

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

**Substantive Hearing
Monday 17 July 2023 – Friday 21 July 2023
Monday 24 July 2023 – Tuesday 25 July 2023**

Virtual Hearing

Name of Registrant: Sky Michael Schuyler

NMC PIN 09C0485E

Part(s) of the register: Registered Nurse – Sub Part 1
RNMH: Mental health nurse L1 – August 2009

Relevant Location: Lancashire and South Cumbria

Type of case: Misconduct

Panel members: Alan Greenwood (Chair, lay member)
Caroline Rollitt (Lay member)
Jane Jones (Registrant member)

Legal Assessor: Robin Hay

Hearings Coordinator: Shela Begum

Nursing and Midwifery Council: Represented by Dan Santos-Costa of Counsel

Mr Schuyler: Not present and unrepresented

Facts proved: Charges 1a, 1b, 1d, 1f, 1g, 1h, 1i, 1j, 1k, 1l, 1m, 1n, 1o, 1p, 3a, 3b, 3d, 3e, 3f, 3g, 3h, 4, 5a, 5b, 5c, 5d, 5e, 5f and 6

Facts not proved: Charges 1c, 1e, 2, 3c,

Fitness to practise: Impaired

Sanction: Striking off order

Interim order: Interim suspension order (18 months)

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

At the outset of the hearing, Mr Santos-Costa, on behalf of the Nursing and Midwifery Council (NMC), made an application that this case be held in private on the basis that there will be some reference to matters relating to Mr Schuyler's health. 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 or by the public interest.

The panel determined to go into private session in connection with matters relating to Mr Schuyler's and Doctor 1's health as and when such issues are raised in order to maintain the confidentiality of sensitive information.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Schuyler was not in attendance and that the Notice of Hearing letter had been sent to his registered email address by secure email on 8 June 2023.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how

to join and, amongst other things, information about Mr Schuyler's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

Decision and reasons on proceeding in the absence of Mr Schuyler

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

Mr Santos-Costa referred the panel to an email from Mr Schuyler dated 18 April 2023 in which he stated:

"Hi I will not be able to attend any future investigations in regards to the conduct of my behaviour and actions during this period in my life, [PRIVATE] my actions caused significant distress for those who brought complaint against. Whilst I was not receiving the correct or weight of support I was asking for by LCFT , I feel they left me burning out and chaotic until it was too late then hung me out to dry, I accept this and take full responsibility for my behaviour despite the lack of support.

[...]

Finally I would like for my sincere apologies to be given to all those that were affected by chaotic and inappropriate behaviour during a period of my life that was so terribly painful for myself and those who suffered at my hands. I can say hand on heart that the price I paid I paid in full, I lost my reputation, my job , [PRIVATE] if I am to lose my pin as well and any future of a career, I will live with that as another consequence of this terrible period in my life.

*I also ask that this statement, apology and [PRIVATE] be presented at my hearing .
If this is not the correct person to whom this information is to presented to I formally
as you to forward this email to the appropriate person.”*

The panel accepted the advice of the legal assessor.

The panel is aware that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised ‘*with the utmost care and caution*’ as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Schuyler. In reaching this decision, the panel has considered the submissions of Mr Santos-Costa, the representations from Mr Schuyler, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v and General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Schuyler;
- Mr Schuyler has informed the NMC in April 2023 that he will no longer be attending and he has indicated that he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- A witness has been warned to attend this hearing to give live evidence,
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2019;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and

- There is a strong public interest in the expeditious disposal of the case.

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

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

Details of charge (as amended)

That you, a registered nurse:

1. Between 6 May and 6 June 2019:
 - a) Wrote the words 'arse', 'tits', 'vag', 'prick', 'ass flaps', 'cock', 'boobs', 'bum' on Student Nurse 1's notebook;
 - b) Pulled Student Nurse 1's chair towards you saying words to the effect of 'come here a minute';
 - c) Made a joke about touching Student Nurse 1's breast;
 - d) Whilst leaving a smoking area with Student Nurse 1, said 'same time next week love?' or words to that effect whilst pretending to sort out your trousers and belt;
 - e) Showed a nude photo of yourself to Student Nurse 1 and then said 'at least you didn't see my dick' or 'you're alright my dick was covered' or words to that effect;

- f) Hit Student Nurse 1's bottom with an iPad and said 'that wasn't my hand by the way' or words to that effect;
 - g) Offered Student Nurse 1 a ride on your motorbike stating that there are 'rewards for your hard work' or words to that effect;
 - h) Suggested that if Student Nurse 1 had his mobile number it would make reporting absence easier;
 - i) Told Student Nurse 1 that she was beautiful and an attractive woman;
 - j) Asked Student Nurse 1 if you could 'rub my leg against you' or words to that effect;
 - k) Told Student Nurse 1 'I am falling in love with you in a work way' or words to that effect;
 - l) Leaned over and said to student Nurse 1 'Hello, do you come here often?' or words to that effect;
 - m) Said to Student Nurse 1, 'I had a look at your boobs then' or words to that effect;
 - n) Said to Student Nurse 1 when referring to another female present 'I'd do it to her an all' or words to that effect;
 - o) Said to Student Nurse 1 'that's what boobs are for' or words to that effect;
 - p) On one or more occasions stroked Student Nurse 1's arm.
2. Your conduct at Charge 1 above was sexually motivated in that you intended to pursue a sexual relationship with Student Nurse 1.
3. Between 6 May and 6 June 2019:
- a) Said to an unknown colleague 'can I put my balls in your mouth' or words to that effect;
 - b) Said to Student Nurse 2 'you just do something funny to me' or words to that effect;
 - c) Asked Student Nurse 2 for her phone number;
 - d) Texted Student Nurse 2 asking 'what colour knickers are you wearing' or words to that effect;
 - e) Texted Student Nurse 2 'Seen as u were late, what colour underwear you got on xx';

- f) Said to Student Nurse 2 'what's this about you being racist towards bald, tattooed, biker men?' or words to that effect;
 - g) Texted Student Nurse 2 'so tell me, have you ever thought about dating an older biker type skinhead bloke';
 - h) Said to Student Nurse 2 'can I put my balls in your mouth' or words to that effect.
4. Your conduct at Charge 3 above was sexually motivated in that you intended to pursue a sexual relationship with Student Nurse 2.
5. Between May and September 2019:
- a) Said to Doctor 1 she was an 'attractive woman' or words to that effect;
 - b) Asked Doctor 1 to have 'an affair with you' and that 'your husband wouldn't need to know' or words to that effect;
 - c) Asked Doctor 1 if she 'would like to have your number' or words to that effect;
 - d) Said to Doctor 1 'I know you really want it' or words to that effect;
 - e) Told Doctor 1 that 'you wanted to put her on the back of your motorbike and have sex with her' or words to that effect;
 - f) Texted Doctor 1 'ooh yeah don't forget to rub my balls better'.
6. Your conduct at Charge 5 above was sexually motivated in that you intended to pursue a sexual relationship with Doctor 1.

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

Application to admit hearsay evidence

Mr Santos-Costa made an application under Rule 31 that the panel should allow the documents in relation to the evidence of Student Nurse 1, Student Nurse 2 and Doctor 1 into evidence. In his written submissions, Mr Santos-Costa set out the evidence which was subject to the application:

1. *"This matter is before the fitness to practise committee for substantive hearing. This skeleton argument constitutes a hearsay application submitted on behalf of the NMC.*

2. *This hearsay application is made in relation to the following documents within the Exhibits Bundle (all page references are references to the Exhibit Bundle):*
 - a. *Appendix 1 – Schedule of Allegations (partially, only in relation to the witness evidence contained therein) (page 22-58)*
 - b. *Appendix 6 – Chronology of incidents re: Student Nurse 1 (page 109-125)*
 - c. *Appendix 7 – Chronology of incidents re: Student Nurse 2 (page 127-137)*
 - d. *Appendix 8a – Student Nurse 1’s initial statement, together with supplemental reflective statement dated 28/01/2020 (page 139-141)*
 - e. *Appendix 8b – Student Nurse 2’s initial statement (page 143-144)*
 - f. *Appendix 9 – Witness Meeting with Student Nurse 2, Summary Notes (page 145-150)*
 - g. *Appendix 10 – Witness Meeting with Student Nurse 1, Summary Notes (page 151-156)*
 - h. *Appendix 12A – WhatsApp messages between SS and Student Nurse 2 (page 163-176)*
 - i. *Appendix 18 – Witness Statement of Doctor 1 dated 04/11/2019 (page 200-201)*
 - j. *Appendix 19 – Screenshot of messages between SS and Doctor 1 (page 203)*
3. *The following documentation contained within the Exhibits Bundle is no longer to be relied upon by the NMC:*
 - a. *Appendix 11 – Witness statement of [Person 2] dated 30/09/2019 (page 159)*
 - b. *Witness statement of [Person 3] (page 160-168)*
 - c. *Appendix 13 – Witness Meeting with [Person 7], Summary Notes (page 178-179)*
 - d. *Appendix 14 – Witness Meeting with [Person 1], Summary Notes (page 181-182)*
 - e. *Appendix 17 – Email correspondence between [Person 4] and [Person 5] (page 196-198)*
 - f. *Appendix 21 – Supervision document (page 214)*

- g. *Appendix 22 – Witness Statement of [Person 6] dated 28th January 2020 (page 216)*
- h. *Appendix 23 – Email correspondence from [Person 3] to [Witness 1] (page 218)*

[Mr Santos-Costa submitted that the legal principles were as follows]

- 4. *Generally, hearsay evidence is prima facie admissible in these proceedings, so long as it satisfies the requirement that it is relevant and fair. It is not inadmissible simply because it is hearsay. Rule 31(1) of The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (the Rules) stipulates:*

(1) Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place).

- 5. *In the case of Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin), Mr Andrew Thomas QC (as at the time) helpfully set out at paragraph 56 of the judgment several factors that a Panel ought to consider when determining whether to admit hearsay evidence:*
 - (i) Whether the statements were the sole or decisive evidence in support of the charges;*
 - (ii) The nature and extent of the challenge to the contents of the statements;*
 - (iii) Whether there was any suggestion that the witnesses had reasons to fabricate their allegations;*
 - (iv) The seriousness of the charge, taking into account the impact which adverse findings might have on the [Registrant's] career;*
 - (v) Whether there was a good reason for the non-attendance of the witnesses;*
 - (vi) Whether the [NMC] had taken reasonable steps to secure their attendance;*

(vii) The fact that the [Registrant] did not have prior notice that the witness statements were to be read.

[...]

- (i) The nature of the evidence itself, and the nature and extent of any challenge*
- 6. [...]. The evidence constitutes the allegations made by the complainants against the Registrant, together with supporting material in the form of WhatsApp messages for example.*
 - 7. While the Registrant has not responded to the NMC charges directly, in his statement of case (Exhibit LD/2, page 220-229), the Registrant pleaded guilty to all the allegations. At no stage throughout the local investigation did the Registrant dispute the nature of the factual allegations. Similarly, no factual challenge has been made as part of the NMC's investigation. In his most recent correspondence dated 18 April 2023, the Registrant stated that he took full responsibility for his behaviour. Therefore, it can be inferred from that, in my submission, that no factual challenge is made to the allegations made by Student Nurse 1, Student Nurse 2 and Doctor 1.*
 - 8. Having said that, during the local investigation, the Registrant was clear in relation to Student Nurse 1 and Student Nurse 2 that he did not wish to pursue a sexual relationship with either complainant. Therefore, it can be inferred that the Registrant does not accept Charge 2 and 4, namely that his conduct in relation to both Student Nurse 1 and Student Nurse 2 was sexually motivated in that he intended to pursue a sexual relationship with both individuals.*
 - 9. However, the same cannot be said in respect of Doctor 1. It is submitted that it is apparent from his second interview that the Registrant did wish to pursue a sexual relationship with Doctor 1 (Page 206-207):*

[...]

Q3 [Witness 1] With regards to the events of 24th May, can you recall telling D1 that you found her attractive and asking if she would have an affair with you?

A3 (SS) Yes I can recall this, I do not deny this happened. We had been discussing life and always wanting more, not being satisfied with things when we got them, the

discussion led to talking about affairs, D1 admitted to me that she had previously had affairs in her current marriage and that she had been close to having an affair with another male junior doctor recently, we joked about this, asked why this kind of thing happened.

Q4 [Witness 1] Can you recall her reaction on the day and whether she asked you to leave the office?

A4 (SS) I don't recall her asking me to leave the office. I recognise my judgement was skewed. She made it clear she was not interested, but she was not offended, but I suppose that's not to say she wasn't. My belief judgement was compromised, i believed we were both looking for comfort in which we were getting from one another, for my part i was feeling very lonely.

[Witness 1] You didn't pick up on any cues?

(SS) Not 100% sure, I recognise just how chaotic my lifestyle was and full of self-denial. I was not dishonest with people more myself. I was just getting through days. I am Not excusing my actions but i am not in (a) clear my mind. I fully accept that's what happened, but once D1 made clear she was not interested our relationship continued unpeeded and we had been of great support to one another

10. As a result of the above, it appears that the only substantive matter in dispute in these proceedings is the Registrant's motivation for his conduct in relation to Student Nurse 1 and Student Nurse 2, i.e., Charges 2 and 4.

11. This is a matter of context, rather than fact. Neither of these complainants can assist the Panel in its determination of this issue. They cannot speak to the Registrant's motivation, they can only speak to their experience which, importantly, is not challenged by the Registrant.

12. Only the Registrant himself can attest to what his motivation was, and he has voluntarily absented himself from these proceedings.

13. Accordingly, the Registrant cannot be said to challenge the "contents of the statements", applying the guidance in Thorneycroft.

(ii) There is no suggestion of fabrication

14. *There is no suggestion that any of the complainants have fabricated their evidence. In fact, reiterating the above, the Registrant has agreed with the complainant's evidence as part of the local investigation. No factual challenge has been made, and indeed no suggestion has been made by the Registrant that any of the three complainants have fabricated their account.*

15. *In the case of Student Nurse 2 and Doctor 1, some of their evidence is corroborated by the screenshots of WhatsApp communication between themselves and the Registrant. Additionally, it is the case for Student Nurse 1 and Student Nurse 2 that their evidence is corroborated by their respective interviews.*

16. *There is nothing to suggest that this evidence is unreliable, again it is accepted by the Registrant as being true.*

(iii) The seriousness of the allegations

17. *It ought to be said that these allegations are serious and adverse findings may have a significant impact on the Registrant's career.*

(iv) Communication with the three complainants: Student Nurse 1, Student Nurse 2, Doctor 1

18. *All three complainants engaged with the local disciplinary investigation. They provided written statements, and in Student Nurse 1 and Student Nurse 2's case, participated in an interview with the investigation team. It is the documents procured as part of the local investigation that form part of this hearsay application.*

19. *Having said that, all three complainants have absented themselves from these proceedings. I will consider each complainant in turn.*

Doctor 1

20. *[PRIVATE].*

21. *[PRIVATE].*

22. *It is submitted that, that constitutes good reason and that reasonable steps had been taken to secure her attendance. [PRIVATE]. [...] it is submitted that the NMC did all they reasonably could to secure her attendance.*

Student Nurse 2

23. *The NMC contacted Student Nurse 2 on 9 May 2022. Student Nurse 2 stated that while she wanted to assist with the investigation, she was reluctant because at the time of the communication, she was living directly opposite the Registrant, and his living room window looked into her bedroom, and she regularly saw him. This made her uncomfortable. She stated that she felt it would be very difficult for her to provide a witness statement and attend any hearing with someone who lives so close. She explained that this was a traumatic experience for her.*
24. *Student Nurse 2 was made aware of her professional obligation to engage with her regulator; however, she expressed significant reluctance. Student Nurse 2 was told that the NMC will seek further advice on how to proceed. I have seen no further correspondence between the NMC and Student Nurse 2.*
25. *As Student Nurse 2 had expressed that her experience was traumatic, it was decided by the NMC that Student Nurse 2 should not be forced to engage with these proceedings. Student Nurse 2 was young and feared repercussions from her involvement in these proceedings. Those fears were exacerbated by the fact that the Registrant lived directly opposite her. In the circumstances, I submit that the NMC did all they reasonably could in the circumstances to secure Student Nurse 2's attendance.*

Student Nurse 1

26. *Student Nurse 1 was spoken to on 27th May 2022. Student Nurse 1 explained that while she recalled the Registrant, she could not recall a lot of the detail. She did consider that she was able to provide a statement, but she was reluctant to attend any hearing. The NMC explained the support mechanisms available to her.*
27. *On 4th July 2022, having reviewed the exhibits, Student Nurse 1 communicated via SMS that she "did not want to go back through everything as it's something I've moved on from". It is right to say that Student Nurse 1 was no longer a nurse at the time, and therefore not subject to the same professional obligations as Student*

Nurse 2. I have seen no further communication between Student Nurse 1 and the NMC.

28. Student Nurse 1 was no longer a nurse and therefore was not obliged to engage with the NMC. She expressed significant reluctance to relive the incident and wanted to move on with her life. That is despite being told about the mechanisms that could be put in place to assist and support her through the process. It is submitted that the NMC did all they reasonably could in the circumstances to secure her attendance.

[Mr Santos-Costa concluded as follows]

29. Overall, it is submitted that this evidence is undoubtedly relevant as it forms the sole, or at the very least decisive, evidence in this case. It is also submitted that its admission is fair. Fundamentally, the Panel can attribute whatever weight to the hearsay evidence that they see fit. If admitted, it will of course be unchallenged.

30. The complainants have made it clear to the NMC that they did not wish to engage with the process for different reasons. In all three cases, it is submitted that the NMC did attempt to secure the attendance of the complainants and the attempts were reasonable in the circumstances.

31. Importantly, there is no suggestion that this evidence is inherently unreliable or that any part of it has been fabricated. Fundamentally, during the local disciplinary investigation the Registrant accepted the factual nature of the allegations made against him. The content of the hearsay evidence is therefore not challenged.

32. The only matter in issue, it is submitted, is whether the Registrant's conduct towards Student Nurse 1 and Student Nurse 2 was sexually motivated in that he intended to pursue a sexual relationship with both complainants. That issue is not something that either complainant can attest to. They cannot give evidence as to the Registrant's motivation. That is something that only the Registrant can give evidence to. He has voluntarily absented himself from these proceedings.

33. As a result, it is submitted that it is entirely fair to admit this hearsay evidence in the circumstances, and it therefore ought to be admitted for the reasons outlined above."

Decision and reasons on application to admit hearsay evidence

In reaching its decision, the panel considered all the information before it, together with the submissions made by Mr Santos-Costa. It accepted the legal assessor's advice.

The panel had regard to Rule 31 which provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel concluded that two of the documents, Appendix 12a and Appendix 19, which consisted of screenshots of texts messages were not in fact hearsay.

The panel gave consideration to the factors set out in the case of *Thorneycroft*.

The panel considered whether any of this evidence was the sole or decisive evidence in support of the charges. The panel found that none of this evidence was the sole or decisive evidence because there is other admissible evidence which supports the factual allegations such as local admissions made by Mr Schuyler and exhibited messages.

The panel next considered the nature of the evidence and the extent of the challenge to the contents of the evidence. Mr Schuyler has not challenged the factual allegations at charges 1, 3, and 5, although he does challenge charges 2, 4 and 6.

There has been no suggestion of any fabrication of the evidence.

The panel found that the allegations in this case are very serious and further that adverse findings may have a significant impact on Mr Schuyler's career.

The panel considered whether there was a good reason for the non-attendance of the complainants. The panel was satisfied that in respect of Doctor 1, there are good reasons for her non-attendance at this hearing and that the NMC did take reasonable steps to secure her attendance. Student Nurse 1 was reluctant to attend any hearing and she was no longer practising as a nurse and therefore not subject to a professional obligation to attend this hearing. She explained that she wants to move on with her life and despite being told about the mechanisms that could be put in place to assist and support her through the process, chose not to engage further or attend. In relation to Student Nurse 2, the panel heard that she has declined to attend this hearing and informed the NMC that she lives in close proximity to Mr Schuyler and that she feared the repercussions from her involvement with these proceedings and the impact which this would have on her life.

The panel next considered whether the NMC had taken reasonable steps to secure their attendance. It concluded that the NMC did take reasonable steps to try and secure the attendance of doctor 1, but that it did not take reasonable steps to secure the attendance of Student Nurse 1 and Student Nurse 2. The NMC had not even taken witness statements from any of the witnesses.

The panel considered whether Mr Schuyler would be disadvantaged and any unfairness which may be caused to him if the documents were admitted in evidence. The panel concluded that the evidence should be admitted but careful consideration should be given in due course to the weight which is placed on it.

In these circumstances, the panel decided that this evidence is relevant and that it would not be unfair to Mr Schuyler for the evidence to be admitted but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on consideration of whether there is a case to answer in respect of Charge 2

At the panels request, Mr Santos-Costa addressed it on whether there was sufficient evidence in relation to Charge 2. He provided written submissions in which he stated:

“1. The Panel, as it is entitled to do in the absence of a Registrant under Rule 24(8), has queried whether sufficient evidence has been presented to find the facts proved in relation to Charge 2 of the Schedule of Charge. It is submitted on behalf of the NMC that there is indeed a case to answer.

2. Charge 2 reads as follows:

“Your conduct at Charge 1 above was sexually motivated in that you intended to pursue a sexual relationship with Student Nurse 1.”

The Law

3. The case of R v Galbraith [1981] 1 WLR 1039 sets out the test to apply in submissions of no case to answer in a criminal context, however it has been held to apply in the same way to regulatory proceedings, such as these proceedings. The legal test is as follows:

i. If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

ii. The difficulty arises where there is some evidence, but it is of a tenuous character, e.g., because of inherent weakness or vagueness or because it is inconsistent with other evidence.

1. Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

2. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability, or other matters within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.

[...]

4. It is submitted that there is sufficient evidence to support the conclusion that, on the NMC's

case at its highest, the Registrant has a case to answer in relation to Charge 2.

5. It is conceded that there is an absence of direct evidence to demonstrate that the Registrant intended to form an intimate relationship with Student Nurse 1 (SN1). However, this charge is concerned with the Registrant's motivation. To put it in criminal terms, the Panel is solely concerned with the Registrant's mens rea. It is submitted that it is commonplace in cases such as this for various pieces of circumstantial evidence to form an inferential case against a registrant at the fact-finding stage.

6. This point is elucidated in the case of Solicitors Regulation Authority v Nabeel Amer Sheikh [2020] EWHC 3062 (Admin), Lord Justice Davis held:

[56] "I do not understand the SDT to have gone so far as to say there was no evidence to support these particular allegations. The question therefore was whether the evidence adduced by the SRA was of too tenuous a character to be capable of sustaining a conclusion to the criminal standard that the allegations were proved. The evidence has to be taken at its highest: and an allegation should be left for decision where on one possible view of the facts there was evidence upon which such a conclusion could properly be reached: see Galbraith."

[emphasis added]

[...]

[66] "Moreover, where a prosecution case is circumstantial and cumulative, it is common defence strategy to seek to undermine each strand of the evidence cumulatively relied on, saying that a different inference as to each strand can be drawn and so on. But a jury does not have to be sure as to each individual strand of the evidence: what matters is whether, on the totality of the evidence, it is made sure of guilt. With respect, I get no impression at all of the required "holistic" approach being taken by the SDT in this case in its appraisal of the submission of no case to answer on these allegations."

7. It is submitted that, taking the case at its highest, a reasonable panel could properly infer from the evidence that it is more likely than not that the Registrant intended to pursue a sexual relationship with SN1. The strands of evidence that together represent the inferential case against the Registrant are outlined below:

(i) Student Nurse 1's evidence a.

- a. SN1 reflected in her meeting with the investigating officer, Person 8, that she thought her mentor fancied her (page 151).
- b. On 5th June 2019, the Registrant told SN1 that she could not "have the day" because she rang in to tell The Orchards that she was unwell. The Registrant is alleged to have told SN1 that she should have his number to communicate these matters directly to him so that he could say that she was at work. The Panel heard evidence from [Witness 1] that it was not usual for a mentor to communicate in this manner with a student.

On the same day, the Registrant described SN1 as "beautiful", "stunning" and "attractive". It is submitted that these words go beyond the polite complimentary and indicate a sexual attraction.

Further, the Registrant is alleged to have stood close to SN1 and asked if he could rub his leg against her, "in a joking sort of way".

Additionally, the Registrant is alleged to have said that he was "falling in love with [SN1] in a work way".

Later in the same shift, the Registrant responded "ooo SN1" when SN1 leaned over to get her notepad. Further, the Registrant is alleged to have said to SN1, "I had a look at your boobs then" after she leaned over to pick something up (page 140 refers).

- c. *On 6th June 2019, the Registrant is alleged to have discretely touched SN1's arm frequently during conversation (page 140). It is submitted that this body language and invasion of personal space is typically indicative of flirtatious behaviour.*

(ii) [Witness 1]'s Evidence

- a. *It is conceded that [Witness 1] said in evidence that she was unconvinced that he had any intention behind his excessive praise to SN1. However, it is submitted that [Witness 1] did not have any direct involvement with, or experience of, SN1 and SS's relationship.*
 - b. *Additionally, [Witness 1] explained that SN1, Student Nurse 2 (SN2) and Junior Doctor 1 (D1) all shared similar physical features and characteristics. She stated that they were "all small petite blondes" and "demure". There is significant evidence to support the suggestion that the Registrant wished to pursue a sexual relationship with SN2 and D1.*
8. *It is conceded that none of these pieces of evidence individually could satisfy the panel, on the balance of probabilities, that the Registrant intended to pursue a sexual relationship with SN1. Indeed, if each piece of evidence is viewed in isolation, one might reasonably conclude that it is relatively innocuous.*
9. *However, when viewed together, it is submitted that this evidence paints a picture indicative of the Registrant's intention to form a sexual relationship with SN1. It is submitted that, in combining the strands of evidence and looking holistically at the inferential case against the Registrant, the Panel can find that it is more likely than not that the Registrant intended to pursue a sexual relationship with SN1.*

10. That is especially true when one considers the extent and the nature of the sexualised comments alleged to have occurred during one shift on 5th July 2019 outlined in SN1's statement.

11. When taking the NMC's case at its highest, specifically considering the evidence at (i) and(ii) above holistically, it is submitted that a Panel could reasonably and properly infer that it is more likely than not that the conduct at Charge 2 is proved. Accordingly, it is respectfully submitted that the Registrant has a case to answer in relation to Charge 2, and the test in Galbraith is not satisfied."

Decisions and reasons on whether there is a case to answer in respect of Charge 2

The panel took account of the submissions made and accepted the advice of the legal assessor.

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

The panel has concluded that sufficient evidence has been adduced upon which charge 2 could be proved.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Santos Costa, on behalf of the NMC, to amend the wording of charges 1b, 1f and 1n.

It was submitted by Mr Santos-Costa that the proposed amendment would provide clarity and more accurately reflect the evidence. The proposed amendment was as follows:

“That you, a registered nurse:

1. Between 6 May and 6 June 2019:
 - b. Pulled Student Nurse 1’s chair towards you saying words to the effect of ~~said~~ ‘come here a minute’;
 - f. Hit Student Nurse 1’s bottom with an ~~ipad~~ **iPad** and said ‘that wasn’t my hand by the way’ or words to that effect;
 - n. Said to Student Nurse 1 when referring to ~~Student Nurse 2~~ **another female present** ‘I’d do it to her an all’ or words to that effect;

[...]

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

The panel accepted the advice of the legal assessor and had regard to Rule 28 of ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules).

The panel was satisfied that these proposed amendments were by way of clarification and would cause no injustice to Mr Schuyler. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and to properly reflect the evidence.

Background

The charges arose whilst Mr Schuyler was employed as a registered nurse at Lancashire and South Cumbria NHS Trust (the Trust).

It is alleged that between 6 May 2019 and 6 June 2019, Mr Schuyler made inappropriate comments to Student Nurse 1 which were sexual in nature. These included jokes about touching Student Nurse 1’s breast. Also, that he made comments about Student Nurse 1 being an attractive woman and that he was ‘falling in love’ with her ‘in a work way’. Further, on one or more occasions ‘stroked’ her arm.

It is further alleged that during the same period between 6 May 2019 and 6 June 2019, Mr Schuyler made inappropriate comments to Student Nurse 2 which were sexual in nature and asked her whether she would consider dating him. He allegedly also asked for her phone number.

Between May 2019 and September 2019, it is alleged that Mr Schuyler made inappropriate comments to Doctor 1 that were sexual in nature and asked her to have an affair with him.

These actions are alleged to have been sexually motivated in that he intended to pursue sexual relationships with Student Nurse 1, Student Nurse 2 and Doctor 1.

Decision and reasons on facts

In reaching its decisions on the facts, the panel considered all the evidence before it, both oral and documentary, together with the submissions made by Mr Santos-Costa.

The panel accepted the advice of the legal assessor.

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

The panel heard evidence from a witness called on behalf of the NMC:

- Witness 1: At the time of the investigation, Acting Service Manager for Lancaster and Morecambe Older Adult Mental Health Services.

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

Charge 1a

1. Between 6 May and 6 June 2019:

- a) Wrote the words 'arse', 'tits', 'vag', 'prick', 'ass flaps', 'cock', 'boobs', 'bum' on Student Nurse 1's notebook;

This charge is found proved.

In reaching this decision, the panel took into account the initial and contemporaneous written statement Student Nurse 1. It stated:

"On another day during first week, [Mr Schuyler] had written various comments in my note book when I left this around him. He did this at 2 or 3 points during the day. Comments such as "arse" "tits" "vag" "prick" "asshole" "ass flaps" "cock" "boobs" "bum"."

It has been recorded on the 'Workforce Directorate Witness Meeting' document dated 7 October 2019 that during the interview, Student Nurse 1 *"provides her notebook as evidence of [Mr Schuyler] writing obscene words throughout"*.

During that interview Student Nurse 1 stated:

"[Mr Schuyler] thought it was funny at the time, I did laugh at it then but on reflection it's not funny and there was no explanation."

Further, the panel had regard to the formal summary notes of the Trust's Disciplinary Investigation Meeting with Mr Schuyler dated 4 September 2019 who stated:

"Childishly, I wrote things in her notebook which wasn't funny but at the time I thought it was funny, both students laughed with me and gave me no indications"

that they felt uncomfortable with my actions. These allegations were throw away things to me and I was messing around and it was misconstrued I had no intent to elicit anything”

The panel found, based on the evidence before it, there is evidence to determine that Mr Schuyler did write the words ‘arse’, ‘tits’, ‘vag’, ‘prick’, ‘ass flaps’, ‘cock’, ‘boobs’, ‘bum’ on Student Nurse 1’s notebook. The panel therefore finds this charge proved.

Charge 1b

1. Between 6 May and 6 June 2019:

b) Pulled Student Nurse 1’s chair towards you saying words to the effect of ‘come here a minute’;

This charge is found proved.

The panel had regard to the initial written statement Student Nurse 1 in which she stated:

“On my first day I was sat in the office- opposite end of the office to [Mr Schuyler]. He pulled my chair from behind over to him and said “come here a minute”. This was to show me something work related on the computer.”

The panel took into account the summary notes of the Disciplinary Investigation Meeting with Mr Schuyler dated 4 September 2019 which stated:

“The chair incident was that I just pulled her chair over to me. I didn’t know what my actions were making SN1 feel uncomfortable and in no way was it to illicit any favour in that it was an innocent thing. I wasn’t trying to flirt.”

The panel determined that, both Mr Schuyler and Student Nurse 1, have provided accounts which verify that Mr Schuyler did pull the chair Student Nurse 1 was sat on towards him. Based on the evidence before it, the panel concluded that, it is more likely

than not, that Mr Schuyler did pull Student Nurse 1's chair towards him and said words to the effect of 'come here a minute'. The panel therefore finds this charge proved.

Charge 1c

1. Between 6 May and 6 June 2019:
 - c) Made a joke about touching Student Nurse 1's breast;

This charge is found NOT proved.

In reaching this decision, the panel took into account the summary notes of the Disciplinary Investigation Meeting with Mr Schuyler dated 4 September 2019.

During the meeting, when Mr Schuyler was asked "*On Monday 27th May, SN1 states [...] that you made a comment about touching her boobs?*"

To which Mr Schuyler responded "*I did not touch boobs, I would not do that.*"

It was clarified to Mr Schuyler during the interview that the accusation did not relate to actually "touching" but having made a comment about touching Student Nurse 1's breast.

To which he responded:

"I didn't say that [...] this is not funny, even the accusation. They are throw away comments and throw away actions. The only thing I wanted is for them to have a good placement and I believe I have failed them. I don't want or desire to have anything else from them."

The panel determined that, based on the evidence before it, it could not be persuaded that on the balance of probabilities, it is more likely than not that Mr Schuyler made comments about touching Student Nurse 1's breast. The panel took into account the initial statement of Student Nurse 1 as well as her interview meeting notes and it could not determine that

there is any evidence within those documents to confirm that such comments were made by Mr Schuyler. It therefore finds this charge not proved.

Charge 1d

1. Between 6 May and 6 June 2019:

- d) Whilst leaving a smoking area with Student Nurse 1, said 'same time next week love?' or words to that effect whilst pretending to sort out your trousers and belt;

This charge is found proved.

In reaching this decision, the panel took into account that in her initial statement Student Nurse 1 stated:

"I was on a night shift with [Mr Schuyler] We went out for a cigarette and it was raining so he said we should stand in the shed. We went in the shed, he didn't close the door. When we finished smoking, I came out the shed then he came out just after me and said, "same time next week love?" while pretending to sort out his pants and belt."

It also noted that the 'Workforce Directorate Witness Meeting' document dated 7 October 2019 in which it is recorded that Student Nurse 1 stated:

"On either 29th or 30th May we were having a cigarette outside and he said watch out for the cameras so I am not sure whether that was because of smoking or for another reason and he didn't want to be caught on camera".

The panel determined that, on the balance of probabilities, it is more likely than not that this incident did occur as alleged, and that Mr Schuyler did say 'same time next week love?' or words to that effect whilst pretending to sort out his trousers and belt as he and Student Nurse 1 were leaving a smoking area. The panel therefore find this charge proved.

Charge 1e

1. Between 6 May and 6 June 2019:

- e) Showed a nude photo of yourself to Student Nurse 1 and then said 'at least you didn't see my dick' or 'you're alright my dick was covered' or words to that effect;

This charge is found NOT proved.

In reaching this decision, the panel took into account the initial statement of Student Nurse

1. Within her statement she states:

“On one of these night shifts when it was quiet, [Mr Schuyler] was showing me photos on his phone [...] He then scrolled back onto the photo gallery and a nude photo of him in the mirror showed on the screen. I’m not sure whether this was accidental, but he put across to me that it was. He then said something along the lines of “at least you didn’t see my dick” or “you’re alright my dick was covered”

The panel took into account the summary notes of the Disciplinary Investigation Meeting with Mr Schuyler dated 4 September 2019. Mr Schuyler was asked by the interviewer

“[Student Nurse 1] alleges that you showed her a nude photograph of yourself. Is this true and why did you do this?”

Mr Schuyler responded:

“The picture was there on my phone, I was not completely nude, and it was embarrassing. The picture was for my girlfriend and it was just there amongst my other photos. I was trying to show pictures of where I went on holiday. It was personal and I didn’t want anyone to see it. I was embarrassed. I was showing my bike and camping it wasn’t intentional It was accidental.”

The panel considered the wording of the charge. The panel understood the word “showed” as a deliberate action to allow or cause something to be visible. It noted that Student Nurse 1’s evidence is ambiguous as to whether the photo being made visible was a deliberate action by Mr Schuyler or not. Further it noted that Mr Schuyler has denied that the photo was made visible to Student Nurse 1 deliberately. Based on the information before it, the panel could not conclude that the evidence before it is sufficient to ascertain that Mr Schuyler deliberately allowed the photo to be made visible. The panel therefore found this charge not proved.

Charge 1f

1. Between 6 May and 6 June 2019:

- f) Hit Student Nurse 1’s bottom with an iPad and said ‘that wasn’t my hand by the way’ or words to that effect;

This charge is found proved.

In reaching this decision, the panel took into account the initial statement from Student Nurse 1 in which she stated: “On the way into the clinic [Mr Schuyler] hit my bum with an iPad and said, *“that wasn’t my hand by the way”*”.

Further, the panel had regard to the summary notes of the Disciplinary Investigation Meeting with Mr Schuyler dated 4 September 2019 in which he stated:

“I can’t recall the iPad, but it may be something that I would do. They are throw away comments and throw away actions.”

The panel noted that Mr Schuyler stated that he couldn’t recall the incident but suggested that it may have happened. The panel therefore concluded that, on the basis of the information before it, it is more likely than not that Mr Schuyler did hit Student Nurse 1’s bottom with an iPad and said ‘that wasn’t my hand by the way’ or words to that effect. The panel therefore finds this charge proved.

Charge 1g

1. Between 6 May and 6 June 2019:

- g) Offered Student Nurse 1 a ride on your motorbike stating that there are 'rewards for your hard work' or words to that effect;

This charge is found proved.

The panel had regard to the initial statement from Student Nurse 1 in which she stated:

“On one of the day shifts before working nights with [Mr Schuyler], we had talked about his motorbike and I mentioned how I’d love to get one and that I’ve never been on one. Following this on one of the night shifts we were outside, [Mr Schuyler] asked me if I had a waterproof coat, boots and jeans. When I said yes, he said something along the lines of “what we will do is... on a nice day we can go out on the bike” [...] he said id[sic] earned it for working hard and told me that when I work hard there will be rewards.”

However, the panel gave consideration to the summary notes of the Disciplinary Investigation Meeting with Mr Schuyler dated 4 September 2019. During the meeting Mr Schuyler was asked *“Did you ever recall saying to [Student Nurse 1], “if you work hard there will be rewards” in the context of taking her out on your motorbike?”*. To which he had responded:

“Absolutely not and not in the context of getting rewards from the job. She asked me if I could take her out on my bike, but the two were not related. That statement is rubbish. I am angry at that one and I am annoyed. Under no circumstance would I attempt to illicit any gain, sexual, financial, physical or spiritual from any employee or student, patient, nor absolute anyone whom I came into contact with in my employment with LCFT”

Mr Schuyler denies this incident having occurred as alleged. The panel considered that Student Nurse 1's evidence provides a clear and detailed explanation of what occurred. The panel found that Student Nurse 1's account was a transparent explanation and is consistent with the pattern of behaviours exhibited by Mr Schuyler. The panel therefore determined that, on the balance of probabilities, it is more likely than not that Mr Schuyler did offer Student Nurse 1 a ride on his motorbike and did state that there would be 'rewards for your hard work' or words to that effect. The panel therefore finds this charge proved.

Charge 1h

1. Between 6 May and 6 June 2019:

- h) Suggested that if Student Nurse 1 had his mobile number it would make reporting absence easier;

This charge is found proved.

In reaching this decision, the panel took into account the initial statement of Student Nurse 1 in which she stated:

"[Mr Schuyler] and I were on morning medications. I had been off sick on the Monday just gone and had rang the office to make them aware. While in the clinic [Mr Schuyler] said that if I had his mobile, I could just text him to let me know if I'm unable to come in for whatever reason". He said, "because you rang in you cant have the day"."

The panel concluded that on the basis of this evidence, it is more likely than not, that Mr Schuyler did suggest that if Student Nurse 1 had his mobile number it would make reporting absence easier. The panel therefore finds this charge proved.

Charge 1i

1. Between 6 May and 6 June 2019:
 - i) Told Student Nurse 1 that she was beautiful and an attractive woman;

This charge is found proved.

In reaching this decision, the panel took into account the initial statement of Student Nurse 1 in which she stated:

“At the beginning of the medication round he told me that I looked stunning today and that I’m beautiful. [...] I had left the clinic to go and get or do something, when I returned I said that I only put makeup on because I’d had no sleep and felt awful. He then told me I’m beautiful and that I’m an attractive woman.”

Student Nurse 1 has provided a clear and detailed explanation of what had occurred and what was said by Mr Schuyler. The panel did not have regard to any account provided by Mr Schuyler in relation to this allegation. The panel found that based on the evidence before it, it is more likely than not, that this incident did occur as alleged. The panel therefore finds this charge proved.

Charge 1j

1. Between 6 May and 6 June 2019:
 - j) Asked Student Nurse 1 if you could ‘rub my leg against you’ or words to that effect;

This charge is found proved.

The panel noted the initial statement of Student Nurse 1 in which she stated:

“While I was signing off medications on the system in the clinic, [Mr Schuyler] stood close to me and said, “can I rub my leg against you? In a joking sort of way”

The panel had regard to the summary notes of the Disciplinary Investigation Meeting with Mr Schuyler dated 4 September 2019 in which he stated:

“I have no recollection of asking to rub my leg up and down her and I would say that and I was being a dick and it shouldn’t have been said and I regret that my banter wasn’t funny. When I sit and hear it I am appalled.”

Student Nurse 1 clearly sets out what was said and Mr Schuyler stated he has no recollection of the incident.

The panel determined that, it is more likely than not that Mr Schuyler did ask Student Nurse 1 to rub his leg against her or words to that effect. The panel therefore finds this charge proved.

Charge 1k

1. Between 6 May and 6 June 2019:

k) Told Student Nurse 1 ‘I am falling in love with you in a work way’ or words to that effect;

This charge is found proved.

In reaching this decision, the panel had regard to Student Nurse 1’s initial statement in which she states:

“At the end of the medication round he praised me on how well I’m doing with the medications and commented on how far id come. Said that looking back at the start he thought I would be a “jabbering wreck” and that he thought hed[sic] need to look after me. but he told me how much I’ve overcome things and how proud he is of me. He then said “I’m falling in love with you in a work way... in a work way”. [Mr

Schuyler] praises me constantly when in the clinic- mainly in relation to how well I'm doing with the work"

The panel found Student Nurse 1's account to be a clear and detailed explanation of what had occurred.

Based on the evidence before it, the panel determined that, it is more likely than not, that Mr Schuyler did tell Student Nurse 1 'I am falling in love with you in a work way' or words to that effect.

Charge 11

1. Between 6 May and 6 June 2019:

- l) Leaned over and said to student Nurse 1 'Hello, do you come here often?' or words to that effect;

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse 1's initial statement in which she states:

"At some point during the day we were in the office. Other staff were present, and [Mr Schuyler] was sat at the spare desk. My note pad was in front of him and I leaned to get it. When I did this he quietly said "ooo Student Nurse 1". I just ignored this.

At one point he leaned over to me in the office and said "Hello, do you come here often?" in a flirty/sexualised way."

Based on the evidence before it, the panel determined that, it is more likely than not, that Mr Schuyler did lean over and say to student Nurse 1 'Hello, do you come here often?' or words to that effect. The panel therefore finds this charge proved.

Charges 1m, 1n and 1o

1. Between 6 May and 6 June 2019:
 - m) Said to Student Nurse 1, 'I had a look at your boobs then' or words to that effect;
 - n) Said to Student Nurse 1 when referring to another female present 'I'd do it to her an all' or words to that effect;
 - o) Said to Student Nurse 1 'that's what boobs are for' or words to that effect;

These charges are found proved.

The panel had regard to the initial statement by Student Nurse 1 in which she stated:

"Towards the end of the shift there was just me, [Mr Schuyler] and [Person 1] in the office. I had leant to pick something up and [Mr Schuyler] said something like "I had a look at your boobs then". As it wasn't straight after id leaned over, I wasn't sure if he was referring to me or [Person 1]. He said he meant me, then said "I'd do it to her n all" meaning he would also comment on [Person 1]'s boobs. He then said something like "that's what women's boobs are for" meaning they're for men to look at"

The panel had regard to the summary notes of the Disciplinary Investigation Meeting with Mr Schuyler dated 4 September 2019. Mr Schuyler was asked by the interviewer:

*"[Student Nurse 1] also recalls you commenting on her breasts on 5th June saying, "I had a look at your boobs then". This was in front of [Person 1] and implying that that is what women's boobs are for?
Do you recall saying this to her what did you mean?"*

Mr Schuyler's response to this stated:

"Yes the content is correct, but not the context. I accept whatever consequences which arise from this, but it wasn't meant in a derogatory way. It was in no way meant for any action at all to take place[sic]."

The panel determined that, based on the evidence before it, the incidents set out in charges 1m, 1n and 1o did occur as alleged. It therefore finds these charges proved.

Charge 1p

1. Between 6 May and 6 June 2019:

p) On one or more occasions stroked Student Nurse 1's arm.

This charge is found proved.

In reaching this decision, the panel took into account the initial statement of Student Nurse

1. She stated:

"Morning medication round. Only subtle things happened with [Mr Schuyler]. For example he touches my arm often. Was a lot of discrete touching of my arms during conversation. At the end of the medication round [Mr Schuyler] verbalized how impressed with my progress again. He then held the top of my arms/shoulders and turned me towards the clock to show me how soon id got the meds done."

The panel noted Student Nurse 1's makes reference to Mr Schuyler 'touching' her arm and it noted that the wording of the charge is "stroked". The panel determined that the account provided by Student Nurse 1 and her use of the word 'touch' does not alter the essence of what is alleged and is fundamentally the same.

Based on the evidence before it, the panel concluded that, it is more likely than not that Mr Schuyler did on one or more occasions stroked Student Nurse 1's arm. The panel therefore finds this charge proved.

Charge 2

2. Your conduct at Charge 1 above was sexually motivated in that you intended to pursue a sexual relationship with Student Nurse 1.

This charge is found NOT proved.

In reaching this decision, the panel considered the account provided by Student Nurse 1 in her initial statement relating to the incidents set out in charges 1a, 1b, 1d, 1f, 1g, 1h, 1i, 1j, 1k, 1l, 1m, 1n, 1o and 1p. It also took into account Mr Schuyler's responses to the incidents.

In relation to some of the charges, Student Nurse 1 said that initially she thought his comments were made jokingly. However, she then stated:

“Around five weeks in I began to think that the tone of the conversations were more than banter.”

Further, Mr Schuyler described some of his comments as “banter”.

The panel also heard evidence from Witness 1 who stated that she did not infer from Mr Schuyler's comments towards Student Nurse 1 that they were motivated by an intention to pursue a sexual relationship.

The panel were not satisfied that evidence before it was sufficient to prove that Mr Schuyler's actions were motivated by an intention to pursue a sexual relationship.

Charges 3a, 3b and 3h

3. Between 6 May and 6 June 2019:
 - a) Said to an unknown colleague 'can I put my balls in your mouth' or words to that effect;
 - b) Said to Student Nurse 2 'you just do something funny to me' or words to that effect;
[...]
 - h) Said to Student Nurse 2 'can I put my balls in your mouth' or words to that effect.

These charges are found proved.

In reaching this decision, the panel took into account the initial and contemporaneous statement of Student Nurse 2 in which she stated:

*"I had heard the person involved saying inappropriate comments to other members of staff and i think he said it to me too,
"can i put my balls in your mouth"
He also said to me, "you just do something funny to me.""*

Student Nurse 2 later goes onto state:

"And again, to the best of my knowledge, i believe he said -again in a joke like manner-, "question... so can i put my balls in your mouth.""

The panel had regard to the summary notes of the Disciplinary Investigation Meeting with Mr Schuyler dated 4 September 2019. It was put to Mr Schuyler by the interviewer that *"It is alleged that you said to SN2, "Can I put my balls in your mouth"?"*.

Mr Schuyler responded:

"It is an appalling thing, I don't recollect saying that but I wouldn't put it past

me. If I have said that then fair enough.”

Based on the evidence before it, the panel was satisfied that, on the balance of probabilities, it is more likely than not that Mr Schuyler did say to both an unknown colleague and to Student Nurse 2 ‘can I put my balls in your mouth’ or words to that effect. Further, it concluded that based on the evidence before it, Mr Schuyler did say to Student Nurse 2 ‘you just do something funny to me’ or words to that effect. The panel therefore finds these charges proved.

Charge 3c

3. Between 6 May and 6 June 2019:
 - c) Asked Student Nurse 2 for her phone number;

This charge is found NOT proved.

In reaching this decision, the panel took into account the initial statement of Student Nurse 2 in which she stated:

“On Wednesday 22nd May the person involved and I exchanged phone numbers. This was because he had asked me if i wanted to meet for a coffee outside of work. I told him that that sounded great, and that i would message him when i got home to discuss whether i could make it or not. Though when i got home i didn't feel comfortable with the idea of seeing him outside of work, just him and i. So i made up a excuse as to why i couldn't go, but asked if we could rearrange again to keep the rapport.”

Student Nurse 2’s evidence explains that the phone numbers were ‘exchanged’ but does not suggest or confirm that Mr Schuyler had ‘asked’ for her phone number.

The panel had regard to the Witness Meeting Summary Notes dated 5 July 2019. During the meeting Student Nurse 2 stated:

“He had my telephone number I don’t know how that came about now whether he gave me his or I gave him mine.”

The panel concluded that there is not sufficient evidence before it to confirm or verify that Mr Schuyler ‘asked’ for Student Nurse 2’s phone number. It therefore finds this charge not proved.

Charge 3d

3. Between 6 May and 6 June 2019:

d) Texted Student Nurse 2 asking ‘what colour knickers are you wearing’ or words to that effect;

This charge is found proved.

The panel had regard to the initial statement of Student Nurse 2 in which she stated:

*“Later on on Wednesday the 22nd May, the person involved sent me a message asking what colour knickers i was wearing which didn't fit in with the conversation at all. Again, as with all of the comments, this was presented in a joke way, but i did feel very uncomfortable. I replied to this message with,
“Hahaa, disgusting *laughing emoji* x””*

In addition, in Witness Meeting Summary Notes dated 5 July 2019 it is documented that Student Nurse 2 stated:

“It was on 22nd May when he text me, he asked me what colour knickers I had on.”

Further the panel had regard to the screenshots of the text messages exchanged whereby Mr Schuyler states:

“U welcome, I will leave you be now, to relax, what colour knickers you wearing lol xx”

The panel determined that there is sufficient evidence before it to conclude that Mr Schuyler did text Student Nurse 2 asking ‘what colour knickers are you wearing’ or words to that effect. The panel therefore finds this charge proved.

Charge 3e

3. Between 6 May and 6 June 2019:

e) Texted Student Nurse 2 ‘Seen as u were late, what colour underwear you got on xx’;

This charge is found proved.

The panel had regard to the initial statement of Student Nurse 2 in which she stated:

*“The day after, I woke up late as my alarm didn't go off, and so I would be a little bit late to placement. I messaged the person involved and asked if he could tell the rest of the team that i'd be late as i thought this was a quicker option. Later on the person involved sent me a message saying “Seen as u were late, What colour underwear you got on xx *emoji.*””*

The panel had regard to the screenshots of the messages exchanged between Mr Schuyler and Student Nurse 2 in which it shows Mr Schuyler stating “Seen as u were late, what colour underwear you got on xx”.

The panel determined that there is sufficient evidence before it to conclude that Mr Schuyler did text Student Nurse 2 asking 'Seen as u were late, what colour underwear you got on xx'. The panel therefore finds this charge proved.

Charges 3f and 3g

3. Between 6 May and 6 June 2019:

- f) Said to Student Nurse 2 'what's this about you being racist towards bald, tattooed, biker men?' or words to that effect;
- g) Texted Student Nurse 2 'so tell me, have you ever thought about dating an older biker type skinhead bloke';

These charges are found proved.

The panel had regard to the initial statement of Student Nurse 2 in which she stated:

"Also on the 1st June he said on whatsapp "So tell me, have you ever thought about dating an older biker type skinhead bloke xx" (Incase the person reading this hasn't met the person involved, this appears to be a description of himself.) I replied with a series of messages,

"Whattttt

I can't say I have

I dont think my boyfriend would be very pleased!

*Or probably my dad for that matter *laughing emoji**

You know you said to tell you if you've gone too far, that was probably it haha x"

Student Nurse 2's account of this was consistent with the screenshots of the text messages exchanged between Mr Schuyler and Student Nurse 2.

Student Nurse 2 also states within her initial statement:

“The next time i saw him in placement, he asked me about this situation. He said something along the lines of, “So whats this about you being racist towards bald, tattooed biker men?!”

To the best of my knowledge i responded with “I didn't know that was a race, I just don't think my boyfriend or dad would be happy with that”

He said in a jokey way, “I wasn't planning on telling them.”

Then he just said “No i'm joking.”

The panel found, based on the evidence before it, that Mr Schuyler did text Student Nurse 2 ‘so tell me, have you ever thought about dating an older biker type skinhead bloke’ and that he did then say to Student Nurse 2 ‘what’s this about you being racist towards bald, tattooed, biker men?’ or words to that effect. The panel therefore finds these charges proved.

Charge 4

4. Your conduct at Charge 3 above was sexually motivated in that you intended to pursue a sexual relationship with Student Nurse 2.

This charge is found proved.

The panel considered Mr Schuyler’s conduct as found proved as set out in charges 3a, 3b, 3d, 3e, 3f, 3g and 3h.

The charges found proved demonstrate sexualised behaviour within the work environment and there was also an exchange of phone numbers which led to communications taking place outside of the work environment. Mr Schuyler made comments relating to Student Nurse 2’s underwear which were sexual in nature and also made comments about whether Student Nurse 2 had thought about or considered dating him.

The panel found that there appears to be a clear intention of pursuing a sexual relationship with Student Nurse 2 and concluded that his actions as set out in the charges found proved were motivated by this intent. It therefore finds this charge proved.

Charge 5a

5. Between May and September 2019:

a) Said to Doctor 1 she was an 'attractive woman' or words to that effect;.

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Doctor 1 dated 4 November 2019. She stated:

“on 24 May 2019 [...] [Mr Schuyler] arrived in the office, sat down on the sofa next to the table I was working on and complimented the dress I was wearing and said he thought I looked attractive.”

The panel had regard to the summary notes of the Disciplinary Investigation Meeting with Mr Schuyler dated 11 December 2019. He was asked by the interviewer:

“With regards to the events of 24th May, can you recall telling D1 that you found her attractive [...]?”

Mr Schuyler responded:

“Yes I can recall this, I do not deny this happened.”

The panel was satisfied that on the basis of this evidence, it could determine that Mr Schuyler said to Doctor 1 that she was an attractive woman or words to that effect.

Charges 5b, 5c and 5d

5. Between May and September 2019:

- b) Asked Doctor 1 to have 'an affair with you' and that 'your husband wouldn't need to know' or words to that effect;
- c) Asked Doctor 1 if she 'would like to have your number' or words to that effect;
- d) Said to Doctor 1 'I know you really want it' or words to that effect;

These charges are found proved.

In reaching this decision, the panel took into account the written statement of Doctor 1 dated 4 November 2019 in which she stated:

“Following this he asked me to have an affair with him. I told him I wasn’t interested and reminded him that I was married. He told me my husband wouldn’t need to know about this and asked if I’d like to have his number, I repeated that I wasn’t interested to which he continued to insist that I should take his number and said something to the lines of “I know you want it really”. This continued with some time with me repeating I wasn’t interested and asking him to stop and with him carrying on trying quite forcefully to persuade me to take his number and to have an affair with him.”

The panel had regard to the summary notes of the Disciplinary Investigation Meeting with Mr Schuyler dated 11 December 2019 in which he stated:

“Yes I can recall this, I do not deny this happened. We had been discussing life and always wanting more, not being satisfied with things when we got them, the discussion led to talking about affairs, D1 admitted to me that she had previously had affairs in her current marriage and that she had been close to having an affair with another male junior doctor recently, we joked about this, asked why this kind of thing happened.”

The panel concluded that Mr Schuyler did ask Doctor 1 to have 'an affair' and that her husband 'wouldn't need to know' or words to that effect. Further the panel was satisfied that Mr Schuyler did ask Doctor 1 if she 'would like to have your number' or words to that effect and 'I know you really want it' or words to that effect. The panel therefore finds these charges proved.

Charge 5e

5. Between May and September 2019:

- e) Told Doctor 1 that 'you wanted to put her on the back of your motorbike and have sex with her' or words to that effect;

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Doctor 1 dated 4 November 2019 in which she stated:

"He then left to go back to the ward only to return shortly. This time he stayed in the doorway of the office and told me explicitly how he would want to put me on the back of his motorbike to have sex with him."

The panel had regard to the summary notes of the Disciplinary Investigation Meeting with Mr Schuyler dated 11 December 2019. He was asked by the interviewer:

"Did you talk to her about having sex with her on your motorbike?"

Mr Schuyler responded:

"I don't recollect it, it was possibility and I will take responsibility for that. This comment has come up before in this investigation, it has never sat right in my mind, I would say to anyone who showed interest in going on my bike with me, male or female, that we would ride on the bike, meaning sat on it travelling, not in

a sexual manner.”

The panel found that on the basis of the evidence before it, that it could be satisfied that this incident did occur as alleged. Doctor 1 provides an explicit description of what was said by Mr Schuyler and therefore the panel determined that Mr Schuyler did tell Doctor 1 that he ‘wanted to put her on the back of your motorbike and have sex with her’ or words to that effect. The panel therefore finds this charge proved.

Charge 5f

5. Between May and September 2019:

f) Texted Doctor 1 ‘ooh yeah don’t forget to rub my balls better’.

This charge is found proved.

In reaching this decision, the panel took into account the screenshots of the messages exchanged between Mr Schuyler and Doctor 1. He stated:

“Always sending you good vibes lovely, my balls ache, can u just rub them for me [...] ooh yeah don’t forget to rub my balls better.”

The panel determined that, on the basis of the evidence before it, Mr Schuyler did text Doctor 1 ‘ooh yeah don’t forget to rub my balls better’. It therefore finds this charge proved.

Charge 6

6. Your conduct at Charge 5 above was sexually motivated in that you intended to pursue a sexual relationship with Doctor 1.

This charge is found proved.

The panel considered the intentions behind Mr Schuyler's actions as set out in charges 5a to 5f. He made reference to finding her "attractive", "having an affair" and that he wanted "to put her on the back of your motorbike and have sex with her". The panel could find no reason for these comments other than the pursuit of a sexual relationship. It therefore finds this charge proved.

Fitness to practise

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

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

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

Submissions on misconduct and impairment

Mr Santos-Costa provided the panel with written submissions in respect of misconduct and impairment. He stated:

“1. The Panel has found the following Charges proved: 1a, 1b, 1d, 1f, 1g, 1h, 1i, 1j, 1k, 1l, 1m, 1n, 1o, 1p, 3a, 3b, 3d, 3e, 3f, 3g, 3h, 4, 5a, 5b, 5c, 5d, 5e, 5f and 6.

2. Charges 1c, 1e, 2, and 3c are not proved.

3. The NMC submit that SS’s actions in relation to the Charges found proved amount to misconduct.

4. Further, it is submitted that SS’s fitness to practice is currently impaired by reason of that misconduct.

5. Page references in this document are references to the exhibit bundle unless stated otherwise.

[...]

6. Misconduct is defined in the case of Roylance v General Medical Council [1999] 3 W.L.R. 541. The relevant passage is at paragraph 331 B-E:

“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word "professional" which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the word "serious." It is not any professional misconduct which will qualify. The professional misconduct must be serious.”

[...]

7. As per *Roylance*, misconduct must be sufficiently serious to warrant a finding of impairment. The term seriousness is defined in the case of *Remedy UK Ltd v GMC* [2010] EWHC 1245 (Admin) (*Remedy*). In that case, two categories of seriousness are outlined at paragraph 37(1):

- i. Sufficiently serious misconduct that can be properly described as misconduct going to fitness to practise.
- ii. Misconduct that is of a morally culpable or otherwise disgraceful kind which may, and often will, occur out with the course of professional practice itself, but which brings disgrace upon the professional and thereby prejudices the reputation of the profession.

8. There is no single test for defining what constitutes misconduct that goes to fitness to practise. Having said that, it need not arise in the context of a doctor exercising their clinical practice (*Remedy* at paragraph 37(2)).

9. NMC Guidance on seriousness dictates that, “We may also need to take action in cases where the concerns were not directly related to the care the nurse, midwife or nursing associate provided to people, but which call into question the basics of their professionalism”.

10. Further guidance on seriousness is provided in the case of *Nandi v GMC* [2004] EWHC 2317 (Admin) (*Nandi*). It was held that, “the adjective “serious” must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners”, at paragraph 31 (*Collins J*).”

11. If misconduct is established, the next step is to consider whether that misconduct is sufficiently serious to establish that the registrant’s fitness to practise is impaired by reason of that misconduct. Impairment does not have a statutory definition; however, helpful guidance is supplied in the case of *CHRE v NMC & Grant* [2011] EWHC 927 (Admin) (*Grant*) in the form of a four-stage test at [76] (*Cox J*):

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

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

12. Findings of impairment can be made on public protection and/or public interest grounds. These factors are incorporated into the test in Grant above. Factors that will be relevant to this determination may be:

- a. Whether the misconduct is easily remediable;*
- b. That it has been remedied; and*
- c. That it is highly unlikely to be repeated.*

(Cohen v General Medical Council [2008] EWHC 581 (Admin)).

13. Of further relevance to this assessment will be the attitude of the practitioner to the events which give rise to the specific allegations (Nicholas-Pillai v General Medical Council [2009] EWHC 1048 (Admin), 19 (Mitting J)).

[...]

14. The NMC advance two submissions, namely:

- i. The behaviour described in the charges found proved amounts to serious misconduct; and*
- ii. SS's fitness to practice is impaired by reason of this misconduct.*

i. The conduct described in the following charges found proved by the Panel amounts to serious misconduct.

15. The behaviour and conduct found proved by the Panel is of a similar nature, despite there being three separate complainants. Accordingly, it is submitted that the Registrant's conduct as a whole amounts to serious misconduct.

16. The regulatory concerns are as follows:

(1) Intimidating and/or harassing behaviour in that the Registrant:

(a) Made numerous inappropriate comments towards colleagues that were lewd and sexual

(b) Made unwanted advances towards colleagues making them feel uncomfortable

(c) Facilitated, or attempted to facilitate, the exchange of personal mobile numbers with SN1 and SN2

(d) Made physical contact with colleagues by:

i. Hitting a staff member on the bottom with an iPad

ii. Unwanted touching towards colleagues

(2) Some or all of the actions in Regulatory Concern 1 above were sexually motivated in that the Registrant intended to pursue a sexual relationship with SN1, SN2 and D1.

17. The Registrant has demonstrated a pattern of what was described by [Witness 1] as over friendly behaviour towards vulnerable individuals, supported by vulgar comments and vulgar propositions. [Witness 1] described the Registrant's behaviour as coercive.

Student Nurse 1

18. The Panel has not found that the Registrant's conduct towards SN1 was motivated by an intention to form a sexual relationship. Nevertheless, it is submitted

that the Registrant's conduct towards SN1 still constitutes serious misconduct for the following reasons:

- a. The Registrant was the formal mentor of SN1. He was in a position of authority, trust, and power.*
- b. The sexualised and inappropriate comments are vulgar and offensive. SN1 described the Registrant's view of women as "disgusting" (page 154).*
- c. The Registrant failed to maintain proper professional boundaries between himself and SN1 and blurred the boundary between the professional and the personal.*
- d. The Registrant regularly invaded SN1's personal space and would regularly touch her arm discretely.*
- e. The Registrant invited SN1 to ride on his motorbike as a reward for her hard work.*

19. The Registrant's behaviour caused SN1 to feel as if the Registrant "fancied" her (page 151), and his behaviour made her feel "really uncomfortable" after she realised "what was going on" (page 153).

20. The Registrant's conduct towards SN1 has, it is submitted, breached Core Duty 20 of the NMC's Code of Conduct, to uphold the reputation of your profession at all times, in the following respects:

- a. 20.2 (To act with honesty and integrity at all times, treating people fairly without discrimination, bullying or harassment) – The Registrant's behaviour towards SN1 amounted to sexual harassment. He regularly commented on her appearance, and would make lewd remarks and gestures, ostensibly in jest, in respect of performing oral sex upon him. This conduct was unwanted and caused offence and distress to SN1.*
- b. 20.3 (Be aware of how your behaviour can affect and influence the behaviour of others) – The Registrant's behaviour caused significant distress to SN1.*

c. 20.5 (Treat people in a way that does not take advantage of their vulnerability or cause them upset or distress) – the Registrant’s behaviour has caused SN1 upset and distress.

d. 20.6 (Keeping objective and clear boundaries at all times with people in your care) – The Registrant was SN1’s mentor and therefore she was in his care. He continually blurred the boundaries between the professional and personal, which caused SN1 distress.

21. It is submitted that as a result of the above, this behaviour, even in the absence of an intention to form a sexual relationship, would be considered deplorable by fellow practitioners and represents serious misconduct (Nandi applied).

22. As a result, it is submitted that the conduct found proved under Charge 1 amounts to serious misconduct.

Student Nurse 2

23. The position in respect of SN2 and D1 is slightly different as the Panel has found that The Registrant’s conduct was motivated by an intention to form a sexual relationship with both individuals.

24. The Registrant’s conduct towards SN2 involved inappropriate and sexualised comments, including “Can I put my balls in your mouth” and “you do something funny to me” (page 143). Additionally, the Registrant exchanged mobile numbers with SN2 and tried to arrange to meet her outside of work.

25. The Registrant texted SN2 on 22nd May 2019 asking what colour knickers she was wearing out of the blue (page 175). This question was asked repeatedly, and the following day when SN2 was late for placement, the Registrant texted her, “seen as u were late, what colour underwear you got on” (page 176). SN2 stated in interview that she thought it was “disgusting” and that she felt uncomfortable (page 147). These messages are wholly inappropriate, show a complete lack of professionalism, and would, it is submitted, constitute serious misconduct on their own.

26. *The Registrant's conduct towards SN2 is made more serious as a result of his desire to form a sexual relationship with SN2. The Registrant texted SN2, "So tell me, have you ever thought about dating an older biker type skinhead bloke xx" before sending a picture of himself (page 164). SN2 stated in interview that the next day the Registrant said that he didn't intend to tell her boyfriend or her father.*

27. *Fundamentally, it is submitted that the Registrant's conduct towards SN2 constitutes serious misconduct because he abused his position of trust in order to pursue a sexual relationship with SN2. This behaviour caused SN2 significant distress as a result. That submission is made for the following reasons:*

a. He created a working environment that did not have appropriate professional

boundaries through use of lewd, sexualised, and inappropriate comments.

b. He exchanged mobile numbers with SN2 and attempted to manufacture a relationship outside of the workplace. This abuse of position is particularly typified by his comment to SN2 that it was "good to see work colleagues outside of work and talk about work or life stuff" (page 144-146). It is entirely inappropriate for a mentor, informal or otherwise, to exchange personal numbers with a student, and this is exacerbated by his desire to pursue a sexual relationship with SN2.

c. He repeatedly asked SN2 what colour underwear she had on, and he even used SN2's tardiness to placement as an excuse to ask a further time: "seen as u were late, what colour underwear you got on" (page 176). This is utterly inappropriate and, when viewed in the context of his motivation, constitutes serious misconduct.

d. Despite SN2 communicating that the Registrant had gone too far by indirectly asking if she would date him and that she tried to mention her boyfriend and father to deter him, the Registrant persisted the very next day when he said that he wasn't planning on telling her boyfriend or father about it. It is submitted that this amounts to sexual harassment.

28. It is submitted that the Registrant has failed to uphold the reputation of the profession and has breached Core Duty 20 of the NMC Code of Conduct for the reasons outlined above. He abused his position to pursue a sexual relationship with a student nurse. His conduct amounted to the sexual harassment of SN2.

29. Overall, it is submitted that the Registrant's conduct towards SN2 would be considered deplorable by fellow practitioners and represents serious misconduct (Nandi applied).

Doctor 1

30. The conduct in respect of D1 largely occurred on one day, 24th May 2019. In that day, the Registrant told D1 that she was attractive and asked her to have an affair with him (page 200). The Registrant accepted that he had a genuine attraction to D1, and that he did ask her to have an affair with him.

31. The serious misconduct, in my submission, occurred as a result of the persistence of the Registrant. D1 reflected in her witness statement that she told the Registrant that she wasn't interested in an affair. Despite this, the Registrant insisted that she take his mobile number, saying "I know you want it really" (page 200). D1 stated that the Registrant continued to persist, despite her telling him she wasn't interested before returning later and telling her that he would like to put her on the back of his motorbike and have sex with her (page 200). D1 stated that this made her feel very uncomfortable.

32. [PRIVATE].

33. It is right to say the Registrant later apologised and his relationship with D1 was subsequently good, but his persistent, unwanted behaviour amounted to the sexual harassment of D1, which caused her distress. Accordingly, it is submitted that the Registrant's conduct breached Core Duty 20, in that he has failed to uphold the reputation of the profession. It is further submitted that his conduct towards D1 would be considered deplorable by fellow practitioners and therefore represents serious misconduct.

ii. The Registrant's fitness to practice is impaired by reason of this misconduct.

34. The NMC submit that the Registrant's fitness to practise is impaired as a result of this misconduct on both a public protection and a public interest basis.

Public Protection

35. NMC guidance dictates that if a registrant has failed to uphold the reputation of the profession in failing to treat people fairly without harassment, in a way that does not take advantage of their vulnerability or cause them upset or distress, this is considered a serious concern which could result in harm to patients if not put right.

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?

36. It is right to say that there are no concerns regarding the Registrant's clinical practice. However, he has engaged in a pattern of inappropriate behaviour directed towards vulnerable individuals, and he has abused his position of trust and authority in an effort to pursue a sexual relationship with SN2 and D1.

37. The Registrant's behaviour has undoubtedly had a detrimental impact on all three complainants. They all report feeling uncomfortable as a result of the Registrant's conduct, and the Panel has heard from [Witness 1] that one of the student nurses needed extra support following the incident.

38. It is submitted that there are genuine fears that his behaviour could not only put members of staff at risk in the future, but also patients who may be vulnerable. A significant concern is that the Registrant's behaviour appears to be directed at individuals more vulnerable than he, both professionally and personally.

39. While the Registrant has taken responsibility for his actions, he has demonstrated a lack of insight into the motivation for his inappropriate sexual behaviour directed towards SN2. Further, he has unfortunately failed to demonstrate, it is submitted, that he has remedied his behaviour. It is therefore likely to be repeated in the future. Accordingly, it is submitted that his behaviour could, in the future, put patients and members of staff at unwarranted risk of harm.

Has in the past brought and/or is liable in the future to bring the medical profession into disrepute?

40. It is submitted that for all the reasons already outlined, the Registrant's behaviour has in the past brought the nursing profession into disrepute. It is submitted that this behaviour is not isolated, and the Registrant has demonstrated a pattern of similar behaviour towards individuals that share similar characteristics and vulnerabilities. Accordingly, it is submitted that the Registrant is liable in the future to bring the medical profession into disrepute.

41. The Registrant has consistently denied that he intended to pursue a sexual relationship with SN2, which suggests a lack of insight.

42. However, in his Statement of Case (page 224-225), he has indicated that he is remorseful and that he agreed with the findings of [Witness 1]' final report.

43. [PRIVATE].

44. [PRIVATE].

45. Accordingly, the NMC is obliged to submit that no evidence has been provided by the Registrant to demonstrate that his behaviour has been remedied, and therefore it is likely to be repeated.

46. As a result of the above, it is submitted that a finding of impairment is necessary to protect the public.

Public Interest

47. It is further submitted that a finding of impairment is in the public interest.

48. The NMC submit that the Registrant's actions have breached the following Core Duty encapsulated in the NMC's Code of Conduct:

a. Core Duty 20

Uphold the reputation of your profession at all times.

20.1 keep to an 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 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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and their carers

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

49. The nursing profession is based upon the care of others, not just patients but the public in general. The public expect a certain degree of professionalism from the nursing profession. It is submitted that the Registrant's conduct has shown a complete lack of professionalism.

50. The Registrant has failed to be aware of how his behaviour might impact others, and he has failed to keep clear professional boundaries at all times with those in his care. He attempted to cultivate a relationship with SN1 and SN2 outside of work, and the Panel has found that in SN2's case, this was motivated by an intention to have a sexual relationship with SN2.

51. Further, it is submitted that his conduct towards SN1, SN2 and D1 amounts to sexual harassment.

52. Crucially perhaps, the Registrant was in a position of seniority compared to the three complainants in this case. In particular, he had a direct duty of care over SN1 and SN2, for who he was a formal mentor, and informal mentor, respectively. He was in a position of trust. Core Duty 20.8 is clear that one must act as a role model to students. If a member of the public was aware of the Registrant's conduct towards SN1, SN2 and D1, together with the fact that his conduct towards SN2 and D1 was motivated by an intention to form a sexual relationship with those individuals, they would be shocked and appalled.

53. Accordingly, it is submitted that the Panel can be satisfied that a finding of impairment can be justified on public protection grounds.

[...]

54. In line with the above, the NMC submit that the Panel can be satisfied that the Registrant's actions amount to serious misconduct, and as a result of that misconduct, both registrants' fitness to practise is impaired. Such a finding is necessary to protect the public and it is in the public interest."

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

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 determined that Mr Schuyler's actions did fall significantly short of the standards expected of a registered nurse, and that his actions amounted to a breach of the Code. Specifically:

"20 Uphold the reputation of your profession at all times.

20.1 keep to an 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 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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and their carers

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

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times”

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

However, the panel found that Mr Schuyler’s actions towards Student Nurse 1 involved intimidating and sexually harassing behaviour which included inappropriate comments, touching of her arm, hitting her on her bottom with an iPad and that all of this occurred in a professional environment. Student Nurse 1 was working at the Trust under placement and in her reflection on her placement experience dated 28 October 2020 in which she explains the impact Mr Schuyler’s actions had on her. She stated:

“Around five weeks in I began to think that the tone of the conversations were more than banter. I found this difficult to address with him [...] After I reported it, I had to work with him for one or two shifts and I remember thinking that I could not be around him when I reported this. This made me anxious as I was reluctant to even look at him.

[...] I found him a bit intimidated[sic] [...]

I also remember feeling paranoid at the time, thinking that people passing on motorbikes were him. It affected my sleep because I was worrying and then I was going to the placement and having to work long shifts.”

Further, the panel found that, in relation to Student Nurse 2 and Doctor 1, Mr Schuyler's actions showed inappropriate and sexualised behaviours which occurred within a professional environment with the intent of pursuing a sexual relationship. This behaviour included inappropriate comments of a sexual nature.

The panel had regard to the Trust's Disciplinary Investigation report which stated:

"Witness Impact Appraisal

The complainants have all endured degrees of distress and emotional consequence as a result of [Mr Schuyler's] behaviour and this is detailed in their personal statements. Feelings of disgust and disempowerment have been described by [Student Nurse 2]. Feelings of discomfort, anxiety, disrupted sleep and distress have been elicited in [Student Nurse 1]. [...]. [Student Nurse 1] continues to be in receipt of counselling following the impact of her experience. The Tutors verify that there are ongoing needs for both students requiring redress as a result of their experiences."

The panel found that Mr Schuyler's actions did fall seriously short of the conduct and standards expected of a nurse. The panel considered that Mr Schuyler was a senior nurse, and that Student Nurse 1 and Student Nurse 2 were junior to him and were mentees who should have been able to work comfortably with him in a professional manner and environment. The panel found that this behaviour raised fundamental questions about Mr Schuyler's professionalism. The panel concluded that Mr Schuyler's actions as set out in the charges found proved were deplorable and caused emotional harm to those involved. It determined that Mr Schuyler's actions amounted to misconduct.

Decision and reasons on impairment

The panel next considered, whether as a result of his misconduct, Mr Schuyler's fitness to practise is currently impaired.

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

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

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

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

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

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

d) [...]’

The panel found that limbs a, b, and c of the “test” are engaged.

Although, no patients were actually harmed as a result of Mr Schuyler’s misconduct, it occurred within a professional work environment and therefore there was an indirect risk to patients as a result. Also some of the incidents occurred during medication rounds which had potential to interfere with patient care if the student nurses were being made to feel uncomfortable this could interfere with their concentration levels and therefore put patients at a risk of harm. Further, the panel found that there was emotional harm caused to Student Nurse 1, Student Nurse 2 and Doctor 1 as a result of his actions.

The panel found that Mr Schuyler’s misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

In regard to insight, although Mr Schuyler demonstrated some acceptance of the inappropriateness of some of his comments and behaviour, he did not demonstrate a full understanding of the impact of his actions on Student Nurse 1, Student Nurse 2, or Doctor 1. He has not demonstrated an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. Further, Mr Schuyler has not demonstrated that he understands the importance of professional boundaries and how he would maintain professional boundaries in the workplace in the future.

The panel next considered where Mr Schuyler’s misconduct could be remedied. It had regard to the NMC’s guidance which stated:

“Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:

[...]

- *Incidents of harassment (including sexual harassment) that have taken place in a professional context”*

The panel considered the evidence before it in determining whether or not Mr Schuyler has taken steps to strengthen his practice. It noted Mr Schuyler’s email dated 18 April 2023 in which he stated:

“[PRIVATE].

I have not worked since my dismissal from my post as mental health nurse, [PRIVATE]”

[PRIVATE]. The panel concluded that Mr Schuyler has not felt able to take any steps to address the concerns. Further, the panel has not seen any evidence of relevant training undertaken by Mr Schuyler.

This was a pattern of behaviour which occurred over a significant period of time and involved numerous incidents with different colleagues. The panel therefore determined that, given the insufficient insight, Mr Schuyler has demonstrated, and his lack of steps taken to address the misconduct, there is a risk of repetition.

For all the reasons above, the panel decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public

confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required because public confidence in the profession would be undermined if a finding of impairment were not made and therefore finds Mr Schuyler's fitness to practise also to be impaired on the grounds of public interest.

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

Sanction

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

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

Submissions on sanction

Mr Santos-Costa provided the panel with written submissions in respect of sanction.

- “1. The Panel has found that SS's fitness to practise is currently impaired by reason of the misconduct found proved.*
- 2. The Panel justified a finding of impairment on public protection and public interest grounds.*
- 3. The Panel must now consider sanction.*

4. The NMC submit that the misconduct is so serious that a strike off order is the appropriate sanction in this case.

[...]

5. The following sanctions are available to the Panel:

- a. Striking-Off Order*
- b. Suspension Order*
- c. Conditions of Practice Order*
- d. Caution Order*
- e. No Further Action*

[...]

6. The NMC has published guidance on determining sanction:

a. Proportionality

The Panel must be proportionate when making decisions about sanctions. It is under a legal duty to make sure that any decisions to restrict a nurse, midwife or nursing associate's right to practise as a registered professional are justified. Being proportionate means finding a fair balance between the nurse, midwife or nursing associate's rights and the overarching objective of public protection.

Any sanction must go no further than tackling the reasons why the nurse, midwife or nursing associate is not currently fit for practise. The interests of the registrant must be somewhat weighed against the public interest in appropriately sanctioning a registrant whose fitness to practise is currently impaired, taking into account any aggravating or mitigating features.

If the sanction isn't enough to achieve public protection, the Panel should consider the next most serious sanction. When the Panel finds the sanction that is enough to achieve public protection, then it has gone far enough. The Panel must explain why the following most serious sanction is not necessary as it would be going further than is needed to achieve public protection – simply saying that it would be disproportionate isn't enough.

b. Aggravating Features

The Panel must consider whether there are any features of the case that make it more serious. Some examples of these aggravating features are:

- *Any previous regulatory or disciplinary findings*
- *Abuse of a position of trust*
- *Lack of insight into failings*
- *A pattern of misconduct over time*
- *Conduct which put patients at risk of suffering harm*

(Generally, whether or not harm actually occurred is less important than if the registrant caused a risk of harm)

c. Mitigating Features

The Panel must equally consider whether there are any features of the case which make it less serious. Some examples of mitigating features include:

- *Evidence of the nurse, midwife, or nursing associate's insight and understanding of the problem, and their attempts to address it. This may include early admission of the facts, apologies to anyone affected, any efforts to prevent similar things happening again, or any efforts to put problems right.*
- *Evidence that the nurse, midwife or nursing associate has followed the principles of good practice. This may include them showing they have kept up to date with their area of practice.*
- *Personal mitigation, such as periods of stress or illness, personal or financial hardship, level of experience at the time in question, and the level of support in the workplace.*

The Guidance states that the purpose of regulatory proceedings is to protect the public and not to punish the nurse, therefore mitigating features carry less weight than they otherwise would in the Criminal Justice System, for example (Bolton v Law Society [1994] 1 WLR 512).

d. Previous interim orders and their effect on sanctions

The purpose of interim orders is to tackle risks while a case is being investigated and prepared, and before the Panel decides whether the nurse, midwife or nursing associate is fit to practise.

The Panel should consider whether any interim order in place effects the determination of sanction. For example, it may be of relevance if the registrant has complied with any conditions of practice imposed. The Panel may also consider the length of any interim order imposed, and whether that has any bearing on the length of the sanction to be imposed.

e. Previous Fitness to Practise History

NMC guidance stipulates that sometimes the registrant's conduct may be so serious that it is fundamentally incompatible with continuing to be a registered professional.

If this is the case, the fact that the registrant does not have any fitness to practise history cannot in and of itself be persuasive in deterring the Panel from removing the registrant from the register.

For these reasons, the Panel should bear in mind that there will usually only be limited circumstances where the concept of a "previously unblemished career" will be a relevant consideration when deciding on sanction (Judge v NMC [2017] EWHC 817 (Admin)).

[...]

7. The following passages from case law may assist to the Panel in determining sanction:

8. Brennan v Health Professions Council [2011] EWHC 41 (Admin), 47 (Ouseley J): "Where the purpose of sanction is to deal with issues other than the primary one of maintaining public safety, and is instead to provide deterrence to others, to maintain confidence in the profession's reputation and standards and in its regulatory process, the reasoning is particularly important in showing that the sanction is proportionate to the misconduct and for the individual."

9. A submission by a registrant in terms of any difficulty that sanction will bestow upon the registrant in obtaining employment will not of itself constitute a legitimate challenge to any conditions on registration imposed. "It inevitable when conditions are put upon registration that there will be enhanced difficulty in the [registrant] obtaining a post, because that is in the nature of the beast, in the interests of the protection of patients" (*Daraghmeah v GMC* [2011] EWHC 41 (Admin), 88 (King J)).

[...]

10. It is submitted that the Panel should start their decision-making with the least severe sanction, and work upwards until they reach the most appropriate outcome.

11. The NMC submit that as a result of the misconduct, the only appropriate sanction in this case is one of a striking off order. That submission is founded on the following basis:

- a. SS has failed to demonstrate sufficient insight;
- b. SS's conduct caused harm to SN1, SN2 and D1;
- c. SS's conduct represented a pattern of misconduct over time;
- d. SS abused a position of trust; and
- e. SS has failed to adequately demonstrate any steps taken to address his behaviour.

12. I will deal with each available sanction in turn.

i. No Further Action

13. It is submitted that this case involves sexual misconduct and is therefore too serious to warrant taking no further action. The Registrant has engaged in a course of conduct that amounts to the sexual harassment of three junior colleagues, two student nurses and one junior doctor.

ii. Caution Order

14. Similarly, for the reasons outlined above it is submitted that this misconduct is far too serious to warrant the imposition of a caution order. Per NMC Guidance, a

caution order is only considered appropriate if the Panel has decided that there is no risk to the public or to patients.

iii. Conditions of Practice Order

15. It is submitted that this is not an appropriate sanction. SS's conduct is not linked to his clinical practice; therefore, it is submitted that no conditions of practice would sufficiently protect the public. The Registrant's misconduct represents an attitudinal issue which is more difficult to remediate through conditions of practice.

16. From a practical standpoint, it is difficult to ascertain what, if any, conditions could be imposed to protect the public in such a case as this, and whether any conditions could be monitored and assessed.

iv. Suspension Order

17. Applying NMC Guidance, this case is not suitable for a suspension order. As stated above, the Registrant engaged in a pattern of behaviour which indicates an attitudinal issue that has caused harm. As a result of the analysis at paragraphs 18-19, and 21-25 below, it is submitted that there remains a risk of harm to the public due to the Registrant's insufficient insight, and failure to take steps to address his behaviour. Accordingly, such a case is not suitable for a Suspension Order.

v. Strike Off Order

Abuse of Position and Harm

18. The Registrant was undoubtedly in a position of trust over SN1 and SN2, being their formal and informal mentor respectively, but also in a position of power over D1, with the latter being his junior in terms of experience. His conduct represents an abuse of that position. That is aggravated by the fact that in relation to SN2 and D1, the Registrant's sexual harassment was predicated with a desire to form a sexual relationship with both individuals.

19. The Registrant's conduct undoubtedly caused harm to SN1, SN2 and D1. This harm cannot be understated. Junior members of staff should be able to work

without being sexually harassed by more senior colleagues. Such conduct is deplorable in society generally, but even more so in a professional setting. The registrant's conduct is aggravated by the fact that the sexual harassment was directed towards vulnerable colleagues.

Insight and Steps taken to address his behaviour

20. The Registrant has expressed some remorse and limited insight into his actions. The Panel is invited to consider, inter alia, the following:

a. When asked about what he would do differently in the future during his first interview, the Registrant responded, "I'd make sure the professional relationship is there and not misconstrued" [Appendix 15, page 189].

b. During his second interview he reflected, "I do have compassion towards anyone I have caused discomfort to, I pride myself on not afflicting pain on to others in any way, my natural state is gentle and kind. If it's not come through I'm sorry. I do recognise the damage my actions caused[sic], I've not seen it. I am fully aware my behaviour can cause upset and I'm sorry this has not come across correctly. I came in this morning for this to be about them and my impact upon them, not me and seeing that behaviour. I do feel sadness for them and my behaviour has impacted on them, but I just feel, but don't have the words. I look at it from that angle of me not knowing fully what I was doing and that doesn't excuse it." [Appendix 20, Page 211]

c. In his statement of case, the Registrant reflected, "I have read this [Report] thoroughly and agree with its findings. It is only very recently that I have been able to see the full extent and picture of the events documented, it reads awful. I deeply regret my actions, behaviour and the breach of trust shown by me". He added, "In reading this report, it appals [sic] and disgusts me, when I think of how my behaviour has impacted on those that made their allegations, and those that have had to gather evidence, give witness statements, compose reports, support individuals involved, it deeply saddens me, I agree I have breached trust, [PRIVATE]. There is no place within the working environment for that type of

behaviour, I have always prided myself on supporting my peers, providing a safe environment⁴ to work in, this was out of character for me”

[Exhibit LD/2, page 225.

21. However, the Registrant’s acceptance of responsibility in his latest email to the NMC is caveated with a suggestion that he did not receive the appropriate support at the time [Registrant’s Response Bundle, page 3-4]. This undermines the depth of his apparent insight and he appears to be suggesting that he is not fully responsible for his actions. Additionally, the Registrant’s response at paragraph 20(a) above suggests that the victims in this case may have “misconstrued” the relationship. Such a response clearly shows that the Registrant’s insight is limited, as again it purports to suggest that others are somewhat to blame.

22. The Panel will remember the evidence of [Witness 1], in which she said that the Registrant’s response to these allegations was inconsistent. [PRIVATE].

23. Throughout the disciplinary proceedings, the Registrant has denied that he had any sexual intent in respect of SN2. The Panel may consider that this indicates a distinct lack of insight. The evidence clearly shows that the Registrant propositioned SN2 via text message. The Registrant has failed, it is submitted, to show any insight into this aspect of his conduct.

24. It is submitted that the Panel has been provided with limited information regarding any steps that SS has taken to address his behaviour. The Registrant has engaged in a pattern of inappropriate behaviour and, in relation to SN2 and D1, that behaviour was underpinned by a desire to form an intimate relationship with the same. This is an attitudinal issue with which the Registrant has not, it is submitted, taken adequate steps to address.

25. Additionally, the Registrant, while expressing remorse, has failed to demonstrate a full understanding of why his behaviour is deplorable in a professional setting in particular, and he has failed to understand and reflect upon the impact that his conduct has had on the reputation of the profession as a whole.

Mitigation

26. *The Registrant outlined his mitigation in some detail during the course of the initial investigation. [PRIVATE], the Panel is invited to consider the following:*

- a. The Registrant's First Interview [Appendix 15, Page 184-190]*
- b. The Registrant's supporting statement dated 1st November 2019 [Appendix 16, Page 192-193]*
- c. The Registrant's Second Interview [Appendix 20, Page 205-212]*
- d. The Registrant's Statement of Case [Exhibit LD/2, Page 221-229]*
- e. An email from the Registrant of 18th April 2023 [Registrant's Response Bundle, Page 3-4]*
- f. [PRIVATE].*

[...]

27. Fundamentally, the Registrant has engaged in a course of conduct that amounts to the sexual harassment of junior colleagues, two of which were under his supervision and to which he owed a duty of care. This sexual harassment, in the case of SN2 and D1, was underpinned by a desire to form a sexual relationship. Such conduct is fundamentally incompatible with continued registration. Accordingly, the Panel is invited to impose a striking off order.

28. It is submitted that a striking-off order is proportionate when weighing the interests of SS against the public interest in imposing such a sanction."

Decision and reasons on sanction

Having found Mr Schuyler's fitness to practise currently impaired, the panel then considered what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful

regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Abuse of a position of trust
- Lack of insight into failings
- A pattern of misconduct over a period of time involving a number of colleagues
- Lack of accountability for his actions in that Mr Schuyler suggested it was 'banter'. Mr Schuyler said that his conduct was misconstrued by those involved and blamed a lack of organisational support
- The conduct put patients at a risk of harm as his actions were distracting to those who were providing the patient care.

The panel also took into account the following mitigating features:

- Partial admissions to the factual charges at a local level at an early stage of the Trusts investigations
- Some limited expressions of remorse at a later stage of the Trust's investigation
- He demonstrated limited insight into the distress caused to those involved at a later stage of the Trust's investigation.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action. Misconduct of this nature demands a sanction.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Schuyler's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the*

spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel found that Mr Schuyler's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Schuyler's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining alone. Furthermore, the panel concluded that the placing of conditions on Mr Schuyler's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that 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;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel determined that none of the factors above apply to Mr Schuyler's case and therefore concluded that a suspension order is not the appropriate order.

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

The panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

Mr Schuyler's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel found that the findings demonstrate that Mr Schuyler's actions were serious and involved sexual harassment within a professional environment. The panel determined that to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Schuyler's actions in bringing the

profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mr Schuyler in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Santos-Costa. He provided written submissions which stated:

"The Panel has imposed a striking-off order against Mr. Schuyler. Accordingly, Mr. Schuyler will be taken off the register, and will no longer be a registered nurse.

2. Mr. Schuyler has 28 days to appeal this decision.

3. Any sanction imposed by a Panel will not take effect until that 28-day period has elapsed should the individual decide not to appeal, or, if an appeal has been lodged, before the appeal has been finally determined. Lodged appeals can take considerable time before they are finally determined.

4. *The Panel is invited to impose an interim order for 18 months under Article 31(1)(c) of the Nursing and Midwifery Order 2001 on the basis that this case is so serious that an interim order is necessary to (i) protect the public, and (ii) it is otherwise in the public interest.*

5. *NMC guidance:*

(i) Necessary to protect the public

For an interim order to be considered necessary for the protection of the public, it is not

enough for the panel to consider that an interim order is merely desirable, the panel must be satisfied that there is a real risk to patients, colleagues or other members of the public if an order is not made.

Three factors are especially important to this consideration:

The seriousness of the regulatory concern. This will depend on how much harm the alleged conduct has already caused, or could have caused, to the public. Cases that involve dishonesty, sexual misconduct, or where the actions of the nurse, midwife or nursing associate may have caused the death of a patient are usually considered more serious.

The likelihood of the alleged conduct being repeated if an interim order were not imposed. If the concerns are serious and it seems they are likely to be repeated, then this significantly increases the risk of harm to members of the public.

Each case will be considered on its own facts. There may be other relevant factors a panel needs to consider in a particular case to decide whether to make an interim order on public protection grounds.

A panel will weigh up the seriousness of the regulatory concern and the likelihood of it being repeated if an interim order were not in place.

The seriousness of the concerns and risk of repetition are then assessed with reference to the particular circumstances of each case. An assessment of the harm that was caused, or could have been caused, to the public by the alleged conduct

will be vital when considering seriousness. This could include physical, mental, emotional or financial harm.

A panel must also consider how likely it is that the concerns could arise again in the future if the nurse, midwife or nursing associate's practice was not restricted. This will be crucial in assessing the level of risk the nurse, midwife or nursing associate presents to members of the public.

A panel may find the guidance on insight and strengthened practice helpful in assessing how likely it is that incidents may recur.

(ii) Otherwise in the public interest

As part of their assessment of risk, a panel will consider all the elements of what constitutes the public interest.

One element is promoting and maintaining public confidence in nurses, midwives or nursing associates. It would be relatively rare for an interim order to be made only on the grounds that an order is otherwise in the public interest, if there is no evidence of a risk of harm to patients, so the threshold for imposing an interim order solely on this ground is high. A panel would have to be satisfied that public confidence in the profession could be seriously damaged by the nurse, midwife or nursing associate continuing to practise without restriction while their case is being investigated, and where necessary, prepared for a hearing. In which case the panel should set out the nature and seriousness of any damage to the reputation of the professions that would result if an order was not made. Then it would weigh the likelihood of serious damage to public confidence in the professions if the nurse, midwife or nursing associate were allowed to continue to practise, against the interests of the nurse, midwife or nursing associate; this will ensure their decision is proportionate.

Considering the interests of the nurse, midwife or nursing associate includes considering their right to practise unrestricted, damage to their own professional reputation, and their ability to address any concerns through demonstrating safe practice (although this may be less relevant in cases that do not relate to the nurse, midwife or nursing associate's clinical ability).

6. It is submitted that an interim order is required in this case. The Panel has found that Mr. Schuyler's misconduct was so serious to warrant the imposition of a striking-off order. It is therefore essential that an interim order be imposed to protect the public and it is otherwise in the public interest.

7. The Panel can either impose an interim conditions of practice order (ICOP), or an interim suspension order (ISO).

Interim Conditions of Practice Order

8. It is submitted that an ICOP is entirely inappropriate in the circumstances. The Panel has concluded that the misconduct found proved in this case is so serious as to warrant a striking off order. It found that the regulatory concern was not something that could be addressed through retraining alone.

9. Therefore, the imposition of an ICOP would be counter-intuitive in the circumstances, and it would seriously damage the reputation of the nursing and midwifery profession if a member of the public was aware that a nurse was able to continue practising, albeit restricted, while they awaited a decision on appeal, despite being removed from the register for serious misconduct.

Interim Suspension Order

10. It is submitted that an ISO is appropriate to both protect the public, and the reputation of the profession.

11. The Panel has found that Mr. Schuyler sexually harassed junior colleagues in the workplace, and in relation to SN2 and D1, that sexual harassment was underpinned by a desire to form a sexual relationship with them.

12. The Registrant abused his position of trust and engaged in a course of conduct towards multiple vulnerable individuals that was coercive, inappropriate, demeaning, misogynistic, and ultimately harmful.

13. The Panel has recognised that this is an attitudinal issue that is more difficult to remediate.

Additionally, Mr. Schuyler has failed to take appropriate steps to address his behaviour, and he has failed to demonstrate sufficient insight.

14. *The Panel has found that there are no conditions of practice that would be workable, and it is submitted that no conditions would be effective at protecting the public given the regulatory concerns that have been identified by the Panel.*
15. *Further, the misconduct has brought the profession into disrepute. His conduct seriously breached the fundamental tenets of the profession, and the Panel has declared that this is fundamentally incompatible with continued registration. Mr. Schuyler has acted far and below the standards expected of a registered nurse.*
16. *The Panel has found that his misconduct is so serious that a striking-off order is the appropriate sanction. This is of course the most serious sanction the Panel can impose.*
17. *It is therefore submitted that an ISO is otherwise in the public interest as it is an interim order that has the same practical effect as a striking-off order, i.e., to prevent Mr. Schuyler from practising.*
18. *If Mr. Schuyler were to be allowed to continue practising, restricted or otherwise, in light of the Panel's findings, it is submitted that the reputation of the nursing and midwifery council would be damaged. Such a decision would be counterintuitive, and it would put the public at unnecessary risk of harm.*
19. *Accordingly, it is submitted that an ISO is necessary to protect the public, and it is otherwise in the public interest."*

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim

suspension order for a period of 18 months to cover the 28-day appeal period and the period for which any appeal may be lodged and considered.

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

That concludes this determination.