

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

**Substantive Hearing
Wednesday 5 July – Tuesday 18 July 2023**

Virtual Hearing

Name of Registrant: Hyginus Onuoha Eze

NMC PIN 0115487E

Part(s) of the register: Registered Nurse - Mental Health Nursing
(September 2004)

Relevant Location: Middlesex

Type of case: Misconduct

Panel members: Adrian Blomefield (Chair, Lay member)
Tracey Chamberlain (Registrant member)
Nicholas Rosenfeld (Lay member)

Legal Assessor: Tracy Ayling KC

Hearings Coordinator: Taymika Brandy

Nursing and Midwifery Council: Represented by Ben Edwards, Case Presenter

Mr Eze: Present and represented by Paschal Ihebuzor,
Solicitor, limited representation by Mr Ashraf
Khan, Special Counsel, instructed by the NMC
for the cross examination of Colleague 1

Facts proved: All

Facts not proved: None

Fitness to practise: Impaired

Sanction:

Striking-off order

Interim order:

Interim suspension order (18 months)

Details of charge:

That you, whilst working as a registered nurse, in relation to Colleague 1:

1. On 29 September 2019 said to her *"It is disgusting when girls aren't clean below"* and/or *"Is it true that if you're clean and a man is slightly prickly that it stimulates girls to have better orgasms: Would you try that?"* or words to that effect.

[PROVED].

2. On a date on or around 29 September 2019: **[PROVED IN ITS ENTIRETY]**

- a. Pushed her.
- b. Put your hands on her breasts.
- c. Said to her *"I'd never noticed how pretty your eyes are"* and/or *"I could stare into your eyes all day"* or words to that effect.
- d. Did not move away from her when asked.
- e. Kissed her.

3. On 9 October 2019: **[PROVED IN ITS ENTIRETY]**

- a. Touched her face.
- b. Said to her *"I've never noticed your eyes, they make me so wide"* or words to that effect.
- c. Put your hand on her leg and started to move it upwards.
- d. Did not stop touching her leg when she told you to stop.

4. On 11 October 2019: **[PROVED IN ITS ENTIRETY]**

- a. Said to her *"I knew you were married but seeing the rings now has reminded me, I wished I had know before that you were married. You are beautiful. You make me wide"* or words to that effect.
- b. Put your hands on her face.
- c. Pushed your lips onto her lips and/or tried to put your tongue in her mouth.

5. Your conduct in one or more of charges 1 to 4 was sexually motivated in that you were seeking sexual gratification. **[PROVED IN RELATION TO CHARGE 1, 2a,2b,2c,2d,2e,3a,3b,3c,3d,4a,4b and 4c]**

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

Background

You were referred to the NMC on 15 December 2020 by West London Mental Health NHS Trust ('the Trust'). At the time, you were employed as a Clinical Team Leader on Solaris ward in St. Bernard's Hospital. Solaris ward is a low secure assertive rehabilitation ward and service. Service users are generally referred from admissions wards. You had been employed by the Trust since December 2006.

The referral relates to concerns that were raised by Colleague 1, a student nurse apprentice, undertaking a placement on Solaris ward at the time. Colleague 1 had started her nursing apprenticeship in 2017 and worked as a Health Care Assistant at the Trust previously from September 2015.

On 29 September, 9 October and 11 October 2019, you were both working on various shifts that interchanged, which meant that on these days you were working on the same shift for a period of time. The shift patterns were early shift (07:00-15:00), long day shift (07:00- 21:30) and late shift (13:30-21:30).

On 29 September 2019, whilst working on the same shift, it is alleged that you said to Colleague 1 "*It is disgusting when girls aren't clean below*" and/or "*Is it true that if you're clean and a man is slightly prickly that it stimulates girls to have better orgasms: Would you try that?*".

Later on that day, it is alleged that you pushed Colleague 1 towards the wall, outside the toilets located in the annex of the ward and put your hands on her breasts. you said, "*I'd never noticed how pretty her eyes were*" and that you could "*stare into them all day*".

Colleague 1 states that you did not move away from her when asked and you then kissed her cheeks on both sides and walked off.

On 9 October 2019, it is alleged that you touched Colleague 1's face and said "*I've never noticed your eyes, they make me so wide*". She explained that she tried to ignore you, but you put your hand on her left leg and started to move it upwards. It is alleged that you did not stop touching her leg when she told you to stop.

On 11 October 2019, it is alleged that you said to Colleague 1 that "*I knew you were married but seeing the rings now has reminded me, I wished I had known before that you were married. You are beautiful. You make me wide*". You then put your hand around her face but this time securing it so that she couldn't move and pushed your lips onto hers and tried to put your tongue into her mouth.

The Trust's investigation into these concerns began in October 2019. The investigation was initially conducted by Colleague 3 and then subsequently taken over by Colleague 2. The Trust's Investigation report is dated 21 October 2020.

Decision and reasons on application pursuant to Rule 23

Mr Edwards, on behalf of the Nursing and Midwifery Council ('NMC'), made an application under Rule 23 of the Rules for Colleague 1 to be permitted to take the affirmation under her previous name. He submitted that since the allegations Colleague 1 has changed her name and does not want this publicly known. Mr Edwards invited the panel to allow this application in light of the special measures directed at a preliminary meeting on 02 June 2023.

Mr Khan, on your behalf, made no objection to this application.

The panel accepted the advice of the legal assessor, who referred it to Rule 23(2) of the Rules. Rule 23(2) states:

'23.

....

(2) After seeking the advice of the legal assessor, and upon hearing representations from the parties, the Committee may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness.'

The panel had regard to the submissions of Mr Edwards and noted that Mr Khan did not object to this application. The panel noted Colleague 1 had gone to great lengths to preserve her anonymity and the panel was of the view that it was appropriate to allow Colleague 1 to take the affirmation under her previous name. The panel did not consider that any disadvantage or unfairness would be caused to you. The panel considered that you, Mr Edwards and Mr Khan will be able to see Colleague 1 and confirm her identity. The panel also had regard to Rule 22(2) of the Rules. Rule 22(2) states that:

'22.

....

(2) The Committee may, upon the application of the party calling the witness, direct that any details which may identify that witness should not be revealed in public'

In these circumstances, the panel decided to grant this application.

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

Prior to Colleague 1's oral evidence, Mr Khan, on your behalf, made an application that parts of the hearing be held in private as reference will be made to the health and personal circumstances of Colleague 1 during cross-examination. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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, third party or by the public interest. The panel also referred itself to NMC guidance 'hearings in private and public' ref: CMT-10.

The panel determined that any references to Colleague 1's health and personal circumstances would be held in private, as and when such issues were raised. This was on the basis that it was both reasonable and proportionate to do so and justified in the interest of Colleague 1.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Edwards on behalf of the NMC and by Mr Ihebuzor, on your behalf.

The panel was made aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely on 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 1: Student Nurse Apprentice on Solaris ward, at the time the allegations arose.
- Colleague 2: Service Director and Clinical Lead at the Trust.

- Colleague 3: Specialist Community Forensic Team Manager at the Trust, at the time the allegations arose.
- Colleague 4: Clinical Team Leader on Solaris ward, at the time the allegations arose.

The panel also heard evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor which referred to the relevant cases of *Byrne v General Medical Council* [2021] EWHC 2237 (Admin); *GMC v Haris* (2020) EWHC 2518 (Admin); *Sait v The General Medical Council* [2019] EWHC 3279 (Admin) and *Miller* [2010] EWCA Crim 1578. The legal assessor also referred the panel to s.78 of the Sexual Offences Act 2003.

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

Charge 1

That you, whilst working as a registered nurse, in relation to Colleague 1:

1. On 29 September 2019 said to her “*It is disgusting when girls aren’t clean below*” and/or “*Is it true that if you’re clean and a man is slightly prickly that it stimulates girls to have better orgasms: Would you try that?*” or words to that effect.

This charge is found proved.

In reaching its decision the panel took into account the evidence of Colleague 1, Colleague 2, Colleague 4, Ms 1's local investigation statement and your evidence.

The panel first considered whether you and Colleague 1 had been present on the same shift. The panel accepted that you did not dispute the times you had been on shift during the date identified in the charge. However, the panel bore in mind that during Mr Khan's cross-examination of Colleague 1, it was suggested that her name did not appear on the document entitled 'Staff on duty for the following dates' and therefore she may not have worked on the dates of the alleged incident. In response to this during her oral evidence, Colleague 1 explained why her name did not appear of this list. She said that there was a paper book and an electronic rota. The paper book would be updated with the names of those who actually attended and were on shift that day. She also stated that:

"[...] my name will be on the security book. My name would not be on this rota. I would not be staff. My name would be on my team's rota which is Hope Ward, which is my base ward and sponsoring me to do my training away from my ward. [The Ward Manager] would not put me at all on these rotas."

The panel also took into account Colleague 2's evidence in which she told the panel that:

"Rotas are held on the ward and are subject to change [...] It is not as definitive as it is here. The security book would not have an accurate rota, it is completed by the nurse on shift. A student nurse is supernumerary and not on the rota to get paid. Her name would not be on the rota."

The panel noted that this was also supported by Colleague 4 in her oral evidence as when taken to this document and asked whether this was the rota in her oral evidence, she stated that:

"This one looks different to the one we had before. This does not look familiar to me at all."

The panel noted that the document in the exhibit bundle entitled 'Practice Hours' was never put to the Colleague 1. This was a document, which detailed her working hours and each entry was signed by another member of staff. It was verified as accurate by her mentor on 18 October 2019 who recorded 'I have checked the hours of experience recorded by the student.' This document confirmed that Colleague 1 was working on 29 September 2019 and her mentor, in her oral evidence, confirmed her signature. Given the explanations above, the panel were minded to place more weight on that document than the previous document entitled 'Staff on duty for the following dates'. The panel noted that on Colleague 1's Practice Hours sheet, it is recorded that Colleague 1 was on an early shift, you also confirmed that in your oral evidence that you were on long day shift. The panel were therefore satisfied that there had been a period where you were both working on the same shift.

The panel then took into account the local investigation statement of Ms 1. The panel bore in mind that Ms 1 did not attend the hearing to give evidence and therefore, her local investigation statement had been admitted as an agreed hearsay document. In assessing this document the panel referred to the advice of the legal assessor and the NMC's guidance on Evidence ref: DMA-6 ('the Guidance'), having particular regard to the section on weight and hearsay evidence.

That section on hearsay states:

'Hearsay statements will usually carry less weight than oral evidence because it cannot be tested.'

The section on weight states:

'The weight of other evidence may depend on what the panel decides on whether a witness or a piece of evidence is credible. In those circumstances the panel will need to carefully consider issues like:

- *whether the evidence is ‘inherently plausible’*
- *whether it’s supported by other evidence*
- *consistency with previous accounts*
- *how likely the person giving the evidence is to be mistake’*

The panel noted that in Ms 1’s local investigation statement, it states that:

‘[Ms 1] cannot recall being in the back office with just the three of them and couldn’t recall any encounters specifically relating to the 3 of them working the same shift.’

Ms 1 also states that:

‘Everyone likes Hyggi, he’s not inappropriate, he’s a very good friend also.’

The panel bore in mind that Ms 1 had not appeared as a witness and therefore, it did not have the opportunity to test or challenge the objectivity of this evidence. The panel noted that this was not supported by any other evidence in this case. It was the sole evidence other than your evidence which controverted the allegation. Given the nature of its content as against the witness not attending before the panel, combined with the comment ‘is a very good friend also’ the panel determined to place less weight on this hearsay evidence.

The panel then took into account Colleague 4’s local investigation statement. The panel noted that in Colleague 4’s local investigation statement, it states that Colleague 1 had not initially reported this incident when she spoke to Colleague 4, though Colleague 1 did later outline this incident in her initial disclosure to Colleague 2 and 4 on 15 October 2019 as well as her local investigation statement. The panel noted that this was not consistent with the information she had initially reported to Colleague 4. The panel also noted that in Colleague 4’s oral evidence, she was unable to confirm whether she had seen her local statement. It also noted that this witness statement had not been signed by Colleague 4, whereas other witness statements had been and her named appeared on this statement spelt incorrectly, which she herself had noted. This statement detailed

an account of the incident on 29 September 2019. The panel also noted that Colleague 4's local investigation statement was dated 19 November 2019, she also accepted that she had not taken any contemporaneous notes when the matter was first reported to her. Additionally, her statement to the NMC confirming that accuracy of the content of her local investigation meeting is dated 1 June 2023, a considerable time after either the initial reporting of the incident and her local investigation interview.

The panel was of the view that given these above issues, it would account for some discrepancies between the account provided by this witness and Colleague 1.

The panel then took into account your evidence and Colleague 1's evidence. The panel bore in mind that you strongly dispute this allegation, and it is your case that none of the allegations occurred. The panel also noted that since the allegations arose in 2019, Colleague 1 has maintained that these allegations did occur.

In assessing the credibility of your evidence and Colleague 1's evidence, the panel took into account the NMC's Guidance. The panel focused on the content of the oral evidence and considered whether the evidence was plausible and consistent with other evidence which included evidence of what witnesses had said on other occasions. The panel had regard to evidence which was more contemporaneous in order to assess the credibility of the witnesses before it.

The panel first took into account Colleague 1's local investigation statement dated 15 October 2019 that states:

'On Sunday 29th September 2019 during the morning shift, Hyggi kept talking to me and [Ms 1] about girls being 'clean' below and that it is disgusting when girls aren't clean. Hyggi continued to ask more personal information and then asked "is it true that if you're clean and a man is slightly prickly that it stimulates girls to have better orgasms? Would you try that?"'

In Colleague 1's oral evidence she told the panel that this discussion took place around lunch time. Colleague 1 was also able to reiterate what you had allegedly said to her during the conversation and the panel noted that this was consistent with her local investigation statement, which had been taken soon after the alleged incident. The panel noted that Colleague 1 stated Ms 1 had been present during the conversation and in Ms 1's local investigation statement she stated she had not been present. However, for the reasons set out above, relating to the weight the panel attributed to Ms 1's hearsay evidence, the panel in exercising its professional judgment preferred Colleague 1's evidence in this regard.

The panel noted that in relation to the comments in this charge, Mr Khan, during cross-examination asked Colleague 1 why she did not report this to the nurse at the time. Colleague 1 stated that:

"I thought at the time if it happened again I would. I thought if he said it again I would."

The panel bore in mind the legal advice it had heard and accepted regarding the delayed reporting of alleged sexual incidents in that everyone presents differently in such circumstances. The panel noted that throughout cross-examination by Mr Khan, Colleague 1's responses were clear, cogent and credible. The panel considered that the Colleague 1's delay in reporting the incident was entirely plausible. The panel took into consideration your position of authority as the Clinical Team Leader on the ward and the evidence it heard from Colleague 1 about the culture of the working environment. The panel accepted that this may have explained why other more junior members of staff may not have come forward to support Colleague 1's allegations and why she did not report these incidents immediately. In the light of the fact that this was the very first incident and given the matters set out above, the panel found Colleague 1's answer to be credible and drew no adverse inference from the fact that she had not reported it immediately.

In considering your evidence, the panel noted that during your local investigation meeting you stated:

'my only worry is that I could have made a clinical decision that she didn't like and she got offended'

And

'sometimes senior staff have to make decisions and she may not like it'

The panel understood that you were suggesting this may have been a possible reason for her allegedly fabricating these allegations. The panel noted that this assertion was not maintained in your subsequent evidence and was not put to Colleague 1 in her cross-examination. The panel had regard to your oral and documentary evidence and noted that you had also made assertions that [PRIVATE] as a result of struggling with her placement, and that the allegations were [PRIVATE].

The panel acknowledged that when Mr Khan had put to Colleague 1 that she already had [PRIVATE] at the time of the alleged incidents, Colleague 1 agreed with this.

The panel also noted that Colleague 4 had told the panel in her oral evidence that:

[PRIVATE]

The panel took into account Colleague 4's oral evidence, in which she told the panel as Colleague 1's named mentor that there were no previous issues or concerns during her placement, she engaged well with patients, worked well with the team and was proactive.

The panel rejected the assertion that there was a connection between [PRIVATE].

The panel considered that your evidence in respect of these allegations had inconsistencies. Your local investigation, your written and oral evidence were inconsistent with one another. Compared with the consistent evidence of Colleague 1, the panel found your evidence to be unreliable and lacking in credibility.

The panel understands that the burden of proof rests upon the NMC to prove these allegations. However, other than denying that these incidents occurred, the panel noted that you had not advanced any positive assertion as to where you were or what you were doing at the time these alleged incidents as an alternative explanation. Therefore, the panel could only consider your blunt denial of these allegations in the absence of any alternative credible explanation or supporting, authentic and contemporaneous documentation which confirms the duties you were undertaking at the time of the alleged incidents.

The panel considered that Colleague 1's evidence was consistent with her evidence given during the local investigation. The panel particularly noted that during Colleague 3's oral evidence she had made the following comments regarding Colleague 1's local investigation evidence. She stated that:

“her evidence was very detailed about where she was touched, the layout of the room, the décor of the room and where items of furniture were [...].”

The panel also noted that Colleague 1 had given her written account of the allegations following her meeting with Colleague 2 and Colleague 4. In Colleague 2's oral evidence she stated that Colleague 1 was:

“very distressed through the interview... she was distressed. She had nothing to gain by making this allegation. Everything to lose by making this allegation and messing up her placement[...]. She found it hard to talk to me about the actual incident. She was very upset and crying. She found it very difficult to verbalise. It is one of those moments I still think of, as a sad moment as she was so distressed. She was very distressed, tearful and I was worried about her. She was unable to stop crying.”

The panel noted that in Colleague 1's oral evidence she explained that when the allegations arose, she was in her third year of her apprenticeship and that she said she had a further year and a half before she would be awarded her nursing degree. The panel had agreed with Mr Edwards submissions in respect of this, in that she had

nothing to gain by making such allegations at the time or by maintaining her position some four years later. The panel particularly noted that as a consequence of these alleged incidents, she had not completed her apprenticeship and did not qualify as a registered nurse. The panel determined that Colleague 1 has provided a consistent and credible account of this incident, from when it was first reported through to her oral evidence. For these reasons the panel preferred the evidence of Colleague 1 as opposed to yours.

Colleague 1 said that the ward was hard and referred to the culture on the ward. Colleague 1, in her oral and written evidence, submitted that you were a popular and long-standing member of staff on the ward.

In her interview for the local investigation Ms 1 is reported to say, *“Hyggi is a very nice person, he likes talking to everyone, he has never had a problem [...]. Everyone likes Hyggi, he’s not inappropriate, he’s a very good friend also.”*

Colleague 1’s evidence was that there was a reluctance to report issues on the ward stating:

‘I spoke to Health Care Assistants [...] they would say that because he was a band 6 nurse he could make life hard for them so they said not to say anything about it.’

Colleague 3 informed the panel that she had experienced some difficulties in getting staff to take part in the local investigation and she explains this as a reason why other staff, who are referred to by colleague 1 in her evidence, were not included in her local investigation and therefore not available to give evidence to the panel.

Colleague 4 told the panel that she sought advice from another clinical team leader called Colleague A when Colleague 1 made the initial disclosure to her, Colleague 4 said no one else had been told. The local investigation statement records, *“Hyggi confirmed that a colleague had told him on a weekend shift that the allegation had been made.”* and when you were asked to clarify who this was you said it was Colleague B.

This was a different colleague altogether which gave some indication of the lack of confidentiality on the ward.

The panel came to the conclusion that the culture on the ward and especially the apparent lack of confidentiality was a cause of the reluctance of staff to participate in an investigation, given that some of those staff were registered nurses. For all of these reasons the panel determined that it would have been more difficult for colleague 1 to disclose the allegations and it accepts the evidence of colleague 1 when she says she was not able to report the incidents to some staff members and that she was waiting to talk to someone she could trust.

For these reasons the panel accepted the evidence of Colleague 1 and rejected yours.

In all the circumstances, the panel found that, on the balance of probabilities, you had made the comments as set out in charge 1.

Accordingly, this charge is found proved.

Charge 2

2. On a date on or around 29 September 2019:
 - a. Pushed her.
 - b. Put your hands on her breasts.
 - c. Said to her "*I'd never noticed how pretty your eyes are*" and/or "*I could stare into your eyes all day*" or words to that effect.
 - d. Did not move away from her when asked.
 - e. Kissed her.

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the evidence of Colleague 2, Colleague 4, Colleague 1 and your evidence.

The panel considered these sub-charges in totality given that they are alleged to be one continuing act on the same day and on the same occasion.

The panel had regard to its previous findings in charge 1, that you and Colleague 1 had been present on the same shift on 29 September 2019.

The panel then took into account your evidence and Colleague 1's evidence. The panel bore in mind that you strongly dispute this allegation, and it is your case that none of the allegations occurred. The panel also noted that since the allegations arose in 2019, Colleague 1 has maintained that these allegations did occur.

In assessing the credibility of your evidence and Colleague 1's evidence, the panel took into account the NMC's Guidance. The panel focused on the content of the oral evidence and considered whether the evidence was plausible and consistent with other evidence which included evidence of what witnesses had said on other occasions. The panel had regard to evidence which was more contemporaneous in order to assess the credibility of the witnesses before it.

Colleague 1's local investigation statement states that:

'[...] as I was walking to the toilet in the annex, Hyggi was coming out of the toilet, as usually we both said hello to each other. I was near the wall but not touching the wall and he suddenly stopped so I stopped. He pushed me towards the wall with a bit of force with his hands on my breasts. He said he never noticed how pretty my eyes were and that he could stare into them all day. I said thanks as I didn't know what to say and tried to push past him as I was starting to feel uncomfortable but his hands were around the wall by this point so it was hard to move past. I asked him to move and then he leaned close to kiss me and I kept squirming. He then kissed my cheeks on both sides and walked off.'

In Colleague 1's oral evidence she had told the panel that this incident occurred in the annex of the ward where the toilets were situated. The panel noted that this supported her local investigation statement and that she was able to provide further detail relating to the security of the ward. She stated that:

"the toilets are off the ward, there are locked doors. It is an area where hardly anyone goes... no one was around at all. I was scared... you have to go through locked doors."

The panel noted that this was corroborated by Colleague 4 and also by Colleague 2 in her oral evidence. Colleague 2 stated that:

"[...] the Ward has an annex. It's an old Victorian building [...] there are locked doors [...] like a low level prison environment [...] There is an airlock. Keys are allocated at reception with permanent members of staff having key induction training."

The panel noted that in relation to this incident, Mr Khan, during cross-examination of Colleague 1 asked why she did not go straight to the supervising nurses after the alleged incident. Colleague 1 stated that:

"It was a scary thing, it was hard to report someone so senior... I needed time to process. He violated my personal space. No female should have to go through[...] He's done something not right. It's not fair.[...] I needed to find someone who I was comfortable with. To open up. It's so personal. Hold on a minute, this nurse has violated my personal space. He has taken something from me. I needed to be able to trust them."

When Mr Khan put to Colleague 1 that she could have reported the incident via email to her mentor she said:

“this was something personal, why would I email her to say this colleague sexually assaulted me? This was something I needed to process first [PRIVATE]”

The panel bore in mind the legal advice it had heard and accepted regarding the delayed reporting of alleged sexual incidents in that everyone presents differently in such circumstances. The panel noted that throughout cross-examination by Mr Khan, Colleague 1's responses were clear, cogent and credible. The panel considered that the Colleague 1's delay in reporting the incident was entirely plausible. The panel took into consideration your position of authority as the Clinical Team Leader on the ward and the evidence it heard from Colleague 1 about the culture of the working environment. The panel accepted that this may have explained why other more junior members of staff may not have come forward to support Colleague 1's allegations and why she did not report these incidents immediately. Given the matters set out above, the panel found Colleague 1's answer to be credible and drew no adverse inference from the fact that she had not reported it immediately.

The panel noted that during your oral evidence you had told it that a patient you identified as 'FK' had been receiving 1-1 care in the annex. You said that as a result, there would have been members of staff present in the area that would have either witnessed the incident, if it had happened, or whom the incident could have been reported to. The panel considered that this was the first time you had provided this explanation in your evidence and that this information was not provided to the Trust during the local investigation. It was mentioned for the first time in your witness statement dated 5 July 2023 and this recent explanation was not put to any of the witnesses in this case when it could have been. Therefore, the panel were not afforded the opportunity of hearing evidence to corroborate this explanation. The panel noted in their oral and written evidence Colleague 1 and Colleagues 2 and 4 all described the annex and the security measures for it consistently and confirmed that it was used for purposes different from patient care so there was no mention of a patient being looked after in the annex.

The panel noted that during your local investigation meeting you stated:

'my only worry is that I could have made a clinical decision that she didn't like and she got offended'

And

'sometimes senior staff have to make decisions and she may not like it'

The panel understood that you were suggesting this may have been a possible reason for her allegedly fabricating these allegations. The panel noted that this assertion was not maintained in your subsequent evidence and was not put to Colleague 1 in her cross-examination. The panel had regard to your oral and documentary evidence and noted that you had also made assertions that Colleague 1 [PRIVATE] as a result of struggling with her placement, and that the allegations were [PRIVATE].

The panel acknowledged that when Mr Khan had put to Colleague [PRIVATE] at the time of the alleged incidents, Colleague 1 agreed with this.

The panel also noted that Colleague 4 had told the panel in her oral evidence that:

[PRIVATE]

The panel took into account Colleague 4's oral evidence, in which she told the panel as Colleague 1's named mentor that there were no previous issues or concerns during her placement, she engaged well with patients, worked well with the team and was proactive.

The panel rejected the assertion that there was a connection between Colleague 1's [PRIVATE] and the alleged fabrication of these allegations.

The panel considered that your evidence in respect of these allegations had inconsistencies. Your local investigation, your written and oral evidence were

inconsistent with one another. Compared with the consistent evidence of Colleague 1, the panel found your evidence to be unreliable and lacking in credibility.

The panel understands that the burden of proof rests upon the NMC to prove these allegations. However, other than denying that these incidents occurred, the panel noted that you had not advanced any positive assertion as to where you were or what you were doing at the time these alleged incidents as an alternative explanation. Therefore, the panel could only consider your blunt denial of these allegations in the absence of any alternative credible explanation or supporting, authentic and contemporaneous documentation which confirms the duties you were undertaking at the time of the alleged incidents.

The panel considered that Colleague 1's evidence was consistent with her evidence given during the local investigation. The panel particularly noted that during Colleague 3's oral evidence she had made the following comments regarding Colleague 1's local investigation evidence. She stated that:

“her evidence was very detailed about where she was touched, the layout of the room, the décor of the room and where items of furniture were [...]”

The panel also noted that Colleague 1 had given her written account of the allegations following her meeting with Colleague 2 and Colleague 4. In Colleague 2's oral evidence she stated that Colleague 1 was:

“very distressed through the interview... she was distressed. She had nothing to gain by making this allegation. Everything to lose by making this allegation and messing up her placement [...] She found it hard to talk to me about the actual incident. She was very upset and crying. She found it very difficult to verbalise. It is one of those moments I still think of, as a sad moment as she was so distressed. She was very distressed, tearful and I was worried about her. She was unable to stop crying.”

The panel noted that in Colleague 1's oral evidence she explained that when the allegations arose, she was in her third year of her apprenticeship and that she said she had a further year and a half before she would be awarded her nursing degree. The panel had agreed with Mr Edwards submissions in respect of this, in that she had nothing to gain by making such allegations at the time or by maintaining her position some four years later. The panel particularly noted that as a consequence of these alleged incidents, she had not completed her apprenticeship and did not qualify as a registered nurse. The panel determined that Colleague 1 has provided a consistent and credible account of this incident, from when it was first reported through to her oral evidence. For these reasons the panel preferred the evidence of Colleague 1 as opposed to yours.

Colleague 1 said that the ward was hard and referred to the culture on the ward. Colleague 1, in her oral and written evidence, submitted that you were a popular and long-standing member of staff on the ward.

In her interview for the local investigation Ms 1 is reported to say, "*Hyggi is a very nice person, he likes talking to everyone, he has never had a problem [...]. Everyone likes Hyggi, he's not inappropriate, he's a very good friend also.*"

Colleague 1's evidence was that there was a reluctance to report issues on the ward stating:

'I spoke to Health Care Assistants [...] they would say that because he was a band 6 nurse he could make life hard for them so they said not to say anything about it.'

When asked about not reporting charge 2, Colleague 1 stated:

"They were all scared of him. He was popular on the ward, this was the culture of the ward and he could do these types of things. There were nurses there, but he was there the longest. This was just how it was [...]"

Colleague 3 informed the panel that she had experienced some difficulties in getting staff to take part in the local investigation and she explains this as a reason why other staff, who are referred to by colleague 1 in her evidence, were not included in her local investigation and therefore not available to give evidence to the panel.

Colleague 4 told the panel that she sought advice from another clinical team leader called Colleague A when Colleague 1 made the initial disclosure to her, Colleague 4 said no one else had been told. The local investigation statement records, *“Hyggi confirmed that a colleague had told him on a weekend shift that the allegation had been made.”* and when you were asked to clarify who this was you said it was Colleague B. This was a different colleague altogether which gave some indication of the lack of confidentiality on the ward.

The panel came to the conclusion that the culture on the ward and especially the apparent lack of confidentiality was a cause of the reluctance of staff to participate in an investigation, given that some of those staff were registered nurses. For all of these reasons the panel determined that it would have been more difficult for colleague 1 to disclose the allegations and it accepts the evidence of colleague 1 when she says she was not able to report the incidents to some staff members and that she was waiting to talk to someone she could trust.

For these reasons, the panel accepted the evidence of Colleague 1 and rejected yours.

In all the circumstances, the panel determined that Colleague 1 has provided a consistent, and credible, account of the incident. It therefore found it was more likely than not that Colleague 1’s account was accurate, did occur as described and found this charge proved.

Accordingly, this charge is found proved.

Charge 3

3. On 9 October 2019:

- a. Touched her face.
- b. Said to her *“I’ve never noticed your eyes, they make me so wide”* or words to that effect.
- c. Put your hand on her leg and started to move it upwards.
- d. Did not stop touching her leg when she told you to stop.

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the evidence of Colleague 2, Colleague 1 and your evidence.

The panel considered these sub-charges in totality given that they are alleged to be one continuing act on the same day and on the same occasion.

The panel first considered whether you and Colleague 1 had been present on the same shift. The panel accepted that you did not dispute the times you had been on shift during the date identified in the charge. However, the panel bore in mind that during Mr Khan’s cross-examination of Colleague 1, it was suggested that her name did not appear on the document entitled *‘Staff on duty for the following dates’* and therefore she may not have worked on the dates of the alleged incident. In response to this during her oral evidence, Colleague 1 explained why her name did not appear of this list. She said that there was a paper book and an electronic rota. The paper book would be updated with the names of those who actually attended and were on shift that day. She also stated that:

“[...] my name will be on the security book. My name would not be on this rota. I would not be staff. My name would be on my team’s rota which is Hope Ward, which is my base ward and sponsoring me to do my training away from my ward. [The Ward Manager] would not put me at all on these rotas.”

The panel also took into account Colleague 2’s evidence in which she told the panel that:

“Rotas are held on the ward and are subject to change [...] It is not as definitive as it is here. The security book would not have an accurate rota, it is completed by the nurse on shift. A student nurse is supernumerary and not on the rota to get paid. Her name would not be on the rota.”

The panel noted that this was also supported by Colleague 4 in her oral evidence as when taken to this document and asked whether this was the rota in her oral evidence, she stated that:

“This one looks different to the one we had before. This does not look familiar to me at all.”

The panel noted that the document in the exhibit bundle entitled ‘Practice Hours’ was never put to the Colleague 1. This was a document, which detailed her working hours and each entry was signed by another member of staff. It was verified as accurate by her mentor on 18 October 2019 who recorded ‘I have checked the hours of experience recorded by the student.’ This document confirmed that Colleague 1 was working on 9 October 2019 and her mentor, in her oral evidence, confirmed her signature. Given the explanations above, the panel were minded to place more weight on that document than the previous document entitled ‘Staff on duty for the following dates’. The panel noted that on Colleague 1’s Practice Hours sheet, it is recorded that Colleague 1 was on a long day shift, you also confirmed that in your oral evidence that you were on a late shift. The panel were therefore satisfied that there had been a period where you were both working on the same shift.

The panel then took into account your evidence and Colleague 1’s evidence. The panel bore in mind that you strongly dispute this allegation, and it is your case that none of the allegations occurred. The panel also noted that since the allegations arose in 2019, Colleague 1 has maintained that these allegations did occur.

In assessing the credibility of your evidence and Colleague 1’s evidence, the panel took into account the NMC’s Guidance. The panel focused on the content of the oral

evidence and considered whether the evidence was plausible and consistent with other evidence which included evidence of what witnesses had said on other occasions. The panel had regard to evidence which was more contemporaneous in order to assess the credibility of the witnesses before it.

The panel took into account Colleague 1's local investigation statement that states:

'On Wednesday 09/10/19, I was doing my notes in the back office (just before the late shift handover) and I was on the right side and [Ms 1] was next to me trying to fill in a security book I think? Hygi hovered behind us and then walked into the main office. [Ms 1] got up and walked off and Hygi then came and sat on the table and then leaned in towards me and touched my face so that it was facing him. "I never noticed your eyes. They make me so wide". I didn't know what he meant but he continued to say this and kept saying "wide." I tried to continue my notes and ignore him but as I did that he started to put his hand down my left leg and started to move it upwards I tried to get Hygi to stop and even tried to say it loudly to "stop" but he didn't. Thankfully [Colleague 4] had walked into the office and I managed to make an excuse to leave that area'

Colleague 1 also expanded on this statement in her oral evidence and told the panel that this incident occurred between 13:15 and 13:30.

The panel noted that during the course of Colleague 1's oral evidence there were some inconsistencies in her evidence. The panel took into account that in Colleague 1's witness statement in relation to the incident on 9 October 2019, she states that *'when the registrant was doing things like putting his hands on my legs [...] there were other Healthcare Assistants around.'* Whereas in her local investigation witness statement in relation to this incident she states that *'[Ms 1] got up and walked off'*. The panel considered that Colleague 1's NMC witness statement was dated 20 July 2021, some 21 months after her initial local investigation witness statement. The panel was of the view that such discrepancies it had identified in Colleague 1's evidence were minimal

and taking into consideration the passage of time between these statements, it considered that these discrepancies did not undermine the credibility of her evidence.

The panel noted that Colleague 1 was again asked by Mr Khan during cross-examination why she did not report the incident immediately to Colleague 4, her mentor, when she walked in. In response to this question Colleague 1 said:

“It takes courage. With PTSD it is either flight or freeze. I froze in the moment. I tried, it’s like going back to what happened. It’s like a flash back. My heart races when he was there. That’s what it felt like. It was hard. I tried to choose the opposite shift. I tried. I did not want to work with him. I did not want to be assaulted by him. It’s hard to tell someone what happened. It’s hard to talk about what happened. To say hey that is what happened [...]”

The panel bore in mind the legal advice it had heard and accepted regarding the delayed reporting of alleged sexual incidents in that everyone presents differently in such circumstances. The panel noted that throughout cross-examination by Mr Khan, Colleague 1’s responses were clear, cogent and credible. The panel considered that the Colleague 1’s delay in reporting the incident was entirely plausible. The panel took into consideration your position of authority as the Clinical Team Leader on the ward and the evidence it heard from Colleague 1 about the culture of the working environment. The panel accepted that this may have explained why other more junior members of staff may not have come forward to support Colleague 1’s allegations and why she did not report these incidents immediately. Given the matters set out above, the panel found Colleague 1’s answer to be credible and drew no adverse inference from the fact that she had not reported it immediately.

The panel noted in your oral evidence you told it that if this incident occurred in the back office, a member of staff would have seen. You also told the panel that if Colleague 1 had told you to stop loudly, another member of staff would have heard this. The panel was of the view that it was possible for this incident to occur in the brief time period and in the area of the back office, as from the evidence it had heard the view of the office was not immediately available from the ward. The panel also considered it is feasible

that whilst on a busy ward and in a separate office, it is likely that no one was able to hear Colleague 1 say 'stop' loudly. The panel accepted Mr Edwards submissions in respect of this.

the panel noted that during your local investigation meeting you stated:

'my only worry is that I could have made a clinical decision that she didn't like and she got offended'

And

'sometimes senior staff have to make decisions and she may not like it'

The panel understood that you were suggesting this may have been a possible reason for her allegedly fabricating these allegations. The panel noted that this assertion was not maintained in your subsequent evidence and was not put to Colleague 1 in her cross-examination. The panel had regard to your oral and documentary evidence and noted that you had also made assertions that Colleague 1 [PRIVATE] as a result of struggling with her placement, and that the allegations were [PRIVATE].

The panel acknowledged that when Mr Khan had put to Colleague 1 [PRIVATE], Colleague 1 agreed with this.

The panel also noted that Colleague 4 had told the panel in her oral evidence that:

[PRIVATE]

The panel took into account Colleague 4's oral evidence, in which she told the panel as Colleague 1's named mentor that there were no previous issues or concerns during her placement, she engaged well with patients, worked well with the team and was proactive.

The panel rejected the assertion that there was a connection between Colleague 1's [PRIVATE] and the alleged fabrication of these allegations.

The panel considered that your evidence in respect of these allegations had inconsistencies. Your local investigation, your written and oral evidence were inconsistent with one another. Compared with the consistent evidence of Colleague 1, the panel found your evidence to be unreliable and lacking in credibility.

The panel understands that the burden of proof rests upon the NMC to prove these allegations. However, other than denying that these incidents occurred, the panel noted that you had not advanced any positive assertion as to where you were or what you were doing at the time these alleged incidents as an alternative explanation. Therefore, the panel could only consider your blunt denial of these allegations in the absence of any alternative explanation credible explanation or supporting, authentic and contemporaneous documentation which confirms the duties you were undertaking at the time of the alleged incidents.

The panel considered that Colleague 1's evidence was consistent with her evidence given during the local investigation. The panel particularly noted that during Colleague 3's oral evidence she had made the following comments regarding Colleague 1's local investigation evidence. She stated that:

"her evidence was very detailed about where she was touched, the layout of the room, the décor of the room and where items of furniture were [...]"

The panel also noted that Colleague 1 had given her written account of the allegations following her meeting with Colleague 2 and Colleague 4. In Colleague 2's oral evidence she stated that Colleague 1 was:

"very distressed through the interview... she was distressed. She had nothing to gain by making this allegation. Everything to lose by making this allegation and messing up her placement [...] She found it hard to talk to me about the actual incident. She was very upset and crying. She found it very difficult to verbalise. It is one of those moments I still think of, as a sad moment as she was so

distressed. She was very distressed, tearful and I was worried about her. She was unable to stop crying.”

The panel noted that in Colleague 1’s oral evidence she explained that when the allegations arose, she was in her third year of her apprenticeship and that she said she had a further year and a half before she would be awarded her nursing degree. The panel had agreed with Mr Edwards submissions in respect of this, in that she had nothing to gain by making such allegations at the time or by maintaining her position some four years later. The panel particularly noted that as a consequence of these alleged incidents, she had not completed her apprenticeship and did not qualify as a registered nurse. The panel determined that Colleague 1 has provided a consistent and credible account of this incident, from when it was first reported through to her oral evidence. For these reasons the panel preferred the evidence of Colleague 1 as opposed to yours.

Colleague 1 said that the ward was hard and referred to the culture on the ward. Colleague 1, in her oral and written evidence, submitted that you were a popular and long-standing member of staff on the ward.

In her interview for the local investigation Ms 1 is reported to say, *“Hyggi is a very nice person, he likes talking to everyone, he has never had a problem [...].Everyone likes Hyggi, he’s not inappropriate, he’s a very good friend also.”*

Colleague 1’s evidence was that there was a reluctance to report issues on the ward stating:

‘I spoke to Health Care Assistants [...] they would say that because he was a band 6 nurse he could make life hard for them so they said not to say anything about it.’

Colleague 3 informed the panel that she had experienced some difficulties in getting staff to take part in the local investigation and she explains this as a reason why other

staff, who are referred to by colleague 1 in her evidence, were not included in her local investigation and therefore not available to give evidence to the panel.

Colleague 4 told the panel that she sought advice from another clinical team leader called Colleague A when Colleague 1 made the initial disclosure to her, Colleague 4 said no one else had been told. The local investigation statement records, *“Hyggi confirmed that a colleague had told him on a weekend shift that the allegation had been made.”* and when you were asked to clarify who this was you said it was Colleague B. This was a different colleague altogether which gave some indication of the lack of confidentiality on the ward.

The panel came to the conclusion that the culture on the ward and especially the apparent lack of confidentiality was a cause of the reluctance of staff to participate in an investigation, given that some of those staff were registered nurses. For all of these reasons the panel determined that it would have been more difficult for colleague 1 to disclose the allegations and it accepts the evidence of colleague 1 when she says she was not able to report the incidents to some staff members and that she was waiting to talk to someone she could trust.

For these reasons, the panel accepted the evidence of Colleague 1 and rejected yours.

In all the circumstances, the panel determined that Colleague 1 has provided a consistent, and credible, account of the incident. It therefore found it was more likely than not that Colleague 1’s account was accurate, did occur as described and found this charge proved.

Charge 4

4. On 11 October 2019:

- a. Said to her *“I knew you were married but seeing the rings now has reminded me, I wished I had know before that you were married. You are beautiful. You make me wide”* or words to that effect.
- b. Put your hands on her face.
- c. Pushed your lips onto her lips and/or tried to put your tongue in her mouth.

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the evidence of Colleague 2, Colleague 1 and your evidence.

The panel considered these sub charges together as it is alleged these occurred on the same day and on the same occasion as a continuing act.

The panel first considered whether you and Colleague 1 had been present on the same shift. The panel accepted that you did not dispute the times you had been on shift during the date identified in the charge. However, the panel bore in mind that during Mr Khan’s cross-examination of Colleague 1, it was suggested that her name did not appear on the document entitled ‘*Staff on duty for the following dates*’ and therefore she may not have worked on the dates of the alleged incident. In response to this during her oral evidence, Colleague 1 explained why her name did not appear of this list. She said that there was a paper book and an electronic rota. The paper book would be updated with the names of those who actually attended and were on shift that day. She also stated that:

“[...] my name will be on the security book. My name would not be on this rota. I would not be staff. My name would be on my team’s rota which is Hope Ward, which is my base ward and sponsoring me to do my training away from my ward. [The Ward Manager] would not put me at all on these rotas.”

The panel also took into account Colleague 2’s evidence in which she told the panel that:

“Rotas are held on the ward and are subject to change [...] It is not as definitive as it is here. The security book would not have an accurate rota, it is completed by the nurse on shift. A student nurse is supernumerary and not on the rota to get paid. Her name would not be on the rota.”

The panel noted that this was also supported by Colleague 4 in her oral evidence as when taken to this document and asked whether this was the rota in her oral evidence, she stated that:

“This one looks different to the one we had before. This does not look familiar to me at all.”

The panel noted that the document in the exhibit bundle entitled ‘Practice Hours’ was never put to the Colleague 1. This was a document, which detailed her working hours and each entry was signed by another member of staff. It was verified as accurate by her mentor on 18 October 2019 who recorded ‘I have checked the hours of experience recorded by the student.’ This document confirmed that Colleague 1 was working on 11 October 2019 and her mentor, in her oral evidence, confirmed her signature. Given the explanations above, the panel were minded to place more weight on that document than the previous document entitled ‘Staff on duty for the following dates’. The panel noted that on Colleague 1’s Practice Hours sheet, it is recorded that Colleague 1 was on an early shift, you also confirmed that in your oral evidence that you were on a late shift. The panel were therefore satisfied that there had been a period where you were both working on the same shift.

The panel then took into account your evidence and Colleague 1’s evidence. The panel bore in mind that you strongly dispute this allegation, and it is your case that none of the allegations occurred. The panel also noted that since the allegations arose in 2019, Colleague 1 has maintained that these allegations did occur.

In assessing the credibility of your evidence and Colleague 1’s evidence, the panel took into account the NMC’s Guidance. The panel focused on the content of the oral evidence and considered whether the evidence was plausible and consistent with other evidence which included evidence of what witnesses had said on other occasions. The

panel had regard to evidence which was more contemporaneous in order to assess the credibility of the witnesses before it.

The panel took into account Colleague 1's local investigation statement that states:

'I was doing my notes on [sic] the back office (just before late shift handover) and I was the right side and [Mr 2] was on the left-hand side. Hygi came and sat on the table again like he had done the previous time. I thought it would be okay as [Mr 2] was there. However [Mr 2] got up [Hygi] said "I knew you were married but seeing the rings now has reminded me" "I wish I had known you before you were married. You are beautiful. You make me wide" I reminded him he's married and I AM married [...] Hygi then put his hand around my face but this time securing it so that I couldn't move it and his [sic] pushed his lips onto mine and tried to put his tongue in my mouth. I felt so sick. I froze and then couldn't move. He then felt my hand and [Mr 2] returned to the room and sat down eventually Hygi left to go to handover.'

The panel noted that Colleague 1 was again asked by Mr Khan during cross-examination why she did not report the incident immediately. In response to this question, Colleague 1 said:

'With PTSD its hard to report trauma which has happened to you. I froze, I could not move, it was a shock to me. Lips then tongue into someone's mouth is disgusting. Would you like it. [...] I was scared, it's scary to report something like this to anyone, especially someone higher up [...] It made me scared in a way to report what happened to me. Would I be believed. What would the culture be like. It was already a hard ward with the culture. I felt, I was scared anyway about speaking up. Due to the PTSD I did not know what to do. Due to his position on the ward, the health care assistants said he could make my life hard. That's why I didn't say anything.'

The panel bore in mind the legal advice it had heard and accepted regarding the delayed reporting of alleged sexual incidents in that everyone presents differently in such circumstances. The panel noted that throughout cross-examination by Mr Khan, Colleague 1's responses were clear, cogent and credible. The panel considered that the Colleague 1's delay in reporting the incident was entirely plausible. The panel took into consideration your position of authority as the Clinical Team Leader on the ward and the evidence it heard from Colleague 1 about the culture of the working environment. The panel accepted that this may have explained why other more junior members of staff may not have come forward to support Colleague 1's allegations and why she did not report these incidents immediately. Given the matters set out above, the panel found Colleague 1's answer to be credible and drew no adverse inference from the fact that she had not reported it immediately.

The panel then took into account your witness statement. In this, you state that Mr 2, whom Colleague 1 had told the panel was present during the alleged incident on 11 October 2019, was '*mysterious and unidentifiable by the investigation or anyone*'. The panel took into account the oral evidence of Colleague 3 in this regard and noted that she had told the panel that whilst conducting the local investigation, she had asked the Ward Manager several times if she could speak with the member of staff identified as Mr 2 and have his contact details. The Ward Manager confirmed that he knew who the member of staff was and that he no longer worked at the Trust. The panel also had regard to Colleague 1's Practice Assessment Document which shows records of her practice hours for her placement on Solaris ward, on this sheet the initials of Mr 2 are recorded to confirm various shifts throughout September and October 2019, in particular, the initials for Mr 2 confirmed Colleague 1's attendance on an early shift on 11 October 2019. For these reasons the panel rejected your evidence in relation to this and concluded that it had authentic and contemporaneous records before it to support that there had been a member of staff identified as Mr 2, working on the Solaris Ward throughout the time of the allegations.

The panel noted that during your local investigation meeting you stated:

'my only worry is that I could have made a clinical decision that she didn't like and she got offended'

And

'sometimes senior staff have to make decisions and she may not like it'

The panel understood that you were suggesting this may have been a possible reason for her allegedly fabricating these allegations. The panel noted that this assertion was not maintained in your subsequent evidence and was not put to Colleague 1 in her cross-examination. The panel had regard to your oral and documentary evidence and noted that you had also made assertions that Colleague 1 was [PRIVATE] as a result of struggling with her placement, and that the allegations were *'perhaps her imagination or [PRIVATE]'*.

The panel acknowledged that when Mr Khan had put to Colleague 1 [PRIVATE], Colleague 1 agreed with this.

The panel also noted that Colleague 4 had told the panel in her oral evidence that:

[PRIVATE]

The panel took into account Colleague 4's oral evidence, in which she told the panel as Colleague 1's named mentor that there were no previous issues or concerns during her placement, she engaged well with patients, worked well with the team and was proactive.

The panel rejected the assertion that there was a connection between Colleague 1's [PRIVATE] and the alleged fabrication of these allegations.

The panel considered that your evidence in respect of these allegations had inconsistencies. Your local investigation, your written and oral evidence were

inconsistent with one another. Compared with the consistent evidence of Colleague 1, the panel found your evidence to be unreliable and lacking in credibility.

The panel understands that the burden of proof rests upon the NMC to prove these allegations. However, other than denying that these incidents occurred, the panel noted that you had not advanced any positive assertion as to where you were or what you were doing at the time these alleged incidents as an alternative explanation. Therefore, the panel could only consider your blunt denial of these allegations in the absence of any alternative credible explanation or supporting, authentic and contemporaneous documentation which confirms the duties you were undertaking at the time of the alleged incidents.

The panel considered that Colleague 1's evidence was consistent with her evidence given during the local investigation. The panel particularly noted that during Colleague 3's oral evidence she had made the following comments regarding Colleague 1's local investigation evidence. She stated that:

“her evidence was very detailed about where she was touched, the layout of the room, the décor of the room and where items of furniture were [...]”

The panel also noted that Colleague 1 had given her written account of the allegations following her meeting with Colleague 2 and Colleague 4. In Colleague 2's oral evidence she stated that Colleague 1 was:

“very distressed through the interview... she was distressed. She had nothing to gain by making this allegation. Everything to lose by making this allegation and messing up her placement [...] She found it hard to talk to me about the actual incident. She was very upset and crying. She found it very difficult to verbalise. It is one of those moments I still think of, as a sad moment as she was so distressed. She was very distressed, tearful and I was worried about her. She was unable to stop crying.”

The panel noted that in Colleague 1's oral evidence she explained that when the allegations arose, she was in her third year of her apprenticeship and that she said she

had a further year and a half before she would be awarded her nursing degree. The panel had agreed with Mr Edwards submissions in respect of this, in that she had nothing to gain by making such allegations at the time or by maintaining her position some four years later. The panel particularly noted that as a consequence of these alleged incidents, she had not completed her apprenticeship and did not qualify as a registered nurse. The panel determined that Colleague 1 has provided a consistent and credible account of this incident, from when it was first reported through to her oral evidence. For these reasons the panel preferred the evidence of Colleague 1 as opposed to yours.

Colleague 1 said that the ward was hard and referred to the culture on the ward. Colleague 1, in her oral and written evidence, submitted that you were a popular and long-standing member of staff on the ward.

In her interview for the local investigation Ms 1 is reported to say, *“Hyggi is a very nice person, he likes talking to everyone, he has never had a problem [...]. Everyone likes Hyggi, he’s not inappropriate, he’s a very good friend also.”*

Colleague 1’s evidence was that there was a reluctance to report issues on the ward stating:

‘I spoke to Health Care Assistants [...] they would say that because he was a band 6 nurse he could make life hard for them so they said not to say anything about it.’

Colleague 3 informed the panel that she had experienced some difficulties in getting staff to take part in the local investigation and she explains this as a reason why other staff, who are referred to by colleague 1 in her evidence, were not included in her local investigation and therefore not available to give evidence to the panel.

Colleague 4 told the panel that she sought advice from another clinical team leader called Colleague A when Colleague 1 made the initial disclosure to her, Colleague 4 said no one else had been told. The local investigation statement records, *“Hyggi*

confirmed that a colleague had told him on a weekend shift that the allegation had been made.” and when you were asked to clarify who this was you said it was Colleague B. This was a different colleague altogether which gave some indication of the lack of confidentiality on the ward.

The panel came to the conclusion that the culture on the ward and especially the apparent lack of confidentiality was a cause of the reluctance of staff to participate in an investigation, given that some of those staff were registered nurses. For all of these reasons the panel determined that it would have been more difficult for colleague 1 to disclose the allegations and it accepts the evidence of colleague 1 when she says she was not able to report the incidents to some staff members and that she was waiting to talk to someone she could trust.

For these reasons, the panel accepted the evidence of Colleague 1 and rejected yours.

In all the circumstances, the panel determined that Colleague 1 has provided a consistent, and credible, account of the incident. It therefore found it was more likely than not that Colleague 1's account was accurate, did occur as described and found this charge proved.

Charge 5

5. Your conduct in one or more of charges 1 to 4 was sexually motivated in that you were seeking sexual gratification.

This charge is found proved in relation to charges 1,2a,2b,2c,2d,2e,3a,3b,3c,3d,4a,4b and 4c.

In reaching this decision, the panel took into account your evidence and Colleague 1's evidence.

The panel first had regard to the advice of the legal assessor regarding the definition of sexual assault in the Sexual Offences Act 2003, Section 78, which states:

“... touching or any other activity ... is sexual if a reasonable person would consider that –

“(a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, or

“(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.”

In reaching this decision the panel considered all the evidence before it in making its decision on charges 1, 2, 3 and 4 above. Whilst the panel was aware that it is required to consider each of the individual actions set out in the charges. The panel considered that each of the actions in the sub-charges formed a series of continuing acts which it could consider in their totality for each charge.

In relation to charge 1, the panel considered that the charge relates solely to words as opposed to an action. The panel found that you had said to Colleague 1 *“It is disgusting when girls aren’t clean below”* and/or *“Is it true that if you’re clean and a man is slightly prickly that it stimulates girls to have better orgasms: Would you try that?”* or words to that effect. The panel considered that these were inappropriate sexualised comments. It came to the conclusion that making such comments could be for no other reason than for sexual gratification. The panel is satisfied that your comments at charge 1 were sexually motivated in that you were seeking sexual gratification.

In relation to charge 2, the panel found that you had pushed Colleague 1, put your hands on her breasts and said *“I’d never noticed how pretty your eyes are”* and/or *“I could stare into your eyes all day”* or words to that effect. I also found that you did not move away from her when asked and kissed her. It came to the conclusion that making such comments and/or touching someone in such a way could be for no other reason than for sexual gratification. Taking these actions collectively, the panel determined that these actions were sexually motivated in that you were seeking sexual gratification.

In relation to charge 3, the panel found that you had touched Colleague 1's face, said to her "*I've never noticed your eyes, they make me so wide*" or words to that effect. It also found that you put your hand on her leg and started to move it upwards and did not stop touching her leg when she told you to stop. It came to the conclusion that making such comments and/or touching someone in such a way could be for no other reason than for sexual gratification. Taking these actions collectively, the panel determined that these actions were sexually motivated in that you were seeking sexual gratification.

In relation to charge 4, the panel found that you had said to Colleague 1 "*I knew you were married but seeing the rings now has reminded me, I wished I had know before that you were married. You are beautiful. You make me wide*" or words to that effect. It also found that you had put your hands on her face and pushed your lips onto her lips and/or tried to put your tongue in her mouth. It came to the conclusion that making such comments and/or touching someone in such a way could be for no other reason than for sexual gratification. Taking these actions collectively, the panel determined that these actions were sexually motivated in that you were seeking sexual gratification.

Accordingly, this charge is found proved.

The panel noted that on several occasions Mr Ihebuzor submitted that these allegations were borne out of Colleague 1's [PRIVATE] and that these incidents were[PRIVATE]. Whilst the panel accepted that Colleague 1 had agreed [PRIVATE], this was not prohibitive of her providing an accurate account of the alleged incidents. The panel found Colleague 1's evidence overall to be consistent and credible and having tested her evidence in cross examination the panel was satisfied that on the balance of probabilities, that the allegations were all found proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your

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

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

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

Submissions on misconduct

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.'

Mr Edwards invited the panel to take the view that your actions amount to a breach of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ("the Code"). He then directed the panel to specific paragraphs and standards and identified where, in the NMC's view, your actions amounted to a breach of those standards. He also referred the panel to the relevant judgment of *Nandi v GMC* [2004] EWHC 2317 (Admin).

Mr Edwards submitted that it is clear from the facts found proved that you have not acted as a role model of professional behaviour, and not just for students, but also for those other colleagues that work and worked with you. He submitted that you were one

of the most senior members of staff on the ward, and you have clearly failed to act professionally.

Mr Edwards submitted that as the panel have found that your conduct was sexually motivated, this is extremely serious, and your conduct would be regarded as deplorable by fellow colleagues.

Mr Edwards referred the panel to Colleague 1's impact statement dated 27 November 2022. This states:

[PRIVATE].

Mr Edwards submitted that this statement clearly demonstrates the impact these incidents have had on Colleague 1, both personally and professionally. He submitted that these incidents continue to have an impact today as it was clear from her evidence and the way in which she gave her evidence. He submitted that these incidents are still having a detrimental impact on Colleague 1 today, some four years later.

Mr Edwards submitted that your actions fell below the standards expected of a registered nurse and invited the panel to find that your actions above individually, and collectively, are sufficiently serious to amount to misconduct.

Mr Ihebuzor submitted that misconduct is a matter for the panel to consider and he did not make any further submissions in respect of this.

The panel accepted the advice of the legal assessor.

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, in reaching its decision, had regard to the protection of the public and the wider public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement. The panel also had regard to the NMC's guidance on Misconduct ref: FTP-2a. This NMC guidance states that:

'The Code sets the professional standards of practice and behaviour for nurses, midwives and nursing associates, and the standards that patients and public tell us they expect from nurses, midwives and nursing associates. While the values and principles can be interpreted for particular practice settings, they are not negotiable.'

The panel was of the view that your actions amounted to a breach of the Code. Specifically:

'Promote professionalism and trust You uphold the reputation of your profession at all times.'

You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

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

...

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

....

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It went on to consider whether your actions, both individually and collectively, amounted to misconduct.

In determining whether your actions amounted to misconduct in relation to charge 1, the panel considered that you had made unwanted inappropriate sexualised comments to Colleague 1 and she had told the panel that these comments made her feel uncomfortable. The panel also considered its earlier findings in respect of charge 5, in that making such comments were sexually motivated and could be for no other reason than for sexual gratification. In all the circumstances, the panel concluded that your actions in charge 1 fell far below the professional standards expected of a registered nurse and would be regarded as deplorable by your fellow colleagues and members of the public. The panel, therefore, determined that your actions in charge 1 breached the Code and were sufficiently serious to amount to misconduct.

In determining whether your actions amounted to misconduct in relation to charge 2a-2e, the panel considered that you had acted with sexual motivation towards a junior colleague, Colleague 1, by kissing her and making further inappropriate comments. The panel considered that this behaviour was unwanted and that your behaviour had deliberately taken place in a more isolated part of the ward, namely, the annex, so that no one witnessed this behaviour. The panel was of the view that your behaviour was inappropriate and unacceptable. The panel also considered that its earlier findings in respect of charge 5, that making such comments and/or touching someone in such a way could be for no other reason than for sexual gratification. In all the circumstances, the panel concluded that your actions at charges 2a-2e fell far below the professional standards expected of a registered nurse and would be regarded as deplorable by your fellow colleagues and members of the public. The panel, therefore, determined that your

actions in charges 2a-2e breached the Code and were sufficiently serious to amount to misconduct.

In determining whether your actions amounted to misconduct in relation to charge 3a-3d, the panel considered that you had again, inappropriately touched Colleague 1 and made further sexualised and inappropriate comments. The panel considered that this sexually motivated behaviour was profoundly unacceptable and as a senior member of staff on the ward you abused your position of power and trust. The panel also considered its earlier findings in respect of charge 5, that making such comments and/or touching someone in such a way could be for no other reason than for sexual gratification. In all the circumstances, the panel concluded that your actions at charges 3a-3d, fell far below the professional standards expected of a registered nurse and would be regarded as deplorable by your fellow colleagues and members of the public. The panel, therefore, determined that your actions in charges 3a-3d, breached the Code and were sufficiently serious to amount to misconduct.

In determining whether your actions amounted to misconduct in relation to charges 4a-4d, the panel considered that you made further inappropriate sexualised comments to Colleague 1, touched her and tried to put your tongue into her mouth. The panel considered that this was unwanted and sexualised conduct which was sexually motivated. The panel also considered its earlier findings in respect of charge 5, in that your actions in this charge could be for no other reason than for sexual gratification. In all the circumstances, the panel concluded that your actions at charges 4a-4d, fell far below the professional standards expected of a registered nurse and would be regarded as deplorable by your fellow colleagues and members of the public. The panel, therefore, determined that your actions in charges 4a-4d, breached the Code and were sufficiently serious to amount to misconduct.

The panel then considered the charges collectively and considered that your behaviour was an escalating course of sexualised misconduct over a period of two weeks that made Colleague 1 feel vulnerable and intimidated. Further, the panel considered the evidence it had heard from Colleague 1 regarding the profound impact your actions had on her and that your actions have had far reaching consequences beyond the incident.

The panel also considered that your behaviour would have impacted on patient care in that you were unable to attend to your nursing duties whilst carrying out this behaviour and that Colleague 1 was left feeling scared and distressed whilst in the workplace and attending to patients.

The panel therefore determined that your actions, both individually, and collectively, amounted to misconduct.

Decision and reasons on application for an adjournment (heard and considered on 14 July 2023)

Mr Ihebuzor made an application before the panel for a short adjournment until the morning of 17 July 2023, to enable you to provide the panel with additional information in support of your contention that you are not currently impaired. The panel was informed that you wanted to provide it with references, medical evidence and records of your training. He invited the panel to grant this application and to allow you the rest of the afternoon to collect this information, so that the panel may take this into account before deciding whether your fitness to practise is impaired by reason of your misconduct.

Mr Edwards submitted that this application is a matter for the panel. However, it should not cause a delay in the panel's decision regarding misconduct.

The panel accepted the advice of the legal assessor.

In reaching its decision the panel balanced fairness to the NMC and to you. The panel decided to grant this application and to allow you time to gather such information that you felt appropriate.

Submissions on Impairment

Mr Edwards addressed the panel on the issue of impairment and 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. Mr Edwards referred the panel to the cases of *Cohen v GMC* [2015] EWHC 581 (Admin) and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). He submitted that limbs b and c of Dame Janet Smith's test as set out in the Fifth Report from Shipman were engaged by your past actions.

Mr Edwards submitted that your past actions have brought the nursing profession into disrepute and that you have breached one or more of the fundamental tenets of the profession.

Referring to the case *Cohen*, Mr Edwards submitted that your misconduct is not remediable due to the attitudinal issues identified. He submitted that you have denied throughout that these incidents occurred, despite the panel's findings of fact.

Regarding the references you have provided, Mr Edwards submitted that whilst these are positive and describe you as a good nurse and a good colleague, they do not detract from the serious misconduct found proved against Colleague 1. He accepted that the issues do not relate to your clinical practice or ability as a nurse, but your conduct towards Colleague 1 is the important issue for the panel. He submitted that for these reasons, you have not remediated the concerns in this case.

Mr Edwards submitted that the facts found proved span three separate dates and that this demonstrates repetition of conduct. He submitted that taking into account your lack of insight, remediation and acceptance of the facts found proved, there is a real risk that such incidents will happen in the future.

Mr Edwards invited the panel to consider all of the evidence before it and he submitted that given the seriousness of the misconduct, not making a finding of current impairment

would undermine confidence in the nursing profession and the NMC as the regulator. He submitted that a fully informed member of the public would expect a finding of current impairment to be made, given the seriousness of the concerns.

Mr Edwards invited the panel to find that your fitness to practise is currently impaired, on public protection and public interest grounds.

Mr Ihebuzor submitted that the panel should take into account the public interest and the likelihood of these concerns being repeated in the future. He submitted that you have practised effectively and gained professional trust.

He explained that your interim suspension order was lifted in July 2021, and that you have worked during this time until February 2023 with no concerns. He submitted that during this time you practised kindly, safely and professionally. He submitted that impairment speaks to a future risk rather than what has happened. He submitted that this is the principal consideration at this stage. He confirmed that you will be able to make references available pertaining to this period of practice.

Mr Ihebuzor submitted that you understand the seriousness of the facts found proved. He invited the panel to consider the positive aspects of your practice identified and submitted that the panel should not '*throw away the positives*'.

Mr Ihebuzor then outlined the financial impact of your current interim suspension order; although you have found another nonclinical role, he explained that[PRIVATE]. He explained [PRIVATE].

Mr Ihebuzor submitted that you love your job, as nursing is your passion. He submitted that you go out your way to take up extra shifts and that you are always willing to help. He invited the panel to focus on the positives and the activities you have done following the incident.

Mr Ihebuzor submitted that your fitness to practise is not currently impaired, and a finding of no current impairment would not undermine the nursing profession or the public interest, he submitted that public interest includes those in the profession.

Mr Ihebuzor referred the panel to the various testimonials and references you have provided and submitted that these are from professional colleagues that you have worked with. He invited the panel to take these into consideration. He explained that one of the references is from a Clinical Manager at the Trust who has known you since 2005 and has worked with you directly for 10 years. In her reference she states that you have maintained professional boundaries, you are easy to talk to and supportive. He also took the panel to another reference from a mental health nurse which states that you are caring, compassionate and a great team player.

Mr Ihebuzor submitted that you communicate properly, you are kind-hearted, honest, and transparent, and that you did not have a misunderstanding with anyone whilst working on Solaris ward. He submitted that you are reliable and that you made everyone laugh on the ward.

Mr Ihebuzor then referred the panel to a further two references from colleagues that have worked with you during the period that your interim suspension order was revoked (July 2021 – February 2023). He submitted that these references are relevant to the issues of impairment and sanction. He submitted that you worked professionally during this period, whilst treating colleagues with dignity and respect

The panel accepted the advice of the legal assessor which included reference to the relevant cases of *Zygmunt v General Medical Council* [2008] EWHC 2643 (Admin), *Azzam v The General Medical Council* [2008] EWHC 2711 (Admin), *Cheatle v General Medical Council* [2009] EWHC 645 (Admin), *Grant and Cohen* (above). The panel also referred itself the NMC Guidance document entitled impairment ref: DMA-1.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d)...

The panel determined that limbs a), b) and c) are engaged in this case. With regard to limb a) the panel finds that you could not prioritise patient care whilst undertaking the behaviour that constituted your misconduct. The panel also considered the impact that your behaviour had on Colleague 1 and found that it would have distracted her from giving effective care to patients.

The panel also finds that your behaviour placed patients at unwarranted risk of harm. The panel determined that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute by your past actions. The panel are aware that this is a forward-looking exercise, and accordingly it went on to consider whether your misconduct was remediable and whether it had been remediated.

The panel then considered the factors set out in the case of *Cohen* and considered that on at least two occasions, Colleague 1 had indicated that your behaviour was unwanted and despite this, you continued with this course of inappropriate, sexualised behaviour. In these circumstances, the panel determined that your misconduct is difficult to remediate in principle, given your attitudinal issues.

The panel went on to consider whether you remained liable to act in a way to put patients at risk of harm, to bring the profession into disrepute and to breach fundamental tenets of the profession in the future. In doing so, the panel considered whether there was any evidence of insight, strengthened practice and remediation.

Regarding insight, the panel took into account that you contested the charges against you which included Colleague 1 giving evidence and being cross-examined. There was no insight from you reflecting on the impact of Colleague 1, your colleagues, the wider nursing profession, the public, the NMC as the regulator and patient safety. Indeed, the only insight before the panel was how this matter had impacted on you, [PRIVATE], your financial circumstances and family. In addition, although you provided testimonial

evidence, there was nothing before the panel to suggest you had remediated or regretted your actions.

In the absence of any further evidence, the panel determined that you have shown no insight into your misconduct. It could not be satisfied that you fully understood or appreciated the gravity of your misconduct. You have not demonstrated any remorse for your behaviour.

The panel then considered the evidence before it in determining whether or not you have taken steps to strengthen your practice and fully remediated your misconduct. The panel took into account the certificate of completion for various mandatory training courses. The panel noted that these had been completed between November 2022 and January 2023. It noted that they were all identified as mandatory courses and that none of the course had addressed behaviours outlined in the allegations made against you.

The panel noted the number of references and testimonials provided which all spoke positively of you and it had regard to the reference from the Managing Director at Staff Support Services Limited dated 14 July 2023, which stated:

'He told me of case of a sexual allegation by a student at his work dated 2019 . I encouraged him and he was eventually recruited as a Mental Health Support Worker (MHSW) with our agency. Mr Eze worked with us since August 2021 and as a Mental health nurse when his Interim Suspension order was reinstated by the NMC. He has completed over 1600 hour supporting service users across 2 mental health hospitals. The feedback from colleagues who have worked with Mr Ezeh [sic] has been positive and there has been no complain about his character and honesty.

I am aware that the investigating committee of the NMC has signalled concerns about Mr Eze's conduct and character. During the years I knew Mr Eze at West London Mental health Trust and since joining our Agency in 2021, I did not observe any behaviour from him that would made me question his honesty, conduct, and character. I was personally surprised that Mr Eze is facing an investigation of this nature.

Looking at the feedbacks from colleagues of Mr Eze, I am convinced that he has learned his lesson and ready to move forward professionally'

The panel also had regard to a reference from a Registered Mental Health Nurse/Clinical Team Lead at Cygnet Health Care, dated 16 July 2023. This states:

'This is to confirm that Mr Hyginus Onuoha Eze worked with us as an agency staff (RMN) from April 2022 to Feb 2023. During this period, he acted professionally in all ways, treated our service users and colleague with dignity and respect till when he left.

I witnessed no issues of concern as his work colleague.'

The panel considered that most of the references provided attest to your clinical practice prior to these proceedings and that the references identified above, are the only references that relates to your clinical practice during the period from July 2021 and February 2023. Whilst the panel acknowledged your training records, testimonials and references provided, it had insufficient evidence before it to allay its concerns and the panel considered there remained a risk of repetition of the incidents found proved and a risk of unwarranted harm to patients. The panel was of the view that you remained liable to act in a way which could place patients at risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession in the future. Accordingly, the panel concluded that a finding of impairment is necessary on the grounds of public protection to mark the profound unacceptability of your behaviour.

The panel bore in mind that the overarching objectives of the NMC: to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel concluded, given the seriousness of your misconduct, the nature of it, that it occurred in the workplace and with a junior member of staff, that public confidence in the profession and in the

regulator would be undermined if a finding of impairment were not made in this case. Therefore, the panel also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on both public protection and public interest grounds.

Sanction

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

In reaching this decision, the panel has had regard to all the evidence in this case, including the submissions made by Mr Edwards and Mr Ihebuzor. It has also on the request of Mr Ihebuzor re-visited the submissions made at the impairment stage. The panel has also had careful regard to the Sanctions Guidance (SG) published by the NMC and the NMC guidance document on Considering Sanctions for Serious Cases: 'Cases Involving Sexual Misconduct'.

The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Edwards submitted that the appropriate and proportionate order in this case is a striking-off order. He outlined what the NMC considered to be the aggravating features of this case. He submitted that there are no mitigating factors in this case. He also referred the panel to the NMC guidance on 'Considering sanctions for serious cases' and the guidance published by the Council for Healthcare Regulatory Excellence (now the Professional Standards Authority) entitled '*Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels*'.

Mr Edwards submitted that you should not be permitted to practise as a registered nurse following the panel's findings of fact, as such behaviour found proved, does not have a place in any profession, particularly in a caring profession. He submitted that your behaviour undermines the public confidence in the nursing profession. He submitted that it also undermines the confidence of your colleagues.

Mr Edwards then addressed each of the available sanctions. He submitted that taking no action would not address the public protection and public interest issues, and that a caution order would not be appropriate, as this case did not involve misconduct at the lower end of the spectrum of impaired fitness to practise. In regard to a conditions of practice order, he submitted that no workable conditions can be formulated. In respect of a suspension order, he submitted that temporary removal from the register in this case would not be appropriate given the deep-seated attitudinal issues, your lack of insight and understanding.

Mr Edwards invited the panel to impose a striking-off order to uphold professional standards and maintain public confidence in the profession.

Mr Ihebuzor referred the panel to your references and invited the panel to consider his submissions in respect of the impairment stage, as they are relevant at this stage in the hearing also.

Mr Ihebuzor referred to the SG and reminded the panel to consider the principle of proportionality and that it must strike a balance between your interests and those of the NMC. He also stated that any sanction imposed must be proportionate and go no further than is necessary in order to protect the public and uphold the public interest. He invited the panel to take into account the mitigating features in this case outlined in his previous submissions at the impairment stage.

Mr Ihebuzor invited the panel to consider the sanctions in ascending order, and to have regard to the public protection and public interest issues in deciding on the most appropriate and proportionate sanction. He invited the panel to consider that a striking-off order is not the only available sanction.

Mr Ihebuzor referred to the NMC guidance document on Considering Sanctions for Serious Cases: 'Cases Involving Sexual Misconduct' and submitted that a striking-off order should not be the starting point for cases involving sexual misconduct. He submitted that a striking-off order is the most serious sanction and should only be used in circumstances where, as it states in the SG, '*is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*'. He submitted that you have worked without concern during the period where your interim suspension order was revoked (July 2021-February 2023) and that your references all suggest that your practice following these incidents has been satisfactory. He invited the panel to consider the positives, which included: that you have a lot to offer the profession, your wealth of experience and your recent period of safe practice without restriction.

Mr Ihebuzor invited the panel to consider imposing a caution order or a conditions of practice order. When asked by the panel about the length of these orders, he submitted that it was a matter for the panel to consider.

Mr Ihebuzor submitted that the allegations have taken a toll on you. He submitted that the interim suspension orders and your period of suspension from the Trust, cumulatively amount to three years and therefore, you have already suffered a lengthy period of suspension.

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 NMC's published guidance on sanctions. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered the following aggravating features in this case:

- This was an escalating pattern of conduct over a number of shifts, covering a two-week period;
- Abuse of a position of trust in that this was a sexual assault on a junior member of staff;
- You did not stop when Colleague 1 asked you to;
- [PRIVATE]
- No evidence of insight on the effect that such behaviour would have had on Colleague 1, your colleagues, and the wider profession; and
- Your behaviour took place in the workplace and during your working hours and colleague 1's working hours. This distracted and diverted both from patient care.

The panel also considered the following mitigating features in this case:

- There is evidence before the panel that demonstrates you have kept up to date with your area of practice/education and development;
- Positive testimonials and references from Colleagues you have worked with, these confirmed there were no concerns raised during the period of July 2021- February 2023 and other positive testimonials from colleagues you have worked with prior to these concerns; and
- You have practiced without further concerns during the period of July 2021- February 2023.

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 neither protect the public nor be in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG

states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum of impaired fitness to practise and that a caution order would be inappropriate in view of the seriousness of the case and the nature your actions had on Colleague 1. 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 was mindful that any conditions imposed must be relevant, proportionate, measurable and workable. The panel acknowledged that no issues have been raised regarding your clinical practice and that Mr Ihebuzor had submitted that this sanction was the appropriate one in the circumstances. However, the panel noted that Mr Ihebuzor did not suggest any conditions for the panel to consider. The panel had careful regard to the NMC's conditions of practice library, and it was of the view that no practical or workable conditions could be formulated, given the nature of the charges in this case and as the misconduct identified in this case was very serious and attitudinal. Therefore, this was not something that can be addressed through retraining. In all the circumstances, the panel concluded that there were no appropriate conditions that could be imposed given the finding of facts in this case. A conditions of practice order would not therefore adequately address the seriousness of this case and would not protect the public or satisfy the public interest.

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

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

The panel referred to the NMC guidance document Considering Sanctions for Serious Cases: 'Cases Involving Sexual Misconduct'. This document states that:

'Sexual misconduct will be particularly serious if the nurse, midwife or nursing associate has abused a special position of trust they hold as a registered caring professional. [...] The level of risk to patients will be an important factor, but the panel should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses, midwives and nursing associates.'

'They will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse, midwife or nursing associate from the register. If the panel decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision very clearly and very carefully. This will allow people who have not heard all of the evidence in the case, which includes the victims, to properly understand the decision.'

The panel considered that your misconduct was not a single instance but indeed was an escalating course of conduct over a number of shifts, covering a two-week period. The panel considered that there is evidence of deep-seated attitudinal problems as your misconduct was sexually motivated in that you were seeking sexual gratification. The panel acknowledged that there is no evidence to suggest you have repeated this behaviour since the incidents. The panel acknowledged that your testimonials and references provided all attest to your professionalism and clinical competence as a senior mental health nurse. However, the panel bore in mind its earlier findings in that there remained a risk of repetition of the incidents found proved and a risk of unwarranted harm to patients.

The panel considered that this was a serious case of misconduct which involved you, a senior mental health nurse in a position of trust, sexually assaulting a student nurse, Colleague 1, in the workplace on a number of occasions. The panel was of the view that your behaviour was predatory and calculated, particularly at charge 2, in that your behaviour was carried out in an annex area which was isolated from the main ward and

some of your actions were opportunistic. The panel found it distasteful that you, a mental health nurse, put forward the suggestion [PRIVATE].

The panel found that your conduct was a significant departure from the standards expected of a registered nurse. The panel noted that such a serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register. For all these reasons, the panel was unable to justify only removing you from the register temporarily and therefore determined that a suspension order would not be a sufficient, appropriate or proportionate sanction in this case.

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

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

Your misconduct was a significant departure from the standards expected of a registered nurse and is fundamentally incompatible with you remaining on the register. The panel considered that your misconduct calls into question your professionalism and trustworthiness as a senior mental health nurse. As a result, the panel was of the view that a striking-off order was necessary to protect the public.

The panel was also of the view that the findings in this particular case demonstrate that your actions were so serious that to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the only appropriate and proportionate

sanction is that of a striking-off order. Your actions have brought the profession into disrepute and are incompatible with the standards that the public would expect of a registered nurse. The panel has concluded that nothing short of this would be sufficient in this case. The panel had regard to the personal mitigating features in this case. However, the panel was satisfied that your own interests were substantially outweighed by the public interest in this regard.

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

Interim order

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

Submissions on interim order

Mr Edwards submitted that an interim suspension order was necessary for the protection of the public and is otherwise in public interest. He relied on the panel's earlier determinations to support that submission. He therefore invited the panel to impose an interim suspension order for a period of 18 months to cover the 28-day appeal period and for any potential appeal to be lodged and considered.

Mr Ihebuzor submitted that an interim suspension order should not be granted. He submitted that the consideration at this stage is to protect the public and not to punish you. He submitted that in the event that your appeal is successful, and no interim order is in place, then you can return to practice immediately.

Decision and reasons on interim order

The panel referred itself to the NMC guidance on 'Interim orders after a sanction is imposed' ref: SAN-5 and the NMC guidance on 'Decision making factors for interim orders' ref: INT-2.

The panel accepted the advice of the legal assessor.

Having regard to the seriousness of the facts found proved which amounted to misconduct, its finding of current impairment and the reasons for its decision to impose a striking-off order, the panel considered that to not impose an interim order would be incompatible with its previous findings. The panel considered that an interim order is necessary to protect the public and is otherwise in the public interest.

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

That concludes this determination.

This will be confirmed to you in writing.