

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

**Substantive Hearing
Monday 18 September – Friday 22 September 2023**

Virtual Hearing

Name of Registrant: **Norman Devlin**

NMC PIN 05L0060E

Part(s) of the register: Nurses part of the register Sub part 1 RNA: Adult nurse, level 1 (27 January 2006)

Relevant Location: County of Durham

Type of case: Misconduct

Panel members: Lucy Watson (Chair, registrant member)
Jude Bayly (Registrant member)
Derek McFaull (Lay member)

Legal Assessor: Marian Killen (18– 19 September 2023)
Gillian Hawken (20– 22 September 2023)

Hearings Coordinator: Rim Zambour

Nursing and Midwifery Council: Represented by Clarissa Rodio, Case Presenter

Mr Devlin: Present and represented by Karl Shadenbury, (Unison)

Facts proved: Charges 4a, 4b, 4c, 4d, 5

Facts not proved: Charges 1, 2, 3

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 Shadenbury on your behalf, made a request that this case be held partly in private on the basis that proper exploration of your case involves making reference to your [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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

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

Having heard that there will be references to matters relating to your [PRIVATE], the panel decided to hear these matters in private as and when they arise throughout the hearing.

Details of charge

That you, a registered nurse, whilst employed at Darlington Hospital between February 2019 and August 2019:

- 1) On one or more occasion shouted at staff members.
- 2) Said '*Colleague B is rubbish*', or words to that effect.
- 3) On one more occasion invaded Colleague A's personal space.
- 4) On 8 July 2019, whilst Colleague A was changing her clothes in a bay with curtains closed around them:
 - a) Opened the curtain.

- b) Stepped into the bay area.
- c) Looked at Colleague A up and down whilst they were undressed.
- d) Smirked at Colleague A whilst they were undressed.
- 5) Your conduct at one or more of Charges 3, 4 a), 4 b), 4 c) & 4 d) was sexually motivated in that you sought sexual gratification from one or more of these acts.

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

Background

The charges arose whilst you were employed as a Matron for Discharge by County Durham and Darlington NHS Foundation Trust (the Trust).

It is alleged that you shouted at staff and made derogatory comments about another colleague, namely Colleague B, whom you said is '*rubbish*'; and on one or more occasions you invaded Colleague A's personal space.

It is also alleged that on 8 July 2019 you walked in on Colleague A whilst she was changing in a bay on the Discharge Lounge. You were allegedly told by another staff member that Colleague A was changing but carried on walking towards the bay. Further, you allegedly opened the curtain, looked Colleague A up and down, smirked at them and then left. It is alleged that this was a deliberate act and was sexually motivated.

Colleague A emailed the Chief Executive of the Trust to report the alleged incident on the evening of 8 July 2019.

You denied all the allegations and were subsequently suspended from your place of work during the local investigation into these allegations.

Decision and reasons on facts

There are no admissions in this case.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Rodio and by Mr Shadenbury.

Before making any findings on the facts, the panel heard and 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 live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Assistant Director of Operations at County Durham and Darlington NHS Foundation Trust
- Colleague A: Staff Nurse at County Durham and Darlington NHS Foundation Trust at the time
- Witness 2: Health Care Assistant (HCA) at County Durham and Darlington NHS Foundation Trust

The panel also heard evidence from you under oath.

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

Charge 1

That you, a registered nurse, whilst employed at Darlington Hospital between February 2019 and August 2019:

- 1) On one or more occasion shouted at staff members.

This charge is found NOT proved.

In reaching this decision, the panel took into account all of the written and oral witness evidence and contemporaneous documents in this case including the local investigation reports, witness interviews and email correspondence between Colleague A and the Trust.

This allegation arose from paragraph 16 in Colleague A's witness statement which states the following in relation to your conduct at work:

'He was abrupt with the staff, he would shout at them for anything. He would call out other staff to me.'

The panel took into account the context of the environment at work at the time these allegations took place. It noted that there was a staff consultation at the time where the whole service was going through a change management process and that this had an impact on how staff were feeling in general. The panel heard from Colleague A that *'people were unhappy'*.

In considering Colleague A's written witness statement and oral evidence, the panel determined that this allegation was not backed up by Witnesses 1 and 2 who both indicated that they had never seen or heard you shouting at staff members. Further, that Witnesses 1 and 2 both spoke positively about your professionalism at work and stated they had no reason to believe otherwise.

The panel also noted that in Colleague A's contemporaneous email to the Trust dated 8 July 2019, there is no mention of you shouting at staff members. The email was sent soon after the alleged incident in Charge 4 took place. The panel also took account of your oral evidence that although you may raise your voice, you do not shout.

The panel determined that there is no direct evidence from any of the information before it to sufficiently prove this charge, and that the NMC has not discharged its burden of proving on the balance of probabilities that this charge took place.

Charge 2

That you, a registered nurse, whilst employed at Darlington Hospital between February 2019 and August 2019:

- 1) Said 'Colleague B is rubbish', or words to that effect.

This charge is found NOT proved.

In reaching this decision, the panel took into account all of the written and oral witness evidence and contemporaneous documents in this case including the local investigation reports, witness interviews and email correspondence between Colleague A and the Trust.

This allegation also arose from paragraph 8 of Colleague A's witness statement which states the following in relation to the way you spoke about Colleague B:

'If there was another HCA and I in the lounge he would come in and vent to me that for example: '[Colleague B] was rubbish'. He would call her out all the time.'

The panel determined that the quality of evidence in support of this charge is weak. It noted that Colleague A's allegation was not included in their initial complaint email, with

regard to Charge 4, to the Trust dated 8 July 2019, nor was it mentioned in any of the disciplinary meeting notes before the panel. While the evidence clearly mentions who the comment was made about, it is not specific in that it references other colleagues being present, but this is not corroborated by any of the written or oral evidence before the panel.

The panel noted that Witness 1 stated they had no issues with your professional conduct, and Witness 2 stated that they had never heard derogatory words from you nor have they been around when the alleged comments were made.

The panel also took account of your oral evidence in which you stated that Colleague B was difficult but that they had good qualities.

The panel therefore determined that the NMC has not discharged its duties on the balance of probabilities in providing sufficient evidence to support this charge.

Charge 3

That you, a registered nurse, whilst employed at Darlington Hospital between February 2019 and August 2019:

- 1) On one more occasion invaded Colleague A's personal space.

This charge is found NOT proved.

In reaching this decision, the panel took into account all of the witness evidence and contemporaneous documents in this case including the local investigation reports, witness interviews and email correspondence between Colleague A and the Trust.

This charge originated from the allegation found in paragraph 8 of Colleague A's witness statement which stated the following in relation to you:

'The registrant is one of those people that have no concept of personal space. He was always very friendly with me'.

The panel noted that the contemporaneous documents, including the initial email, with regard to Charge 4, from Colleague A to the Trust and the investigation reports make various allegations against you but that none of these documents mention that you invaded their personal space. The panel also took account of the fact that Colleague A did not mention any specific instances of when you had invaded their personal space. Further, that they stated they had a good relationship with you and had not reported any concerns regarding your behaviour until after the alleged incident on 8 July 2019.

The panel therefore determined that the NMC's burden of proof on the balance of probabilities had not been discharged and the panel therefore found this charge not proved.

Charge 4

This charge comprises four separate factual elements, all relating to a single alleged incident which occurred on 8 July 2019: opening the curtain; stepping into the bay area; looking at Colleague A while they were undressed; and smirking at Colleague A. You accept being in the discharge lounge on 8 July 2019 at the time that this incident was alleged to have occurred, however you denied the entirety of the actions as alleged in Charge 4.

Charge 4a

That you, a registered nurse, whilst employed at Darlington Hospital between February 2019 and August 2019:

- 1) On 8 July 2019, whilst Colleague A was changing her clothes in a bay with curtains closed around them:
 - a) Opened the curtain.

This charge is found proved.

In reaching this decision, the panel took into account all of the written and oral witness evidence and contemporaneous documents in this case including the local investigation reports, witness interviews and email correspondence between Colleague A and the Trust.

The panel accepted Colleague A's evidence that they were in their [PRIVATE] at the time of the incident.

The panel noted that whilst there was some ambiguity as to which bay was being used by Colleague A, there was acceptance by you, Colleague A and Witness 2 that only one of the bays had the curtains closed around it on the morning of the incident. The panel also considered that the incident was reported by Colleague A clearly and promptly on the same evening, and that Colleague A had been consistent with the content of the allegation in their oral and written evidence.

The panel also considered that Witness 2 was present at the time of the incident in the discharge lounge and stated in their evidence that they saw you enter whilst using your phone, that they told you Colleague A was changing but you may not have heard, and that you opened the curtain to the bay.

The panel considered that this charge is substantiated by contemporaneous and oral evidence, written statements, the local investigation and a witness who was present at the time.

The panel considered your evidence in that you walked into the bay area whilst on the phone to find better reception and saw the curtains closed but that you deny opening

them. Despite your evidence, the panel preferred the contemporaneous documentary evidence and witness oral and written evidence. It therefore found that this charge is proved on the balance of probabilities.

Charge 4b

That you, a registered nurse, whilst employed at Darlington Hospital between February 2019 and August 2019:

- 1) On 8 July 2019, whilst Colleague A was changing her clothes in a bay with curtains closed around them:
 - b) Stepped into the bay area.

This charge is found proved.

In reaching this decision, the panel took into account all of the witness evidence and contemporaneous documents in this case including the local investigation reports, witness interviews and email correspondence between Colleague A and the Trust.

The panel noted that in the contemporaneous documents Colleague A stated that you walked into the bay in the notes of the local investigation meeting. In oral evidence Colleague A told the panel that you opened the curtain to the bay, took a step in and looked at them.

The panel also considered Colleague A's reaction after the incident, in that they spoke to Witness 2 who described Colleague A as 'annoyed' and 'upset'. The panel determined that this goes to reinforcing the allegation. Further, the panel also considered your reaction following the incident, in that Colleague A stated you did not apologise or say anything to them, and determined that this reinforces the fact that this was not an accident.

The panel concluded that on the balance of probabilities, it accepts and prefers Colleague A's version of events and evidence and finds this charge proved.

Charge 4c

That you, a registered nurse, whilst employed at Darlington Hospital between February 2019 and August 2019:

- 1) On 8 July 2019, whilst Colleague A was changing her clothes in a bay with curtains closed around them:
 - c) Looked at Colleague A up and down whilst they were undressed.

This charge is found proved.

In reaching this decision, the panel took into account all of the written and oral witness evidence and contemporaneous documents in this case including the local investigation reports, witness interviews and email correspondence between Colleague A and the Trust.

The panel noted the following from Colleague A's initial email reporting this incident to the Trust on 8 July 2019:

'...He still went ahead and opened the curtain whilst [PRIVATE], looked at me with no shock or apology, then shut the curtain and walked out of the lounge...'

The panel determined that this charge follows on from Charges 4a and 4b as found proved. It noted that during cross-examination Colleague A could not recall whether you moved your head up and down or whether you had moved your eyes but that nonetheless, their evidence was credible. The panel determined that there is nothing to suggest that Colleague A has any motivation to fabricate these events.

The panel did not accept your version of events as to why you were in the discharge lounge and the actions you took in the lounge. Therefore, on the basis of accepting that you opened the curtain and stepped into the bay, the panel preferred the evidence of Colleague A that you looked them up and down whilst they were undressed.

The panel was of the view that the oral evidence from Witness 2 further supports this charge in that they witnessed Colleague A annoyed and upset after the incident.

In the light of the above, the panel found this charge proved on the balance of probabilities.

Charge 4d

That you, a registered nurse, whilst employed at Darlington Hospital between February 2019 and August 2019:

- 1) On 8 July 2019, whilst Colleague A was changing her clothes in a bay with curtains closed around them:
 - d) Smirked at Colleague A whilst they were undressed.

This charge is found proved.

In reaching this decision, the panel took into account all of the oral and written witness evidence and contemporaneous documents in this case including the local investigation reports, witness interviews and email correspondence between Colleague A and the Trust.

The panel preferred Colleague A's written evidence in which they indicated that you had '*this horrible smirk on [your] face*'. This was corroborated in Colleague A's oral evidence in which they stated that you:

“Opened the curtain enough to look with a horrible creepy face, no apology nothing. Looked up and down. I just remembered his face, his eyes. He smirked.”

The panel did not accept your version of events on 8 July 2019 and found this charge proved on the balance of probabilities.

Charge 5

That you, a registered nurse, whilst employed at Darlington Hospital between February 2019 and August 2019:

- 1) Your conduct at one or more of Charges 3, 4 a), 4 b), 4 c) & 4 d) was sexually motivated in that you sought sexual gratification from one or more of these acts.

This charge is found proved in relation to Charges 4a), 4b), 4c) and 4d).

As the panel has found Charge 3 not proved, it did not go on to consider whether your conduct in relation to Charge 3 was sexually motivated.

The panel considered whether your conduct on 8 July 2019, as found proved in sub-charges 4(a), (b), (c) and (d) was sexually motivated in that you sought sexual gratification from one or more of these acts. In reaching its decision, the panel took into account all of the witness evidence and contemporaneous documents in this case including the local investigation reports, witness interviews and email correspondence between Colleague A and the Trust.

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

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

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

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

The panel also accepted the advice of the legal assessor in relation to the case of *Arunkalaivanan v GMC* [2014] EWHC 873 (Admin), a case that provides guidance on the approach the panel ought to take to the assessment of the evidence. The panel may find sexual motivation only if it finds on the balance of probabilities that there was sexual motivation from direct evidence, or where it can reasonably draw inferences of sexual motivation from the evidence. In making such a finding, the panel must have regard to inference or deduction from the surrounding circumstances and the evidence as a whole.

The panel has found that you opened the curtain behind which Colleague A was changing; you stepped in; you looked Colleague A up and down; and you smirked at them. The panel accepted the evidence of Colleague A and Witness 2 that it was custom and practice for members of staff to get changed behind the curtain in the bay. It also accepted the evidence of Colleague A and Witness 2 that, when you saw Colleague A behind the curtain [PRIVATE], you did not immediately apologise to them or even mention it to them afterwards. The panel determined that your actions were not a mistake on your part; rather, that they were intentional.

By reference to section 78(b) of the Sexual Offences Act 2003, the panel determined that these actions, which were all part of a single incident, may be sexual by their nature and in the particular circumstances of this case were sexual. The panel considered whether there was any innocent or credible explanation for your behaviour other than that of sexual gratification and was satisfied that there was not. As you had denied Charge 4 in its entirety, you had necessarily not put forward any explanation for your conduct. The panel was of the view that there was no reasonable explanation for the conduct at 4(a), (b), (c)

and (d) other than it being sexually motivated, and the panel was satisfied that it could properly infer a sexual motive in that you sought sexual gratification.

The panel therefore found that on the balance of probabilities, it is more likely than not that sexual motivation can be inferred in the circumstances and as a result this charge is found proved.

Fitness to practise

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

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

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

Submissions on misconduct

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

Ms Rodio invited the panel to take the view that the facts found proved in Charges 4a, 4b, 4c, 4d and 5 amount to misconduct. She invited the panel to have regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2018' (the Code) in making its decision.

Ms Rodio referred the panel to the case of *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) which defines serious professional misconduct as conduct which '*would be regarded as deplorable by fellow practitioners*'. She also referred the panel to the 'Clear Sexual Boundaries Between Healthcare Professionals and Patients: guidance for fitness to practise panels (January 2008)' produced by the Professional Standards Authority (PSA).

Ms Rodio first took the panel to the NMC guidance which states that:

'Sexual misconduct will be particularly serious if the nurse, midwife or nursing associate has abused a special position of trust they hold as a registered caring professional.'

Ms Rodio submitted that following the panel finding the charges proved, serious misconduct in this case as defined by the case of *Nandi* is made out. Further, that the sexual misconduct in this case is particularly serious as you have abused the special position of trust you held as a registered caring professional.

Ms Rodio further submitted that as per the NMC guidance on sexual misconduct, your actions are likely to undermine public trust in the nursing profession.

Therefore, Ms Rodio submitted that your actions in the charges as found proved amount to misconduct.

Mr Shadenbury accepted that your conduct as found proved within the charges is likely to be regarded as deplorable by fellow practitioners and would meet the guidance in *Nandi*. He therefore accepted that your actions within Charges 4 and 5 as found proved in their entirety are likely to amount to misconduct.

Submissions on impairment

Ms Rodio moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *General Medical Council v Meadow* [2007] QB 462 (Admin) and *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Ms Rodio submitted that your behaviour as outlined in the charges amounts to a breach of both the PSA and NMC guidance with regards to impairment.

Ms Rodio invited the panel to consider the test established in *Grant*. Which sets out the following:

'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) [...]’

In relation to limb a) of *Grant*, Ms Rodio submitted that your inappropriate behaviour towards Colleague A caused them significant distress and that such behaviour affects the culture of the workplace and is capable of causing a toxic environment which can create a consequent risk to patients.

With regard to limb b) of the *Grant* test, Ms Rodio submitted that the evidence before the panel has shown that you have failed to uphold the reputation of the profession and have brought the profession into disrepute.

Ms Rodio next addressed the panel on the factors established in the case of *Cohen*, the first of which being whether the conduct is remediable. She drew the panel’s attention to the case of *Yeong v The General Medical Council* [2009] EWHC 1923. Ms Rodio submitted that whilst it is accepted that the facts of this case are not directly comparable with *Yeong*, your failure to maintain professional boundaries was similarly widespread and serious and there remains a risk that you may be tempted to repeat your misconduct.

Ms Rodio outlined that the second question to consider is whether such conduct has been remedied. She turned the panel’s attention to your defence bundle and submitted that although you address the concerns, there is a clear lack of insight evidenced by way of your ‘*categorical*’ denial of the charges and lack of remorse.

Ms Rodio then addressed the final factor of the *Cohen* test, whether there is a risk of repetition. She submitted that you have not stepped back from the situation or acknowledged the impact of your behaviour on Colleague A and that there remains a risk that your conduct may be repeated.

Ms Rodio submitted that although there is no risk to patient safety inherently apparent from these matters, you currently present a potential future risk to the health, safety and well-being of the public, regardless of whether you intend to return to practice or not.

Ms Rodio invited the panel to find that your fitness to practise remains impaired on public interest grounds alone in order to maintain confidence and standards in the nursing profession. She stated that it is for the panel to consider your insight into the gravity of your actions and to assess whether there remains a risk of repetition.

Mr Shadenbury accepted that your behaviour would have caused distress to Colleague A and that the conduct within the charges is such that it would be like to be regarded as deplorable by fellow practitioners. However, Mr Shadenbury submitted that the charges found proved amount to an isolated incident.

Mr Shadenbury turned to the *Grant* test and accepted that limbs a), b) and c) are all engaged albeit that whilst you have acted in the past, you are not liable to do so in the future. He submitted that whilst you deny Charges 4 and 5 you accept the findings of the panel.

Mr Shadenbury submitted that whilst you have previously brought the profession into disrepute and thus breached one of the fundamental tenets of the nursing profession, this was an isolated incident that has not happened before or since, and as such is unlikely to be repeated again in the future. Mr Shadenbury further submitted that you are unlikely to find yourself in similar circumstances on the basis that you have ceased practising and have no intention of returning to nursing.

Mr Shadenbury submitted that concerns relating to sexual misconduct are not easily remediable, and that, in any event, you have not practised since October 2020. He accepted that you have not completed any relevant training and in light of your retirement, have no intention do so.

Mr Shadenbury accepted that the panel are likely to conclude that public confidence in the profession would be undermined if a finding of impairment were not made.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance, Nandi, Meadow, Grant, Cohen, Yeong* and *Remedy UK Ltd v General Medical Council* [2010] EWHC 1245 (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 was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to breaches of the Code. Specifically:

'20 Uphold the reputation of your profession at all times

To achieve this, you must:

- 20.1. *Keep to and uphold the standards and values set out in the Code.*
- 20.2. *Act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment.*
- 20.3. *Be aware at all times of how your behaviour can affect and influence the behaviour of other people.*
- 20.5. *Treat people in a way that does not take advantage of their vulnerability or cause them upset or distress.'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your sexual misconduct as found proved in Charges 4a, 4b, 4c, 4d and 5 are so serious that they would be considered as

deplorable by other members of the profession. It determined that the conduct was of a morally culpable or otherwise disgraceful kind as per the case of *Remedy UK*.

The panel also considered the NMC guidance on harassment which states the following in relation to conduct of a sexual nature:

'The behaviour has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment'.

The panel therefore found that your actions did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *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 finds that although the facts found proved in the charges relate to a single incident and there is no direct evidence of harm to patients, given the nature of your behaviour there was and remains a potential risk of harm to patients. The panel heard from Colleague A's oral evidence that they were so distressed following the incident that they found it difficult to work that day and left them feeling very vulnerable.

The panel bore in mind that impairment is a forward-looking exercise, and the first limb of *Grant* also requires it to consider whether you are liable in the future to act so as to put a patient or patients at unwarranted risk of harm. By your conduct on 8 July 2019, you completely disregarded Colleague A's personal boundaries and demonstrated a flagrant

disregard for whether your actions would cause harm, emotional distress or insult to Colleague A. The panel concluded that your actions towards Colleague A during this incident can be described as attitudinal in nature, relating to your personality, character and integrity. The panel took account of your character references and reflective statement but determined that the information before it speaking to your reflection on the incident was vague and insufficient. The panel also noted that you had continued to deny the allegations throughout both the local and NMC process and you had not offered any apology for your behaviour or shown any remorse. In light of this, the panel concluded that your attitudinal concerns could well translate to vulnerable patients in your care and that you remain liable in the future to act so as to put a patient or patients at unwarranted risk of harm.

In respect of limb b), the panel concluded that your sexual misconduct brought the nursing profession into disrepute, especially when considering the position of responsibility and trust which you held as a registered nurse with senior management responsibility for other members of junior staff. The panel took account of the challenging context in which you worked but determined that, despite this, an informed member of the public would consider that your misconduct brought the profession into disrepute.

In relation to limb c), the panel bore in mind that the charges found proved concern serious sexual misconduct. It therefore determined that the breaches of the code identified at the misconduct stage amounted to breaches of the fundamental tenets of the nursing profession.

Regarding insight, the panel considered your reflective statement where you mentioned you would '*seek additional training about boundaries and behaviours*' should you return to practice. However, the panel had no evidence of this being completed and noted that this statement offered vague and limited insight and did not go to the heart of the allegations at the time. The panel also considered that the evidence before it showed a lack of remorse and therefore was of the view that you had shown very limited insight into your behaviour.

The panel next went on to consider the factors as outlined in *Cohen*, namely:

- Is the misconduct easily remediable?
- Has it been remedied?
- Is it highly unlikely to be repeated?

The panel was satisfied that although it would be very difficult, sexual misconduct can be remediable. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to remedy your behaviour, including whether you had shown any insight, remorse or completed any relevant training or courses. However, the panel had limited evidence of insight before it, and had not seen any evidence of remorse, training or the completion of any courses. The panel therefore determined that you had not shown any evidence of remediation.

The panel is of the view that although this was a single isolated incident, it was a serious incident of sexual misconduct. The panel determined that there is a real risk of repetition based on your lack of remediation and that the behaviour found proved relates to an attitudinal issue that has yet to be addressed. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

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

Sanction

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

In reaching this decision, the panel has had regard to all the evidence 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

Ms Rodio informed the panel that in the Notice of Hearing, dated 17 August 2023, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired.

Ms Rodio submitted that the following aggravating features are relevant:

- Sexually inappropriate behaviour towards Colleague A
- Breach of professional boundaries
- Sexual harassment
- Behaviour linked directly to clinical practice
- The conduct occurred whilst you were in a senior position and you abused your position of trust
- Lack of insight, remorse or remediation.

Ms Rodio submitted that the only mitigating feature in this case is your engagement with the regulator.

Ms Rodio further submitted that a striking-off order is the most suitable, appropriate and proportionate sanction as this case is on the higher end of the spectrum. In relation to a conditions of practice order, she stated that there are no measurable or proportionate conditions that could be put in place to address your behaviour and that this is not a case relating to clinical issues, but that it is linked directly to clinical practice.

In relation to the suitability of a suspension order, Ms Rodio submitted that it would not be sufficient to address your sexual misconduct as a senior member of staff which has greatly undermined the public's trust in nurses.

Ms Rodio submitted that your actions demonstrate evidence of harmful, deep-seated personality issues that are incompatible with continued registration. Further, that in considering proportionality, a striking-off order is the most proportionate in balancing the risk to public protection and public interest with your own interest. Ms Rodio submitted that this order is necessary to mark the importance of maintaining public confidence in the profession and to send a clear message about the standard required of a registered nurse.

Ms Rodio therefore invited the panel to impose a striking-off order.

Mr Shadenbury informed the panel that you have been subject to a 12-month interim suspension order from 22 February 2023.

Mr Shadenbury told the panel that you have not practised as a nurse since October 2020 and there is no suggestion that you have been guilty of misconduct either since or before this incident.

Mr Shadenbury accepted that the panel are likely to find that an order of no further action would be inappropriate in view of the seriousness of this case. Further, that the panel are likely to determine a caution order would also be inappropriate given the sexual nature of your misconduct. He also accepted that the panel are likely to find no practicable or workable conditions that could be formulated to address the misconduct in this case.

Mr Shadenbury outlined that the SG provides a suspension order may be appropriate when some of the following factors are present:

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

Mr Shadenbury submitted that this case relates to only one incident of misconduct, there has been no repetition of the behaviour since this incident and that you do not pose a significant risk of repeating the behaviour on the basis that you have no intention of returning to nursing. Further, that you only remain on the register at present due to the ongoing fitness to practise proceedings.

Mr Shadenbury reminded the panel that should it impose an order short of a striking-off and that order were to lapse, your registration would lapse at the same time. He also stated that were you to make an application to rejoin the register, the registrar will consider any application in light of the panel's findings at this hearing.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Sexually inappropriate behaviour within a workplace
- Behaviour occurred within a clinical setting where Colleague A should have felt safe
- Conduct that caused Colleague A psychological and emotional harm
- Abuse of a senior position of trust whilst employed as a Matron
- Lack of insight and remediation into failings
- Failure to maintain appropriate boundaries.

The panel was of the view that no mitigating features were presented to it in line with the categories set out in NMC guidance. The panel did not accept Ms Rodio's submission that your engagement with the NMC be regarded as a mitigating feature of this case as it is the duty of all nurses to engage with their regulator.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is 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. Furthermore, the panel concluded that the placing of

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

The panel determined that although this was a single instance of misconduct and that there is no evidence before it of any repetition of the behaviour, a suspension order would not be appropriate. The findings in this case relate to sexual misconduct and there is evidence of harmful deep-seated personality and attitudinal issues. The panel was also not satisfied that you have developed insight and that there remains a risk of repeating the behaviour. Therefore, the panel determined that a suspension order would not be proportionate or appropriate given the circumstances of this case.

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

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

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with remaining on the register. The panel was of the view that the findings of sexual misconduct in this case raise fundamental questions about your professionalism and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it the panel determined that the proportionate and appropriate sanction to sufficiently protect patients and members of the public and maintain professional standards is that of a striking-off order.

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 you 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 your own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Rodio.

Ms Rodio submitted that an interim order is necessary on the grounds of public protection and is otherwise in the wider public interest. She stated that an interim order is required to cover the appeal period. She stated that your actions are linked directly to clinical practice and that your behaviour affected the environment in the workplace.

Ms Rodio further submitted that a member of the public would not expect you to be permitted to practise unrestricted during any appeal period given the charges that have been found proved.

Ms Rodio therefore invited the panel to impose an interim suspension order for a period of 18 months in order to protect the public and maintain the standards of conduct and confidence in the nursing profession.

Decision and reasons on interim order

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

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

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

That concludes this determination.