

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

Substantive Hearing

**14 – 18, 21 - 23 and
25 - 29 November 2022**

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

Name of registrant:	Dominic Michael Rogers
NMC PIN:	14L1195E
Part(s) of the register:	Registered Nurse - Children
Relevant Location:	North Northamptonshire
Type of case:	Misconduct
Panel members:	Nicholas Rosenfeld (Chair, Lay member) Jane Jones (Registrant member) Linda Redford (Lay member)
Legal Assessor:	Michael Levy Robin Hay (28 November 2022)
Hearings Coordinator:	Tyrena Agyemang
Nursing and Midwifery Council:	Represented by Katie Mustard, Case Presenter
Mr Rogers:	Not present and unrepresented
Facts proved by admission:	Charges 3, 5(d), 5(g) and 6
Facts proved:	Charges 1 in its entirety, 2, 4 in its entirety, 5 in its entirety, 7 in relation to charge 1, 8, 9, 10, 11 and 12
Facts not proved:	Charge 7 in relation to charge 2
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 Rogers was not in attendance and that the Notice of Hearing letter had been sent to Mr Rogers' email address (as recorded on the NMC Register) by secure delivery on 14 October 2022.

Ms Mustard, 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 and venue of the hearing and, amongst other things, information about Mr Rogers' 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 Rogers 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 Rogers

The panel next considered whether it should proceed in the absence of Mr Rogers. It had regard to Rule 21 and heard the submissions of Ms Mustard who invited the panel to continue in the absence of Mr Rogers.

Ms Mustard referred the panel to the documentation from Mr Rogers which included an email from Mr Rogers dated 7 November 2022, which stated:

"Thank you for your email. I politely decline to attend the hearing [PRIVATE]."

Ms Mustard submitted that in addition to the email dated 7 November 2022, Mr Rogers also sent the Case Coordinator a bundle of papers, which included his response to the charges and the case management form. She referred the panel to the relevant page signed by Mr Rogers on 7 November 2020, where he has ticked the boxes stating he will not be attending the hearing. Mr Rogers also ticked the boxes on the form stating that he would like the hearing to go ahead without him and he confirmed that he is not asking for a postponement or change of hearing date. In the same form, when asked for details as to why he does not wish to attend the hearing, Mr Rogers has stated the following:

“[PRIVATE], I therefore politely decline to attend the hearing. However, I stand by my original statements and deny the allegations put forward.”

Ms Mustard referred the panel to the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162 and submitted that Mr Rogers is aware of the hearing and has chosen not to attend. She further submitted that Mr Rogers had voluntarily absented himself and she subsequently invited the panel to proceeding in his absence.

In answer to questions from the panel, Ms Mustard outlined that Mr Rogers was informed that the hearing was physical and may not have been told, that he could attend virtually.

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 Rogers. In reaching this decision, the panel has considered the submissions of Ms Mustard, the documentation from Mr Rogers, and the advice of the legal assessor. It has had particular regard to

the factors set out in the decision of *Adeogba* 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 Rogers;
- Mr Rogers has informed the NMC that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- A number of witnesses have made themselves available to give live evidence throughout the hearing, including two who are vulnerable;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- 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 Rogers in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him by email. 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, this limited disadvantage is the consequence of Mr Rogers' decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

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

During the hearing Ms Mustard made a request that parts of this case be held in private on the basis that proper exploration of Mr Rogers' case involves references to his health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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

Having heard there will be references to Mr Roger's health, the panel determined to hold those parts in private, as and when such issues are raised.

Details of charge

That you, a registered nurse:

- 1) Between 20 September 2017 and 27 August 2020, in respect of Colleague A
 - (a) On one or more occasions sent inappropriate messages over social media
 - (b) Regularly asked Colleague A to go on a date with you, despite Colleague A telling you no and/or that she was not interested
 - (c) Made a comment to the effect that Colleague A had looked really fit in her social media profile picture and that you ~~has~~ **had** masturbated whilst looking it
 - (d) On one or more occasions sent snapchats containing Colleague A's profile picture with suggestive and/or inappropriate emojis

(e) On one or more occasions asked Colleague A how she would like to have sex and/or where she liked to have sex

(f) On one or more occasions suggested to Colleague A that you could go for a break together to "PAU"

(g) On one or more occasions asked Colleague A if **she** wanted to go into a cupboard with you

2) On one or more occasions rubbed the back of Colleague A, without her consent

3) On an unknown date in 2020 you shook hands with female colleagues and then explained that it was the hand you would use to masturbate.

4) In July 2020 in respect of Colleague B

(a) On one or more occasions you made inappropriate comments and/or jokes about the father of a patient fancying Colleague B

(b) On one or more occasions you made inappropriate comments and or jokes about the father of a patient fancying Colleague B after she had told you to stop doing so because it was freaking her out

(c) Despite Colleague B confiding in you as to why she might be particularly affected by your inappropriate comments or jokes,

i. continued to make jokes and/or comments to the effect that Colleague B liked older men

ii. on one or more occasions said that Colleague B liked "wrinkly cocks" or words to that effect

(d) Commented to Colleague B that her bum looked good, or words to that effect

- (e) Asked Colleague B if you could touch her bottom
- (f) On one or more occasions put your hand on Colleague B's thigh, under the desk
- (g) Commented that you had an interest in Colleague C as a "weird girl" or words to that effect
- (h) Commented that you had an interest in Colleague A when it came to the "physical stuff" and described her as a "bit of a slut" or words to that effect.
- (i) Commented on finding patients' mums "fit"
- (j) Asking Colleague B if she found patients' dads "fit"
- (k) Asked Colleague B what she would do if she cheated on her partner
- (l) Asked Colleague B if she would give someone else a "blow job" whilst she was going out with her partner
- (m) Asked Colleague B if she would participate in a "threesome"
- (n) On one or more occasions asked Colleague B to promise that she would not tell anyone about what he was saying and/or doing
- (o) On one or more occasions asked to touch Colleague B's breasts

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

- (a) On one occasion, tried to prevent Colleague B from leaving the nurses' station
- (b) Grabbed the bottom of Colleague B

- (c) Squeezed the bottom of Colleague B
- (d) Sent a message asking Colleague B to join you in a cubicle during ~~his~~**your** break
- (e) On one or more occasions, other than mentioned in charge 4 (o) asked to touch Colleague B's breasts
- (f) Suggested to Colleague B that she could meet him in cubicle, further away, during her break
- (g) Entered the cubicle that Colleague B had been using during her break
- (h) Took Colleague B's hand and put the back of it against your erect penis, over your trousers
- (i) Followed Colleague B into the dirty utility room
- (j) On a different occasion than that mentioned in charge 5 (h), took Colleague B's hand and moved it towards your penis
- (k) Tried to put your hand up Colleague B's top
- (l) Put your hand down Colleague B's top
- (m) Squeezed one of Colleague B's breasts
- (n) Pulled down Colleague B's facemask and/or kissed her
- (o) Tried to prevent Colleague B from leaving the dirty utility room
- (p) Tried to kiss Colleague B again

(q) On one or more occasions, asked Colleague B to go back to the dirty utility room with you

6) Sent Colleague B a message thanking her for a nice few night shifts, or words to that effect

7) And your conduct as specified in charge 2 amounted to an incident/incidents of sexual assault

8) And your conduct as specified in charge 1 and/or 2 was sexually motivated in that you intended to pursue a future sexual relationship with Colleague A

9) And your conduct as specified in charge 1 and or 2 amounted to sexual harassment of Colleague A and/or a breach of professional boundaries

10) And your conduct as specified in in charge 4 (f) and/or 5 (b) and/or 5 (c) and/or 5 (h) and/or 5 (j) and/or 5 (m) and/or 5 (n) amounted to an incident/incidents of sexual assault in respect of Colleague B who was not consenting to be touched

11) And your conduct as specified in charges 4 and/or 5 and/or 6 was sexually motivated in that you intended to pursue a future sexual relationship with Colleague B

12) And your conduct as specified in charges 4 and/or 5 and/or 6 amounted to sexual harassment of Colleague B and/or a breach of professional boundaries

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

Decision and reasons on application to amend the charge

The panel of its own volition invited submissions on an application from Ms Mustard, to amend the wording of charges 1c, 1g and 5d, once the charges had been read into the record.

The proposed amendments were to correct minor typographical errors within the charges. It was submitted by Ms Mustard that the proposed amendments would correct the typographical errors and would not cause any prejudice or unfairness to Mr Rogers.

“That you, a registered nurse:

1) Between 20 September 2017 and 27 August 2020, in respect of Colleague A

(c) Made a comment to the effect that Colleague A had looked really fit in her social media profile picture and that you ~~has~~ **have** masturbated whilst looking it

(g) On one or more occasions asked Colleague A if **she** wanted to go into a cupboard with you

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

(d) Sent a message asking Colleague B to join you in a cubicle during ~~his~~ **your** break

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

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Rogers and no injustice would be caused to either party by the proposed amendment being allowed. It

was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Admissions to the charges

At the outset of the hearing, the panel heard from Ms Mustard, who informed the panel that Mr Rogers, in his response to the NMC, had made admissions to charges 3, 5d, 5g and 6.

The panel therefore finds charges 3, 5d, 5g and 6 proved, by way of Mr Rogers' admissions.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Mustard under Rule 31 to allow the signed witness statement of Colleague A into evidence. Colleague A was not present at this hearing and, whilst the NMC had last contacted her on 31 May 2022, the panel concluded that the NMC had not made sufficient efforts to ensure that this witness was present during the hearing. The panel considered an email from Colleague A sent to the case coordinator dated 24 March 2022, which stated:

[PRIVATE]

Ms Mustard referred the panel to a telephone note dated 30 May 2022, in which Colleague A outlines that she no longer wants to participate in the proceedings *[PRIVATE]*.

Ms Mustard told the panel that, after careful consideration at that time in May 2022, the decision was made by the Case Coordinator not to contact Colleague A further as it would not be appropriate and neither would the NMC summons Colleague A to a

hearing in order to give evidence. Ms Mustard submitted that Colleague A was not an unwilling witness, [PRIVATE].

Ms Mustard referred the panel to an email chain between the Case Coordinator and Colleague A dating back May 2022, in which the Case Coordinator informs Colleague A, should she wish to reengage and give evidence that there is support available that can be offered to Colleague A should she require it.

Ms Mustard referred the panel to the relevant case law, which included the cases of *Bonhoeffer V GMC* [2011] EWHC 1585 (Admin), *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) and the NMC Guidance on Hearsay.

The NMC Guidance as referred to by Ms Mustard states the following:

Hearsay evidence is not in-admissible just because it is hearsay in our proceedings. However there may be circumstances in which it would not be fair to admit it, for example where it is the sole and decisive evidence in respect of a serious charge and it isn't 'demonstrably reliable' and not capable of being tested.

Ms Mustard referred the panel to *Thorneycroft* and submitted that the panel is a professional panel which is able, if deemed admissible, to give the evidence of Colleague A the appropriate weight.

Ms Mustard submitted that there is a good and cogent reason for the non-attendance of Colleague A. Ms Mustard submitted that is through no fault of Colleague A that she is unable to attend the hearing. She submitted the Colleague A has not just stepped away from the hearing and has not expressed unwillingness to participate, [PRIVATE].

Ms Mustard submitted that the evidence of Colleague A is sole and decisive, but that there are some means to test this evidence. She told the panel that due to the nature of the allegations, Colleague A states that some incidents occurred whilst she was on her own with Mr Rogers.

Ms Mustard reiterated that the panel do have a signed witness statement from Colleague A with a signed declaration of truth dated 18 June 2021, which Ms Mustard submitted was further confirmation as to the accuracy of the witness statement.

Ms Mustard submitted that the panel can test the evidence of Colleague A, by questioning the other witnesses due to give evidence. Ms Mustard outlined that Colleague A had confided in Witness 1 about Mr Rogers' behaviour and although Witness 1's evidence is recounting events, this is still a means of being able to indirectly confirm the account of Colleague A. Ms Mustard outlined a number of questions that the panel could put to Witness 1 during questioning. Ms Mustard also stated that the evidence of Colleague B is capable of testing the evidence of Colleague A as there are some references to Colleague A in Colleague B's evidence.

Ms Mustard submitted that the panel had accepted the admissions of Mr Rogers. Although the admissions do not relate the charges concerning Colleague A, it does give some indication of his behaviour.

Ms Mustard submitted that the evidence of Colleague A should be admitted as hearsay evidence before the panel.

In answer to questions from the legal assessor Ms Mustard told the panel that the NMC had not made any further attempts to contact Colleague A since the last communication with her on 31 May 2022. Ms Mustard submitted [PRIVATE], given that many of the charges depend on her evidence, the decision not to follow up with her was not taken lightly.

Ms Mustard told the panel that there is no written record of the decision made not to contact Colleague A further. Ms Mustard told the panel that there is a record of the telephone note dated 30 May 2022 which can be put before the panel. She told the panel that there has not been any further contact with Colleague A since May, despite the hearing being listed six months after the phone call.

The panel considered the passage of time that had passed since the last contact with Colleague A and requested for the NMC to make further contact with Colleague A to ascertain whether she would be able to give evidence before the panel.

Decision and reasons on Colleague B as an observer

Ms Mustard made an application to the panel for Colleague B to observe the hearing as an interested party after she had given her evidence.

The panel accepted the advice of the legal assessor.

The panel determined that as the hearing is a public hearing, there are no objections to Colleague B observing the hearing as an observer with audio access only.

The panel was of the view that it was important for members of the public to see the regulator at work. The panel therefore decided to grant the application.

Tuesday 15 November 2022

The panel resumed the hearing on the morning of Tuesday 15 November 2022 and requested an update from Ms Mustard as to the attempts made to contact Colleague A.

Ms Mustard outlined that the Case Coordinator had made two phone calls to Colleague A on 14 November 2022. The first call had connected but it was a bad line and the call had to be terminated. Ms Mustard told the panel that the second call went straight to voicemail and the Case Coordinator had sent a text message explaining who she was, but there had been no response from Colleague A.

In answer to panel questions, Ms Mustard confirmed that that Case Coordinator had not been able to adequately explain to Colleague A that there would be support for her

should she wish to reengage with the process and to attend virtually and additionally to inform her that Mr Rogers would not be present in the hearing.

Ms Mustard confirmed that should Colleague A decided to reengage with proceedings and attend the hearing, she would only be required to give evidence virtually for a maximum of one hour and fifteen minutes.

The panel considered when the Case Coordinator is attempting to contact Colleague A that it would be helpful for the witness to know that she may only be needed for just over an hour, that Mr Rogers is not in attendance, that she would attend virtually and with support.

The panel accepted advice from the legal assessor.

The panel considered the case of Thorneycroft in its deliberations and determined that reasonable steps had been taken up until 31 May 2022, but since such time, no steps had been taken to secure the attendance of Colleague A at the hearing.

The panel considered the amount of time that had passed since the last contact with Colleague A. The panel acknowledged the [PRIVATE] that led to Colleague A disengaging from the proceedings, but the panel was concerned that if not contacted again, Colleague A would not have an opportunity to give her evidence.

The panel noted that Colleague A had given a signed statement in preparation for the hearing and that she was willing to give evidence, but she had not been able to continue with the process. The panel considered that, as six months had now passed, [PRIVATE] she could therefore be in a position to give evidence in the hearing.

The panel decided to give Ms Mustard another hour to make contact with Colleague A.

When the hearing resumed Ms Mustard updated the panel. She told the panel that she had relayed its directions to the Case Coordinator and a further attempt had been made to contact Colleague A. Ms Mustard told the panel that the Case Coordinator had called

the witness, but the call went to voicemail. Ms Mustard informed the panel that a voicemail had not been left, and there had been no reply from Colleague A yet.

Ms Mustard told the panel that it was not clear if Colleague A was still working, as an email had been sent to her at her presumed work email address, but there had also been no response.

Ms Mustard outlined that the Case Coordinator had called the Colleague A three times, sent her one text message and one email and there had been no response yet.

The panel accepted the advice from the legal assessor, which included references to the relevant case law of *Ogbonna v NMC* [2010] EWCA Civ 216, *Bonhoeffer v GMC* [2011] EWHC 1585 (Admin), *Thorneycroft, El Karout v NMC* [2020] EWHC 3079 and *McDaid v NMC* [2013] EWHC 586 (Admin).

The panel carefully considered all the information before it and the attempts made to contact Colleague A since the start of the hearing on Monday 14 November 2022. The panel was not satisfied that all reasonable steps had been taken since 31 May 2022.

The panel considered that the decision not to contact Colleague A again at that point in May 2022 was premature, especially when the hearing had been scheduled for six months later.

The panel decided to allow more time for the NMC to re-establish contact with Colleague A. The panel was satisfied that it would be fair to both parties in allowing the NMC this time.

The panel also noted that all recent efforts to contact Colleague A was at the request of the panel and not of the NMC's own volition. The panel was concerned that not every effort had been made to contact Colleague A, and it was not yet satisfied that the NMC have taken all reasonable and fair steps at this stage.

The panel again acknowledged the passage of time since the last contact with Colleague A and was of the view that more strenuous efforts should have been made to secure the attendance of the witness in the hearing. The panel decided to allow additional time for the NMC to convey the panel's concerns and to make effective contact with the witness.

The panel determined that it would hear the evidence of all the other witnesses before making their decision on the hearsay application.

16 November 2022

Ms Mustard provided an update for the panel regarding the attendance of Colleague A.

Ms Mustard informed the panel that, in the afternoon of the 15 November 2022, the Case Coordinator had some effective contact with Colleague A and as a result Colleague A had agreed to give evidence with support, in the hearing and made herself available on Thursday 17 November 2022.

Ms Mustard went on to explain that the Case Coordinator received further contact from Colleague A on the morning of 16 November 2022, informing her that Colleague A had reflected on her decision and no longer felt comfortable to give evidence even with the arrangements that the panel had put forward.

Ms Mustard had requested the telephone notes of the phone calls from the Case Coordinator and put them before the panel.

The panel considered the telephone notes dated 15 and 16 November 2022 and emails to the Colleague A from the Case Coordinator dated 15 November 2022.

Having read aforementioned the telephone notes above, the panel was not sufficiently satisfied that Colleague A had been made aware she would not be required to

physically attend the hearing as, in the telephone note documented by the Case Coordinator, dated 15 November 2022, it stated:

“She asked if she will be attending physically and I reiterated that she will be required physically.”

The panel was concerned the Witness would think she had to physically attend the hearing, when this was not the case.

The panel then made a further request for Ms Mustard, [PRIVATE], to make contact with Colleague A and explain that she would not be required to physically attend the hearing and reiterate all the arrangements the panel had put in place.

The panel bore in mind that whilst it cannot insist Colleague A attend the hearing, it was of the view that Ms Mustard speaking with her, may relay a clear message of the panel’s request and avoid any misunderstanding that may have taken place.

Ms Mustard informed the panel that she would need to seek instructions on how best to proceed with the Witness. She agreed that the telephone note may have cause some confusion. She referred the panel to the email dated 15 November 2022, in which the Case Coordinator informs Colleague A of the following:

...I have informed her that you are happy to give your evidence virtually...

And

...if you want to have a quick 10-minute GoToMeeting test run, I am happy to organise this with you before Thursday...

Ms Mustard confirmed that she had been able to speak to the Case Coordinator and confirmed that wording in the telephone note was a typographical error and nothing more. She told the panel that there was ambiguity in the telephone note, but clarity in

the emails. Ms Mustard submitted that there had never been a suggestion that Colleague A would attend the hearing physically.

17 November 2022

Ms Mustard provided the panel with a further update on Colleague A. She told the panel that she had sought instructions from the NMC and the decision made was that is not appropriate for more contact to be made with Colleague A. [PRIVATE].

Ms Mustard informed the panel, that should it wish, it does have powers under Rule 22(5) of the Rules to compel Colleague A to attend the hearing. Ms Mustard referred the panel to the Rules which states:

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

Ms Mustard submitted that the NMC would not be make any further contact with Colleague A.

The panel accepted the advice of the Legal Assessor.

The panel considered Ms Mustard's submissions and the decision of the NMC. It concluded that it was not comfortable to request further contact with Colleague A. The panel acknowledged Colleague A's consistent reasons for her non-attendance. The panel was not satisfied that compelling Colleague A to attend the hearing would not be appropriate, [PRIVATE].

The panel went on to consider the Hearsay application in respect of Colleague A.

The panel invited further submissions from Ms Mustard.

Ms Mustard reiterated that contact had been now made with Colleague A since the beginning of the hearing.

Ms Mustard addressed each of the panel's requested arrangements during the hearing and requests for further information.

Ms Mustard told the panel that she had made enquiries as to the telephone note dated 30 May 2022 and that this has now been provided to the panel for its consideration.

Ms Mustard confirmed that there was not a telephone note documenting the call of 26 May 2022 but there was correspondence before the panel which outlines the correspondence between Colleague A and the Case Coordinator.

Ms Mustard confirmed that [PRIVATE] had been provided by Colleague A. She confirmed that the NMC have gone as far as it can on this subject as previously stated and despite the arrangements the panel had put in place.

The panel accepted the advice of the legal assessor.

The panel took into account all the information before it. [PRIVATE]. The panel determined that it would not compel Colleague A to attend the hearing and give evidence. The panel was satisfied it has been provided with sufficient information [PRIVATE]. It considered there was a good reason, for the non-attendance of Colleague A.

The panel considered all the attempts and contact the NMC had made with Colleague A and concluded that all reasonable steps had been taken to secure the attendance of Colleague A.

The panel further concluded that, having heard the evidence of all the NMC's witnesses, Colleague A's evidence could be seen to be the sole and decisive for only some of the sub charges. However, when looking at this case in the round and having heard from all the other witnesses, it was not the sole and decisive evidence.

The panel acknowledged Colleague A's witness statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, '*This statement ... is true to the best of my information, knowledge and belief*' and her declaration of truth which was emailed on 18 June 2021 and signed by her.

The panel noted that Mr Rogers had been provided with a copy of Colleague A's statement and the additional emails that the panel had first been provided with at that start of the hearing. As Mr Rogers has chosen to voluntarily to absent himself from these proceedings, he would not be in a position to cross-examine this witness in any event. This supported the admission of this evidence into the proceedings. There was also a public interest in the charges that Mr Rogers faces being examined fully.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statement of Colleague A, but would give what weight deemed appropriate, once the panel had heard and evaluated all the evidence before it.

Decision and reasons on case to answer

As Mr Rogers is not present in the hearing, following the advice of the Legal Assessor, which included reference to the Rules 24(7), in particular:

Except where all the facts have been admitted, and found proved under paragraph 5, at the close of the Council's case, and

- i. either upon the application of the registrant, or*
- ii. of its own volition*

The committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.

the panel invited Ms Mustard to indicate whether it was the position of the NMC that there was a case to answer in respect of all remaining charges. Ms Mustard submitted

that there is a case to answer in respect of all the remaining charges. She further submitted that the remaining charges should be allowed to remain before the panel.

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

The panel went on to consider the matter raised in 24(7)(ii), above and following its initial assessment of all the evidence that had been presented to it at this stage in relation to each and every charge concluded that Mr Rogers had a case to answer.

Decision and reasons on facts

The panel has already found charges 3, 5d, 5g and 6 proved, by way of Mr Rogers' admissions. In reaching its decisions on the remaining disputed facts, the panel took into account all the oral and documentary evidence, including Mr Rogers' returned Case Management Form and Statement of Case document, in this case together with the submissions made by Ms Mustard.

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

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

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Colleague B: Paediatric Nurse at Kettering
General Hospital NHS Foundation
Trust

- Witness 1: Healthcare Assistant at Kettering General Hospital NHS Foundation Trust
- Witness 2: A nurse at Kettering General Hospital NHS Foundation Trust
- Witness 3: Paediatric Nurse at Kettering General Hospital NHS Foundation Trust
- Witness 4: Matron for Paediatrics at Kettering General Hospital NHS Foundation Trust

Background

The charges arose whilst Mr Rogers was employed as a registered nurse at Kettering General Hospital on Skylark Paediatrics Ward.

Alleged concerns were raised that Mr Rogers had sexually assaulted Colleague B whilst at work on the night shift of 28 to 29 July 2020. Colleague B had been afraid to raise concerns immediately after the incident as she was a new member of staff . However, due to escalating anxiety and stress from the incident and the subsequent adverse effect on her health, the concerns were raised by Witness 3 to senior staff.

Mr Rogers and Colleague B both worked on Skylark Ward, where the incident took place. Colleague B reported that whilst on a night shift with Mr Rogers, she had gone into the dirty utility room to dispose of linen and he followed her into the room. Colleague B states that when she tried to leave the room, Mr Rogers prevented her from leaving and grabbed her wrist. Colleague B states that Mr Rogers then got her other wrist and placed it on his erect penis. Mr Rogers then let go of one of her wrists

and put his hand down her top, grabbing and squeezing her breast. Mr Rogers continued the assault despite Colleague B asking him to stop on several occasions.

Mr Rogers then removed his hand from Colleague B's top, pulled down her mask and tried to kiss her. This time Colleague B shouted louder for him to stop, which she felt startled him and she managed to get out the room.

Colleague B reported that prior to this incident, Mr Rogers had become increasingly flirty towards her, asking to touch her breasts, squeezing her bottom and asking inappropriate sexual questions about whether she would have a threesome or give oral sex. This continued despite Colleague B asking Mr Rogers to stop on multiple occasions.

Throughout the NMC investigation, the NMC was made aware that another female member of staff, Colleague A, had also reported that she had previously been sexually harassed by Mr Rogers. Colleague A reported that Mr Rogers, over a number of years had made inappropriate sexual comments to her that were always very sexual and graphic. Mr Rogers had told her he would masturbate over her Facebook profile picture, would ask her where she likes to have sex and make suggestive comments asking if they could take their breaks together in a quiet room. Despite Colleague A telling Mr Rogers to stop, this continued for a number of occasions.

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 along with Mr Rogers' returned Case Management Form and Statement of Case document. The panel then considered each of the disputed charges and made the following findings.

Charge 1(a)

1) Between 20 September 2017 and 27 August 2020, in respect of Colleague A

- (a) On one or more occasions sent inappropriate messages over social media

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Colleague A, the witness statements and oral evidence of witnesses 1 and 3.

The panel considered the witness statement of Colleague A and that it was supported by the evidence of Witness 1. Witness 1 told the panel that she couldn't remember the details, but she had been aware there had been inappropriate messages sent by Mr Rogers. Witness 3's evidence also substantiated the evidence of Colleague A. Witness 3 told the panel during her oral evidence that she knew there were a number of staff who had received inappropriate messages from Mr Rogers via Snapchat.

Witness 3 told the panel that Colleague A had confided in her and told her about the inappropriate messages she had been sent. Witness 3 could specifically recall a message Colleague A had been sent by Mr Rogers which she quoted as: *"I'd love to have sex with you on a car"*.

The panel was satisfied, based on the evidence of Colleague A and the supporting evidence of Witnesses 1 and 3, that, on the balance of probabilities, it was more likely than not that Mr Rogers had on one or more occasions sent inappropriate messages over social media to Colleague A.

The panel therefore finds this charge proved.

Charge 1(b)

1) Between 20 September 2017 and 27 August 2020, in respect of Colleague A

- (b) Regularly asked Colleague A to go on a date with you, despite Colleague A telling you no and/or that she was not interested

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Colleague A, the witness statements and oral evidence of Witnesses 1 and 3.

In her witness statement, Colleague A states that Mr Rogers: *“was regularly asking me if I wanted to go on dates with him and meet outside of work. I kept telling him, no that I am not interested in him like that but he didn’t seem to acknowledge that.”*

Witness 1 during her oral evidence, substantiated the evidence of Colleague A and told the panel that Colleague A had told her that Mr Rogers had asked her to go out on a date with him and that she had said no. Witness 1 told the panel, in addition she had noticed Colleague A, keeping her distance from Mr Rogers after declining to go out on a date with him.

Witness 3 was able to give the panel some context to this charge and outlined during her oral evidence that Mr Rogers had regularly pursued other staff for dates, demonstrating a pattern of behaviour.

The panel accepted the evidence of Witness 3 in that her evidence further outlined a pattern of inappropriate behaviour displayed by Mr Rogers towards the younger female members of staff.

The panel therefore finds this charge proved.

Charge 1(c)

1) Between 20 September 2017 and 27 August 2020, in respect of Colleague A

- (c) Made a comment to the effect that Colleague A had looked really fit in her social media profile picture and that you ~~has~~ **had** masturbated whilst looking it

This charge is found proved.

In reaching this decision, the panel took into account the witness statement and oral evidence of Witness 2, the witness statement of Colleague A, the oral evidence of Witness 1 and the investigation meeting notes dated 8 February 2021.

The panel noted the evidence of Witness 2 as she told the panel that Mr Rogers liked to compliment staff on their physical appearance which was expressed and perceived in a sexualised manner. This evidence was supported by Witness 1 who stated in oral evidence that Mr Rogers would comment on how nice people looked.

The panel noted the investigation meeting notes, where Mr Rogers states: *Sometimes I would like a picture that she has put up on social media but that's all. I would have never said that.* The panel accepted that Mr Rogers had liked Colleague A's social media profile picture and that there was a pattern of him talking about masturbation and making sexualised jokes with his colleagues.

The panel was therefore satisfied that this charge is found proved.

Charge 1(d)

1) Between 20 September 2017 and 27 August 2020, in respect of Colleague A

- (d) On one or more occasions sent snapchats containing Colleague A's profile picture with suggestive and/or inappropriate emojis

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Colleague A and the oral evidence of Colleague B.

The panel heard from Colleague B that Colleague A had told her about inappropriate text messages and comments on her pictures.

The panel noted that it did not have any screen shots or pictures of the comments sent or received as they were sent using Snapchat, a social media platform which automatically deletes messages 24 hours after they have been sent. The panel heard during the oral evidence of the witnesses that snapchat was regularly used as a means for staff to communicate with each other.

The panel have accepted the evidence of Colleague A and it preferred the account of Colleague B over that of Mr Rogers, it therefore finds this charge proved.

Charge 1(e)

1) Between 20 September 2017 and 27 August 2020, in respect of Colleague A

- (e) On one or more occasions asked Colleague A how she would like to have sex and/or where she liked to have sex

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Colleague A and the evidence of Witness 3 and Colleague B.

The panel bore in mind its finding at charge 1(a), the evidence it based its decision on and that there was a clear pattern of Mr Rogers initiating and engaging members of staff in sexualised conversations.

The panel referred back to the oral evidence of Witness 2 where she specifically recalled Mr Rogers had sent Colleague A a message about having sex with her on a car. Witness 2 also confirmed that Mr Rogers had texted a few other members of female staff about having sex with him in various places, such as a car.

The panel also acknowledged the evidence of Colleague B, which gave the panel some context to this charge. Colleague B stated in her oral evidence that Mr Rogers had regularly discussed sex with her and that he had always gone into a lot of detail with her.

The panel was therefore satisfied that on the balance of probabilities Mr Rogers did ask Colleague A how she would like to have sex and/or where she liked to have sex. It found this charge proved.

Charge 1(f)

1) Between 20 September 2017 and 27 August 2020, in respect of Colleague A

- (f) On one or more occasions suggested to Colleague A that you could go for a break together to “PAU”

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Colleague A and the evidence of Colleague B.

The panel heard from Colleague B regarding an incident she recalled when she was working on the same shift as Mr Rogers. She told the panel that when she had gone on her break Mr Rogers had been upset that she had not told him or invited him to join her.

The panel accepted that there was no further evidence to support this charge, but in light of Colleague B’s evidence and the patterns of behaviour displayed by Mr Rogers, it was satisfied that was more likely than not that this incident had occurred.

The panel therefore found this charge proved.

Charge 1(g)

1) Between 20 September 2017 and 27 August 2020, in respect of Colleague A

(g) On one or more occasions asked Colleague A if wanted to go into a cupboard with you

This charge is found proved.

In reaching this decision, the panel took into account oral and witness statement evidence of Witness 1, and the witness statement of Colleague A.

The panel noted Colleague A's evidence, where she states:

He would also ask if I wanted to go into a cupboard with him. I would always tell him no,...

The panel acknowledged that there was no evidence substantiating Mr Rogers had asked Colleague A if she wanted to go into a cupboard with him, but there was evidence from Witness 1 who states in her witness statement and to the panel in her oral evidence, the following:

Colleague A came to me and said how she had been in the cupboard and the Registrant [Mr Rogers] had come in the cupboard where she was and made inappropriate suggestive things towards her. Colleague A felt uncomfortable so left the cupboard immediately and then on passing by the room I was in preparing the bottle, confided in me. Colleague A was very upset about what had happened.

The panel was satisfied that although there was no evidence that demonstrated Mr Rogers had asked Colleague A to go into the cupboard with him, the panel could draw an inference that Mr Rogers had asked Colleague A to go into a cupboard with him on one or more occasions from his conduct once they had been in the cupboard.

The panel therefore found this charge proved.

Charge 2

2) On one or more occasions rubbed the back of Colleague A, without her consent

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Colleague A, the internal investigation meeting notes, the evidence of Witnesses 1 and 3.

The panel noted the evidence of Witness 3 when she told the panel that Mr Rogers was “*very tactile*”.

Witness 1, during her oral evidence, gave the panel an example of an incident when Mr Rogers had felt the shoulder of one of the female nurses without her consent while she was sat at the nurses’ station on the ward and asked her if she was wearing a bra.

The panel also noted from Mr Rogers’ Statement of Case document where he states the following:

Care and compassion are at the forefront of being an incredible nurse, and when treating patients, appropriate touch is sometimes required, for example rubbing their backs when upset or holding their hands when scared.

The panel thought this was mentioned uninvited by Mr Rogers and demonstrated that he thought the rubbing someone's back was an acceptable level of touch and a way of providing comfort.

The panel was in no doubt that the back rubbing of Colleague A by Mr Rogers was unwanted and inappropriate.

The panel combined the comment about rubbing the back in Mr Roger's Statement of Case, with all the other evidence and determined that it was more probable than not, that he did rub the back of Colleague A on more than one occasion, and without her consent.

Charge 4(a) and 4(b)

4) In July 2020 in respect of Colleague B

- (a) On one or more occasions you made inappropriate comments and/or jokes about the father of a patient fancying Colleague B
- (b) On one or more occasions you made inappropriate comments and or jokes about the father of a patient fancying Colleague B after she had told you to stop doing so because it was freaking her out

These charges are found proved.

In reaching this decision, the panel took into account the witness statement and oral evidence of Colleague B and Mr Rogers' Statement of Case.

The panel noted that Mr Rogers, in his Statement of Case, does reference the incident involving the patient's Father and Colleague B. He states the following:

I had told CP to be careful when leaving the ward in the morning, as this father had left the ward several times overnight.

The panel noted that Mr Rogers had mentioned this incident on more than one occasion. The second being during the internal investigation meeting minutes dated 22 September 2020, where he states:

I was more concerned; I said she needed to be careful. It was more banter, it was inappropriate but it was humour; I tried to be funny and she'd laughed as well...

The panel noted that Mr Rogers mentions “*banter*”, “inappropriate humour” and that he “tried to be funny”. The panel, during witness evidence, heard on a number of occasions that there were numerous concerns and a pattern forming regarding Mr Rogers inappropriate sexualised jokes and humour that often made staff go quiet and feel uncomfortable.

The panel also referred to the evidence of Colleague B. The panel considered her oral evidence to be consistent with her witness statement and that there was no reason for the panel to consider Colleague B’s account was fabricated or untrue.

The panel considered Colleague B’s evidence that Mr Rogers was making jokes about her being followed home and kidnapped and considered this to highly inappropriate and as a result would have “*freaked out*” anyone, but Colleague B due to her history of having been groomed.

The panel therefore find both these charges proved.

Charge 4(c) i and 4(c) ii

4) In July 2020 in respect of Colleague B

(c) Despite Colleague B confiding in you as to why she might be particularly affected by your inappropriate comments or jokes,

- i. continued to make jokes and/or comments to the effect that Colleague B liked older men
- ii. on one or more occasions said that Colleague B liked “wrinkly cocks” or words to that effect

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B when she explained she had told Mr Rogers about her being groomed and the supporting evidence of Witness 3.

The panel considered Mr Rogers took that extremely sensitive information Colleague B had shared with Mr Rogers, in an effort to stop his inappropriate jokes, and he then used it against her. It further considered that the term used was very specific and that it was more probable that not that Mr Rogers had made comments about Colleague B liking older men and “wrinkly cocks”.

The panel considered Colleague B’s evidence to be consistent with her witness statement and credible. The panel noted the level of detail she could recall and also considered that the language used was unlikely to have been fabricated.

The panel preferred the account of Colleague B over that of Mr Rogers, and therefore finds these charges proved.

Charge 4(d) and 4(e)

4) In July 2020 in respect of Colleague B

- (d) Commented to Colleague B that her bum looked good, or words to that effect
- (e) Asked Colleague B if you could touch her bottom

These charges are found proved.

In reaching this decision, the panel took into account the witness statement of Colleague B. The panel noted the level of detail Colleague B could recount during her witness statement and that her oral evidence was consistent with her statement.

The panel took into account in its finding at charge 1(c) and the evidence from Witness 2 that Mr Rogers liked to comment on the physical appearance of other staff. The panel noted that this demonstrates an escalation in Mr Rogers conduct from making inappropriate jokes and comments to now asking to touch Colleague B.

The panel was satisfied based on the evidence before it, that on the balance of probabilities, that it was more likely than not this incident did occur. The panel therefore finds these charges proved.

Charge 4(f)

4) In July 2020 in respect of Colleague B

- (f) On one or more occasions put your hand on Colleague B's thigh, under the desk

This charge is found proved.

In reaching this decision, the panel took into account witness statement of Colleague B. The panel noted Colleague B's evidence that the physical contact from Mr Rogers was not invited or wanted. Colleague B told the panel that Mr Rogers had got panicky after Colleague B told him that he had crossed acceptable boundaries.

Colleague B stated in her witness statement:

I kept pushing his hand off and made it very clear this was overstepping boundaries. He kept saying sorry and saying he sometimes takes it too far... I said I wouldn't tell, but to stop it, which he would for a short period of time, but then he would just go back to doing the same thing again. He must have said sorry about 5 or 6 times on the one shift for acting inappropriately. He knew he was overstepping the boundaries.

Having found Colleague B's evidence credible in relation to the previous charges found proved and that Colleague B's oral evidence remained consistent with her witness statement throughout, the panel determined that this charge is found proved, as it was more likely than not that Mr Rogers had put his hand on Colleague B's thigh under the desk.

Charge 4(g)

4) In July 2020 in respect of Colleague B

(g) Commented that you had an interest in Colleague C as a "weird girl" or words to that effect

This charge is found proved.

In reaching this decision, the panel took into account witness statement of Colleague B.

Having previously found that Mr Rogers would often have inappropriate conversations whilst at work with colleagues and that Colleague B's evidence was credible in relation to previous charges found proved; the panel determined that Colleague B's oral evidence had remained consistent with her witness statement throughout.

The panel further determined that this charge is found proved, as it was more likely than not that Mr Rogers had commented that he had an interest in Colleague C as a "weird girl" or words to that effect.

Charge 4(h)

4) In July 2020 in respect of Colleague B

(h) Commented that you had an interest in Colleague A when it came to the “physical stuff” and described her as a “bit of a slut” or words to that effect

This charge is found proved.

In reaching this decision, the panel took into account witness statement of Colleague B.

In line with its previous findings the panel found this charge proved. It took into account that Mr Rogers had made inappropriate comments on Colleague A’s social media profile pictures and sent a number of messages to her, about wanting to have sex with her. The panel determined that it was more likely than not that he did make the comments as alleged in the charge.

Charge 4(i) and 4(j)

4) In July 2020 in respect of Colleague B

(i) Commented on finding patients’ mums “fit”

(j) Asking Colleague B if she found patients’ dads “fit”

These charges are found proved.

In reaching this decision, the panel took into account Colleague B’s written statement in relation to these two charges.

The panel took into account its previous findings and that it had found Colleague B to be a credible witness. The panel considered the extensive amount of contextual evidence that would support finding these charges proved.

Taking into account its previous findings, the panel therefore found these charges proved.

Charge 4(k)

4) In July 2020 in respect of Colleague B

(k) Asked Colleague B what she would do if she cheated on her partner

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B and Mr Rogers' Statement of Case.

The panel noted that in the Statement of Case Mr Rogers has stated:

We had both spoke [sic] about personal topics, ... On reflection, I have fully understood that these topics were not appropriate to be spoken about in a workplace environment.

This extract gave the panel some more context and greater insight into the types of conversations Mr Rogers was engaging in with staff and that, on reflection, his concession that they were inappropriate.

The panel noted that Mr Rogers also made admissions at the local investigation that he had spoken about his *personal relationships and about my past and current relationships*.

The panel had noted that Colleague B was very clear in her oral evidence and her witness statement that she was asked multiple times by Mr Rogers if she would cheat on her partner.

Colleague B states in her witness statement that:

He kept pushing it and giving me scenarios for example if I got really drunk. I said again, it wouldn't happen but he just kept pushing it and asking, if I cheated, would I tell my partner.

The panel noted that Colleague B was clear and consistent with her witness statement whilst giving her oral evidence. The panel was therefore satisfied that on the balance of probabilities, Mr Rogers did ask Colleague B what she would do if she cheated on her partner.

The panel finds this charge proved.

Charge 4(l) and 4(m)

4) In July 2020 in respect of Colleague B

(l) Asked Colleague B if she would give someone else a “blow job” whilst she was going out with her partner

(m) Asked Colleague B if she would participate in a “threesome”

These charges are found proved.

In reaching this decision, the panel took into account the evidence of Colleague B, Mr Rogers' Statement of Case and its findings at charge 4(k).

The panel acknowledged and determined that Mr Rogers did have inappropriate conversations whilst at work. The panel had due regard to this context when

considering this charge. The panel also took into account the culture of sexualised banter and conversations and applied it to this charge.

The panel having considered all the evidence before it, found these charges proved on the balance of probabilities.

Charge 4(n)

4) In July 2020 in respect of Colleague B

(n) On one or more occasions asked Colleague B to promise that she would not tell anyone about what he was saying and/or doing

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B when considering this charge.

The panel considered Colleague B's evidence when she described Mr Rogers as talking quickly whilst asking her if she was *going to tell anyone*.

In relation to charge 4(f), Colleague B told the panel in her oral evidence that she had already made it clear to Mr Rogers that he was *overstepping boundaries* and then that *He must have said sorry about 5 or 6 times on the one shift for acting inappropriately*. Mr Rogers would have been aware that his behaviour was not acceptable, and this would have lead him to panic.

The panel considered Colleague B's description of Mr Rogers to be in line with someone who was panicking and nervous, which contributes to the credibility of her evidence.

The panel therefore finds this charge proved.

Charge 4(o)

4) In July 2020 in respect of Colleague B

(n) On one or more occasions asked to touch Colleague B's breasts

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B and the internal meeting notes dated 22 September 2020.

[PRIVATE].

The panel is aware of the admitted inappropriate conversations that Mr Rogers had at work and that this is supported by a number of witnesses.

The panel preferred and found credible the evidence of Colleague B and in the light of all the evidence before it. The panel determined that it was more likely than not that Mr Rogers had on one or more occasions asked to touch Colleague B's breasts and finds this charge proved.

Charge 5(a)

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

(a) On one occasion, tried to prevent Colleague B from leaving the nurses' station

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B. The panel considered that due to the nature of the charge that there would not be any corroborating evidence to support the evidence of Colleague B.

The panel went on to consider the evidence of Colleague B and it noted the level of detail she used to explain the incident. Colleague B was able to describe very clearly the circumstances, for example where they were sat behind the nurses' station and that he had moved his wheely chair to prevent her from leaving the area. The panel found this was consistent with her witness statement.

The panel noted that prior to this incident, Colleague B had *...started to feel funny with him and that I didn't really want to be on shift with only him.* The panel considered that these feelings could have resulted in Colleague B not wanting to be around Mr Rogers.

Having found Colleague B's evidence credible and reliable on a number of other charges, the panel had no reason to doubt her account in relation to this charge.

This charge is therefore found proved.

Charge 5(b) and (c)

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

- (a) Grabbed the bottom of Colleague B
- (b) Squeezed the bottom of Colleague B

This charge is found proved.

In reaching this decision, the panel took into account evidence of Colleague B.

The panel accepted Colleague B's evidence when she told the panel that Mr Rogers had grabbed and squeezed her bottom and found it to be credible. This incident

followed on from Mr Rogers' attempt to prevent Colleague B from leaving the nurses' station and was an escalation of his inappropriate conduct towards Colleague B.

Colleague B told the panel in her oral evidence that the actions of Mr Rogers did not hurt her and were quick. The panel noted that Colleague B was clear about her evidence and did not try to embellish the incident.

The panel therefore found this charge proved.

Charge 5(e)

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

- (e) On one or more occasions, other than mentioned in charge 4 (o) asked to touch Colleague B's breasts

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B and its findings at charge 4(o), together with the circumstances at the time of the incident, the panel could see no evidence that could suggest it did not take place, apart from Mr Rogers continued denial.

The panel considered the pattern of Mr Rogers behaviour and how he had previously pursued Colleague B with comments about other subjects, including [PRIVATE]. The panel noted that this had been a recurring subject for Mr Rogers and that he had been unusually and inappropriately [PRIVATE].

This charge is therefore found proved.

Charge 5(f)

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

(f) Suggested to Colleague B that she could meet him in cubicle, further away, during her break

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B and the internal investigation meeting minutes.

The panel acknowledged the following:

DR [Mr Rogers] – I would, I'd say it in person or via phone that if they need me to come and grab me. I don't like to see people struggle. She said that's fine. I said why don't you come and join me on my break, she responded with laughing faces and the conversation ended there.

Person 1 – What did you mean by asking her to come on your break with you?

DR [Mr Rogers] – I was just joking in reference to what had been said earlier about how sexually experienced I was. There was nothing to it, I was trying to be funny but she took it the wrong way.

The panel considered that Mr Rogers has admitted that he did ask Colleague B to join him on his break, but in his own words: *she took it the wrong way.*

The panel therefore found this charge proved.

Charge 5(h)

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

(h) Took Colleague B's hand and put the back of it against your erect penis, over your trousers

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B. It considered Colleague B's evidence to be a very clear account of the incident, in that she outlined the incident in detail for the panel in her oral evidence. The panel found her evidence credible, detailed and consistent and therefore found this charge proved.

Charge 5(i)

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

(i) Followed Colleague B into the dirty utility room

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B, Mr Rogers' Statement of Case and the statements he made during the local investigation.

The panel referred to the statement of case which states:

We had made the bed and both took some linen to the dirty utility, whilst having general conversation

The panel considered Mr Rogers' evidence and whilst there is some agreement that both he and Colleague B were both in the dirty utility room together, the panel preferred the account given by Colleague B which was detailed and consistent along with the evidence of the context of Mr Rogers' behaviour at work.

The panel found therefore found this charge proved.

Charge 5(j)

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

- (j) On a different occasion than that mentioned in charge 5 (h), took Colleague B's hand and moved it towards your penis

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B. The panel considered that Colleague B gave very clear evidence about how this incident occurred in both her witness statement and in her oral evidence before the panel along with the accounts of Mr Rogers' sexualised language, communication and behaviour.

The panel therefore found this charge proved.

Charge 5(k) and 5(l)

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

- (k) Tried to put your hand up Colleague B's top
- (l) Put your hand down Colleague B's top

These charges are found proved.

In reaching this decision, the panel took into account the evidence of Colleague B.

The panel considered that Colleague B was able to give the panel a very detailed description of the incident which the panel found to be credible and consistent.

The panel noted Colleague B's distress and shock and that it still persisted today in relation to this incident. It also took into account Mr Rogers' sexualised language, communication and behaviour at work.

The panel therefore found this charge proved.

Charge 5(m)

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

(m) Squeezed one of Colleague B's breasts

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B.

The panel has already found charges 4(o) and 5(e) in relation to Mr Rogers asking to touch the breasts of Colleague B proved. It also determined that he had an unusual and inappropriate interest in Colleague B's [PRIVATE]. The panel gave due regard to all the evidence before it including this context and Mr Rogers' sexualised language, communication and behaviour at work, when considering the charge.

The panel referred to the oral evidence of Colleague B when she told the explained the Mr Rogers had squeezed her breast and that it was "*Painful at the tightest point of squeeze*". Her evidence was credible and she made no attempt to embellish her account.

The panel, in light of all the evidence, found this charge proved.

Charge 5(n)

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

(n) Pulled down Colleague B's facemask and/or kissed her

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B.

The panel had noted that Mr Rogers had stated that Colleague B was not wearing a mask, which, given the timing of the incident, would have been inexplicable. This incident occurred at the height of the COVID-19 pandemic and the panel determined that it would have been reasonable and expected that Colleague B would have been wearing a face mask whilst on duty on the ward.

When the panel questioned Colleague B, she explained that when she was on the ward, she would always wear a face mask and that when she was on her break in an isolated room, she would remove it.

The panel next considered the actions of Mr Rogers and that there had been a clear escalation of inappropriate behaviour towards Colleague B which then became unwanted physical contact.

The panel found Colleague B's evidence in relation to Mr Rogers pulling down her facemask and/or kissing her credible. It therefore found this charge proved.

Charge 5(o), 5(p) and 5(q)

5) On the night shift of 28 to 29 July 2020, in respect of Colleague B

(o) Tried to prevent Colleague B from leaving the dirty utility room

(p) Tried to kiss Colleague B again

(q) On one or more occasions, asked Colleague B to go back to the dirty utility room with you

These charges are found proved.

In reaching this decision, the panel took into account the evidence of Colleague B.

The panel acknowledged the level of detail Colleague B could provide in relation to these charges and that she was clear and consistent with the contemporaneous records from the local investigation and her NMC witness statement.

The panel found Colleague B to be credible and additionally, given the context of Mr Rogers' sexualised language, communication and behaviour at work, it therefore found these charges proved.

Charge 7

7) And your conduct as specified in charge 2 amounted to an incident/incidents of sexual assault

This charge is found NOT proved.

In reaching this decision, the panel took into account the NMC's guidance on Sexual Misconduct and advice from the Legal Assessor on a definition of sexual assault, which the panel noted was unlawful touching with a sexual motivation.

The panel had heard in evidence that Mr Rogers had found Colleague B attractive and that he had asked her out on numerous occasions, this led the panel to infer that any contact between them could have had some elements of a sexual nature involved. The panel noted Mr Rogers would rub the back of patients he was treating as a means of comfort and although it was unwanted and uninvited physical contact, the panel could not determine that the back rubbing amounted to sexual assault in relation to Colleague A.

The panel, however, did find that Mr Rogers had touched Colleague A without her consent, but there was no evidence that it was sexual in nature and therefore did not amount to sexual assault.

Therefore, this charge is found not proved.

Charge 8

8) And your conduct as specified in charge 1 and/or 2 was sexually motivated in that you intended to pursue a future sexual relationship with Colleague A

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Colleague A, the evidence of Witness 1 and the NMC Guidance on Sexual Misconduct.

The panel bore in mind it has found charges 1(a)-(g) and charge 2 proved. It considered the totality of the evidence, which assisted the panel in drawing an inference that Mr Rogers had intended to pursue a future sexual relationship with Colleague A.

The panel considered the charges individually and collectively and the evidence before it.

The panel was satisfied that the messages on social media, the comments on Colleague A profile pictures, the repeated invitation to go on a date with Mr Rogers all had a sexual motivation behind it. The panel also bore in mind that Mr Rogers had referred to Colleague A as a *slut* and noted from Colleague B's evidence that he had stated:

...if it was for "physical stuff" the he [sic] would choose healthcare assistant Colleague A...

The panel therefore found this charge proved.

Charge 9

9) And your conduct as specified in charge 1 and or 2 amounted to sexual harassment of Colleague A and/or a breach of professional boundaries

This charge is found proved

In reaching this decision, the panel took into account the witness statement of Colleague A and the evidence of Witness 1.

The panel considered the evidence of Witness 1 who told the panel during her oral evidence that Colleague A was visibly upset and very shaken by the constant harassment of Mr Rogers. The panel noted that although Colleague A did not appear in person, in her emails to the NMC she described the devastating effect it had on her. Witness 1 also told the panel that Colleague A tried to avoid Mr Rogers.

The panel noted the following from Colleague A witness statement:

I never felt scared or anything around Dominic. It was more I just felt uncomfortable with him as I knew as soon as we were alone, that the comments would start. I would feel on edge waiting to see what he would say next.

The panel considered its findings in relation to charge 1 and determined that Mr Rogers' actions did amount to sexual harassment and a breach of professional boundaries.

In the circumstances of this case, the panel determined that the back rubbing alone did not amount to sexual harassment.

However, the panel concluded that in relation to charge 2 as the back rubbing was unwanted and inappropriate Mr Rogers breached professional boundaries. This charge found proved on that basis.

Charge 10

10) And your conduct as specified in in charge 4 (f) and/or 5 (b) and/or 5 (c) and/or 5 (h) and/or 5 (j) and/or 5 (m) and/or 5 (n) amounted to an incident/incidents of sexual assault in respect of Colleague B who was not consenting to be touched

This charge is found proved.

In reaching this decision, the panel took into account its findings at charges 4 (f), 5 (b), 5 (c), 5 (h), 5 (j), 5 (m) and 5 (n). It also took into account the evidence of Colleague B.

Having found charges 4 (f), 5 (b), 5 (c), 5 (h), 5 (j), 5 (m) and 5 (n) all proved, the panel looked at each charge individually and collectively.

The panel noted that in each incident Colleague B had not given her consent or complied with Mr Rogers' requests. Consequently, the panel determined that Mr Rogers had acted in an inappropriate manner, which did amount to sexual assault in respect of Colleague B, who was not consenting to be touched.

The panel therefore found this charge proved.

Charge 11

11) And your conduct as specified in charges 4 and/or 5 and/or 6 was sexually motivated in that you intended to pursue a future sexual relationship with Colleague B

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B, Mr Rogers' admission and the panel's finding at charges 4 and 5.

The panel noted from the evidence that Mr Rogers had stated on a number of occasions that he had wanted to have sex with Colleague B. Given the nature of the charges found proved at charges 4 and 5 it was clear Mr Rogers wanted some type of sexual relationship with Colleague B and his actions were in pursuit of one.

The panel therefore finds this charge proved.

Charge 12

12) And your conduct as specified in charges 4 and/or 5 and/or 6 amounted to sexual harassment of Colleague B and/or a breach of professional boundaries

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B, Witnesses 2, 3, 4 and Mr Rogers' Statement of Case.

Witnesses 2 and 4 gave the panel some context on the impact of Mr Rogers' actions on Colleague B. They both told the panel during their oral evidence that after the incident on the night shift of 28 to 29 July 2020, they noticed Colleague B was a lot quieter than normal, she was crying whilst on shift which was very unusual and that she was closed

off and struggled with her workload. In addition, Witness 3 told the panel that Colleague B's personality disappeared.

The panel noted in Colleague B's witness statement where she states *I just really wanted to leave* and *I was very anxious*. Witness 2 told that panel in her oral evidence that Colleague B was *so anxious that she collapsed*. This demonstrated the impact of the sexual harassment on Colleague B's health and emotions. Prior to this shift Colleague B had made several attempts to swap her shift, to avoid working with Mr Rogers and this was confirmed by Witnesses 2 and 4.

Witness 1 also confirmed that Mr Rogers had breached professional boundaries on many occasions suggesting this was a pattern of behaviour.

The panel further noted that Mr Rogers himself acknowledged that he had gone too far. He stated in his Statement of Case

I apologised for my wrong doing and she also said sorry for what had happened. I expressed that I regretted that the altercation occurred and that boundaries were overstepped.

Mr Rogers also stated that the: *flirtatious banter had gone too far*.

The panel acknowledged Mr Rogers' limited account during the local investigation and the inconsistencies highlighted within his written explanation.

The panel preferred the evidence and account of Colleague B, as it has been detailed, clear and consistent with her witness statement. The panel, additionally, noted the context of Mr Rogers' sexualised language, communication and behaviour at work.

The panel therefore finds this charge proved.

Fitness to practise

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

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

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mr Rogers'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.' It also had regard to the cases of *Cheatle v General Medical Council* [2009] EWHC 645) and *Council for the Regulation of Health Care Professionals v (1) General Medical Council (2) Biswas* [2006] EWHC 464 (Admin).

Ms Mustard's submission was 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 Mustard identified the specific, relevant standards where Mr Rogers's actions amounted to misconduct in her written submissions. She further submitted that all

aspects of his conduct whether admitted or found proved, when looked at in its full context, is individually and cumulatively sufficiently serious to amount to a finding of misconduct.

Ms Mustard submitted that the inappropriate comments and actions which so negatively affected Colleague B, are not what would be expected in the workplace and fall far below the standards expected of a registered nurse. Ms Mustard referred to Witness 4's evidence that had she heard conversations or jokes of a sexual nature on the ward she would have "*interrupted and addressed it*", demonstrating that she does not consider this an appropriate topic in a hospital workplace.

Ms Mustard referred to the panel's decision on the facts that there was a '*clear escalation of inappropriate behaviour towards Colleague B which then became unwanted physical contact*'.

Submissions on impairment

In regard to impairment Ms Mustard referred to the need for the panel 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. In this context she referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Zgymunt v General Medical Council* [2008] EWHC 2643 (Admin).

Ms Mustard referred also to the test in the case of *Grant* and submitted that the questions in limbs (b) and (c) of the test, can be answered in the affirmative, in terms of past conduct and due to a lack of insight. She submitted that there is a continuing risk that Mr Rogers may be liable to act in the same way in future. She further submitted that Mr Rogers's conduct fell far below the standards expected of a registered nurse and were morally reprehensible, particularly, the incidents which amounted to sexual assault.

Ms Mustard submitted that the morally reprehensible behavior of Mr Rogers was liable to bring the profession into disrepute and was in breach of a fundamental tenet of the profession, namely the expectation that a nurse should act professionally with respect and integrity. Although, she submitted, there is no suggestion in the evidence before the panel that any of Mr Rogers's actions caused direct patient harm, it is an inevitable link that if he was not focused on his work (because he is flirting with or harassing colleagues) he was not prioritising patient care and therefore exposing patients to a risk of harm, as referred to in the first limb of the Grant test. She further submitted that this was something Colleague B was mindful of when giving her NMC witness statement as she said:

"I didn't say it to him at the time, but on reflection I feel I should have reminded Dominic that by asking if he could come into my cubicle he clearly wasn't considering the fact the patients would be left with no one to attend to them".

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel found that Mr Rogers's actions fell significantly short of the standards expected of a registered nurse and amounted to a breaches of the Code. Specifically:

8 Work co-operatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

20.7 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. However, the panel concluded that Mr Rogers's conduct fell far below the standards expected of a nurse, particularly as he was on duty at the time of the incidents.

The panel had particular regard to the fact that Mr Rogers's conduct could have not only prevented him from concentrating on delivering care to his patients, but it also impeded the work of other nurses on duty at the same time, particularly Colleagues A and B. By suggesting to Colleague B that she should join him on a break in a cubicle, this would have left the ward with no qualified nurses on duty and therefore posed a significant risk to patient safety and showed no regard for the patients on the ward.

The panel concluded that Mr Rogers's actions amounted to serious misconduct in the workplace which caused Colleagues A and B a significant amount of distress.

The charges found proved included matters that were sexually motivated, involved sexual harassment, sexual assault and breaches of professional boundaries. The panel determined that the charges both individually and collectively amount to serious misconduct.

The panel therefore found that Mr Rogers's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel then considered whether as a result of the misconduct, Mr Rogers'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 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 patients were put at risk of harm as a result of Mr Rogers's misconduct. Further, that he was in breach of fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to sexual assault, sexual harassment and sexual misconduct, all actions that were found to have been sexually motivated, extremely serious.

In regard to insight, the panel determined that although Mr Rogers made admissions to some of the charges, his insight regarding his actions on the remaining charges was very limited. He sought to blame Colleague B for the misconduct and solely focused on the effect upon his own wellbeing and feelings. He appeared to have no regard for the

vulnerable patients in his care, in a paediatric ward nor the impact of his behaviour on his colleagues.

In his reflections, Mr Rogers had not addressed any of the charges nor has he demonstrated an understanding of how his actions could put the patients at a risk of harm. Furthermore, there is very limited appreciation of what he did was wrong and how this would impact negatively on the reputation of the nursing profession.

It was particularly concerning that the incidents took place in a paediatric ward and that Mr Rogers had made sexualised comments about the parents who were there attending their children.

In the light of the nature of the matters found proved, the blatant disregard by Mr Rogers of the effect of his actions and their repeated nature, the panel concluded that his misconduct is attitudinal. It therefore finds that it is not easily remediable. Furthermore, there is nothing to indicate that Mr Rogers has taken any steps to address his misconduct. The panel therefore cannot be satisfied that it is unlikely that such behaviour would not be repeated.

The panel therefore determined that a finding of current impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of current impairment on public interest grounds is required as a member of the public, aware of all the circumstances in this case would be concerned that the nurse against whom such concerns were found proved, was allowed to practise unrestricted.

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

Having regard to all the above, the panel has determined that Mr Rogers's fitness to practise is currently impaired.

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 Rogers off the register. The effect of this order is that the NMC register will show that Mr Rogers 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 Mustard informed the panel that in the Notice of Hearing, dated 14 October 2022, the NMC had advised Mr Rogers that it would seek the imposition of a striking-off order if it found Mr Rogers' fitness to practise currently impaired.

Ms Mustard referred the panel to the NMC Guidance, '*Considering sanctions for serious cases*' which has a sub-category '*Cases involving sexual misconduct*' which is relevant to this matter. The guidance states:

'Conduct ranging from criminal convictions for sexual offences to sexual misconduct with patients, colleagues or patients' relatives could undermine a nurse, midwife or nursing associate's trustworthiness as a registered professional.'

When making decisions on sanctions in this kind of case, the Fitness to Practise Committee should consider the guidance on sexual boundaries produced by the Professional Standards Authority (PSA).

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. It will also be particularly serious if they have to register as a sex offender. The level of risk to patients will be an important factor, but the panel should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses, midwives and nursing associates.

....

Panels deciding on sanction in cases about serious sexual misconduct will, like in all cases, need to start their decision-making with the least severe sanction, and work upwards until they find the appropriate outcome. They will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse, midwife or nursing associate from the register. If the panel decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision very clearly and very carefully. This will allow people who have not heard all of the evidence in the case, which includes the victims, to properly understand the decision.'

Ms Mustard also referred the panel to the PSA Guidance on sexual boundaries, which states:

- *whether the healthcare professional has demonstrated any insight*
- *whether the healthcare professional works with or has access to vulnerable groups of patients or carers*
- *whether there is a risk of the healthcare professional re-offending if allowed to continue in unrestricted practice.*

Furthermore, Ms Mustard referred the panel to the NMC Sanctions Guidance. She addressed the panel on each available sanction and submitted that the most appropriate sanction in this matter was a striking-off order.

Ms Mustard submitted that given the serious nature of the facts found proved, it is '*fundamentally incompatible*' with Mr Rogers being a registered professional and remaining on the NMC register. She submitted that the regulatory concerns about Mr Rogers raise fundamental questions about his professionalism, as the concerns relate to his personal conduct and integrity which are basic requirements of professionalism.

Ms Mustard submitted that public confidence in nurses would not be maintained if Mr Rogers is not removed from the register. She told the panel that due to the seriousness nature of the charges offending what would likely be considered minimum expectations of a nurse (or any professional). This means that the public interest cannot be served with a lesser sanction than removal from the register.

Furthermore, she submitted that a striking-off order is the only sanction which would be sufficient to protect patients, members of the public and maintain professional standards. Ms Mustard told the panel that for all reasons above, it is submitted that this is the only proportionate sanction, when weighed against the gravamen of the charges.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Mr Rogers' 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:

- Not prioritising patient care
- Abuse of position of trust
- A pattern of misconduct with several colleagues over a period of time, starting at the point of registration and continuing over three years
- Lack of insight into failings
- The damaging, negative and long-lasting impact on his colleagues

The panel also took into account the following mitigating features:

- Admissions to a very limited number of lesser charges

The panel referred to the NMC Guidance on Cases involving sexual misconduct, which states:

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. It will also be particularly serious if they have to register as a sex offender. The level of risk to patients will be an important factor, but the panel should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses, midwives and nursing associates.

The panel then went on to decide the appropriate sanction in this matter.

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 Rogers' 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 Rogers' 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 order on Mr Rogers' 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 charges relate to sexual motivation, sexual harassment and sexual assault and Mr Rogers' deep-seated attitudinal concerns. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of a conditions of practice order on Mr Rogers' registration would not adequately address the seriousness of this case, or address the public protection and the public interest concerns.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The conduct, as highlighted by the facts found proved, which related to sexual assault, sexual harassment and sexual misconduct, were a significant departure from the standards expected of a registered nurse.

The panel determined that Mr Rogers showed no regard for the impact on colleagues or for the patients on the ward. The panel also considered the impact of Mr Rogers' actions on both Colleagues A and B. Furthermore, the panel determined that Mr Rogers' actions were serious breaches of the fundamental tenets of the profession and as a result are fundamentally incompatible with him remaining on the register.

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?*

Mr Rogers' actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Rogers' actions were serious and to allow him to remain on the NMC register 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 Rogers' actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mr Rogers 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 Rogers' own interest 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 into account of the submissions made by Ms Mustard. She submitted that an 18-month interim suspension order should be imposed to cover the appeal period should Mr Rogers decide to appeal the panel's decision.

Ms Mustard submitted that an interim suspension order is necessary on both grounds of public protection and the wider public interest, for all the reasons the panel found in its determination. She invited the panel to consider that Mr Rogers is still impaired and that it would be incompatible for no order to be imposed that would restrict his nursing practice.

The panel accepted the advice of the legal assessor.

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, nor according to its decision on sanction. The panel therefore imposed an interim suspension order for a period of 18 months, due to the public protection and public interest concerns in this case.

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

That concludes this determination.