

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

**Substantive Hearing
Thursday 1 February – Thursday 8 February 2024**

Virtual Hearing

Name of Registrant: Steven Kerslake

NMC PIN: 1010771E

Part(s) of the register: Registered Nurse – RNMH
Mental health nurse – September 2011

Relevant Location: Northamptonshire

Type of case: Misconduct

Panel members: David Crompton (Chair, lay member)
Louise Poley (Registrant member)
Tom Ayers (Lay member)

Legal Assessor: Tim Bradbury (1 February – 6 February 2024)
Gerard Coll (7 February – 9 February 2024)

Hearings Coordinator: Rene Aktar

Nursing and Midwifery Council: Represented by Lucie Danti, Case Presenter

Mr Kerslake: Not present and unrepresented at the hearing

Facts proved: Charges 1a), 1b), 2, 3a), 3b), 3c), 3d), 4a(i), 4c),
4d), 5, 6a), 6b(i), 6b(ii)

Facts not proved: Charges 4a(ii) and 4b)

Fitness to practise: Impaired

Sanction: **Striking-off order**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Kerlake was not in attendance and that the Notice of Hearing letter had been sent to Mr Kerlake's registered email address by secure email on 2 January 2024.

Ms Danti, on behalf of the Nursing and Midwifery Council (NMC), 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, that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Kerlake'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 Kerlake 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 Kerlake

The panel next considered whether it should proceed in the absence of Mr Kerlake had regard to Rule 21 and heard the submissions of Ms Danti who invited the panel to continue in the absence of Mr Kerlake. She submitted that Mr Kerlake had voluntarily absented himself.

Ms Danti submitted that there had been no engagement at all by Mr Kerlake with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel accepted the advice of the legal assessor.

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

The panel has decided to proceed in the absence of Mr Kerlake. In reaching this decision, the panel has considered the submissions of Ms Danti, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [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 Kerlake;
- Mr Kerlake has not engaged with the NMC and has not responded to any of the 6 emails sent to him about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- 2 witnesses have attended today to give live evidence, others are due to attend;
- 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 2021;
- 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 Kerlake in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, He has made no response to the allegations. 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 Kerslake's decision to absent himself from the hearing, waive his right 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 Kerslake. The panel will draw no adverse inference from Mr Kerslake's absence in its findings of fact.

Details of charge

That you, a registered nurse:

1) Between January 2021 and March 2021:

a) told Colleague B that she should 'take it as a compliment' or used words to that effect in response to her reporting an incident where a patient had attempted to kiss her and/or touch her inappropriately. **[PROVED]**

b) said 'your ass is very slappable, you look beautiful' or words to that effect to Colleague B. **[PROVED]**

2) In January 2021, placed your hand(s) on and/or grabbed Colleague A's bottom. **[PROVED]**

3) In or around March 2021:

a) stroked the back of Colleague B's head. **[PROVED]**

b) massaged Colleague B's shoulder **[PROVED]**

- c) touched/slapped Colleague B's bottom. **[PROVED]**
 - d) Said to Colleague B, having touched/slapped her bottom, 'I can't help it, your ass looks slappable' or said words to that effect. **[PROVED]**
- 4) On or around 11 May 2021:
- a) touched Colleague A's:
 - i) shoulders. **[PROVED]**
 - ii) face. **[NOT PROVED]**
 - b) kissed Colleague A's cheek **[NOT PROVED]**
 - c) grabbed Colleague A's bottom. **[PROVED]**
 - d) rubbed Colleague A's thigh. **[PROVED]**
- 5) Your actions at charges 1 and/or 2 and/or 3 and/or 4 above were done in pursuit of or to obtain sexual gratification **[PROVED]**
- 6) Your actions at charges 1 and/or 2 and/or 3 and/or 4 above harassed Colleague A and/or B in that:
- a) your conduct was unwanted conduct of a sexual nature and/ or related to a protected characteristic, namely sex. **[PROVED]**
 - b) your conduct had the purpose or effect of:
 - i) violating Colleague A and/or B's dignity. **[PROVED]**

- ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A and/or B. **[PROVED]**

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

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

At the outset of the hearing, Ms Danti made a request that this case be held partly in private on the basis that proper exploration of Colleague B's evidence and documentation involves reference [PRIVATE]. 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 that any matters relating to Colleague B's [PRIVATE] should be heard in private. The remainder of the hearing should be heard in public.

Background

Mr Kerslake was anonymously referred to the NMC on 26 August 2021. This referral resulted in an investigation by the NMC, which identified the regulatory concerns set out below.

A regulatory concern is an issue that the NMC sees as being a possible risk to the public, to professional standards or to the public's confidence in nurses, midwives and nursing associates. The regulatory concerns are:

1. Inappropriate behaviour with a junior member of staff

2. Mr Kerslake's behaviour was sexually motivated. These regulatory concerns relate to incidents that took place at [PRIVATE], ('the Trust'), while he was working as a Band 6 Team Leader.

Ground Rules

At the outset of the hearing, Ms Danti referred the panel to the Communicourt Intermediary Report (the 'Report') dated 19 December 2023 that was prepared in respect of Colleague B. Ms Danti set out that Colleague B [PRIVATE] and, as a result, the NMC have taken a number of steps to [PRIVATE].

[PRIVATE].

[PRIVATE].

[PRIVATE].

Decision and reasons on application to admit hearsay evidence for Colleague A

The panel heard an application made by Ms Danti under Rule 31 to allow the written statement of Colleague A into evidence. Colleague A was not present at this hearing and, whilst the NMC had made, what the panel determined to be, sufficient efforts to ensure that this witness was present, [PRIVATE].

In the preparation of this hearing, the NMC had indicated to Mr Kerslake in the Case Management Form (CMF), that it was the NMC's intention for Colleague A to provide live evidence to the panel. Despite knowledge of the nature of the evidence to be given by Colleague A, Mr Kerslake made the decision not to attend this hearing. On this basis Ms Danti advanced the argument that there was no lack of fairness to Mr Kerslake in allowing Colleague A's witness statement into evidence.

Ms Danti submitted that in terms of the admission of hearsay evidence, the Courts have reiterated on a number of occasions that the important factor to consider throughout is one of fairness. She referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) which sets out the factors to be considered when deciding whether or not to admit hearsay evidence as follows:

'(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 Appellant's career;

(v) whether there was a good reason for the non-attendance of the witnesses;

(vi) whether the Respondent had taken reasonable steps to secure their attendance; and

(vi) the fact that the Appellant did not have prior notice that the witness statements were to be read.'

Ms Danti submitted that in applying these factors to this case, she pointed out that the panel has wide powers under the Rules to admit evidence in a range of circumstances and from a range of sources, and that admissibility of hearsay in these types of proceedings is not subject to the same types of restrictions as in, for example, criminal courts or proceedings. She submitted that it comes down to this core element of relevance and fairness.

Ms Danti submitted that it should be noted that the weight that can be attached to this evidence is an important factor. She acknowledged that this evidence, if admitted, could not be tested in the same way that other evidence in the case has been where witnesses have come and therefore subjected themselves to questioning under Oath. However, Ms Danti submitted that this has perhaps less relevance in a case such as this, where Mr Kerslake has voluntarily absented himself from the proceedings and in so doing, he has

not availed himself of the opportunity to challenge or test the witnesses evidence directly in cross examination or even indirectly, because in this case Mr Kerlake has not provided any specific response to the allegations or charges.

In relation to the reasons for the non-attendance of Colleague A, Ms Danti referred the panel to the email from her to the NMC dated 31 January 2024 in which she states:

[PRIVATE].

Ms Danti informed the panel that the NMC did pursue the matter further and referred Colleague A [PRIVATE]. She submitted that due to Colleague A's responses, the NMC respected her wishes, and it is not the NMC's intention to harass individuals who have clearly communicated their views on future engagement. She submitted that the NMC have not received any further communication since 1 February 2024 in which Colleague A said in an email with the case officer stating:

[PRIVATE].

Ms Danti submitted that there is nothing which undermines the evidence as set out in the witness statement or exhibits. She further submitted that this evidence is not sole and decisive on any of the charges that are before the panel. She submitted that the panel has had the benefit of hearing Colleague A's evidence, testing it and being able to compare it to any, and all, of the written documentation that forms part of the exhibits.

Ms Danti submitted that there is less prejudice to Mr Kerlake in admission of this evidence. She submitted that there has been no communication from Mr Kerlake and reiterated that he has voluntarily absented himself.

In closing, Ms Danti submitted that in all of these circumstances, it would be fair to admit this statement as hearsay evidence.

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

The panel gave the application in regard to Colleague A serious consideration. The panel noted that Colleague A's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, 'This statement ... is true to the best of my information, knowledge and belief' and signed by her.

The panel considered whether Mr Kerslake would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Colleague A to that of her witness statement alone.

The panel considered whether Mr Kerslake would be disadvantaged by the admission of the hearsay evidence. It noted that despite knowledge of the nature of the evidence, Mr Kerslake made the decision not to attend this hearing. The panel considered that as Mr Kerslake had been provided with all of the statements and exhibits the NMC intends on relying upon and, as the panel had already determined that Mr Kerslake had chosen voluntarily to absent himself from these proceedings, he would not be in a position to challenge the evidence at this hearing in any case.

The panel took into account that Colleague A's evidence was corroborated by other pieces of evidence, and it could be tested by the other evidence in the case. The panel took into account Mr Kerslake's interview and that there does not appear to be any suggestion there or elsewhere that Colleague A has either fabricated her account or would have had any motive to do so. It further noted that the charges are serious and that the NMC have taken all reasonable steps to secure attendance.

The panel noted that there was no real prejudice to Mr Kerslake if the statements and the exhibits were admitted as hearsay evidence and on this basis decided that there was no lack of fairness to Mr Kerslake. Further, the panel determined that there was also a public

interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, the panel came to the view that it would be fair and relevant to accept the exhibits as hearsay evidence but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on application to admit hearsay Ms 1's witness statement

Ms Danti made an application on behalf of the NMC to admit a witness statement as hearsay evidence under Rule 31. She referred the panel to Ms 1's witness statements which refer to the context and a background to the charges. The witness statement contains hearsay evidence.

Ms Danti informed the panel that although the witness statement is not the sole evidence in this matter, she was making the application out of an abundance of caution in pursuant to Rule 31(1) of the Nursing and Midwifery Fitness to Practice Rules 2004. She invited the panel to admit the hearsay evidence and submitted that it is fair and relevant.

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

The panel balanced fairness to Mr Kerslake against fairness to the NMC. It was of the view that the witness statement introduced by Ms 1 in her statement was not the sole and decisive evidence in this case. Any disadvantage to Mr Kerslake in allowing this evidence would be mitigated by the live and documentary evidence before the panel which could be tested under cross examination. The panel was of the view that there would be no unfairness to Mr Kerslake in admitting the witness statement as hearsay evidence.

In these circumstances, the panel determined that it would be fair and relevant to accept the witness statement as hearsay evidence. In due course, the panel would give what it

deemed to be the appropriate weight to this evidence once it had heard and evaluated all of the other evidence in the case.

Decision and reasons on facts

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

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

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: Mental Health Nurse
- Colleague B: Health Care Assistant (HCA) at Northamptonshire Healthcare NHS Foundation Trust
- Witness 2: Matron on Marina Ward at Northamptonshire Healthcare NHS Foundation Trust
- Witness 3: Staff Nurse at Northamptonshire Healthcare NHS Foundation Trust
- Witness 4: Band 6 Nurse on Marina Ward at Berrywood Hospital

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

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

Charge 1a)

That you, a registered nurse:

1) Between January 2021 and March 2021:

- a) told Colleague B that she should ‘take it as a compliment’ or used words to that effect in response to her reporting an incident where a patient had attempted to kiss her and/or touch her inappropriately.

This charge is found proved.

In reaching this decision, the panel took into account Colleague B’s written witness statement and oral evidence.

The panel took into account that Colleague B’s evidence was consistent throughout the local investigation in her witness statements and her oral evidence, and that there was no evidence for the panel that the information was fabricated. The panel noted that Colleague B’s evidence was compelling [PRIVATE]. The panel considered that the oral evidence was clear and consistent and that the evidence was largely supported by Witness 2’s oral and witness statement, as well as Ms 1’s hearsay evidence.

The panel was therefore satisfied that Colleague B’s evidence was reliable and that the alleged response given by Mr Kerslake after he had been told that a patient had attempted

to kiss Colleague B and/or touch her inappropriately was more likely to have occurred than not.

The panel therefore found this charge proved.

Charge 1b)

b) said 'your ass is very slappable, you look beautiful' or words to that effect to Colleague B.

This charge is found proved.

In reaching this decision, the panel took into account Colleague B's and Witness 3's written witness statement and oral evidence.

The panel took into account Colleague B's oral evidence, which was consistent with her written statements. The panel also took into account that Mr Kerlake did not hide that fact that he was open to doing this with younger girls and admitted this to other colleagues. The panel took into account the part of Colleague A's statement which described her experience of a similar type of incident:

"He was sat down he grabbed me for a hug and grabbed my bum, I laughed and ran to the back of the office, Bo asked Steve what he did and he said "I grabbed her arse".

The panel took into account Witness 3's oral evidence in which he stated that he was aware that similar complaints had been made by other colleagues. The panel considered that this evidence supported the suggestion that this was the type of behaviour in which Mr Kerlake had engaged.

The panel concluded that there was enough evidence to suggest that Mr Kerlake made inappropriate comments to Colleague B.

The panel therefore found this charge proved.

Charge 2

2) In January 2021, placed your hand(s) on and/or grabbed Colleague A's bottom.

This charge is found proved.

In reaching this decision, the panel took into account Witness 3's, Witness 4's oral and written statements, and Colleague A's hearsay evidence.

The panel took into account that although Witness 3 did not witness this directly, he did make statements in his oral evidence which were consistent with his witness statement dated 23 June 2021. He stated:

"I do remember that shift when I was working with them both. I do remember him hugging her. I didn't witness him touching her bum because I wasn't looking at them. Afterwards [Colleague A] said that Steve K had touched her inappropriately. I saw them hugging but did not see him touch her bum. When he had left the room, she told me. She said that he goes over the top when he hugs. I didn't ask her what that meant. But we know that Steve likes to hug other people. He does this a lot, so I don't take any notice." [sic]

The panel noted that although Witness 3 did not directly witness the incident, he did give corroborative evidence that, *"something had happened, [PRIVATE], and she stated that he "takes it too far"*.

The panel also took into account that this was reported to Witness 4 within a couple of days of it happening as this was also corroborated in Witness 4's oral evidence. The panel considered it to be significant that this complaint was made by Colleague A to her manager shortly after the events to which it related.

The panel concluded that there is consistency and clarity within the witness statements and the live oral evidence.

The panel therefore found this charge proved.

Charge 3a)

In or around March 2021:

- a) stroked the back of Colleague B's head.

This charge is found proved.

In reaching this decision, the panel took into account Colleague B's and Witness 4's written statements and oral evidence. It also took into account Ms 1's hearsay evidence.

[PRIVATE]. The panel took into account that Colleague B was clear in her oral evidence that Mr Kerslake did touch her hair. The panel also took into account parts of the Confidential Investigation Meeting dated 14 June 2021 where Mr Kerslake was interviewed. He stated:

[PRIVATE].

The panel further took into account parts of the same report in which Mr Kerslake states:

“[Colleague B] showed me the shaved part of her hair when I enquired as to how short it was cut. Although I did touch her hair on this occasion it was done so as part of a friendly conversation which she at the time was inviting of, pulling her hair to the side. She was comfortable with this was not done as part of any unacceptable, inappropriate sexual behaviour.”

The panel further noted that both Witness 4 in her oral evidence and Ms 1 in her written statements described how they had confronted Mr Kerslake when he had previously touched them inappropriately.

The panel also noted that in his local investigation interview, Mr Kerslake had admitted touching Colleague B's hair albeit he provided a slightly different version of events. However, the panel concluded that the witness statements and oral evidence from the witnesses corroborated each other and that there was sufficient evidence to prove that Mr Kerslake did stroke the back of Colleague B's neck and that it was unwelcome.

The panel therefore found this charge proved.

Charge 3b)

b) massaged Colleague B's shoulder

This charge is found proved.

In reaching this decision, the panel accepted Colleague B's account given in her witness statement and her oral evidence. Her account was plausible, credible and consistent and the panel could not detect any reason why she would invent what, on one view, might be regarded to be an inconsequential event.

The panel took into account that Colleague B's written statements were consistent with her oral evidence. [PRIVATE].

The panel therefore found this charge proved.

Charge 3c)

c) touched/slapped Colleague B's bottom.

This charge is found proved.

In reaching this decision, the panel accepted Witness 2's evidence that Colleague B had reported the incident to her approximately two weeks later.

The panel took into account that Colleague B's oral evidence was clear and consistent with her written witness statement. [PRIVATE].

[PRIVATE].

The panel noted that Mr Kerslake denied the allegations in his interview notes in which he stated:

[PRIVATE].

The panel took the view that there was sufficient evidence to conclude it was more likely than not that Mr Kerslake did touch/slap Colleague B's bottom.

The panel therefore found this charge proved.

Charge 3d)

- d) Said to Colleague B, having touched/slapped her bottom, 'I can't help it, your ass looks slappable' or said words to that effect.

This charge is found proved.

In reaching this decision, the panel accepted the evidence in Colleague B's and Witness 2's witness statements and that given orally, for the same reasons given in respect of paragraph 3c above, the panel found this charge proved.

Charge 4a(i)

4) On or around 11 May 2021:

- a. touched Colleague A's:
 - i. shoulders.

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's and Witness 4's oral evidence and their witness statements, together with Colleague A's and Ms 1's written witness statements.

The panel took into account that Witness 1 in his oral evidence had stated that Mr Kerslake had grabbed Colleague A and suggested that he had been too close, in his opinion. Witness 1 told the panel that Colleague A had told him that Mr Kerslake overstepped her boundaries. The panel accepted Colleague A's evidence that when Colleague A set boundaries, Mr Kerslake had overstepped them.

The panel accepted the account given in Colleague A's witness statement in which she stated:

"Most shifts we have been on together he has been very touchy, rubbing my shoulders, hair. I awkwardly laughed but never said anything.

On Wednesday last week (12th May 2021) I was in the office with him and Bo, he did a few weird things such as he grabbed my shoulders and directly stared at me, I walked away."

The panel also considered it significant that the Confidential Investigation Meeting notes, dated 14 June 2021, record Mr Kerslake stating:

"I am disappointed she didn't say anything. If people are on a computer I might put my hand on their shoulder. I don't recall her ever saying she had a problem with my behaviour. No one has said that they have a problem with my behaviour." [sic]

The panel noted that it did not appear that Mr Kerlake was denying the allegation. Rather, he was expressing disappointment that Colleague A had not said anything at the time that she objected to his behaviour.

The panel concluded that it was more likely than not that he did touch Colleague A's shoulders.

The panel therefore found this charge proved.

Charge 4a (ii)

7) On or around 11 May 2021:

a) touched Colleague A's:

ii) face.

This charge is found NOT proved.

In reaching this decision, the panel took into account Colleague A's hearsay evidence and whereas it considered it to be reliable and truthful in relation to this allegation, the panel considered that it was imprecise as to the circumstances or occasion that it had occurred. The panel also noted that there was no evidence elsewhere that referred to this specific incident and so it was not otherwise supported by other evidence. Furthermore, it does not appear that this specific allegation was ever put to Mr Kerlake to give him an opportunity to respond to it.

Accordingly, the panel found that the NMC had not discharged the burden of proof in relation to this alleged incident.

The panel therefore found this charge not proved.

Charge 4b)

b) kissed Colleague A's cheek

This charge is found NOT proved.

For the same reasons given in relation to Charge 4a(ii), the panel found this allegation not proved.

Charge 4c)

c) grabbed Colleague A's bottom.

This charge is found proved.

In reaching this decision, the panel took into account Witness 3's and Witness 4's oral and written witness statements, and Colleague A's hearsay evidence.

The panel took into account parts of the Confidential Investigation Meeting notes, dated 14 June 2021, in which Mr Kerslake states:

"I don't remember touching anyones bottom." [sic]

It also took into account Witness 4's witness statement where she states:

"[Colleague A] wanted to speak to me straightaway on 16 May. [PRIVATE]. He went to hug her; he put both hands on her bum which made her jump back. Another member of staff, Bo asked what had happened and Steve had said 'I grabbed her arse.' [Colleague A] told me that she didn't challenge at the time. [PRIVATE]."

The panel took into account that Colleague A had made Witness 4 aware of the situation at the time of the events. It also took into account that Colleague A made an early

complaint and that there is also evidence from Witness 1 to support the fact that Mr Kerslake had grabbed her bottom.

The panel had sight of the Confidential Investigation Meeting notes dated 17 June 2021 in which Witness 3 stated:

“She told Misodzi the Band 6 team leader that Steve had touched her thigh and her bottom. [PRIVATE].”

The panel took into account that the witness statements, exhibits and oral evidence all corroborated the evidence. It concluded that there was enough evidence to suggest that Mr Kerslake had grabbed Colleague A’s bottom.

The panel therefore found this charge proved.

Charge 4d)

d) rubbed Colleague A’s thigh.

This charge is found proved.

In reaching this decision, the panel took into account Witness 3’s, Witness 4’s oral and written witness statements, and Colleague A’s hearsay evidence.

The panel took into account parts of the Confidential Investigation Meeting notes dated 14 June 2021, in which Mr Kerslake states:

“I did talk to [Colleague A] about this and I did put my hands up to this but I haven’t touched her. I just touched her knee. I then took my hand away.”

The panel noted that there was some form of touching from Mr Kerslake towards Colleague A as this is recorded in his interview notes. [PRIVATE].

The panel took into account that there had been a limited admission from Mr Kerslake about the touching of Colleague A's knee. The panel concluded that due to the consistency of the other witness evidence, that they do not accept Mr Kerslake's version of events.

The panel therefore found this charge proved.

Charge 5

- 5) Your actions at charges 1 and/or 2 and/or 3 and/or 4 above were done in pursuit of or to obtain sexual gratification

This charge is found proved.

In reaching this decision, the panel took into account all the documentary evidence and submissions before it.

The panel took into account the NMC's submissions about groping someone's bottom being described as being sexual in nature. The panel noted that it would be difficult to explain why it would not be described as sexual in nature and that the comments made would only gravitate towards one definition.

The panel therefore found this charge proved.

Charge 6a)

- 6) Your actions at charges 1 and/or 2 and/or 3 and/or 4 above harassed Colleague A and/or B in that:
 - a) your conduct was unwanted conduct of a sexual nature and/ or related to a protected characteristic, namely sex.

This charge is found proved.

In reaching this decision, the panel took into account Colleague B's oral and witness statements, as well as Colleague A's hearsay evidence. It also took into account the evidence provided by Ms 1 and Witness 4.

[PRIVATE]. The panel noted that several witnesses stated that Mr Kerslake did not behave in a similar way with male colleagues, and none of the witnesses could recall ever seeing Mr Kerslake hug a male colleague.

The panel further noted that Ms 1 in her written statement and Witness 4 in her oral evidence, described having experienced this sort of behaviour and that they had made it clear to Mr Kerslake that his behaviour was inappropriate.

The panel concluded that there was sufficient information to conclude that Mr Kerslake's actions were of a sexual nature.

The panel therefore found this charge proved.

Charge 6b(i) and 6b(ii)

b) your conduct had the purpose or effect of:

ii) violating Colleague A and/or B's dignity.

iii) creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A and/or B.

These charges are found proved.

In reaching this decision, the panel took into account [PRIVATE].

The panel took into account that Colleague A had tried to ignore Mr Kerslake's actions on different occasions and that she had repeatedly indicated that he had crossed a boundary.

The panel considered that Mr Kerslake behaviour promoted an unhealthy culture on the ward, specifically targeting younger female staff.

The panel concluded that there was evidence to prove that Colleague A and B's dignity was compromised. The panel also considered that Mr Kerslake's behaviour had created an intimidating and offensive environment for his colleagues.

The panel therefore found these charges proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Kerslake'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, maintain public confidence in the profession and declare and uphold standards for 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 Kerslake's 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 Danti invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) in making its decision.

Ms Danti identified the specific, relevant standards where Mr Kerslake's actions amounted to misconduct. She referred the panel to parts of the Code, specifically, 1.1, 8, 8.2 and 20, 20.1, 20.2, 20.3 20.4, 20.5, 20.7, 20.8, 20.9 and 20.10.

Ms Danti submitted that Mr Kerslake knew full well his behaviour was inappropriate and that he had exploited his role within the ward with more junior colleagues [PRIVATE]. She submitted that the incidents predominantly occurred in the presence of other male colleagues and that Mr Kerslake would turn these incidents into a joke. [PRIVATE]. Ms Danti submitted this created an environment where the conduct could be repeated.

Ms Danti submitted that Mr Kerslake exploited the situation to his own advantage and that his behaviour was predatory. [PRIVATE].

Ms Danti submitted that Mr Kerslake's behaviour fell seriously below the standard expected of a registered nurse. She submitted that the breaches themselves are extremely serious and significant, and accordingly, that Mr Kerslake's conduct could undermine public confidence in the profession.

Ms Danti submitted that the seriousness of this case was indeed heightened by the fact that this was conduct that occurred repeatedly over a significant period of time. She submitted that all the charges proved are sufficiently serious, both individually and collectively, so as to amount to misconduct.

Submissions on impairment

Ms Danti moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Cohen v General Medical Council* [2008] EWEC 581 (Admin).

Ms Danti submitted that the seriousness of the harm caused in this case requires a finding of impairment. She submitted when considering insight, the panel should be reminded of Mr Kerslake's responses recorded in the investigation meeting notes. She submitted that Mr Kerslake denies any harm caused and denies any wrongdoing.

Ms Danti submitted that there is no evidence of any insight or regret. She submitted that there is no acceptance of any responsibility for what happened. Ms Danti submitted that Mr Kerslake's responses were an attempt to avoid any blame.

Ms Danti submitted that this case does not relate to the competency of Mr Kerslake, but rather to his conduct. She submitted there is no evidence that Mr Kerslake has taken any steps to ensure that the conduct in question has been remedied. Ms Danti submitted that the concerns are more difficult to put right as the crux of the concerns relate solely to Mr Kerslake's attitude and conduct.

Ms Danti submitted that given the seriousness of the harm to Colleague A and B, repetition would put the public at risk. She submitted that Mr Kerslake's conduct has brought the nursing profession into disrepute and has breached the fundamental tenets of the profession.

Ms Danti reminded the panel that Mr Kerslake had chosen to absent himself from this hearing and has not engaged in this process. She submitted that Mr Kerslake has no insight, that the conduct has not been remedied and that there is a real risk of repetition.

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 was of the view that Mr Kerslake's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Kerslake's actions amounted to a breach of the 2015 Code. Specifically:

1 Treat people as individuals and uphold their dignity

1.1 treat people with kindness, respect and compassion

8 Work co-operatively

8.2 maintain effective communication with colleagues

20 Uphold the reputation of your profession at all times

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

20.4 keep to the laws of the country in which you are practising

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

20.7 make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It had regard to the case of *Roylance v General Medical Council* 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.'*

In light of this, the panel determined that Mr Kerslake's conduct failed to prioritise people and the safety of patients and colleagues, which is a requirement of him as a registered nurse.

The panel was of the view that Mr Kerslake's conduct extended over a significant period of time. It also believed that Mr Kerslake's behaviour was of a sexual nature, therefore making the concerns difficult to put right. The panel noted that this could be indicative of a deep-seated attitudinal issue.

Further, it determined that Mr Kerslake had breached fundamental tenets of the Code. The panel was also of the view that his conduct was very serious and would be considered as *'deplorable'* by fellow practitioners.

On the basis of the above, the panel determined that Mr Kerslake's conduct fell significantly short of the standards expected of a registered nurse and is sufficiently serious to amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Kerslake'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 be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

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

d) ...

The panel concluded that three of the four limbs of this test were engaged.

The panel considered that Mr Kerslake's actions caused actual harm to colleagues. The panel also took the view that Mr Kerslake's conduct put patients at risk of harm because it created an unhealthy culture which was liable to be detrimental to patient care. In this regard, the panel noted that on one occasion, he stroked the thigh of Colleague A whilst she was trying to conduct a work-related phone call with a patient. Furthermore, the panel determined that Mr Kerslake's misconduct had breached fundamental tenets of the nursing profession and therefore also brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find Mr Kerslake's fitness to practise to be impaired.

The panel was of the view that Mr Kerslake did not demonstrate any understanding of how his actions put patients and colleagues at a risk of harm. The panel could not be satisfied that Mr Kerslake appreciated the seriousness of his conduct which demonstrates a deep-seated attitudinal issue. The panel was of the view that Mr Kerslake had not demonstrated any insight, nor had he shown any remorse, or strengthened his practice.

The panel is of the view that there is a risk of repetition and therefore 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 considered there to be a public interest in the circumstances of this case. The panel found that the charges found proved are serious. It was of the view that a fully

informed member of the public would be concerned by its findings on facts and misconduct. The panel concluded that public confidence in the nursing profession would be undermined if a finding of impairment were not made in this case. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that Mr Kerlake's fitness to practise as a registered nurse is currently impaired on the grounds of 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 Mr Kerlake off the register. The effect of this order is that the NMC register will show that Mr Kerlake 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

Ms Danti informed the panel that in the Notice of Hearing dated 2 January 2024, the NMC had advised Mr Kerlake that it would seek the imposition of a strike-off order if it found Mr Kerlake's fitness to practise currently impaired.

Ms Danti proposed the following aggravating factors:

- Repeated conduct giving rise to numerous allegations which were found to be proven and constituted misconduct;
- Misuse of power in respect of junior colleagues, namely Colleague A and Colleague B;
- Predatory behaviour in pursuit of sexual gratification;

- Mr Kerslake's behaviour constituted harassment was designed to intimidate, degrade and humiliate Colleague A and B;
- Mr Kerslake has not been engaging with the NMC;
- Mr Kerslake has voluntarily absented himself from the proceedings;
- There is no evidence of insight, remorse, or remediation.

Ms Danti submitted there are no mitigating factors.

Ms Danti submitted that such serious attitudinal concerns made it incompatible for Mr Kerslake to remain on the register. She submitted that no workable conditions could be formulated that would address the risk of repetition, and a striking-off order was the only appropriate order.

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

Decision and reasons on sanction

Having found Mr Kerslake's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The panel also took into account the NMC Guidance on sexual misconduct, 'Considering sanctions for serious cases SAN-2'. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- The repetitive nature of the behaviour, despite previously having been warned by other nurses;
- Mr Kerslake's deep-seated attitudinal issues;
- The imbalance in power between Mr Kerslake and junior colleagues;
- Predatory behaviour for the purposes of sexual gratification;

- Mr Kerslake has shown no insight, regret or remediation;
- Mr Kerslake's behaviour contributed to an unhealthy culture;
- Behaviour that was intimidating or degrading to colleagues.

The panel did not consider there were any mitigating factors.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Kerslake's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Kerslake's misconduct was not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on Mr Kerslake'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 serious charges in this case, the attitudinal concerns and repeated misconduct. There are no workable conditions that would adequately address the risk to the public. In addition, Mr Kerslake has failed to provide any evidence of relevant training, insight, or remediation which the panel found demonstrates an attitude which is inconsistent with workable conditions of practice. The panel concluded that placing conditions on Mr Kerslake's registration would not satisfy the public interest in the maintenance of confidence in the profession and the upholding of standards and would not adequately 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;*
- *[...]*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *[...]*
- *[...]*

The panel found that this was not a single incident of misconduct, it was a pattern of behaviour. The panel also concluded that Mr Kerslake has deep-seated attitudinal problems which manifest themselves as sexually predatory behaviours. Furthermore, Mr Kerslake has shown no insight or remorse whatsoever, nor has he strengthened his practice in any way. As a result, the panel took the view that he is liable to repeat his behaviour. The panel decided that he does not satisfy any of the criteria in the Sanctions Guidance regarding a suspension order.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse.

In this particular case, 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?*

The panel had regard to the Guidance on dealing with harassment and bullying which makes it clear that this should always be treated as a serious matter. The panel also took into account the Guidance on sexual misconduct which indicates that unless exceptional circumstances exist, the likelihood is that the registrant will be vulnerable to a striking off order being imposed. The panel did not consider any such circumstances exist in this case.

The panel was of the view that the findings in this particular case demonstrate that Mr Kerslake's actions were serious and to allow him to continue practising would fail to protect the public and would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Kerslake'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 because his actions were fundamentally incompatible with remaining on the register.

This will be confirmed to Mr Kerslake 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 Kerslake's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

Ms Danti submitted that, given the panel's reasons for imposing the striking-off order, an interim suspension order of 18 months is in the public interest. She submitted that public confidence in the profession would be seriously damaged if Mr Kerslake were allowed to practise without restriction during the appeal period. Ms Danti submitted that an interim order of 18 months was required to allow sufficient time for any appeal lodged to conclude.

Decision and reasons on interim order

The panel is satisfied that an interim order is in the public interest. It had regard to the seriousness of the case and the reasons set out in its decision on sanction in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate in this case, due to the reasons set out in its decision on sanction. The panel therefore imposed an interim suspension order for a period of 18 months in order to maintain public confidence in the profession and in the NMC as its regulator. The panel determined that an 18-month period is required to allow sufficient time for any appeal lodged to conclude.

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

That concludes this determination.