the Registrant "also lives* [PRIVATE] *would worry about the implications of assisting".*

vi. The Panel may well think that the NMC could have taken more proactive steps, however, Colleague A is not a registered member who would be subject to the NMC's Code of Conduct and so required to engage with the NMC as a regulator and attend a hearing;

vii. As stated at the start of the submissions, the NMC submit they had put the Registrant on notice of witness difficulties and by doing so had gone above and before what it required. Please see paragraphs 3 to 4 It is submitted that there has been no unfairness caused to the Registrant as to keeping her informed regarding the difficulties with this witness.

18. In light of the above submissions the NMC submit that the evidence is relevant and fair.

19. If the Panel allow the hearsay evidence, then no further steps are required to be taken.

20. If the Panel refuse the application, the Panel may make a direction under Rule 22(5) of the Rules to compel Colleague A's attendance.

21. The NMC will then use the best endeavours available to effect the Rule 22(5) direction, which would most likely be an application to the High Court for summons.'

Colleague B

Ms Stevenson's written submissions stated:

'3. Before turning to the crux of this application, the NMC do not need to put the Registrant on notice of witness difficulties, how the NMC, gets its witness(es) to a hearing is a matter for the regulator. If the witness(es) does not attend then the NMC can make a hearsay application. Therefore, the NMC submit there has been no unfairness caused to the Registrant regarding the difficulties with this witness..

…

12. The NMC wish to rely on the evidence of Colleague B in order to pursue the NMC's statutory objective, balancing the same with the important public interest in progressing hearings as expeditiously as is fairly possible.

13. Firstly, it is submitted that the evidence is relevant as it goes towards Charges 2 ….

14. Secondly, the NMC submit it would be fair to admit the evidence.

15. At paragraph 56 of Thorneycroft, there are a number of factors for the Panel to take into account when deciding on admitting evidence:…

16. Dealing with each of those factors in turn:

i. This evidence is not the sole or decisive evidence in support of the charges. In relation to Charge 2 there is also evidence from Colleague C

within his interview notes at page 54. .... There is also further evidence as per the NMC's evidential matrix.

ii. Whilst it is known that the Registrant disputes the charges, it is unclear as to what extent the Registrant disputes and challenges the content of the evidence. The NMC submit that the Registrant's representative can address the Panel further as to this point. In any event, Colleague B's evidence is contested.

iii. It has not been clearly articulated that there is a suggestion that Colleague B has a reason to fabricate their allegations.

iv. The charges are serious in that there are inappropriate, sexually motivated, bullying and intimidation concerns.

v. As the Panel will see from the contact log (…) there has been a good reason provided as to the non-attendance of Colleague B. She is engaged with the NMC however [PRIVATE] she cannot attend the hearing. She further states "I had all intentions of attending and had arrange this time out of work".

vi. The NMC had taken steps to secure Colleague B's attendance and it was only upon being made aware [PRIVATE] on 16 February 2023 that it became apparent that she would be unable to attend. Furthermore, in light of her reason for her non-attendance the NMC do not consider it appropriate to seek a witness summons to secure her attendance;

vii. As stated at the start of the submissions, the NMC submit there is no requirement to put the Registrant on notice of any witness difficulties. Adopting paragraphs 3 to 4 above, it is submitted that there has been no unfairness caused to the Registrant in this regard.

17. In light of the above submissions the NMC submit that the evidence is relevant and fair.'

The panel also heard from Ms Herbert, who indicated that she opposed the NMC's application in respect of Colleague A. She accepted the law in the cases of *El Karout v*

NMC (2020) EWHC 3079 and *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) and submitted that the key issue in this case was fairness. Ms Herbert submitted that Colleague A's evidence comprised of a local statement and interview which was taken as part of the Trust's investigation into a case that was started by Ms 1, the founder of MindSpace, after you had professionally challenged her about a safeguarding issue. It was Ms Herbert's submission that the reason Colleague A had provided a statement was because she supported Ms 1 on the matter.

Ms Herbert submitted that Colleague A did not provide her evidence for quasi legal proceedings, or under oath, but provided an interview that was taken by Ms 1. Ms Herbert submitted that taking into account Colleague B's evidence, they were effectively forced into making allegations about you.

Ms Herbert submitted that Colleague A had not suggested that her evidence, which was taken as part of the local investigation, could be used in any way to assist in these proceedings. She had initially agreed to provide a witness statement to the NMC in September 2020, but that she would not attend a hearing. Then she indicated later on in September 2020 that she did not want to be involved in the NMC's investigation. Ms Herbert submitted that Colleague A had been unsupportive of her previous evidence. It was her submission that it would be unfair to deprive you of the opportunity to challenge Colleague A's evidence.

Ms Herbert submitted that it did not appear as though Colleague A was aware that her written evidence would be used during the course of these proceedings. She submitted that relying on this evidence would not be appropriate.

Ms Herbert stated that Colleague A's evidence pointed to charges 1, 4, 7 8, 11 and 12. In respect of charge 1, she submitted that the comment had allegedly been made towards Colleague A, but that Colleague A did not support the allegations. Ms Herbert submitted that this was clearly unfair and prejudicial to you. In respect of charge 4, Ms Herbert submitted that you completely denied this allegation. She stated that the course provider

had confirmed that no such incident had taken place, and so Colleague A would need to be challenged on her account. In respect of charges 7, Ms Herbert submitted that you vehemently denied this allegation. She submitted that Colleague B, the subject of the allegation had not given any evidence that such a comment had been made to her, and so the NMC was effectively asking the panel to consider Colleague A's evidence about an incident involving a comment allegedly being made to Colleague B, even though Colleague B had not mentioned any such comment and would also not be attending this hearing. In relation to charges 8, 11 and 12, Ms Herbert stated that this was disputed and so Colleague A would need to be challenged.

Ms Herbert submitted that the NMC had not taken reasonable steps to seek Colleague A's attendance. She submitted that whilst your representatives were put on notice that Colleague A was going to be the subject of a hearsay application, this was only done on 24 February 2023. Ms Herbert submitted that overall, it would be completely unfair and inappropriate for the NMC to rely on Colleague A's evidence.

Ms Herbert then indicated that she opposed the NMC's application in respect of Colleague B. She submitted that Colleague B should attend this hearing because although she was partially corroborative of the NMC's case, she was clear in her NMC written statement on what she said to Ms 1 and that she made her local statement [PRIVATE] and that she did not agree with what she said. Ms Herbert submitted that the veracity of Colleague B's written statement was to be doubted.

Ms Herbert submitted that Colleague B is important to your case as she was the subject of some of the allegations. She submitted that whilst Colleague B's evidence was not the sole evidence in respect of the charges, she was either the subject or witness to the incidents giving rise to charges 6, 7 and 9, which in her submission are serious charges.

Ms Herbert submitted that it was not clear why Colleague B could not attend this hearing to give evidence via video link, and why this had not been enquired by the NMC. She invited the panel to direct the NMC to make further enquiries as to why Colleague B could not attend via video link.

Notwithstanding [PRIVATE], the panel asked Ms Stevenson to explore the possibility of securing her attendance via video link.

The panel heard and accepted the legal assessor's advice on the principles it should take into consideration when determining these applications. This included that Rule 31 provides that, '*subject to the requirements of relevance and fairness*', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The legal assessor also referred the panel to the relevant parts of the judgments in the cases of *El Karout v NMC* and *Thorneycroft v Nursing and Midwifery Council* that set out the principles and factors that the panel should take into account.

Before the panel concluded its deliberations on the NMC's application, the hearing resumed because Ms Stevenson had received an update in relation to Colleague B indicating that she was not able to attend the hearing via video link [PRIVATE]. Ms Stevenson indicated that she had relayed this information to Ms Herbert.

Ms Herbert then informed the panel that she no longer opposed the application for Colleague B's written statement to be admitted into evidence.

The panel considered each of the applications to admit hearsay evidence separately.

In reaching its decisions, the panel first considered whether the hearsay evidence was relevant and then considered whether it would be fair to admit it. The panel carefully considered the judgments in the cases of *El Karout v NMC* and *Thorneycroft v Nursing and Midwifery Council* and applied the following principles when considering the applications*:*

1.1. 'The admission of the statement of an absent witness should not be regarded as a routine matter. The FTP rules require the Panel to consider the issue of fairness before admitting the evidence.

1.2. The fact that the absence of the witness can be reflected in the weight to be attached to their evidence is a factor to weigh in the balance, but it will not always be a sufficient answer to the objection to admissibility.

1.3. The existence or otherwise of a good and cogent reason for the non-attendance of the witness is an important factor. However, the absence of a good reason does not automatically result in the exclusion of the evidence.

1.4. Where such evidence is the sole or decisive evidence in relation to the charges, the decision whether or not to admit it requires the Panel to make a careful assessment, weighing up the competing factors. To do so, the Panel must consider the issues in the case, the other evidence which is to be called and the potential consequences of admitting the evidence. The Panel must be satisfied either that the evidence is demonstrably reliable, or alternatively that there will be some means of testing its reliability.'

The panel therefore acknowledged that it should not admit hearsay evidence as a matter of routine and that it must undertake a careful balancing exercise to determine whether it would be fair for it to be admitted.

The panel also had regard to paragraph 56 in the judgment of the case *Thorneycroft v Nursing and Midwifery Council*, where the judge identified a number of factors relevant to the admission of the disputed hearsay in that case, namely:

i. whether the statements were the sole and decisive evidence in support of the charges;
ii. the nature and extent of the challenge to the contents of the statements;
iii. whether there was any suggestion that the witnesses had reasons to fabricate their allegations;
iv. the seriousness of the charge, taking into account the impact which adverse findings might have on the Appellant's career;

v. *whether there was a good reason for the non-attendance of the witnesses;*
vi. *whether the Respondent had taken reasonable steps to secure their attendance; and*
vii. *the fact that the Appellant did not have prior notice that the witness statements were to be read.*

Hearsay evidence of Colleague A

The panel had regard to the nature of Colleague A's evidence, which comprised of the notes of her interview at the Trust on 20 November 2017 and her local statement dated 18 October 2017. The panel considered that whilst Colleague A's evidence had not been provided during the course of the NMC's investigation, it was produced for the purpose of the Trust's local investigation. Colleague A gave the local statement in a formal setting with management at the Trust, which was then followed up by a further interview that she signed. There was information in the evidence to suggest that Colleague A had an understanding that her evidence could go forward to a hearing '*of a HR nature*'.

It was satisfied that whilst not the sole and decisive evidence on any of the charges, Colleague A's evidence was probative and relevant to charges 1, 4, 6, 7, 8, 11 and 12.

The panel had heard from Ms Herbert that you disputed charges 1, 4, 6, 7, 8, 11 and 12.

There was no evidence before the panel to suggest that Colleague A had reason to fabricate her evidence.

The panel was satisfied that charges 1, 4, 6, 7, 8, 11 and 12 were serious, involving alleged inappropriate and sexually motivated behaviour and bullying and intimidation and that if found proved, could have an adverse impact on your nursing career.

The panel noted that the reason for Colleague A's non-attendance at the hearing was that she did not want to be involved in the investigation or attend the hearing. The panel noted

that Colleague A was not a registered nurse and was satisfied by the evidence placed before it that the NMC had made reasonable attempts to secure her co-operation and attendance. In these circumstances, the panel was satisfied that it would be disproportionate for the NMC to take steps to compel her attendance.

The panel was also mindful of its own powers under Rule 22(5) to require a person to attend the hearing to give evidence but was of the view that this would be inappropriate and disproportionate having regard to the fact that Colleague A was not a registered nurse and the reasons given for her reluctance and refusal to engage in these proceedings.

The panel was also satisfied that you had been put on notice about the difficulties in securing the attendance of Colleague A prior to the start of this hearing.

Further, the panel noted your direct objection of Colleague A's evidence. It considered that there was unfairness to you in this regard as you were deprived, as was the panel, from reliance upon the live evidence of Colleague A and the opportunity of questioning and probing that testimony. However, the panel was satisfied that Colleague A's evidence was inherently consistent and not contradictory. The panel determined that there was also public interest in the issues being explored fully which supported the admission of Colleague A's evidence into the proceedings.

Taking all of the above matters into account, the panel decided that it would be fair to admit the hearsay evidence of Colleague A. In reaching this decision, the panel noted that it would be able to attach such weight as it deemed appropriate to Colleague A's hearsay evidence once it had heard and evaluated all of the evidence before it at the fact-finding stage.

Hearsay evidence of Colleague B

The panel then considered the application in respect of Colleague B. The panel had regard to Colleague B's evidence, which comprised of a witness statement provided to the NMC dated 29 September 2020. It noted that Colleague B's NMC witness statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, '*This statement … is true to the best of my information, knowledge and belief*' and signed by her.

The panel then considered the principles set out in the case of *Thorneycroft v NMC*.

It was satisfied that whilst not the sole and decisive evidence on any of the charges, Colleague B's evidence was relevant to charges 2 and 3 (although the NMC had decided to offer no evidence in respect of charge 3).

The panel had heard from Ms Herbert that you disputed charge 2, and initially sought to challenge Colleague B's evidence. Although following further information about Colleague B's ability to join the hearing via video link, you no longer opposed the application to admit her written statement into evidence.

There was no evidence before the panel to suggest that Colleague B had reason to fabricate her evidence.

The panel was satisfied that charge 2 was serious, involving alleged inappropriate and sexually motivated behaviour and that if found proved, could have an adverse impact on your nursing career.

The panel noted that there was a good and cogent reason for Colleague B's non-attendance at the hearing [PRIVATE]. It was satisfied that the NMC had made reasonable

attempts to secure her attendance at the hearing and failing that, her attendance via video link.

The panel was also mindful of its own powers under Rule 22(5) to require a person to attend the hearing to give evidence but was of the view that this would be inappropriate and disproportionate having regard to Colleague B's [PRIVATE].

The panel took into account that you had not been put on notice about the difficulties in securing the attendance of Colleague B prior to the start of this hearing. However, you were provided with a copy of Colleague B's witness statement.

The panel considered that there might be some disadvantage to you as a result of the non-attendance of Colleague B to give evidence at the hearing, as you would be deprived of the opportunity of questioning and probing her testimony. However, the panel also took into account that you no longer opposed the application in respect of Colleague B. It was the panel's view that there was a public interest in the issues being explored fully which supported the admission of Colleague B's evidence into the proceedings.

Taking all of the above matters into account, the panel decided that it would be fair to admit the hearsay evidence of Colleague B. In reaching this decision, the panel noted that it would be able to attach such weight as it deemed appropriate to Colleague B's hearsay evidence once it had heard and evaluated all of the evidence before it at the fact-finding stage.

Decision and reasons on application to amend charge 13

At the conclusion of the live evidence of the NMC's witnesses, the panel heard an application by Ms Stevenson to amend the wording of charge 13.

The proposed amendment was to remove charge 13b)iv and replace it with a charge 13c. Ms Stevenson said that the panel had heard evidence from Colleague F who clarified that

you had said "*I'll do it again*" to her. It was submitted by Ms Stevenson that the proposed amendment would clarify the charge and more accurately reflect the evidence given by Colleague F.

Ms Stevenson reminded the panel that in line with Rule 28, the NMC could apply to amend a charge at any stage before making its findings of fact. She referred the panel to the case of *The Professional Standards Authority for Health and Social Care v The Nursing and Midwifery Council, Ms Winifred Nompumelelo Jozi* [2015] EWHC 764 (Admin).

Ms Stevenson submitted that the NMC did not propose to introduce a new charge, but merely clarify the charge. She submitted that this amendment would not change the nature, gravity or scope of the charges against you, and did not affect the misconduct behind the charge. Ms Stevenson submitted that the proposed amendment could be made fairly and without injustice.

"Whilst employed as a Registered Nurse at Wakefield CAMHS, you:

13) On 27 June 2019, said to Colleague F:

a) *"I find you really attractive, does that embarrass you? So much so that I went home and did something whilst thinking about you"* or words to that effect;

b) wrote the following on a piece of paper provided to / in view of Colleague F:

i) *"embarrassed?";*

ii) *"repulsed?";*

iii) “impressed?”;

~~iv) *“I’ll do it again”*;~~

v) *“every day until 19 July”*;

c) “I’ll do it again” or words to that effect

…

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

Ms Herbert indicated that she opposed the application. She accepted the relevance of Rule 28 in this matter but submitted that the panel would need to have regard to the merits of the case and fairness to the proceedings. Ms Herbert submitted that such an amendment could not be made without injustice to you.

Ms Herbert referred the panel to the case of *PSA v HCPC & Doree* [2017] EWCA Civ 319. She submitted that in this case, the NMC sought to change the charge to fit the evidence that had just been heard from Colleague F which was inappropriate. She highlighted that Colleague F, on this particular issue had been very inconsistent in her evidence about what you had said and written to her, and that it would not be correct or fair to justify such an amendment as a mere clarification.

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

The panel noted that Colleague F had given an account in her live evidence which differed from her documentary evidence. It also noted that the NMC sought to amend the wording of charge 13 to reflect the live evidence given by Colleague F. The panel was therefore not satisfied that the proposed amendment amounted to a mere clarification of the charge.

In the panel's view, it amounted to a significant amendment that was sought as a result of the inconsistent evidence given by Colleague F. Accordingly, the panel was of the view that it would not be fair to amend the charge 'to fit' the live evidence given by Colleague F. In reaching this decision, the panel noted the timing of the application to amend the charge and that it was made after Ms Herbert had cross-examined Colleague F on the basis of the charge as currently drafted.

The panel therefore decided not to accede to the application to amend charge 13.

Decision and reasons on application of no case to answer

The panel considered an application from Ms Herbert that there is no case to answer in respect of charges 12b, 13b)iv and 13b)v.

In relation to this application, Ms Herbert referred the panel to the case of *R v Galbraith* [1981] 1 WLR 1039, which laid down that there would be no case to answer where there was either no evidence to support the allegation (limb one) or where the evidence was so tenuous (because of inherent vagueness, weakness or inconsistency with other evidence) that no properly directed panel could find the matter proved (limb two).

Regarding charge 12b, Ms Herbert highlighted her note of Colleague C's live evidence that "*he did not remember*" in response to Ms Herbert's suggestion that Colleague A talked about the comment. She referred the panel to Colleague A's evidence which had been admitted as hearsay evidence. Colleague A's account of the conversation was provided in the notes of her interview at the Trust on 20 November 2017 and her local statement dated 18 October 2017, where she stated that she told you '*some facts about* [PRIVATE] *including the purpose of sex is to reproduce*' and that within [PRIVATE].

Ms Herbert submitted that this was the only evidence before the panel. Where there was some written evidence from Colleague C, he did not support this evidence in his live evidence before the panel. Further, Colleague A's evidence did not support the charge.

Ms Herbert therefore submitted that the evidence in respect of charge 12b was tenuous and inconsistent.

In relation to charges 13b)iv and 13b)v, Ms Herbert submitted that there had been inconsistency from Colleague F. She referred the panel to:

- Colleague F's written statement dated 18 March 2020 which stated that *'…The Registrant then said out loud "I'll do it again" and then wrote on the piece of paper "every day until the 19 July".';*
- The notes of Colleague F's interview at the Trust on 4 September 2019 which stated*'…Then he said: 'I'll keep doing it every night until the 19th.';*
- The email from Colleague F dated 1 July 2019 which stated '…*then he wrote 'I'll do it again and keep doing it every night until July 19th'; and*
- The notes of the meeting with Colleague F on 4 July 2019 which stated, '*so he then said, "so much so that I went home last night and did something whilst thinking of you" put on note that he'll do it every day until 19th July*.'

Ms Herbert submitted that it was Colleague F's suggestion in live evidence that you had said one comment ("*I'll do it again*") out loud and written the other comment ("*every day until 19 July*") on a piece of paper. Ms Herbert submitted that Colleague F's live evidence before the panel was inconsistent with her written evidence and that her other evidence was generally inconsistent, as she had given three to four different accounts of the incident.

Further, in respect of the allegation in charge 13b)v (that you said to colleague F "*every day until 19 July 2019*"), Ms Herbert reminded the panel of Colleague F's evidence that she did not know whether you knew that she would be returning to CAMHS on 19 July 2019. She asked the panel to consider that her evidence was inconsistent as to the basis of this allegation.

Ms Herbert submitted that there was no case to answer in respect of charges 13b)iv and 13b)v as the evidence on these charges was both tenuous and inconsistent in nature.

In these circumstances, it was submitted by Ms Herbert that charges 12b, 13b)iv and 13b)v should not be allowed to remain before the panel.

Ms Stevenson submitted that there is a case to answer in respect of charges 12b, 13b)iv and 13b)v. She submitted that the NMC has adduced sufficient evidence such that a properly directed panel could find the facts proved. Ms Stevenson referred to Rule 24(7) which states that:

> *'24 (7) Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and –*
>
> *(i) either upon the application of the registrant, or*
> *(ii) of its own volition,*
>
> *the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.'*

Ms Stevenson endorsed Ms Herbert's reference to the case of *R v Galbraith* and invited the panel to consider the NMC's guidance on Evidence, which included guidance on no case to answer. With regard to any inconsistencies, Ms Stevenson reminded the panel of the test in *R v Galbraith*:

> '*a. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly*

come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.'

Regarding charge 12b, Ms Stevenson provided her note of Colleague C's live evidence. She said that during cross-examination, it was put to Colleague C that it was Colleague A who said the comment '*they only have sex to procreate*' and Colleague C answered that he could not remember. Ms Stevenson stated that it was then put to him that he was trying to deflect from what Colleague A said that was inappropriate, and he was suggesting it was you. In response, Colleague C stated that he remembered what you said whether Colleague A said that or not. Ms Stevenson said that Colleague C's evidence was clarified through panel questions, and he answered that he stood by the comments heard, that it was a long time ago and that he stood by his witness statement as he remembered writing it, but didn't remember the full conversation. When re-examined it was put to Colleague C "*you were asked about the* [PRIVATE] *service user, is it right you can't recall whether it was or wasn't colleague A who said or had said it*" and he replied, "*I can't remember, if asked me 6 months after probably clear picture just don't remember*".

Ms Stevenson referred the panel to Colleague C's written statement dated 19 September 2020, the notes of his interview at the Trust on 20 November 2017 and his local statement dated 18 October 2017, which maintained that you had made the comment about the patient's mother.

Ms Stevenson also referred to Colleague A's written evidence in respect of this matter, comprising of her local statement dated 18 October 2017 and the notes of her interview at the Trust on 20 November 2017. She stated that whilst there were inconsistencies between Colleague A and Colleague C's accounts, as per the case of *R v Galbraith:*

'where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury'.

Ms Stevenson submitted that there was a possible view of the facts, namely the account of Colleague C, where there was evidence on which the panel could properly come to the conclusion that you made that comment or said words to that effect. She submitted that at this stage, the panel did not have to consider credibility of a witness but that it may be worth noting, as to the reliability of the evidence, whether the witnesses would be untruthful in the accounts given and, if they are mistaken in their accounts, consideration may be given to the fact that the witnesses are giving evidence some six to seven years after the incidents occurred.

Ms Stevenson submitted that in this case, the panel had the benefit of contemporaneous documents. She submitted that contemporary documents are always of the utmost importance as memories fade. Ms Stevenson submitted that within the contemporaneous documents from Colleague C (namely his local statement and interview notes) as well as his NMC written statement, he was consistent and clear that you said that due to the [PRIVATE] she "*only had sexual intercourse to procreate*". She submitted that furthermore, Colleague C's live evidence did not change or materially shift from his previous accounts, it was simply that he could no longer remember and so he stood by his statement.

Ms Stevenson submitted that in addition, it may be worth noting that the panel may attach less weight to the evidence of Colleague A.

Ms Stevenson submitted that sufficient evidence had been presented for charge 12b and that the evidence was neither inherently weak nor vague. She therefore submitted that there was a case to answer.

Regarding charge 13b)iv and 13b)v, Ms Stevenson provided her note of Colleague F's live evidence:

> Panel's question: "Are you saying that he said "I'll do it again"?

Colleague F's response: "So he'd written down the impressed repulsed …then he said "I'll do it again" then he wrote down when he'd do it until"

Panel's question: "So your evidence is that he didn't write down "I'll do it again"" Colleague F's response: "Not that I recall but he did write "every day until 19th July""

Ms Stevenson also referred the panel to Colleague F's NMC written statement dated 19 September 2020, the notes of her interview at the Trust on 4 September 2019, the notes of her meeting at the Trust on 4 July 2019 and her email dated 1 July 2019. Ms Stevenson submitted that at this stage, the panel did not have to consider credibility of a witness but that it may be worth noting, as to the reliability of the evidence, whether the witness would be untruthful in the accounts given and, if she is mistaken in her account, consideration may be given to the fact that Colleague F is giving evidence some four years after the incidents occurred.

Ms Stevenson asked the panel to consider that Colleague F's email dated 1 July 2019 and the notes of her meeting at the Trust on 4 July 2019 were her two most contemporaneous pieces of evidence which referred to you writing down "*I'll do it again and every night until 19 July*" or words to that effect. She asked the panel to consider the date of the evidence and again that contemporaneous documents are always of the utmost importance as memories fade.

In response to Ms Herbert's submission that Colleague F said in live evidence that she could not remember whether you knew that she would be returning to CAMHS on 19 July 2019 or not, Ms Stevenson asked the panel to consider that memories fade and that Colleague F did not positively answer that you did not know, but simply that she could not remember.

Ms Stevenson also invited the panel to consider the local statement of Ms 2, a colleague at Wakefield CAMHS at the time.

Ms Stevenson submitted that in addition, you have accepted charges 13a, 13b)i, 13b)ii and 13b)iii, all of which arise from the same incident. She submitted that these admissions were consistent with the NMC's evidence, and the account given by Colleague F.

Ms Stevenson submitted that sufficient evidence had been presented for charge 13b)iv and 13b)v and that the evidence was neither inherently weak or vague. She therefore submitted that there was a case to answer.

Ms Stevenson submitted that in all the circumstances, it would not be wholly unsafe for this case to proceed beyond the halfway stage.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor. It had regard to the provisions of Rule 24(7), the NMC guidance in relation to submissions of no case to answer and the test set out in the case of *R v Galbraith*.

In reaching its decision, the panel made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer in respect of charges 12b, 13b)iv and 13b)v. The panel considered the submission of no case to answer in respect of each charge separately.

In relation to charge 12b, the panel noted the following evidence:

- Colleague C's written statement dated 19 September 2020;
- The notes of Colleague C's interview at the Trust on 20 November 2017;
- Colleague C's local statement dated 18 October 2017;
- Colleague A's local statement dated 18 October 2017; and
- The notes of Colleague A's interview at the Trust on 20 November 2017

The panel noted that Colleague C had provided consistent written evidence that you had said that due to [PRIVATE], she "*only had sexual intercourse to procreate*". The panel took into account Colleague C's live evidence that he did not remember the conversation, but that he stood by his written statement. It also noted the passage of time since the alleged incident in August 2017 and this hearing in February and March 2023, and the effect this might have on the memory of the witnesses.

The panel also considered Colleague A's local statement and the notes of her interview at the Trust which indicated that she had told you some facts about [PRIVATE], including the purpose of sex to reproduce.

The panel noted that there were some inconsistencies within Colleague A's account of the incident. However, in the panel's view, these were relevant to the panel's assessment of the reliability of Colleague A's evidence at the fact-finding stage.

The panel therefore determined that the evidence provided by Colleague C and Colleague A, taken at its highest, was such that charge 12b was capable of being found proved by a properly directed panel. The panel was therefore satisfied that sufficient evidence had been presented by the NMC to support a case to answer. The panel therefore rejected Ms Herbert's submission in relation to this charge.

In relation to charge 13b)iv, the panel noted the following evidence:

- Colleague F's written statement dated 18 March 2020;
- The notes of Colleague F's interview at the Trust on 4 September 2019
- Colleague F's email dated 1 July 2019; and
- The notes of the meeting with Colleague F at the Trust on 4 July 2019.

The panel accepted that within her written evidence, Colleague F's account was inconsistent as to whether you said '*I'll do it again*' or whether you wrote this comment on a piece of paper.

In her live evidence, Colleague F stated that you had said '*I'll do it again*'. This account differed to the allegation in the charge (on 27 June 2019, you wrote "*I'll do it again*" on a piece of paper provided to/in view of Colleague F), so much so that the NMC had made an application to amend the wording of the charge, which the panel rejected on the basis of fairness.

Having regard to the significant inconsistencies in Colleague F's evidence, the panel determined that the evidence presented by the NMC in relation to this charge fell within the second limb of the test as set out in the case of *R v Galbraith*. In the panel's view, the NMC's evidence, taken at its highest, was such that a properly directed panel could not find this charge proved. Accordingly, the panel was satisfied that that the NMC had not presented sufficient evidence in support of this charge and there was no realistic prospect that it could find the facts of charge 13b)iv proved. The panel therefore acceded to Ms Herbert's submission of no case to answer in respect of this charge.

In relation to charge 13b)v, the panel the panel noted the following evidence:

- Colleague F's live evidence, her written statement dated 18 March 2020; and
- Her two contemporaneous accounts of the incident contained in the email dated 1 July 2019 and the notes of her meeting at the Trust on 4 July 2019.

The panel noted that all of Colleague F's evidence was consistent in that she maintained that you had written '*every day until July 19'* on a piece of paper.

The panel also had regard to the notes of Colleague F's meeting at the Trust on 4 September 2019 which stated that you had said '*I'll keep doing it every night until the 19th*'. The panel noted the inconsistency between this account and Colleague F's other evidence however, it considered that Colleague F's account was being noted down by someone else as part of the investigation.

The panel therefore determined that the evidence provided by Colleague F, taken at its highest, was such that charge 13b)v was capable of being found proved by a properly directed panel. The panel was therefore satisfied that sufficient evidence had been presented by the NMC to support a case to answer. The panel therefore rejected Ms Herbert's submission in relation to this charge.

Decision and reasons on application to interpose the evidence of your witness prior to your own evidence

Before the panel concluded its deliberations on the submission of no case to answer, the hearing resumed, at 09:46 on day five of the proceedings, at the request of Ms Herbert. Ms Herbert asked the panel to consider an application to interpose the evidence of your witness, Witness 3, prior to your own evidence. She explained that Witness 3 was only available to give evidence that day between 09:00 and 11:00 due to his busy work commitments, and could not attend the hearing on any of the other scheduled hearing dates.

Ms Herbert referred the panel to Witness 3's written statement and submitted that he was a witness that you sought to rely on as he provided important evidence as to fact. She told the panel that Witness 3 worked in the 4:Thought/MindSpace team in 2016 and 2017, and was alleged to be a direct witness to charges 4 and 6. She said that Witness 3 would have also been in the office for the alleged behaviour contained in charges 1, 8 and 11.

Ms Herbert submitted that any objection from the NMC should not be supported in these circumstances as, in her view, the NMC should have called Witness 3 to be a witness in this proceedings. She stated that Witness 3 was mentioned numerous times in the documentary evidence. Ms Herbert submitted that you had already seen Witness 3's written statement, and so it was unlikely that he would give evidence that you were not already aware of.

Ms Herbert invited the panel to consider its powers under Rule 22(5):

'*22.–…*

(5) The Committee may of its own motion require a person to attend the hearing to give evidence, or to produce relevant documents.'

Ms Herbert submitted that in light of Witness 3's relevance to serious allegations in this case, the panel might consider it important to hear from him. She submitted that Witness 3's evidence was extremely relevant to the matters that the panel would need to decide on. She submitted that it would not be appropriate to have Witness 3's oral evidence "*fall away*" due to professional obligations.

Ms Stevenson indicated that the NMC opposed this application and did not agree with Witness 3's evidence being heard before your own evidence. Ms Stevenson acknowledged that you had already seen Witness 3's written statement but submitted that this would not be the whole of his evidence. She referred the panel to Rule 22(6) which states that:

'***22.***–*…*

(6) No witness as to fact may observe the proceedings until she has given evidence or been formally released by the Committee.'

Ms Stevenson submitted that equally, a registrant should not hear the evidence of their witness before they give evidence. She submitted that registrants give evidence before their witnesses for a reason. Ms Stevenson stated that she had discussed an option that would be suitable to both parties with Ms Herbert and one option was to interpose Witness 3's evidence after you had been cross-examined on the areas that his evidence related to, before returning to the remainder of your evidence. Ms Stevenson reminded the panel that it was still deliberating on the application of no case to answer. She submitted that it would not be appropriate for the panel to come out of retirement to deal with Witness 3's evidence. She submitted that witnesses could not usually be given precise times, and that generally, they would fit the hearing around their commitments.

Ms Herbert queried the analogy presented by Ms Stevenson in respect of Rule 22(6). She submitted that you are not a '*witness*' under this rule as you are the registrant, and you are able to listen to the NMC evidence as the registrant. Ms Herbert submitted that this analogy did not work as you had listened to the NMC case before your evidence. She submitted that she could not see any real prejudice to the NMC by allowing Witness 3's evidence to be heard before your evidence. She queried why the NMC challenged this application as Witness 3 was a witness as to fact, yet the NMC had not called him as a witness. Ms Herbert reminded the panel that it had allowed the earlier hearsay applications made by Ms Stevenson. She submitted that it would be unfair and inappropriate to lose Witness 3 as a hearsay witness when he was actually able to attend the hearing.

In response, Ms Stevenson submitted that it was a matter for the NMC to decide how it investigated this case and what witnesses it decided to call.

Ms Herbert accepted that it was a matter for the NMC to decide on how to conduct its investigation but submitted that the NMC should still investigate cases fairly, which includes engaging with witnesses that help and do not help the NMC's case. She highlighted that the NMC had engaged with numerous other witnesses to the alleged incidents that Witness 3 was also a witness to.

In view of the time restriction of Witness 3's availability, the Chair asked the parties whether they would be prepared to accept an oral handing down of the panel's decision on Ms Herbert's submission of no case to answer (with written reasons to follow).

Ms Herbert indicated that she would be willing to take the panel's oral decision. She also indicated that Witness 3 would now be available for a slightly longer period, but that she was not sure how much longer this might be.

Ms Stevenson indicated that the NMC would require a written determination of the panel's decision and reasons on the submission of no case to answer. She submitted that if the

panel did consider handing down an oral decision, it should still consider that Witness 3 gives evidence after you.

The panel heard and accepted the advice of the legal assessor, which included reference to Rule 24 on the order of proceedings.

Ms Stevenson submitted that the NMC would require the panel's written determination on Ms Herbert's submission of no case to answer, as this particular application dealt with the facts and charges of this case, rather than the application in relation to hearsay, for example.

Ms Herbert responded that she could not see any prejudice from an oral handing down of the panel's decision. She again reminded the panel of its powers under Rule 22(5) and submitted that if the panel was of the view that Witness 3's evidence was important and relevant, then it could decide on this at any time in the hearing. She asked the panel to consider why it would object to this application in light of its powers.

Ms Stevenson submitted that there were other options available to the panel, including adjourning the proceedings into the following week until Witness 3 could attend.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor. It had regard to the provisions of Rule 22 and Rule 24.

In reaching its decision, the panel considered fairness to you and the NMC, and bore in the mind the NMC's overarching objective of public protection.

The panel noted that Witness 3 was a registered nurse with a duty to his regulator and a witness of fact in respect of a number of the charges. It considered that no good reason had been offered by the NMC as to why Witness 3 had not been approached to participate as an NMC witness. It also noted that Witness 3 was willing to participate in these proceedings and give live evidence before the panel under oath. The panel decided that

whilst there might be some unfairness to the NMC in you hearing Witness 3's oral evidence before your own evidence, this was outweighed by any unfairness to you if you were to lose a witness of fact.

The panel therefore decided to allow Ms Herbert's application to interpose Witness 3's oral evidence prior to your own oral evidence.

The panel concluded that it would not hand down its decision and reasons up to and including Ms Herbert's submission of no case to answer orally but provide them in writing as had been announced when the panel initially retired. In light of the information about Witness 3's availability, the panel was satisfied that it would be in a position to provide its written determination prior to Witness 3's oral evidence.

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

During your oral evidence under affirmation, Ms Herbert made a request that the parts of this case involving reference to [PRIVATE] be held in private. The application was made pursuant to Rule 19.

Ms Stevenson did not oppose the application.

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

The panel determined to hold in private the parts of this hearing that involve reference to [PRIVATE] as and when such issues are raised, in order to protect your privacy. It was satisfied that this course was justified and that the need to protect your privacy outweighed any prejudice to the general principle of public hearings.

Decision and reasons on application to interpose the evidence of your witness prior to the conclusion of your own evidence

At the conclusion of your live evidence under cross-examination, Ms Herbert made an application to interpose the evidence of your witness, Witness 4, before the conclusion of your live evidence. She referred the panel to Witness 4's character reference dated 12 February 2023. Ms Herbert explained that Witness 4 was only available to give evidence until 18:00 that day.

Ms Stevenson indicated that there was no objection to this application.

The panel heard and accepted the advice of the legal assessor.

The panel considered that you had concluded your live evidence under cross-examination, and that you were due to be re-examined by Ms Herbert and/or questioned by the panel. The panel noted that Witness 4 was willing to participate in these proceedings and give live evidence under oath or affirmation, but that she was only available that day until 18:00. The panel also noted that there was no objection to this application by Ms Stevenson. The panel was satisfied that there would be no unfairness in allowing Witness 4's evidence at that stage of the hearing.

The panel therefore acceded to Ms Herbert's application to interpose Witness 4's evidence, with a view to concluding your live evidence on day seven of the proceedings.

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 Ms Stevenson, on behalf of the NMC and by Ms Herbert, on your behalf.

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:

- Colleague G: Primary Practitioner for Wakefield CAMHS at the relevant time;
- Colleague C: Parent Counsellor for 4:Thought/Mindspace at the relevant time;
- Colleague F: Student Nurse on placement in Wakefield CAMHS at the relevant time;
- Witness 1: Carried out the management investigation into the allegations raised by Colleague F at the Trust; and
- Witness 2: Deputy District Director of the Trust and Chair of your disciplinary hearing at the Trust in March 2018.

The panel also heard evidence from you under affirmation, as well the following witnesses on your behalf:

- Witness 3: Your colleague at 4:Thought/MindSpace at the relevant time;

- Witness 4: Senior CAMHS Clinician at 4:Thought/MindSpace at the relevant time; and

- Witness 5: Your former colleague at Barnsley Substance Misuse Community Team.

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

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

Charges 1a and 1b

That you, a Registered Nurse employed at 4:Thought / MindSpace:

1) *On 20 March 2017 and/or an unknown date in November 2016, told and / or said in the presence of Colleague A:*
   a) *that she was in your "wank bank" or words to that effect*
   b) *that she "had a good pair of tits" or words to that effect*

These sub-charges are found proved.

The panel had particular regard to the wording of this sub-charge, namely that you either told Colleague A or said in her presence that she was in your "wank bank" or words to that effect.

The panel also noted that following the NMC's application to amend the charges, the stem of charge 1a now included two dates, namely 20 March 2017 and/or an unknown date in November 2016. The panel therefore considered the available evidence in relation to both of these dates.

The panel considered Colleague C's witness statement dated 18 September 2020 which stated:

> *'Shortly after joining the Service, in November 2016, the Registrant started to make comments about who was in his 'wank bank'. After this time, every time I came into contact with him he would tell me someone new he had added to his 'wank bank'.*
>
> *Again in November 2016, I was with the Registrant and Colleague A when he said that Colleague A was in his 'wank bank'. At the time, Colleague A and I laughed the comment off as we were both in a new role. Additionally, we looked up to the nurses at the Service as people we could learn from. However, as time went on, we became more shocked by the way that the Registrant would make comments about his 'wank bank'.'*

Colleague C's local statement, which was taken during the Trust's local investigation on 18 October 2017, stated that:

> '*I have witnessed Paul Turnbull say the following in front of my colleague Colleague A:*
>
> *…*
>
> - *He said to Colleague A that he would put her in his wank bank and that she had a good pair of tits.*'

Further, the notes of Colleague C's interview at the Trust on 20 November 2017 stated:

'[Colleague C]- It started as we got to know PT. His attitude is he says what he thinks. He uses the term Wank Bank. He said it to Colleague A within a month of working together. He said Colleague A was in his Wank Bank because she had a nice pair of tits. He said directly to Colleague A in front of me. He said this about November 2016 and he has continued to repeat it on occasions directly to Colleague A in front of me. He'd tell a joke, we would laugh then he'd go on about his wank bank…'

The panel considered that Colleague C had provided a clear and confident recollection of these events in his oral evidence and indicated that he "*stood by*" his contemporaneous evidence.

In respect of Colleague A's evidence, the panel noted that this evidence had been admitted as hearsay, that it was necessary to treat the evidence with caution, and that it would have to decide what weight to attach to it.

Colleague A's local statement dated 18 October 2017 stated:

'*Comment made by Paul Turnbull to memory as follows [sic]:*

…

2. Paul made reference to having a 'wank bank' this is where he thinks about people he fancies and puts them in there. He made reference to me being in there, 'because you have a good pair tits'…'

Further, in the notes of the interview at the Trust on 20 November 2017, Colleague A stated:

'Colleague A: He's told me about his Wank Bank… I only went to the one on the 20th March. When Colleague D left he said she's in my Wank Bank. After this he told me about his type, he said I was in his Wank Bank. I said I'm young enough to

be your daughter. He said you're in my wank Bank because you have a good pair of tits. I think [Colleague C] may have heard…'

The panel considered that both Colleague A and Colleague C had provided contemporaneous accounts of instances on which you told Colleague A, in the presence of Colleague C, that she was in your "*wank bank*" and that she "*had a good/nice pair of tits*". Colleague C specified that this conduct occurred shortly after joining the 4:Thought/MindSpace in November 2016, and that it had repeated on other occasions in his presence, whilst Colleague A described a specific instance on 20 March 2017 when you had made the same comments.

The panel then considered your evidence. You denied the allegation and provided the panel with the context of the working environment at 4:Thought/MindSpace. You stated that inappropriate humour, including that of a sexual nature, was common and occasionally used by all colleagues. You said that you observed and took part in this humour, which was well-received by colleagues and reciprocated. You acknowledged that this did not excuse your role in any inappropriate language or behaviour. However, you denied ever using humour to cause offence, and stated that if you had inadvertently caused offence, you would have been remorseful and apologetic.

The panel took into account that you fundamentally disputed the accounts given by Colleague C and Colleague A about these incidents. The panel noted that you were deprived of the opportunity to challenge Colleague A's hearsay evidence. It also noted that whilst Colleague A had participated in the Trust's local investigation, she never supported the NMC investigation. However, the panel was satisfied that Colleague A had provided a very specific level of detail about this allegation, which supported the account given by Colleague C.

The panel was therefore satisfied that on the evidence given, it was more likely than not that on 20 March 2017 and/or an unknown date in November 2016, you told and/or said in

the presence of Colleague A that she was in your "*wank bank*" or words to that effect, and that she "*had a good pair of tits*" or words to that effect.

Therefore, the panel found charges 1a and 1b proved.

Charge 2a

That you, a Registered Nurse employed at 4:Thought / MindSpace:

2) On an unknown date:

a) gave Colleague B a hug

This sub-charge is found not proved.

The panel was satisfied that the issue in this charge related to whether you had initiated a hug with Colleague B on an unknown date, rather than whether you had reciprocated a hug with her.

In respect of Colleague B's evidence, the panel noted that whilst she had provided a signed NMC witness statement containing a statement of truth, you had been deprived of the opportunity to challenge her evidence. The panel considered that this evidence had been admitted as hearsay, that it was necessary to treat the evidence with caution, and that it would have to decide what weight to attach to it.

Colleague B's signed witness statement dated 29 September 2020 provided that:

> '*On one occasion (I cannot recall exactly when), I had just finished the Registrant's passports (I agreed to countersign some documents for the Registrant as part of his registration with CAMHS) and he gave me a hug to say thank you…*'

The notes of Colleague C's interview at the Trust on 20 November 2017 stated:

'*He'd go up and give Colleague B a hug. I've been told by Colleague B that he said to her I can feel your tits. This happened in Kendray around April. She told me about the comment in May. I've seen him hug her, she reciprocated but you could see she was uncomfortable.*'

The panel noted from Colleague C's evidence that the hug had been reported to him by Colleague B, but that he had not witnessed it himself.

The panel also considered your evidence. You did not deny that you may have reciprocated a hug with Colleague B during the period that you worked with her. You said that she was an affectionate person that occasionally hugged colleagues and that if any hug did occur between Colleague B and yourself, it would have been initiated by her.

The panel also noted the oral evidence of Witness 3 and Witness 4, both of whom had worked in the 4:Thought/MindSpace team at the relevant time. Witness 3 stated that *'Paul's not a huggy person, from what I recall. I am, I'm a huggy person, but Paul isn't' and 'Colleague B was quite a huggy person'.*

When questioned about people giving each other hugs in the office, Witness 4 told the panel that Colleague B was '[…] *very touchy feely* […] *can't recollect anybody else being like that, like, voluntarily hugging people.'*

The panel noted from all of the evidence presented on this charge, including your evidence, that there might have been hugs between you and Colleague B. However, it also noted the consistent evidence that described Colleague B as a "*huggy*" person.

The panel took into account that the principal evidence in support of this charge was that of Colleague B, who had not attended the hearing to give live evidence and whose evidence had not been challenged. In all of the circumstances, the panel was not satisfied

that it could give Colleague B's evidence sufficient weight to find this sub-charge proved. It therefore found charge 2a not proved.

Charge 2b

That you, a Registered Nurse employed at 4:Thought / MindSpace:

2) *On an unknown date:*
    b) *during the course of a hug, told Colleague B that you could "feel her tits pressing up against" or words to that effect*

This charge is found not proved.

In respect of Colleague B's evidence, the panel noted that whilst she had provided a signed NMC witness statement containing a statement of truth, you had been deprived of the opportunity to challenge her evidence. The panel considered that this evidence had been admitted as hearsay, that it was necessary to treat the evidence with caution, and that it would have to decide what weight to attach to it.

Colleague B's signed witness statement dated 29 September 2020 provided that:

> '*On one occasion (I cannot recall exactly when), I had just finished the Registrant's passports (I agreed to countersign some documents for the Registrant as part of his registration with CAMHS) and he gave me a hug to say thank you. The Registrant made a comment that he could feel my breasts during the hug. I told the Registrant off – again, by saying his name in a stern voice – and he apologised. I do not know why he made the comment about my breasts and it was the only time he made a comment like this – I had hugged the Registrant before and he had not said anything.*'

The notes of Colleague B's interview at the Trust on 20 November 2017 stated:

'Colleague B – When in the CAMHS office one day he said 'I'm sorry, let me give you a hug' and he said into my ear 'I can feel your tits pressing up against me'. I pulled away. I was shocked by this remark as he had never made a sexual remark to me before. He referred to me as his work wife because I would correct him often. I was angry with him on this day. This was about the 2nd week in September when in the CAMHS office I don't think anyone else heard…'

The panel then took into account your evidence that whilst you might have hugged Colleague B during the period in which you worked with her, you denied ever saying that you could "*feel her tits pressing up against*" you or words to that effect.

The panel balanced Colleague B's hearsay evidence against your oral evidence which had been tested in cross-examination. The panel noted that there was no other direct evidence to support Colleague B's account of this incident. The panel considered the seriousness of this allegation and the necessity for cogent evidence to find it proved. It was not satisfied that this sub-charge could be found proved on the basis that it could not give Colleague B's hearsay evidence sufficient weight.

The panel therefore determined that on the balance of probabilities, you did not tell Colleague B that you could "*feel her tits pressing up against*" or words to that effect during the course of a hug on an unknown date.

Therefore, the panel found charge 2b not proved.

Charge 4a

That you, a Registered Nurse employed at 4:Thought / MindSpace:

4) *On 11 November 2016, in relation to disabled Asian service user:*
    a) *referred to the service user as "shitter" or words to that effect*

This charge is found proved.

The panel considered Colleague C's witness statement dated 18 September 2020 which stated:

> *'On 11 November 2016, during a Solution Focused Training Day in Sheffield, The Registrant tried to make a joke about a disabled Asian woman who was in a wheelchair. I cannot recall the woman's full name but I believe her surname was* [PRIVATE] *Throughout the day, the Registrant referred to the woman as 'Shitter' to me, [Witness 3] and Colleague A.'*

Colleague C's local statement dated 18 October 2017 stated that:

> '*I have witnessed Paul Turnbull say the following in front of my colleague Colleague A:*
>
> *…*
>
> - *Referring to an Asian lady on solution focused training that her name was Shitter. He would repeat her name over and over again and laugh…'*

Further, the notes of Colleague C's interview at the Trust on 20 November 2017 stated:

> '*[Colleague C]- We went on a Solution Focussed training day in Sheffield which was arranged by MindSpace Founder. This was on the 11th November 2016. It was a full day. There was me and Colleague A and PT. One of the attendees was an Asian lady with a disability … I think her name was Shital. He referred to her as Shitter to me and Colleague A as a joke. In the classroom he whispered this to us …*'

In respect of Colleague A's evidence, the panel noted that this evidence had been admitted as hearsay, that it was necessary to treat the evidence with caution, and that it would have to decide what weight to attach to it.

Colleague A's local statement dated 18 October 2017 stated:

'*Comment made by Paul Turnbull to memory as follows [sic]:*

> *1. Solution focus training. Paul made comment in regards to a lady. The lady was disabled (wheelchair bound) she clearly had a condition which effective her hand so therefore her movement was limited. On our lunch Paul made comment too her name resembling the word 'Shitter' so continued to refer to the lady by this name 'Shitter' to myself and colleague [Colleague C]…'[sic]*

Further, in the notes of the interview at the Trust on 20 November 2017, Colleague A stated:

> '*Colleague A – we went to Sheffield for training, we all went together. I think it was about November time. We went together on the train. We were in the same room. On the course was a lady who was in a wheelchair, she was Asian. She had a condition with her hands. At dinner time PT went with me and [Colleague C] to the potato van. He said did you see that lady, he called her shitter...*'

You evidence was that you did not make any such comment about the service user.

The panel noted from Colleague C's oral evidence and witness statement (dated 18 September 2020) that Witness 3 had heard this comment being made by you. However, it was Witness 3's oral evidence that he did not hear any such comment being made. The panel bore in mind that Witness 3 had been asked to recall an event, several years later at this hearing, and that he had no recollection of inappropriate language or behaviour referred to the disabled lady. He also told the panel that he would have noticed if that behaviour occurred, and he would have addressed it immediately with you.

The panel considered that both Colleague C and Colleague A had provided contemporaneous detailed accounts which were specific about the date, the name of the

service user, her condition, and the subtlety through which such a comment was made by you. The panel preferred the accounts given by Colleague C and Colleague A in respect of this allegation.

The panel therefore decided that it was more likely than not that on 11 November 2016, in relation to a disabled Asian service user, you referred to the service user as "*shitter*" or words to that effect.

Therefore, the panel found charge 4a proved.

Charge 4b

That you, a Registered Nurse employed at 4:Thought / MindSpace:

4) *On 11 November 2016, in relation to disabled Asian service user:*
    b) *offered sweets to the service user, knowing that she was disabled and that she would have difficulty unwrapping the sweet offered to her*

This charge is found NOT proved.

The panel considered Colleague C's witness statement dated 18 September 2020 which stated:

> *'The disabled woman had difficulty using her hands and they were quire* [sic] *swollen. During a lunch break, the Registrant told us that he would go to buy some sweets and share them with the group. The Registrant knew that the woman would struggle to take sweets from the packet due to the difficulty she had using her hands. The Registrant seemed to be excited by the prospect of embarrassing the woman.*

The Registrant returned to the training session with a packet of boiled sweets and during the afternoon he opened the bag of sweets and offered them to the woman. The Registrant watched the woman struggle to take a sweet from the packet and eventually took one out and out it in her hand. At this time, the Registrant had a grin on his face and looked to us to see if we were laughing; no one else found the Registrant's actions funny. The woman did not realise that she was part of the Registrant's joke.'

Colleague C's local statement dated 18 October 2017 stated that:

'*I have witnessed Paul Turnbull say the following in front of my colleague Colleague A:*

…

- *Referring to an Asian lady on solution focused training that her name was Shitter. He would repeat her name over and over again and laugh. At dinner time he purposely bought a bag of boiled sweets knowing that the lady would not be able to get one out of the bag because her hands. He then in front of everyone in the room offered her one and made an issue by getting one out for her.*'

Further, the notes of Colleague C's interview at the Trust on 20 November 2017 stated:

'*[Colleague C]- We went on a Solution Focussed training day in Sheffield which was arranged by MindSpace Founder. This was on the 11th November 2016. It was a full day. There was me and Colleague A and PT. One of the attendees was an Asian lady with a disability. She was in a wheelchair, her hands were swollen and it was difficult for her to use her hands. ... At break time he bought some boiled sweets in a bag. He told us he was going to offer them to her. He said I'm going to buy some sweets she will never get them out of the bag. He did this in front of the whole class. He thought it was funny. She tried to take one, then he gave her one out of the bag. He laughed afterwards. I don't think she realised she was part of his*

joke. He laughed afterwards while walking to the station. He made comments throughout the afternoon.'

In respect of Colleague A's evidence, the panel noted that this evidence had been admitted as hearsay, that it was necessary to treat the evidence with caution, and that it would have to decide what weight to attach to it.

Colleague A's local statement dated 18 October 2017 stated:

'*Comment made by Paul Turnbull to memory as follows [sic]:*

1. Solution focus training. Paul made comment in regards to a lady. The lady was disabled (wheelchair bound) she clearly had a condition which effective her hand so therefore her movement was limited. … Paul also bought a bag of boiled sweet which he commented she could not get her hand in but he will offer her a sweet. Paul was seen by myself has being prejudice toward disability and racist.'

Further, in the notes of the interview at the Trust on 20 November 2017, Colleague A stated:

'*Colleague A – we went to Sheffield for training, we all went together. I think it was about November time. We went together on the train. We were in the same room. On the course was a lady who was in a wheelchair, she was Asian. She had a condition with her hands. At dinner time PT went with me and [Colleague C] to the potato van. He said did you see that lady, he called her shitter. He came to the shop with me and bought a bag of sweets and said she won't be able to get her hands in. When we got back he did offer her a sweet. He made me feel uncomfortable. He said this in front of me and [Colleague C]. I don't think others knew he was having a joke at her expense. The group didn't know.*'

In the notes of your interview at the Trust on 7 December 2017, it stated:

> '*PT - I bought sweets at lunch time and shared them out on the table and we were sat round in a square like a wedding table and I passed them around but not for that reason.*'

The panel took into account that you had not disputed attending the training day or buying the sweets. It was your evidence that you shared the sweets out on the table for all, and you disputed offering sweets to the service user, knowing that she was disabled and would have difficulty unwrapping them.

The panel considered that although consistent, Colleague C and Colleague A's evidence contained an element of personal interpretation of what they had observed on the day; there was a disabled service user who might have had difficulties with unwrapping the sweets as a result of her disability. The panel was satisfied that Colleague A and Colleague C may have misinterpreted your actions when you provided the sweets to the group, with a view that you had done so intentionally to embarrass the service user.

The panel was therefore not satisfied on the balance of probabilities, that on 11 November 2016, you had offered the sweets to the service user, knowing that she was disabled and that she would have difficulty unwrapping them.

Therefore, the panel found charge 4b not proved.

Charge 5

That you, a Registered Nurse employed at 4:Thought / MindSpace:

5) *On an unknown date in, or around, November or December 2016, said to / in the presence of Colleague C, that gay men are "weak and pathetic" or words to that effect*

This charge is found NOT proved.

The panel considered Colleague C's witness statement dated 18 September 2020 which stated:

> *'Soon after the Registrant joined the Service, I was speaking generally with the Registrant and mentioned my partner* [PRIVATE] *and from this the Registrant knew that* [PRIVATE]*. The Registrant then mentioned the character Paddy Kirk (from the soap opera 'Emmerdale') and said that Paddy Kirk reminded him of a gay man because he was "weak and pathetic" and that is what gay people are. As a character, Paddy Kirk is portrayed as weak and a bit of a ditherer.'*

Colleague C's local statement dated 18 October 2017 stated that:

> '*When I was alone with Paul he knew* [PRIVATE]*, he said to me that Paddy Kirk from Emmerdale a television soap opera reminded him of a gay man because he was pathetic and wet just like one.*'

Further, the notes of Colleague C's interview at the Trust on 20 November 2017 stated:

> '*[Colleague C]- Yes, PT knew* [PRIVATE]*; it came out in conversation when we first worked together in 2016. About November/ December time he referred to Paddy Kirk in Emmerdale saying he always thought he was Gay as he was Pathetic and Weak as that's what Gays are, I can't remember word for word. I think he said it on purpose to offend me. This was in the office at Kendray. I don't think there were any witnesses. I didn't challenge it. I found it shocking but he's quite a strong character, I didn't want him to know he'd bothered me, why give him more material. I didn't tell anyone at first but then I told Colleague A about it. I didn't tell any managers.*'

Colleague C maintained this account in oral evidence before the panel.

The panel noted that there had been no suggestion from Colleague C that you had made such a comment more than once.

You denied this allegation and told the panel in evidence that you are not homophobic and would never use such language. You said that you were aware that Colleague C is [PRIVATE], but that this did not affect the way in which you engaged and interacted with him.

The panel also had regard to the oral evidence of Witness 5, who had worked with you between 2008 and 2012. Witness 5 told the panel that [PRIVATE] and at that time that he worked with you, there was a negative attitude towards him in the work environment. However, out of all of this colleagues, you were the only one he could speak to. He stated that you had never shown any homophobic behaviour towards him, and that he found it surprising that you could make such a comment years later.

The panel considered that Witness 5's evidence supported your own evidence that you would not have used such language. It also took into account that at the material time of this charge, Colleague C had only worked with you for a short period of a few months.

The panel noted that the fictional character of Paddy Kirk from the soap opera Emmerdale was not a gay man, nor was the actor that played this character a gay man. The panel considered that whilst there may have been some discussion about Emmerdale and comments made by you about Paddy Kirk, any such comments about this character might have been taken out of context. The panel was of the view that your comments about the character might have been interpreted in a particular way, which Colleague C could have perceived as a comment about gay men. However, the panel could not be satisfied that by calling Paddy Kirk "*weak and pathetic*", you were referring to gay men as such.

The panel therefore determined, on the balance of probabilities, that you did not say to or in the presence of Colleague C that gay men are "*weak and pathetic*" or words to that effect on an unknown date in, or around, November or December 2016.

Therefore, the panel found charge 5 not proved.

Charge 6

That you, a Registered Nurse employed at 4:Thought / MindSpace:

6) *On an unknown date, in or around November or December 2016, told colleagues that you masturbate in bed while* [PRIVATE] *is asleep beside you, or words to that effect*

This charge is found proved.

The panel considered Colleague C's witness statement dated 18 September 2020 which stated:

> *'In approximately November / December 2016, the Registrant made a comment that he would masturbate in bed next to his* [PRIVATE] *who was asleep. The Registrant said this in conversation with myself, Colleague A and Colleague B. The comment was not part of the conversation and I think that he said it while trying to be funny with an added shock factor.*
>
> *[Colleague B] was bothered by the Registrant's comment and said that she was disgusted and revolted by what he had said. The Registrant laughed and said that he was only joking. Nevertheless, I felt this was an inappropriate comment for the Registrant to make.'*

Colleague C's local statement dated 18 October 2017 stated that:

'*I have witnessed Paul Turnbull say the following in front of my colleague Colleague A:* [sic]

…

- *Talked about wanking in bed when his* [PRIVATE] *was asleep and waking her up and telling her to go back to sleep. He had a trail of tissues by the side of his bed and* [PRIVATE] *going mad.*'

Further, the notes of Colleague C's interview at the Trust on 20 November 2017 stated:

'*[Colleague C]- Yes He talked about Wanking in front of his* [PRIVATE] *in bed while she is a sleep [sic]. He said this in front of me and Colleague A and I think maybe Colleague B. There was also a man called [Witness 3] who worked in the office about November/December time last year (2016).'*

In respect of Colleague A's evidence, the panel noted that this evidence had been admitted as hearsay, that it was necessary to treat the evidence with caution, and that it would have to decide what weight to attach to it.

Colleague A's local statement dated 18 October 2017 stated:

'*Comment made by Paul Turnbull to memory as follows [sic]:*

…

3. Paul made lots of sexualised joke in my presences. [sic] He also on occasion spoke about the intimacy he shared with his wife. He stated that he regular 'has wank in bed while his [PRIVATE] *sleeps, if she wakes up I tell her to go back to sleep, my sheets are stuck together all the time and tissues all over the side of the bed, [wife] goes mad.*'

Further, in the notes of the interview at the Trust on 20 November 2017, Colleague A stated:

'*Colleague A – … He made jokes about his wife, saying sometimes she's not up to it so he has a wank, he leaves dirty tissues on the bedroom floor for her to clean up…*

…

PT comments are uncomfortable about [PRIVATE] *and colleagues…*'

You denied this allegation in evidence and stated that you would not have made any such comments about [PRIVATE] as she had worked within the same Trust since 1988 and was a well-known and well-respected member of staff. You said that if there was any suggestion of an inappropriate conversation about [PRIVATE].

The panel considered that Colleague C's evidence was very specific about Colleague A and Colleague B being present when you made these comments. He was also very specific about Colleague B's response to your comments. Colleague B had not provided an account describing this particular incident. However, in her signed NMC witness statement dated 29 October 2020, she provided that:

'*The Registrant was quite funny and he liked telling jokes in the office. The Registrant did make sexual jokes and comments which I sometimes found offensive and uncalled for; I told the Registrant that I did not like his sexual jokes. However, these comments were always made in the office and not in corridors or in front of young people. [Colleague C] and Colleague A found the Registrant's comments funny and they also offered jokes of this nature.*'

The panel noted that Colleague B's witness statement, although signed and containing a statement of truth, amounted to hearsay evidence. It also took into account that you had been deprived of the opportunity to challenge her evidence.

The panel was satisfied that whilst Colleague B had not made specific reference to this incident, her evidence was consistent with the suggestion by Colleague C that you made sexual jokes and comments that she told you she did not like.

Similarly, the panel considered that whilst Colleague A's account had not been tested in live evidence, she had provided contemporaneous accounts with considerable and specific detail about the comments. Colleague A's evidence also supported the account given by Colleague C who said that she was present at the time that these comments were made about [PRIVATE]. The panel preferred the accounts given by Colleague C and Colleague A in respect of this allegation.

The panel therefore determined that it was more likely than not that on an unknown date, in or around November or December 2016, you told colleagues that you masturbate in bed while [PRIVATE] is asleep beside you, or words to that effect.

Therefore, the panel found charge 6 proved.

Charges 7a and 7b

That you, a Registered Nurse employed at 4:Thought / MindSpace:

7) *In December 2016:*
    a) *pretended to be Colleague B's husband by imitating a* [PRIVATE] *accent*
    b) *referred to a sex act involving a* [PRIVATE]

These sub-charges are found proved.

Colleague C's local statement dated 18 October 2017 stated that:

> '*I have witnessed Paul Turnbull say the following in front of my colleague Colleague A:*

…

- *Asked if Colleague B's husband had a* [PRIVATE] *shop and was told no he then said in a* [PRIVATE] *accent that they all own* [PRIVATE] *shops. He then referred to using the* [PRIVATE] *to have sex with her.*'

Further, the notes of Colleague C's interview at the Trust on 20 November 2017 stated:

'*[Colleague C]- … Colleague B's husband has a* [PRIVATE]*. PT said all* [PRIVATE] *people have* [PRIVATE] *shops so he said this about Colleague B's husband that he shags her with his* [PRIVATE]*. He said this in front of Colleague A and me. He said it loads of times. He would try and say this in a* [PRIVATE] *'O Colleague B then he would refer to the* [PRIVATE]*. He said this when we were in Kendray, right up to the end of June when we moved out of there.'*

The panel took into account that although there was no specific paragraph in relation to charge 7a and 7b in his NMC witness statement or in his oral evidence provided by Colleague C, the panel was satisfied that Colleague C had provided evidence of this incident in his local statement and interview. Furthermore, the panel was satisfied that Colleague C adopted his exhibits, which included his statements from the local investigation and his NMC witness statement. Further, in oral evidence, Colleague C confirmed that he "*stood by*" his original statements which were contemporaneous to the events.

In respect of Colleague A's evidence, the panel noted that this evidence had been admitted as hearsay, that it was necessary to treat the evidence with caution, and that it would have to decide what weight to attach to it.

Colleague A's local statement dated 18 October 2017 stated:

'*Comment made by Paul Turnbull to memory as follows [sic]:*

…

4. In the present [sic] of myself and [Colleague C], Paul asked if Colleague B's husband own [sic] a [PRIVATE] *shop. When told by myself no, it is* [PRIVATE] *[sic]. He said 'well he's* [PRIVATE] *the all have* [PRIVATE] *shops'. He then continues to use a* [PRIVATE] *accent and stated that 'come on Colleague B just let me shag you with my* [PRIVATE]*'.*'

Further, in the notes of the interview at the Trust on 20 November 2017, Colleague A stated:

'*Colleague A – No, most things I've witnessed myself. He commented about Colleague B's husband saying 'he has a* [PRIVATE] *shop' I said no it's* [PRIVATE] *So he started to speak in a* [PRIVATE] *accent. He was acting out being Colleague B's husband saying 'oh my* [PRIVATE]*' he said 'I fuck you with my* [PRIVATE]*.' In a* [PRIVATE] *voice. We were in the Kendray office, a few months after starting, I think it was after Christmas… I witnessed this with [Colleague C].*'

You denied these allegations in evidence and said you knew Colleague B's husband owned a fish and chip shop, not a [PRIVATE] shop. You said that you had no reason to make any jokes of that nature in relation to Colleague B.

The panel noted that Colleague B had not provided an account describing an incident of this nature. However, there had been no suggestion on the evidence that you made these comments in her presence.

The panel considered that whilst Colleague A's account had not been tested in live evidence, she had provided contemporaneous accounts which supported Colleague C's evidence. The panel preferred the accounts given by Colleague C and Colleague A in respect of this allegation and found these accounts to be more credible than your account. The panel noted Colleague A's Interview that these events occurred 'after Christmas' 2016, while the charge alleges that it occurred in December 2016. The panel was satisfied

that Colleague A had made an approximation of the date, rather than an exact specification.

The panel therefore determined that it was more likely than not that in December 2016, you pretended to be Colleague B's husband by imitating a [PRIVATE] accent and referred to a sex act involving a [PRIVATE]. It therefore found sub-charges 7a and 7b proved.

Charge 8

That you, a Registered Nurse employed at 4:Thought / MindSpace:

8) On 20 March 2017, said that you would put Colleague D was in your "wank bank", or words to that effect

This charge is found proved.

The panel considered Colleague C's witness statement dated 18 September 2020 which stated:

> *'On another occasion, Colleague D (Safeguarding Nurse) came into the office and, after she left, the Registrant said to Colleague A and I that Colleague D would be added to his wank bank.'*

Colleague C's local statement dated 18 October 2017 stated that:

> '*I have witnessed Paul Turnbull say the following in front of my colleague Colleague A:*
>
> *…*
>
> - *He said that he would put Colleague D safeguarding nurse in his wank bank.*'

Further, the notes of Colleague C's interview at the Trust on 20 November 2017 stated:

'*[Colleague C]- …He'd tell a joke, we would laugh and then he'd go on about his wank bank. He said it about Colleague D* [PRIVATE] *around January/February 2017. He said she was in his Wank Bank. He said this to me and Colleague A. I never saw him say it directly to Colleague D'.*

The panel noted Colleague C's evidence that this comment was made in around January/February 2017, while the charge alleges that you said it on 20 March 2017. The panel was satisfied that Colleague C had made an approximation of the date, rather than an exact specification.

In respect of Colleague A's evidence, the panel noted that this evidence had been admitted as hearsay, that it was necessary to treat the evidence with caution, and that it would have to decide what weight to attach to it.

The notes of Colleague A's interview at the Trust on 20 November 2017 stated:

'*Colleague A – He's told me about his Wank Bank. He said that Colleague D the* [PRIVATE]*, when she left the meeting, was in his Wank Bank. He's not said this in front of Colleague D He's started to invite her to our meetings, at least twice, 20th March and 15th May 2017 for Safeguaridng Supervision. I only went to the one on the 20th March. When Colleague D left he said she's in my Wank Bank.*' [sic]

You denied this allegation in evidence.

The panel considered that whilst Colleague A's account had not been tested in live evidence, she had provided contemporaneous accounts which supported Colleague C's evidence, and in this instance was very specific about 20 March 2017 as this was the only date when she had attended a safeguarding supervision meeting. The panel preferred the accounts given by Colleague C and Colleague A in respect of this allegation, and found these accounts to be more credible than your account.

The panel therefore determined that it was more likely than not that on 20 March 2017, you said that you would put Colleague D in your “wank bank”, or words to that effect. It therefore found charge 8 proved.

Charge 9

That you, a Registered Nurse employed at 4:Thought / MindSpace:

9) *In February 2017, gestured and/or told colleagues that the chair that Colleague B had been seated on “stank of shit” or words to that effect*

This charge is found not proved.

The panel considered Colleague C’s witness statement dated 18 September 2020 which stated:

> *‘In February 2017, the Registrant made a comment about Colleague B while in the office. After Colleague B got up from her chair and turned her back away from the Registrant, the Registrant waved his fingers in front of his nose to indicate that she smelled. The Registrant made this action in front of me and Colleague A. Colleague B did not see the Registrant do this.’*
>
> *After Colleague B left the room, the Registrant said that the chair she had been sitting on ‘smelled of shit’. Colleague A and I did not react to this and we did not inform Colleague B of what the Registrant had said because we did not think it was appropriate to do so.*

Colleague C’s local statement dated 18 October 2017 stated that:

'*I have witnessed Paul Turnbull say the following in front of my colleague Colleague A:*

…

- *Said that one of my colleague smelt referring to her private area.*'

Further, the notes of Colleague C's interview at the Trust on 20 November 2017 stated:

'*[Colleague C]- Yes he said Colleague B had an odour '*

You denied this allegation and stated that you did not use those words in respect of Colleague B.

The panel noted Colleague C's evidence that Colleague A was present when these comments were made. However, there was no evidence from Colleague A about this alleged incident, either in her local statement or the notes of her interview at the Trust.

The panel noted that this was a serious allegation which required cogent evidence. The panel considered that there was no supporting evidence to corroborate Colleague C's account about this alleged incident, and in the panel's view, the evidence on this charge amounted to one word against another. On this basis, the panel was not satisfied that the NMC had discharged its burden of proof in respect of charge 9.

The panel therefore determined that on the balance of probabilities, in February 2017, you did not gesture and/or tell colleagues that the chair that Colleague B had been seated on "*stank of shit*" or words to that effect.

The panel therefore found charge 9 not proved.

Charge 11

That you, a Registered Nurse employed at 4:Thought / MindSpace:

11) In, or around, February or March 2017, said that Colleague E was in your "wank bank", or words to that effect

This charge is found proved.

The panel considered the notes of Colleague C's interview at the Trust on 20 November 2017 which stated:

> '*[Colleague C]- … He also talked about Colleague E, she works in Holy Trinity in the Well Being Team. She would refer children to PT and support the children to attend appointments with PT. He really liked her. And said she was in his Wank Bank in front of me and Colleague A…This was about February or March 2017. He said is in the office at Kendray'.*

The panel took into account that again, although there was no specific paragraph in relation to charge 11 in his NMC witness statement, the panel was satisfied that Colleague C had provided evidence of this incident in his local interview on 20 November 2017. Furthermore, the panel was satisfied that Colleague C adopted his exhibits, which included his statements from the local investigation and his NMC witness statement. Further, in oral evidence, Colleague C confirmed that he "*stood by*" his original statements which were contemporaneous to the events. The panel noted that when Colleague C was asked when this alleged incident took place, he responded in his oral evidence *'it was too long ago, I cannot remember, but I do remember it happening.'* The panel noted that he did not remember the specific date of the incident, as it was six years ago, but he did remember the fact that the incident took place.

In respect of Colleague A's evidence, the panel noted that this evidence had been admitted as hearsay, that it was necessary to treat the evidence with caution, and that it would have to decide what weight to attach to it.

Colleague A's local statement dated 18 October 2017 stated:

'*Comment made by Paul Turnbull to memory as follows [sic]:*

…

6. When speaking about joint work with client and parent, Paul expressed that he is working closely with Colleague E. He said he fancies Colleague E and that she is defiantly [sic] in his wank bank. He is upset though because she pregnant at the minute [sic].'

Further, the notes of Colleague A's interview at the Trust on 20 November 2017 stated:

'*Colleague A – … At Holy Trinity Special educational needs he said he liked Colleague E. He said she's part of my wank Bank. PT and Colleague E have a strong relationship…He said this in front of me. I don't know if anyone else was present. He never said this directly to Colleague E, he was always professional in front of her and the children.*'

You denied this allegation in evidence and maintained that you and Colleague E had a good professional working relationship.

The panel considered that whilst Colleague A's account had not been tested in live evidence, she had provided contemporaneous accounts which supported Colleague C's evidence. The panel preferred the accounts given by Colleague C and Colleague A in respect of this allegation, and found these accounts to be more credible than your account. It was satisfied that there was sufficient evidence to find the charge proved.

The panel therefore determined that it was more likely than not that in, or around, February or March 2017, you said that Colleague E was in your "*wank bank*", or words to that effect. It therefore found charge 11 proved.

Charge 12a

That you, a Registered Nurse employed at 4:Thought / MindSpace:

12) On 1 August 2017, in relation to the mother of a child being supported by the service said:

a) that the mother "needed a good seeing to" or words to that effect

This charge is found proved.

The panel considered Colleague C's witness statement dated 18 September 2020 which stated:

> *'On 1 August 2017, while at summer workshop encouraging young people to learn about the Service and wellbeing, the Registrant made a comment about a mother of one of the children being supported by the Service. The Registrant said that the mother,* [PRIVATE] *(I cannot recall her full name), needed 'a good seeing to'. The Registrant also made a comment that, due to her* [PRIVATE]*,* [PRIVATE] *only had sexual intercourse to procreate. Colleague A also heard the Registrant make these comments.'*

Colleague C's local statement dated 18 October 2017 stated that:

> '*I have witnessed Paul Turnbull say the following in front of my colleague Colleague A:*
>
> *…*
>
> - *A parent* [PRIVATE*] needed a good seeing to and the she would not be so stressed. He then referred to her* [PRIVATE] *being* [PRIVATE] *not been able to have sex.*' *[sic]*

Further, the notes of Colleague C's interview at the Trust on 20 November 2017 stated:

'*[Colleague C]- Yes there is a parent called* [PRIVATE]*…He made derogatory comments about her being a* [PRIVATE]*… I witnessed him say she needed a good seeing to, it would make her a bit happier, give her something else to think about to stop her worrying about her son. He said this about April time. Colleague A was there at the time…I think I can get you the date. 1st August 2017'.*

In respect of Colleague A's evidence, the panel noted that this evidence had been admitted as hearsay, that it was necessary to treat the evidence with caution, and that it would have to decide what weight to attach to it.

Colleague A's local statement dated 18 October 2017 stated:

'*Comment made by Paul Turnbull to memory as follows [sic]:*

…

7. After a professional school meeting with one of our service clients. Paul returned to the office and began to express what the client needed to stop getting so stressed about her child's behaviour. '[PRIVATE] *just needs a good seeing too'. He said 'do* [PRIVATE] *have sex' I stated that within the* [PRIVATE] *they only have sex in order to reproduce. Paul then said 'no wonders dad had a break down and mothers like she is'…*'

Further, the notes of Colleague A's interview at the Trust on 20 November 2017 stated:

'*Colleague A – … He talked about* [PRIVATE] *me and PT had been to a meeting. When we got back he said she's a Jehovah's Witness. I told him some facts about the* [PRIVATE] *including the purpose of sex is to reproduce and he said she needs a good seeing too. I think [Colleague C] witnessed this, I didn't challenge him.*'

You denied this allegation in evidence and stated that you would never talk about a service user in that way. You said that had you made such a comment about the service

user or her [PRIVATE], you would have expected this to have been raised formally by Colleague A and Colleague C.

The panel considered that whilst Colleague A's account had not been tested in live evidence, she had provided contemporaneous accounts which supported Colleague C's evidence. The panel preferred the accounts given by Colleague C and Colleague A in respect of this allegation, and found these accounts to be more credible than your account.

The panel therefore determined that it was more likely than not that on 1 August 2017, in relation to the mother of a child being supported by the service, you said that the mother "*needed a good seeing to*" or words to that effect. It therefore found charge 12a proved.

Charge 12b

That you, a Registered Nurse employed at 4:Thought / MindSpace:

12) On 1 August 2017, in relation to the mother of a child being supported by the service said:

b) that due to the [PRIVATE]*, she "only had sexual intercourse to procreate" or word to that effect*

This charge is found not proved.

The panel considered Colleague C's witness statement dated 18 September 2020 which stated:

> *'On 1 August 2017, while at summer workshop encouraging young people to learn about the Service and wellbeing, the Registrant made a comment about a mother of one of the children being supported by the Service. … The Registrant also made*

a comment that, due to her [PRIVATE]*,* [PRIVATE] *only had sexual intercourse to procreate. Colleague A also heard the Registrant make these comments.'*

Colleague C's local statement dated 18 September 2020 stated that:

'*I have witnessed Paul Turnbull say the following in front of my colleague Colleague A:*

…

- *A parent Mrs S needed a good seeing to and the she would not be so stressed. He then referred to her* [PRIVATE] *being* [PRIVATE] *not been able to have sex.*' *[sic]*

Further, the notes of Colleague C's interview at the Trust on 20 November 2017 stated:

'*[Colleague C]- Yes there is a parent called* [PRIVATE]*…He made derogatory comments about her being a* [PRIVATE]*. He commented about her having sex only to procreate… He said this about April time. Colleague A was there at the time…I think I can get you the date. 1st August 2017'.*

In respect of Colleague A's evidence, the panel noted that this evidence had been admitted as hearsay, that it was necessary to treat the evidence with caution, and that it would have to decide what weight to attach to it.

Colleague A's local statement dated 18 October 2017 stated:

'*Comment made by Paul Turnbull to memory as follows [sic]:*

…

7. After a professional school meeting with one of our service clients. Paul returned to the office and began to express what the client needed to stop getting so stressed about her child's behaviour. '[PRIVATE] *just needs a good seeing too'. He said 'do* [PRIVATE] *have sex' I stated that within the*

[PRIVATE] *they only have sex in order to reproduce. Paul then said 'no wonders dad had a break down and mothers like she is'…*'

Further, the notes of Colleague A's interview at the Trust on 20 November 2017 stated:

'*Colleague A – … He talked about* [PRIVATE]*, me and PT had been to a meeting. When we got back he said she's a* [PRIVATE]*. I told him some facts about the* [PRIVATE] *including the purpose of sex is to reproduce and he said she needs a good seeing too. I think [Colleague C] witnessed this, I didn't challenge him.*'

You denied this allegation in evidence and stated that you would never talk about a service user in that way.

The panel considered that whilst Colleague A's account had not been tested in live evidence, she had provided contemporaneous accounts which supported Colleague C's account that a conversation about the service user's mother took place. However, it was Colleague A's account that she was the one that introduced the information in the conversation about the purpose of sexual intercourse for Jehovah's Witnesses being to procreate.

The panel therefore determined, on the balance of probabilities, that on 1 August 2017, in relation to the mother of a child being supported by the service, you did not say that due to the [PRIVATE], she "*only had sexual intercourse to procreate*" or word to that effect. It therefore found charge 12b not proved.

Charge 13b)v

Whilst employed as a Registered Nurse at Wakefield CAMHS, you:

13) On 27 June 2019, said to Colleague F:

b) wrote the following on a piece of paper provided to / in view of Colleague F:

v) *“every day until 19 July”*

This charge is found NOT proved.

The panel considered Colleague F’s witness statement dated 18 March 2020 which stated:

> ‘*Later, when [Colleague G] took a phone call, the Registrant … wrote on the piece of paper "every day until the 19 July". The relevance of this date was that I was planning on going back to the CAMHS team on 19 July 2019 to make up some hours.*’

Colleague F’s contemporaneous account in an email dated 1 July 2019 stated:

> ‘*…and then he wrote ‘…every night until July 19th’ which is the day I’m going back there to make up some hours.’*

The notes of Colleague F’s meeting at the Trust on 4 July 2019 stated:

> ‘*…he…put on note that he’ll do it every day until 19th July.*’.

The notes of Colleague F’s interview at the Trust on 4 September 2019 stated:

> ‘*Then he said: I’ll keep doing it every night until the 19th.This was the day I was supposed to be going back to the service to make up my hours.*’

In oral evidence, Colleague F told the panel that you said “*every day until 19 July*” as opposed to writing it on the piece of paper.

The panel accepted that within her written and oral evidence, Colleague F's account was inconsistent as to whether you said "*every day until 19 July*" or whether you wrote this comment on a piece of paper.

The panel noted your admissions to charges 13a, 13b)i, 13b)ii and 13b)iii, which related to the same incident with Colleague F. You accepted that there was a piece of paper on which you were writing comments to Colleague F. However you were adamant that you did not write '*every day until 19 July*' on the piece of paper because you did not know that Colleague F was returning to the service, or that she would be returning on that date. Whilst Colleague F had maintained in evidence that she was returning to the service on 19 July 2019, Colleague F stated in oral evidence that she did not know whether you knew she would be returning. There was no evidence before the panel to indicate that on 27 June 2019 you knew that she would be returning to the service, or the specific date of her return.

On this basis and in light of the inconsistencies in Colleague F's evidence, the panel was not satisfied on the balance of probabilities that you wrote "*every day until 19 July*" on the piece of paper provided to/in view of Colleague F. The panel therefore found charge 13b)v not proved.

Charge 18b

That you, a Registered Nurse:

18) Your conduct at any and/or all of charges 1, 2, 4, 5, 6, 7, 8, 9, 11, 12 and 13 above was:

b) In breach of professional boundaries

This charge is found proved.

The panel considered this charge in relation to the disputed charges found proved [1, 4a, 6, 7, 8, 11 and 12a]. The panel noted that you admitted charge 18b in relation to charges 13a, 13b(i), 13b(ii) and 13b(iii), and the panel has already found these proved by way of your admission.

The panel has reached a separate decision in relation to each of the charges specified in the two paragraphs above.

In reaching its decisions, the panel had to consider what 'professional boundaries' mean. As there is no specific definition, the panel decided to adopt its ordinary meaning, which includes managing boundaries expected of a registered nurse working within an interdisciplinary professional environment with colleagues and/or service users.

The panel finds that your conduct and use of language specified in each of these charges breached professional boundaries in accordance with the panel's definition. Your actions and language towards colleagues and service users were manifestly inappropriate. At times, you made highly inappropriate disclosures about aspects of your personal life. Your remarks about service users were unprofessional, and colleagues would not have expected to encounter in the workplace the language you used and the behaviour you exhibited towards them.

Having regard to the above, the panel considered each charge in turn, and was satisfied that on each occasion, your conduct was in breach of professional boundaries, and accordingly, found all elements of charge 18b proved.

Charge 18c

That you, a Registered Nurse:

18) Your conduct at any and/or all of charges 1, 2, 4, 5, 6, 7, 8, 9, 11, 12 and 13 above was:

c) *Intended to intimidate, degrade, humiliate and/or offend those individuals referred to in the respective charges in relation to their protected characteristics*

This charge is found proved.

The panel noted that charge 18c was drafted as follows: 'intended to intimidate, degrade, humiliate and/or offend…'. The panel therefore approached each decision in relation to this charge by considering whether it was satisfied on the balance of probabilities that your conduct was intended to cause any one of those effects listed. It did not consider it necessary to find all of these elements present for it to find the charge under consideration proved.

The panel considered this charge in relation to the disputed charges found proved [1, 4a, 6, 7, 8, 11 and 12a] The panel noted that you admitted the underlying facts of 13a, 13b(i), 13b(ii) and 13b(iii), but not the ulterior intent alleged in charge 18c. The panel therefore also considered these charges.

In reaching its decision, the panel noted that 'protected characteristics' as defined in the Equalities Act 2010 include age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

<u>Charge 1</u>

The panel was satisfied that your words were deliberate and conscious remarks of a sexual nature that were intended to degrade and humiliate female members of staff, in relation to their protected characteristic of sex. The panel was further satisfied that your words were unwanted and said with the intention of normalising sexualised behaviour towards female members of staff in the workplace. Accordingly, the panel found this charge proved.

<u>Charge 4a</u>

The panel was satisfied that your words were deliberate and conscious remarks intended to degrade and humiliate the service user based on her protected characteristic of race. Accordingly, the panel found this charge proved.

Charge 6

The panel was satisfied that your words were deliberate and conscious remarks intended to intimidate and offend your colleagues based on their protected characteristic of sex. The panel was further satisfied that your words were unwanted and said with the intention of normalising sexualised behaviour towards female members of staff in the workplace. Accordingly, the panel found this charge proved.

Charge 7

The panel was satisfied that your words were deliberate and conscious remarks intended to degrade and humiliate your colleague based on [PRIVATE] (charge 7a) and her protected characteristic of sex (charge 7b). The panel was further satisfied that your words were unwanted and said with the intention of normalising sexualised behaviour towards female members of staff in the workplace. Accordingly, the panel found this charge proved.

Charge 8

The panel was satisfied that your words were deliberate and conscious remarks intended to degrade and humiliate your colleague based on her protected characteristic of sex. The panel was further satisfied that your words were unwanted and said with the intention of normalising sexualised behaviour towards female members of staff in the workplace. Accordingly, the panel found this charge proved.

Charge 11

The panel was satisfied that your words were deliberate and conscious remarks intended to degrade and humiliate your colleague based on her protected characteristic of sex. The panel was further satisfied that your words were unwanted and said with the intention of

normalising sexualised behaviour towards female members of staff in the workplace. Accordingly, the panel found this charge proved.

Charge 12a

The panel was satisfied that your words were deliberate and conscious remarks intended to degrade and humiliate a service user on her protected characteristic of sex. Accordingly, the panel found this charge proved.

Charges 13a, 13b(i),13b(ii), 13b(iii)

The panel considered these charges separately but came to the same conclusion that your behaviour in each charge was intimidating, as it occurred in the same moment. The panel was satisfied that your words and actions were deliberate and conscious remarks intended to intimidate your colleague based on her protected characteristic of sex. Accordingly, the panel found this charge proved.

Charge 19b

That you, a Registered Nurse:

19) Your conduct at any and/or all of charges 1, 2, 8, 11 and 13 above was done:

b) in pursuit of sexual gratification

This charge is found proved.

Charge 2 was not found proved and was therefore not considered with respect to this charge. You admitted to this charge in relation to charges 13a, 13b(i),13b(ii), 13b(iii). In reaching this decision, the panel took into account its findings on charges 1, 8, and 11.

In considering whether your conduct at any and/or all of charges 1, 8 and 11 was done in pursuit of sexual gratification, the panel had regard to the ordinary meaning of sexual gratification. The panel's interpretation of the words '*in pursuit of sexual gratification'*

meant it was conduct done '*in furtherance of*' sexual gratification. The panel considered your conduct in these individual charges as follows:

Charge 1

The panel noted its findings on charges 1a and 1b that on 20 March 2017 and/or an unknown date in November 2016, you told and/or said in the presence of Colleague A that she was in your "*wank bank*" or words to that effect and that she "*had a good pair of tits*" or words to that effect.

The panel noted that you spoke directly to Colleague A when you mentioned your "w*ank bank*" (charge 1a) and made reference to her breasts (charge 1b). The panel considered that the context of your words and the imagery you conveyed was such that you intended to use it for some future sexual gratification.

The panel therefore determined that on the balance of probabilities, your conduct at charges 1a and 1b was done in pursuit of sexual gratification.

Charge 8

The panel noted its findings on charge 8 that on 20 March 2017, you said that Colleague D was in your *"wank bank"*, or words to that effect.

The panel noted that you did not make this comment to or in the presence of Colleague D. However, it inferred from the context that you were likely to have been excited to share your thoughts and views with your colleagues in pursuit of your sexual gratification.

The panel therefore determined that on the balance of probabilities, your conduct at charge 8 was done in pursuit of sexual gratification.

Charge 11

The panel noted its findings on charge 11 that in or around February or March 2017, you said that Colleague E was in your *"wank bank"*, or words to that effect.

The panel noted that you did not make this comment to or in the presence of Colleague E. However, it inferred from the context that you were likely to have been excited to share your thoughts and views with your colleagues in pursuit of your sexual gratification.

The panel therefore determined that on the balance of probabilities, your conduct at charge 11 was done in pursuit of sexual gratification.

Charge 20

That you, a Registered Nurse:

20) Your conduct at any and/or all of charges 14, 15, 16 and 17 intended to bully and/or intimidate the recipient of your message(s)

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the facts found proved by way of your admissions for charges 14, 15, 16 and 17.

In considering whether your conduct at any and/or all of charges 14, 15, 16 and 17 intended to bully and/or intimidate the recipient of your message(s), the panel had regard to the ACAS definition of bullying:

> '*Although there is no legal definition of bullying, it can be described as unwanted behaviour from a person or group that is either:*
>
> - *offensive, intimidating, malicious or insulting*
> - *an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone*

The bullying might:

- *be a regular pattern of behaviour or a one-off incident*
- *happen face-to-face, on social media, in emails or calls*
- *happen at work or in other work-related situations*
- *not always be obvious or noticed by others*'

The panel also had regard to the ordinary meaning of intimidation. The panel's interpretation of '*intended*' was conduct carried out deliberately, or where a conscious decision was made to carry it out.

Charge 14

The panel noted your admission to charge 14 that on a date unknown, you sent an unsolicited message to Colleague G via Facebook. The panel had sight of the screenshot from the '*Message Requests*' of a Facebook account, which showed a message of a 'Pinocchio' emoji from an account named '*Paul Turnbull*'.

The panel noted your oral evidence and witness statement dated 2 March 2023. You accepted that you sent '*a lying face emoji*' to Colleague G. However, you denied that it was done with an intention to intimidate. You told the panel that you sent this message to Colleague G at a time when you were [PRIVATE] highly distressed. It was your evidence that at the time of sending the message, you were '*upset and angry, in particular because [you] thought the disciplinary process was highly flawed and that [you were] not being treated fairly.*'

The panel considered what your intention was likely to have been at the time. It considered that you had sent an unsolicited message of a '*lying face*' emoji to Colleague G, in the context of an ongoing investigation into allegations about you, which she was part of and which you disputed. It therefore drew the inference that this message was sent with the intention of intimidating Colleague G in order to change her viewpoint or her potential actions in relation to the investigation.

Charge 15

The panel noted your admission to charge 15 that on a date unknown in February 2020 you sent multiple friend requests to Colleague G via Facebook. The panel had sight of the five screenshots from the '*Friend Requests*' of a Facebook account, which stated '*Paul Turnbull sent you a friend request*'.

The panel noted your oral evidence and witness statement dated 2 March 2023. You said that you did not act in this manner with an intention to intimidate. You told the panel that at the time, you were [PRIVATE] highly distressed. However, as a result of training and reflection on bullying and harassment and with the benefit of hindsight, you accepted that the effect of your actions was that Colleague G would have felt bullied or intimidated.

The panel considered what your intention was likely to have been at the time. It considered that you had sent at least five friend requests to Colleague G on Facebook, in the context of an ongoing investigation into allegations about you, which she was part of and which you disputed. It therefore determined that this was done with the intention of intimidating Colleague G.

Charge 16

The panel noted your admission to charge 16 that between 11 February 2020 and 13 February 2020, you sent unsolicited messages to Colleague F via Facebook. The panel had sight of the screenshots showing messages of 'thumbs up', 'shush face' and 'angry face' emojis from an account named '*Paul Turnbull*'.

The panel noted your oral evidence and witness statement dated 2 March 2023. You said that you did not act in this manner with an intention to intimidate. You told the panel that at the time, you were in a distressed [PRIVATE] state. It was your evidence that '*while not trying to minimise [your] actions, [you] had recently been involved in a disciplinary process that [you] deemed was flawed and deeply unfair*'. You told the panel that you sent "*random*" emojis to Colleague F at a time where you were upset. However, with the benefit

of hindsight, you recognised that Colleague F would have been concerned and shocked at receiving the unsolicited messages and would have felt intimidated.

The panel considered what your intention was likely to have been at the time. The panel considered the meaning of the emojis you sent and it was of the view that you were 'shushing' Colleague F and relaying that you were angry. The panel did not accept that these emojis were selected randomly as they appeared to be relevant in the context. You sent these emojis to Colleague F, in the context of an ongoing investigation into allegations about you, which she was part of and which you disputed. It therefore determined that this was done with the intention of intimidating Colleague F in order to change her viewpoint or her potential actions in relation to the investigation.

Charge 17

The panel noted your admission to charge 17 (in its entirety) that you sent one, or more, unsolicited messages to Colleague C on 24 August 2020 and on 20 September 2020. The panel had sight of the screenshots showing messages of 'laughing face', 'shush face' and 'warning sign' emojis from an account named '*Paul Turnbull*'.

The panel noted your oral evidence and witness statement dated 2 March 2023. You said that you did not act in this manner with an intention to intimidate. You told the panel that at the time, you were angry towards Colleague C as you felt his allegations attributed to the disciplinary hearing. You said that your contact with Colleague C was prompted by the receipt of information from the NMC about further allegations about you. It was your evidence that you were frustrated, felt hopeless and dejected, and dealing with an array of emotions which resulted in you lashing out towards those you held responsible. You told the panel that you sent "*random*" emojis to Colleague C. However, on reflection, you accepted that '*it was an irresponsible and childish attempt to evoke some form of reaction*' and that your actions '*would not have been warmly welcomed*' by Colleague C.

The panel considered what your intention was likely to have been at the time. The panel considered the meaning of the emojis you sent and it was of the view that you were

laughing at Colleague C, ‘shushing’ him and relaying a warning. The panel did not accept that these emojis were selected randomly as they appeared to be relevant in the context. You sent these emojis to Colleague C, in the context of an ongoing investigation into allegations about you, which he was part of and which you disputed. It therefore concluded that this was done with the intention of intimidating Colleague C in order to change his viewpoint or his potential actions in relation to the investigation.

The hearing adjourned part-heard during the panel’s deliberations on the facts due to lack of time.

The hearing resumed on 18 December 2023 and the panel delivered its findings on fact.

The panel proceeded to hear submissions on misconduct and impairment. Members of the public attended the hearing on 18 December 2023 to observe. Ms Herbert made a further application to hear parts of the application in private under Rule 19.

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

During Ms Herbert's submissions on the second stage of the proceedings, she made a request for parts of this hearing to be heard in private on the basis that she intended to make references to [PRIVATE]. The application was made pursuant to Rule 19 of the Rules.

Ms Paterson on behalf of the Nursing and Midwifery Council (NMC), indicated that she supported the application.

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

The panel determined to go into private session in connection when matters relating to [PRIVATE] are raised.

Fitness to practise

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

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

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

Submissions on misconduct

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

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

Ms Paterson referred the panel to *Remedy UK Ltd, R (on the application of Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin). She submitted that the

misconduct in your case has to be *"sufficiently serious".* She identified the following breaches of the relevant code, 1.1, 3.4, 20, 20.2, 20.3 and 20.6.

Ms Paterson referred the panel to the NMC's guidance on *'seriousness'.* She reminded the panel that overall, the findings include breaches of professional boundaries, conduct with the view of degrading individuals based on their protected characteristics and bullying by sending messages to individuals on social media. She submitted that the NMC takes the concerns of this nature seriously, except where professional expressed such views that amounted to a serious departure of the NMC's standards. She reminded the panel that there were concerns of harassment which relate to your behaviour towards staff members, which has had a profound effect on your victims, which could negatively affect the reputation and confidence in nurses.

Ms Herbert informed the panel that she had no submissions to make in respect of misconduct. However, when making its determination on misconduct, she asked the panel to bear in mind that the issue in this case is of professional conduct, and not matters relating to patient safety.

Submissions on impairment

Ms Paterson 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).

Ms Paterson submitted that the four limbs set out in Dame Janet Smith's *"test"* is engaged. She acknowledged that this is a *"forward thinking exercise"* which required careful consideration relating to your impairment. Ms Paterson submitted that in respect of limb A, this relates to bullying, victimisation, and sexual harassment. This had a negative impact

on the working environment which could have affected patient care. Ms Paterson submitted that in addressing limbs B and C, you had acted in a way which intended to humiliate, degrade, and intimidate patients and colleagues. In respect of limb D, Ms Paterson submitted that reaching out to colleagues as in the charges 14 to 17, with the intention to intimidate, does demonstrate your integrity being called into question.

Ms Paterson submitted that in looking at the future, conduct of this nature can be difficult to address. There may be underlying attitudinal issues which is more difficult to put right. She then referred the panel to the NMC's guidance and the paragraph which relates to *'serious concerns that are more difficult to put right'* and submitted that due to the nature of your conduct that it is difficult to correct.

Ms Paterson reminded the panel that your reflective account dated 15 December 2023, which was submitted for the benefit of this resuming hearing, suggests that you accepted that you were accountable for the matters found proved and that you acknowledged that such matters are unacceptable. You also made a number of admissions at the start of the proceedings. However, Ms Paterson invited the panel to consider the stage when insight was developed or *"manifested"*, *"how far attached it goes"* and whether your reflective statement considered the individuals concerned and the impact that your conduct has had on the overall safety, and to declare and uphold standards of the profession and the NMC as regulator. Ms Paterson submitted that your reflective piece is *"generalised"* rather than focusing specifically on what has occurred.

Ms Paterson submitted that in terms of your remediation, it is difficult to remediate concerns which are attitudinal. It has been noted in your reflective piece that you have been out of nursing practice for some time and have identified coping mechanisms and ways in which you sought to deal with the underlying reasons for having acted in such a way. However, Ms Paterson submitted that it is difficult to show that you have been able to demonstrate practice without incident, since you have not been working in a nursing capacity. She specifically submitted that concerns in your case relate to numerous colleagues who were subjected to inappropriate behaviour by you, which was extended to

patients and their families. Ms Paterson submitted that the risk of repetition is far higher than it should be, had it been an isolated incident which was followed by an extensive reflective piece.

Ms Paterson invited the panel to find impairment on public interest grounds. She submitted that the public confidence in the profession and the NMC as regulator would be seriously undermined if a finding of impairment is not made.

Ms Herbert reminded the panel that this is a two-stage process and referred the panel to the NMC's guidance on impairment. She highlighted that that the NMC does not seek to punish professionals, but rather identify whether the professional can practise *'safely, kindly and professionally'.*

Ms Herbert submitted that the panel may be satisfied that there is no longer a concern and no longer a public interest. She submitted that the panel can be satisfied that your conduct was remediable and has been remediated. She sets out the six grounds which she relies on:

1) The events in question occurred between three to seven years ago.
2) The events have not repeated themselves whilst working in an environment where this could reoccur.
3) Positive references from past employers and present colleagues.
4) That you reflected upon and worked hard to correct your past mistakes.
5) You are an honest and caring nurse, who is remorseful from the errors you have made.
6) That you engaged fully in these proceedings and demonstrated your wish to return to practise.

Ms Herbert also invited the panel to consider your reflection and the *"Registrant's bundle"* which was submitted for the benefit of the February 2023 to July 2023 proceedings. Ms Herbert outlined the key documents, including the witness statements, live evidence from you, four testimonials, 15 character references, six training certificates and various written

reflective pieces. She submitted that you showed a thoughtful insight into the errors that you have made and whilst the charges found proved relate to racism, sexual harassment and bullying, she submitted that these are remediable and that you have remedied such behaviour. She told the panel that you are unlikely to repeat your actions, as a result of these proceedings. The process has been *"long"* and asked the panel to remember the circumstances in relation to the allegations in 2016 and 2017 and 4:Thought / MindSpace. She submitted that 4:Thought / MindSpace was not an ideal working environment at the time and that you described it as *"toxic",* which led to the situation occurring. You now recognise the impact that this has had on your behaviour.

Ms Herbert told the panel that you now work for a large retail store and have been able to provide examples about how you should behave in a working environment and your insight. She provided an example of when you were invited to attend a work Christmas event by a young female colleague, which you declined. She submitted that your practical response of common sense instead of being *"embroiled",* demonstrated your ability to recognise now how you should conduct yourself whilst at work. In terms of charge 13, Ms Herbert told the panel that you have always accepted this allegation as soon as it was put to you. You told the panel in your evidence that you regretted your actions and have always recognised that Colleague F has done *"nothing wrong".* In terms of the Facebook messages, she submitted that during those disciplinary proceedings, you were not yourself, [PRIVATE]. You isolated yourself and acknowledged that you had made some extremely poor decisions. You also said in your evidence that you were [PRIVATE] and had not sought support for this.

Ms Herbert submitted that in *"trying to get [your] life straight",* you now have an understanding that you demonstrated *"appalling"* behaviour. You recognised in your live evidence and recent reflective statement dated 15 December 2023 the impact that your messages had on the individual in question. You showed insight by now recognising this and it is unlikely to happen again. She gave an example of your current involvement in a Whatsapp group, whereby you realised that some members of this group unfortunately do not share the same standards that you currently hold yourself against. You have an

understanding of how you should conduct yourself when communicating and that such knowledge of what is appropriate to send shows that you demonstrated good insight.

Ms Herbert told the panel that you have undertaken relevant courses to address the concerns. Ms Herbert also informed the panel that you developed what you have learned by providing further reflective pieces and accepted that you needed to consider your professional boundaries. She submitted that in your recent reflective piece dated 15 December 2023, you were able to demonstrate more awareness and how your behaviour could be interpreted.

Ms Herbert submitted that in relation to Colleague F, this situation was a *"reality check"* for you. You can now see how your insight has developed and provided a final reflective piece to the panel. You also undertook training and reinforced your understanding. You work in a multicultural team at a large retail store and no incidents of such nature occurred again, therefore, she submitted that it is highly unlikely that such conduct is due to be repeated.

Ms Herbert specified some of the character references contained within the bundle. These references were provided on your behalf for the purpose of the hearing that took place on various dates between February 2023 to July 2023. These described you as a *'valued member',* able to deal with challenging situation, and that you did not demonstrate racism or sexual harassment. She told the panel that these references came from former colleagues who worked with you for many years and that they all recognised the impact that these proceedings had on you. Ms Herbert further stated that your remediation has taken place throughout the years and highlighted the character reference dated 31 January 2023 from a former colleague at a large retail store.

Ms Herbert told the panel that it has been a significant length of time since you have been able to practise as a nurse. It has been almost four years, and two years of your being subjected to a suspension. She submitted that if a well-informed member of the public were to learn about this case, where there has been real and genuine insight, they would

be of the view that the public interest has been met through these proceedings, your engagement and through the interim order. Ms Herbert told the panel that even if no impairment was found, the professional impact that this had on you is profound. You would have to complete a Return to Practise course, provide references and explain the four-year gap and the proceedings that have taken place. It may be that some will take the risk of employing you again, but it clearly has further ramifications. She concluded her submissions by stating that there is no current impairment given the circumstances of this case.

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, *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Cheatle v General Medical Council* [2009] EWHC 645.

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

> ***'1 Treat people as individuals and uphold their dignity.***
>
> *To achieve this, you must:*
>
> ***1.1*** *Treat people with kindness, respect and compassion.*
>
> ***3 Make sure that people's physical, social and psychological needs are assessed and responded to***
>
> *To achieve this, you must:*

3.4 *Act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care.*

20 Uphold the reputation of your profession at all times.

To achieve this, you must:

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.*

20.8 *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.'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel considered each of the individual charges and asked itself whether the charges found proved and the charges found proved by way of your admission amounted to misconduct. In charges 1a, 1b, 4a, 6, 18b, 18c and 19b, the panel was of the view that your use of language was highly inappropriate and wholly unacceptable or expected from a professional. You failed to treat your colleagues as individuals or uphold the reputation of your profession by using phrases and displaying behaviour which objectified individuals based on their gender and made references to their race.

The panel considered your actions in charges 7a, 7b and 8. The panel felt that well-informed members of the public would find your actions deplorable and fell seriously short of the conduct and standards expected from a nurse. The majority of these comments were not made in the presence of the target, but that you wanted to obtain a reaction and the engagement of your colleagues as part of the work culture. The panel was of the view that your behaviour followed this similar theme throughout charges 11, 12a, 13a, 13b)i,

13b(ii) and 13b(iii) in which you made highly inappropriate comments in order to encourage them to engage with you.

The panel found your intimidation towards Colleague G in charge 14 extremely serious. You were aware at that stage that Colleague G had provided evidence in respect of a local investigation around your behaviour. You sent Colleague G repeated *'friend request'* on Facebook which the panel felt was tantamount to an interference with the evidence of a witness. Your behaviour was sinister and serious, and Colleague G felt as though you were blaming her for the outcome of the local investigation against you. You failed to acknowledge how your behaviour could have affected and or influenced others and this was also evident in your further conduct in charges 15, 16, 17 and 20.

The panel found that your 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, your fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

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 and to justify that trust, nurses 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 reminded itself of the timeline of the events. It bore in mind the legal advice and the NMC's guidance on seriousness relating to concerns which relate to behaviour that may be difficult to put right. The panel identified that there were no public protection issues arising from your conduct and that you had not acted dishonestly in the past and or liable to act dishonestly in the future. However, your misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. Therefore, it found limbs B and C engaged.

Regarding insight, the panel took into account that you made admissions, demonstrated a developing understanding of how your actions made Colleague F feel uncomfortable, how this impacted negatively on the reputation of the nursing profession, and you apologised to this panel for the circumstances that unfolded.

The panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel noted that you have not practised as a nurse for four years following your suspension and when the referral was made to the NMC. The panel also had sight of your training certificates and reflective pieces which were completed prior to the start of your substantive hearing in February 2023:

- Professional Boundaries Course, dated 1 February 2023
- Professional Boundaries Course - Reflection and Lessons Learned
- Bullying and Harassment Certificate, dated 5 February 2023
- Bullying and Harassment Training - Reflection
- Conflict Management - Training Certificate, dated 7 February 2023
- Conflict Management Training - Reflection and Lessons learned.
- Sexual Harassment Training Certificate, dated 4 February 2023
- Sexual Harassment in the Workplace - Reflection

- LGBTQ+ Awareness Certificate, dated 13 February 2023
- LGBTQ+ Awareness Certificate Feedback and Reflection
- Racism Awareness Certificate, dated 16 February 2023
- Racism Awareness Learning and Reflection

However, the panel is of the view that there is still a risk of repetition, as the charges proved relate to deep-seated attitudinal concerns. Whilst the panel heard submissions from Ms Herbert that you would not repeat your actions again due to the extent of reflection and remediation that you have done during the course of these proceedings, the panel felt that your insight is still developing. There was insufficient evidence from a person in charge, such as a current line manager from your current employment, to provide an insight in your professional behaviour. Your misconduct took place over a long period of time. There were extensive local investigations for the events in 2016 and 2017. When you returned to work, you displayed and repeated a similar type of behaviour in that you demonstrated sexualised and inappropriate behaviour. In 2020, your behaviour was further exacerbated by focusing your intimidating behaviour to colleagues who provided evidence against you.

Furthermore, the panel had regard to your most recent reflective piece dated 15 December 2023. The panel was of the view that this lacked depth. Whilst your reflective piece was well written, it lacked focus on the colleagues that suffered emotional harm as a result of your actions. It did not sufficiently relate to the particulars of the charges found proved. As such, the panel determined that your insight is still developing at this stage.

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 profession and upholding the proper professional standards for members of those professions. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds your fitness to practise impaired on the grounds of public interest only.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 6 months. The effect of this order is that the NMC register will show that your registration has been suspended.

Submissions on sanction

Ms Paterson informed the panel that in the Notice of Hearing, dated 24 January 2023, the NMC had advised you that it would seek the imposition of a striking-off order if the panel found your fitness to practise currently impaired. She submitted that the relevant sanction is still a striking-off order and that the misconduct in your case is incompatible with remaining on the register.

Ms Paterson submitted that this is a serious case which involves some serious findings of fact. She reminded the panel of its findings on misconduct and impairment. She referred the panel to the NMC Guidance on sanction *(Reference SAN-1)* and drew the panel's attention to a number of aggravating and mitigating factors.

Ms Paterson submitted that the following aggravating factors are:

- It is important to note the chronology of the misconduct identified in your case. She submitted that the first set of incidents occurred at Mindspace. You were then made subject to Mindspace's disciplinary process, and you received a final written warning. Ms Paterson informed the panel that you were transferred to the CAMHS unit and during this, the misconduct with Colleague F occurred.

During the disciplinary process, you continued your misconduct by intimidating and sending messages to colleagues.

- Your pattern of misconduct occurred over a long period of time and in two different workplace setting. One set of the allegations occurred whilst you were subject to a final written warning.
- Abuse of position of trust regarding your behaviour whilst you were responsible for the co-mentoring of Colleague F.

Ms Paterson outlined the mitigating factors:

- Ms Paterson submitted that the panel has now been provided with a very recent reference dated 19 December 2023 from a line manager. She accepted that it is positive and pertains to there being no investigation or complaints raised at your current workplace setting. However, she submitted that this reference mirrors many of the others that can already be found in the '*Registrant's bundle'*. Some of those written references relate to a period of time prior to the incidents, some were simultaneous to the incidents. She submitted that some of these references speaks to the "*shock"* of the nature of the charges against you. However, Ms Paterson submitted that previous references and views of previous authors did not prevent the panel from finding misconduct. Moreover, there is no sufficient evidence to allay the concerns or the risks.
- Ms Paterson reminded the panel that you provided and showed evidence that you undertook relevant training courses and demonstrated some steps taken to mitigate. However, she invited the panel to consider whether two hours of training in relation to *'Bullying and Harassment'* and *'Professional boundaries'* were sufficient to address the deep-seated attitudinal concerns.
- Ms Paterson submitted that whilst you demonstrated developing insight, the panel felt that your reflective piece lacked depth.
- Ms Paterson submitted that the NMC acknowledged that there were personal mitigating factors. However, case law *"dictates"* that this was of limited value in

regulatory proceedings and that this panel should consider this when considering the weight of those personal mitigating factors.

Ms Paterson addressed the panel on the different type of sanctions available to the panel. She submitted that making no order does not address the risk of repetition and that a Caution Order is only relevant where the concerns meet the lower end of the spectrum. She submitted that a Conditions of Practice Order is not appropriate, as this is not a case where there were identifiable areas for practice which are in need of training. Your case falls below the behaviour and attitude expected from a professional, as such, the panel may find it difficult to formulate conditions which would address the risks. In considering a suspension order, Ms Paterson submitted that this is not appropriate given the panel's findings on impairment. Your behaviour was repeated at two different workplaces, and the misconduct continued, albeit it was different in nature. Whilst you have demonstrated some partial insight, Ms Paterson submitted that in light of your history and the nature of the concerns, there is a significant risk that you would repeat similar conduct in the future.

Ms Paterson invited the panel to impose a striking-off order. She submitted that this is the only appropriate order, specifically due to your repeated use of offensive language and your intimidation and degrading behaviour towards your colleagues and a service user. She submitted that the behaviour you exhibited is fundamentally incompatible with continued registration. She reminded the panel that whilst there have been no concerns raised in your long career of nursing, except for the charges found proved, she submitted that the NMC Guidance (Reference: Ftp-SAN1) stated that this should not be taken into consideration since the allegations against you relate to a deep-seated attitudinal concern.

The panel also bore in mind Ms Herbert's submissions. Ms Herbert reminded the panel that whilst the charges found proved are serious, this is not a case where a criminal offence has occurred and been repeated, and the offensive language was not used towards patients. She submitted that there are levels of seriousness, but this is not in the higher echelon where a striking-off order is appropriate.

Ms Herbert submitted that the references that were provided on your behalf showed that there are no deep-seated attitudinal issues. She told the panel that the behaviour you demonstrated in some of the allegation was out of character for you. Further, she submitted that the training that you have done is sufficient and the fact that you have written various reflective pieces and applied your learning and reflection to your workplace demonstrated that you have put what you learned into your daily work. Ms Herbert submitted that you accepted that you had shown attitudinal concerns in the past in relation to these charges.

Ms Herbert addressed your developing insight and referred to the risk. She submitted that the panel has received today a positive reference from your current line manager. You have not practised as a nurse since 2019. There was a time gap between when the NMC imposed the interim suspension order on your practice despite the nature of the allegations. She told the panel that the Fitness to Practice process has been long and robust. You engaged and conducted yourself appropriately and showed developing insight.

Ms Herbert informed the panel that your current role is at a large retail store. She recognised that this is not in a healthcare setting. However, the recent reference from your line manager who has been managing you for the last eight months attested that she is *"now"* aware of allegations and that there have been no issues with your conduct. You have a customer facing role and have received positive feedback. She was so confident with your ability to conduct yourself at a professional standard that you were appointed as a *'driver buddy'*. Ms Herbert submitted that this demonstrates that the risk is minimal. She informed the panel that you have 23 years of good conduct, albeit it does not undermine the allegations found proved in this hearing.

Ms Herbert submitted that the appropriate sanction is a suspension order for 6 months to a year to mark the seriousness of the charges. She submitted that the public interest is met, since there is no evidence of deep-seated attitudinal concerns since the 2020 incident, that you showed insight and that you do not currently pose a significant risk. She

reminded the panel that the guidance is *"not a checklist"* and are only factors for the panel to consider.

Ms Herbert submitted that this is also a case where sanction could be considered without a review. It is not necessary in this case. She referred to the NMC guidance which states that where a registrant does not currently pose a current risk to patients, a review would serve no purpose.

Ms Herbert outlined that in order for you to return to a nursing role, you will need to complete a return to practise course, undertake relevant training, obtain supervision, and explain to a future employer why you had not worked in a healthcare setting for four years. She submitted that a suspension order would be appropriate as there has been no repetition for three years and you showed that you developed some insight. She submitted that where there is not a high risk of repetition, a suspension order would meet the public interest.

Ms Herbert submitted that a striking-off order is disproportionate. She invited the panel to consider the matters in 2016 and 2017 are different. In relation to Colleague F, you misunderstood the signals. In 2020, the messages you sent were during a time in which you [PRIVATE], felt alone [PRIVATE]. She refuted the submission that you *"carried on"* your misconduct. She submitted that they were separate incidents. In considering the racism and derogatory language, this occurred around six or seven years ago, and you have not repeated this in any of your work in 2019 or 2020 and at present. She submitted that there is no *"deep seated problem"* and that your actions were to such an extent that it would not be fundamentally incompatible to remain on the register.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found your 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:

- Previous internal disciplinary findings in which you received a written warning.
- Occurred over a long period of time
- Occurred in more than one workplace.
- Abuse of position of trust in respect of a colleague.

The panel also took into account the following mitigating features:

- Positive references and training certificates.
- The personal circumstances referred to by Ms Herbert.
- Your remorse and developing insight.
- No actual or potential physical harm to service users

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, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*

The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

- *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;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *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 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. It noted that neither representative put forward an argument for a conditions of practice order.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case.

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

- *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 was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel accepted the submission of Ms Herbert, that whilst these charges are serious, that you can be rehabilitated and that you have a developing insight.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

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

The panel considered that this order is 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.

In making this decision, the panel carefully considered the submissions of Ms Paterson in relation to the sanction that the NMC was seeking in this case. The panel also accepted

that there were no concerns regarding your clinical practice. Where the panel found a risk of repetition existed was from your attitude at the time of the charges found proved and that some of your actions at the time were considered *'sinister'.* However, the panel determined that whilst it accepted that there were attitudinal concerns at the time of the charges, you demonstrated developing insight into your previous actions and moving towards a positive step into remediating those concerns. It acknowledged that your reflective piece was well written but did lack some depth in certain areas. Your reflection during the course of the proceedings, your engagement, your updated reference dated 19 December 2023 which was not available to the panel at the impairment stage, demonstrated that you felt remorse and expressed a willingness to return to the nursing profession.

The panel determined that a suspension order for a period of 6 months was appropriate in this case to mark the seriousness of the misconduct.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order, or allow the order to lapse.

Any future panel reviewing this case would be assisted by:

- Your continued engagement.
- Further relevant and updated testimonials from a manager or supervisor.
- Updated training and reflection.
- Updated plans on your Return to Practice.
- Updated reflective piece during your period of suspension.

This will be confirmed to you in writing.

Submissions on interim order

The panel took account of the submissions made by Ms Paterson. Ms Paterson submitted that an interim order is required to cover the appeal period. She submitted that it is in the interest of the public to impose an interim order. She submitted that given the panel has found that there is a risk of repetition, there is a risk during that appeal period that you could again breach the fundamental tenets of the nursing profession. In terms of the length, she submitted that 18 months is the appropriate length to cover the time it may take in the event that you appeal the decision.

The panel also took into account the submissions of Ms Herbert. She accepted why the panel may need to impose an interim order. However, she submitted that 18 months is not appropriate.

The panel accepted the advice of the legal assessor. The legal assessor reminded the panel of the NMC's guidance (*Reference-SAN-5)* and made references to the relevant case law.

Decision and reasons on interim order

The panel was satisfied that an interim order 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 to cover the appeal period.

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

That concludes this determination.