Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Tuesday, 25 February – Tuesday, 11 March 2025
Wednesday, 18 June – Thursday, 19 June 2025

Virtual Hearing

Name of Registrant:	**Karen Elizabeth Allen**
NMC PIN:	07I0013W
Part(s) of the register:	Registered Nurse – Children's Nursing RNC – (26 October 2007)
Relevant Location:	Sully, Wales
Type of case:	Misconduct
Panel members:	Paul O'Connor (Chair, lay member) Allwin Mercer (Registrant member) Angela Kell (Lay member)
Legal Assessor:	Lucia Whittle-Martin
Hearings Coordinator:	Nicola Nicolaou
Nursing and Midwifery Council:	Represented by Neair Maqboul, Case Presenter (25 February – 11 March 2025) Alex Radley (18 and 19 June 2025)
Ms Allen:	Present and not represented at the hearing (25 February – 4 March 2025) Not present and not represented (5 - 11 March 2025, 18 and 19 June 2025)
Facts proved:	Charge 1a, 1b, 2 (in relation to charge 1a only), 4, 5, and 6
Facts not proved:	Charge 1c, 1d, 3, 7, 8a, 8b, 8c, 9, 10a, 10b, and 11a
Fitness to practise:	Impaired
Sanction:	**Striking-off order**

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

Details of charge

That you, a registered nurse:

1) On one or more occasions between May 2022 and May 2023 you:

    a) Gave Child A “wedgies” by pulling his underpants up so high that they were uncomfortable.

    b) Engaged in water play with Child A, and repeatedly soaked Child A after each dry change of clothes.

    c) Threw food at Child A.

    d) Straddled Child A.

2) Your conduct at Charge 1 was abusive in that it was cruel and/or degrading to Child A.

3) Your conduct at Charge1(a) and/or 1(b) was bullying in that you deliberately acted in this way to make Colleague A uncomfortable.

4) On one or more occasion between May 2022 and May 2023, you flicked Child C’s penis without clinical justification.

5) Your conduct at Charge 4 was abusive in that it was cruel and/or degrading to Child C.

6) Your conduct at Charge 4 was sexual in nature, in that you flicked Child C’s penis without clinical justification.

7) Your conduct at Charge 4 was bullying in that you deliberately acted in this way to make Colleague A uncomfortable.

8) On one or more occasions between January 2018 and May 2023, you:

   a) Commented on Colleague B's weight.

   b) Commented on Colleague B's clothes.

   c) Told Colleague B that they needed a haircut.

9) Your conduct at charge 8(a) and/or 8(b) and/or 8(c) was bullying in that your comments were derogatory towards Colleague B.

10) On one or more occasions between January 2018 and May 2023, you:

   a) Told Colleague C *"no, that's tough"* or words to that effect.

   b) Told Colleague C *"you have to stand your ground and tell her that you are capable of looking after her"* or words to that effect.

11) Your conduct at charge 10(a) and/or 10(b) was bullying in that you:

   a) Did not provide adequate support when Colleague C expressed her concern about safely caring for Child B.

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

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

Prior to making the hearsay application, Ms Maqboul, on behalf of the Nursing and Midwifery Council (NMC) made a request that this application be held in private on the basis that reference will be made to [PRIVATE]. Witness 4 is Colleague C, the witness relevant to charges 1c, 1d, 10, and 11. Ms Maqboul informed the panel that your husband is in the room with you providing support. She submitted that as there

will be reference to [PRIVATE], the NMC is asking for your husband to leave the room when the hearsay application is being made. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You did not oppose this application but said that you would prefer if your husband stayed in the room whilst the hearsay application is being made.

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

Having heard that there will be reference to [PRIVATE], the panel determined to hear the hearsay application in private in order to protect Witness 4's privacy. In reaching its decision, the panel took account of the fact that Witness 4's witness statement had been anonymised but concluded that there is a possibility that others involved in the case would be able to identify the maker of it.

Decision and reasons on application to admit the written evidence of Witness 4 as hearsay evidence

[PRIVATE]

Decision and reasons on application to apply support measures for witnesses 1, 2, and 3

Ms Maqboul submitted that the NMC are applying for support measures to be put in place for witnesses 1, 2, and 3 in this case under the panel's general powers of case management. She submitted that these support measures will assist the witnesses in giving the best oral evidence that they can.

Ms Maqboul referred to the NMC guidance, supporting people to give evidence in hearings, CMT-12. She referred to an example of a support measure which states:

‘7. Using screens or setting up the room or virtual hearing in a way that the person giving evidence feels most comfortable and can give evidence effectively.’

Ms Maqboul submitted that witnesses 1, 2, and 3 have expressed [PRIVATE]. Ms Maqboul therefore submitted that the NMC are making an application on behalf of the witnesses to request that you have your camera disabled when the witnesses are giving evidence, and for the witnesses to have their own cameras disabled.

Ms Maqboul submitted that if the panel do not accept the application under its general powers of case management, the NMC would seek to make the same application under Rule 23 to apply special measures for these witnesses.

In relation to Witness 2, Ms Maqboul referred the panel to a telephone note between Witness 2 and the NMC dated 12 February 2025. In the telephone note, it is stated that Witness 2 confirmed her attendance for this hearing but said she was concerned about seeing/hearing you. Ms Maqboul then referred the panel to another telephone note between Witness 2 and the NMC dated 25 February 2025 in which Witness 2 requested that your camera is disabled when she is giving evidence. She also expressed that she would like her own camera to be off as [PRIVATE].

In relation to Witness 3, Ms Maqboul referred the panel to a telephone note between Witness 3 and the NMC dated 24 February 2025 where there is reference to Witness 3 [PRIVATE]. Witness 3 requested that both his camera, and your own, are disabled when he is giving his evidence.

In relation to Witness 1, Ms Maqboul referred the panel to a telephone note between Witness 1 and the NMC dated 17 February 2025 where Witness 1 requested that the camera is disabled for you and herself but did not provide an explanation as to why this had been requested. Ms Maqboul submitted that Witness 1 was the investigating officer during the internal investigation and was not a direct party to any of the charges in this case.

Ms Maqboul invited the panel to impose the supportive measures under its general powers of case management but submitted that if the panel reject this, the NMC would rely on Rule 23 to invite the panel to impose special measures for the witnesses.

You told the panel that you feel you have a right to see the witnesses and ask them questions.

The panel accepted the advice of the legal assessor.

In reaching its decision, the panel took into account the NMC guidance, CMT-12, and had regard to Rule 23.

Regarding Witness 1, the panel determined that [PRIVATE] Witness 1 did not provide an explanation as to why she requested cameras to be disabled for you and herself, and that [PRIVATE]. The panel took into account that Witness 1 was not directly involved in the matters that have been charged and determined that Witness 1 is not classified by Rule 23 as a vulnerable witness. The panel determined that there were no grounds to apply this support measure for Witness 1.

In relation to Witness 2 and Witness 3, the panel took into account that this hearing is a virtual process, and therefore there is a degree of separation in that the hearing parties are not in the same room as each other. The panel determined that this hearing is a formal process for which there are clear expectations as to behaviour and upholding the NMC values.

The panel acknowledged that the witnesses may feel uncomfortable if they are able to see you, and you are able to see them. However, in balancing fairness to the NMC and to you, the panel determined that there is nothing before it to indicate that there is an ongoing issue of [PRIVATE]. On the basis of all the material before it, the panel concluded that the threshold of [PRIVATE] had not been reached in relation to either Witness 2 or Witness 3.

The panel therefore rejected the NMC's application for witnesses 1, 2, and 3's cameras, and your own camera to be disabled whilst the witnesses are giving their evidence. The panel determined that this decision reflects the NMC values of being fair, kind, and collaborative.

Decision and reasons on additional application to apply support measures for Witness 2 and Witness 3

Ms Maqboul had previously informed the panel that Witnesses 2 and 3 would have personal support with them when they give their evidence from fellow employees at [PRIVATE] ('the Hospice'). It later transpired that one of the employees due to support Witness 3 was involved in the internal investigation in relation to the allegations in this case.

Ms Maqboul informed the panel that members of the NMC Witness Liaison Team were available to provide virtual support to Witness 2 and Witness 3 when they give their evidence instead of the personal support from the employees of the Hospice. She explained that these individuals are NMC employees and have no prior knowledge of this case.

You indicated that you do not oppose this application.

The panel accepted the advice of the legal assessor.

The panel determined that as the Witness Liaison Team is an internal team within the NMC, and the Public Support Officers have no prior knowledge of the matters in this case, it would be appropriate for them to support Witness 2 and Witness 3 during their oral evidence, rather than the employees from the Hospice. The panel therefore accepted the NMC's application to allow the Witness Liaison Team to support Witness 2 and Witness 3 during their oral evidence.

Background

The NMC received a referral on 26 October 2023 by Witness 1, Director of Nursing and Clinical Services at the Hospice.

The referral resulted in an investigation by the NMC, which formulated the charges in this case. These charges relate to incidents when you were employed as a registered band 5 nurse at the Hospice on the Ward/Care Wing (the Ward).

Decision and reasons on your request to obtain additional evidence

Following Witness 3's oral evidence, you requested if it would be possible to obtain evidence of dates of your annual performance reviews and quarterly supervision meetings with Witness 3. You explained that in his oral evidence, Witness 3 said that an element of support was provided to you during your employment in the form of quarterly supervision meetings and yearly performance reviews, however, you dispute this and would like evidence of these meetings taking place.

Ms Maqboul submitted that Witness 3, in his oral evidence, made concessions as to not raising matters directly with you in terms of the evidence of how often the meetings happened. She further submitted that Witness 3 conceded that the meetings did not happen as often as they should have.

Ms Maqboul also raised a question of how this additional evidence would take the panel further in terms of the charges in this case.

The panel determined that it is appropriate and proportionate to obtain this additional evidence and directed the NMC to obtain this information.

Decision and reasons on application to request additional time to obtain evidence

Ms Maqboul provided an update regarding your request to obtain evidence of dates of your annual performance reviews and quarterly meetings with Witness 3. She submitted that the request has been made to the Hospice and it is being dealt with by the Human Resources (HR) department.

Ms Maqboul reminded the panel that it requested that the NMC obtain this information and submitted that the panel would have to see this information before you give your evidence. Ms Maqboul submitted that there may be aspects of the information that you wish to address the panel on, or that she wishes to question you on.

Ms Maqboul submitted that it would be fair to you to be able to see this information before you give your evidence.

You told the panel that you agree with the NMC's application and said that you would like to see the information before you give your evidence.

The panel accepted the advice of the legal assessor.

In reaching its decision, the panel took into account the submissions by Ms Maqboul and your position in that you want to have sight of this information before you give your evidence. The panel determined that it would be fair to you and the NMC to allow until 09:00 on Tuesday, 4 March 2025 for the NMC to obtain this information.

Decision and reasons for hearing to be held partly in private

During your oral evidence, you made reference to [PRIVATE].

The panel determined that, pursuant to Rule 19, parts of the hearing would be held in private when reference is made to [PRIVATE] in order to preserve your privacy and the privacy of the witnesses.

Decision and reasons on application to adjourn the hearing

On 5 March 2025 at 06:51, the NMC Hearings Coordinator received an email from Ms Allen's email address, assumed to be from her husband which stated:

'[PRIVATE]'

Ms Maqboul submitted that Ms Allen is not in a position to engage with the hearing today. She submitted that the NMC's position is that time should be given today to allow [PRIVATE], and for contact to be made with Ms Allen on Thursday, 6 March 2025 to get an update on her position.

The panel accepted the advice of the legal assessor.

The panel determined that it was reasonable to allow the day for [PRIVATE], and to attempt to get an update from her in 24 hours' time. The panel therefore adjourned the hearing until 6 March 2025 at 10:00.

On 6 March 2025, Ms Maqboul informed the panel that Ms Allen's husband had provided an update regarding her position at 17:55 on 5 March 2025. She submitted that the NMC were sensitive to Ms Allen's circumstances and suggested that the panel direct the Hearings Coordinator to send an email to Ms Allen requesting an update on [PRIVATE]. She further submitted that Ms Allen should be asked to clarify if she is seeking an adjournment for the rest of the hearing, or if she is asking the panel to proceed in her absence.

Ms Maqboul submitted that Ms Allen should be given until 09:00 on Friday, 7 March 2025 to respond to this email.

The panel determined that Ms Allen should be given until 09:00 on Friday, 7 March 2025 to respond to the email that will be sent by the Hearings Coordinator.

The following email was sent to Ms Allen on 6 March 2025 at 13:50:

> '[…] *The panel was informed yesterday of your situation by means of the emails helpfully sent by your husband.*
>
> *The panel would like to make you aware that your attendance so far in this hearing has been very helpful for them in terms of understanding your defence argument and they would value your continued attendance.*

The panel has asked if you would be able to provide an update on [PRIVATE]. *It has also asked me to inform you of the possibility that the NMC may apply to continue with the hearing tomorrow in your absence. In that event, it may be important for you to have provided* [PRIVATE].

The panel would be helped by knowing whether your preference is to:

1. *ask the panel to adjourn the hearing, to allow you time to* [PRIVATE], *and then continue engaging or;*
2. *ask the panel to continue with the hearing in your absence.*

Your preference will be taken into account when the panel make its decision tomorrow morning about whether to continue or adjourn the hearing to a later date. Whatever your decision, we feel that it is important for you to know that in any event, it is highly unlikely that the hearing will complete by next Tuesday and additional time will need to be allocated to finish the case on a future date.

It would be helpful if you could respond to this email yourself, rather than your husband. However, if you are unable to respond and we hear back from your husband instead, it would be helpful if your husband could provide an explanation as to why you were not able to respond yourself.

Can I ask that I receive a response by 9am tomorrow (7 March 2025) so that I can provide the panel with an update, and we can take things from there.'

Decision and reasons on proceeding in the absence of Ms Allen

On Friday, 7 March 2025 at 08:44, Ms Allen responded to the Hearing's Coordinator's email. The email stated:

'My husband has informed me that you would like myself to respond to the email.
[PRIVATE]

I am requesting that you continue with the hearing in my absence.
I thank you for the patience and consideration.'

The hearing resumed on Friday, 7 March 2025 when the panel then considered whether it should proceed in the absence of Ms Allen. It had regard to Rule 21 and heard the submissions of Ms Maqboul who invited the panel to continue in the absence of Ms Allen.

Ms Maqboul submitted that Ms Allen has been given two days to decide what she wants to do in terms of re-engagement with this hearing. She submitted that the most recent email from Ms Allen dated 7 March 2025 suggests that she does not wish to continue attending this hearing.

Ms Maqboul made reference to the NMC guidance on proceeding with hearings when the nurse, midwife, or nursing associate is absent, CMT-8 and submitted that there is no suggestion that allowing Ms Allen further time would result in her engagement at a later date.

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 decided to proceed in the absence of Ms Allen. In reaching this decision, the panel considered the email responses from Ms Allen and her husband, the submissions of Ms Maqboul, and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Ms Allen informed the Hearings Coordinator that she no longer wishes to engage with the hearing and provided reasons as to why;

- [PRIVATE]
- No application for an adjournment has been made by Ms Allen but the panel cannot be satisfied that an adjournment would result in Ms Allen engaging at a later date; and
- There is a strong public interest in the expeditious disposal of the case.

The panel considered the disadvantage to Ms Allen in proceeding in her absence. The panel had received written submissions which include character references from Ms Allen. It had also heard oral evidence from her at the fact-finding stage where she was also given the opportunity to cross-examine the witnesses in this case. The panel considered that the only disadvantage to Ms Allen at the fact-finding stage would be that she will not be able to provide a closing statement for her case before the panel deliberate on the facts.

The panel considered that Ms Allen was given time to decide if she wanted to request an adjournment of this hearing or ask the panel to proceed in her absence. The panel took into account Ms Allen's request in her email dated 7 March 2025 for the hearing to proceed in her absence. The panel determined that it would be fair to Ms Allen to proceed in her absence, and that it is also in the public interest to deal with the expeditious disposal of this case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Ms Allen.

Decision and reasons on facts

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

The panel has drawn no adverse inference from the non-attendance of Ms Allen following her oral evidence.

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

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

- Witness 1: Director of Nursing and Clinical Services at the Hospice at the time of the alleged incidents
- Witness 2/Colleague A: Healthcare Support Worker at the Hospice at the time of the alleged incidents
- Witness 3/Colleague B: Lead Nurse at the Hospice at the time of the alleged incidents

The panel also heard evidence from Ms Allen under affirmation.

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 both the NMC and by Ms Allen.

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

Charge 1a

That you, a registered nurse:

1) On one or more occasions between May 2022 and May 2023 you:

   a) Gave Child A “wedgies” by pulling his underpants up so high that they were uncomfortable.

This charge is found proved.

This charge relied on the evidence of Witness 2.

In reaching this decision, the panel took into account Witness 2’s evidence of how Ms Allen repeatedly gave Child A wedgies. She was asked how Child A would react when she did so. Witness 2 responded with *“*[…] *when she had first done it, he most probably would have just had his little smile bless him. But as time went on, it was uncomfortable* […]*”*

Witness 2 was asked by the panel to describe what she meant by *“a proper wedgie”*, to which she responded: *“*[…] *it’s just pulling the boxer shorts right up, I suppose towards your nipple line as far up as the fabric will take it which is most probably uncomfortable.* […]*”*.

The panel took into account that Witness 2 didn’t raise her concerns about Ms Allen at the time of this incident but rather raised the concern during a general conversation with a colleague in September 2023. This suggested to the panel that Witness 2 had not been complaining with the intention of getting Ms Allen into trouble. Further, the panel took into account Witness 2’s local statement dated 26 October 2023 which stated:

‘[PRIVATE]*’*

The panel determined that the incident and safeguarding reporting culture in the Hospice was not very good at the time on the basis of the evidence from Witness 1 who said in her oral evidence that she *“had concerns”* about the ability of staff to *“recognise and come forward and report safeguarding concerns”*

The panel took into account Ms Allen's oral evidence and response bundle in which she stated:

> *'I would come up behind him and gently tug on his belt loop [tugging it out not up] and walk away laughing. If at any time he did have wedgies it was not my intent, to my recollection not at any time did he express any sign of discomfort or annoyance.'*

The panel took account of the fact that Ms Allen is a person of good character. However, having heard the entirety of the evidence, and in particular the oral account provided by Witness 2, the panel determined that it was more likely than not that the account provided by Witness 2 was both true and accurate, and preferred that evidence to the evidence provided by Ms Allen.

The panel determined that Witness 2 was clear and consistent in her local statement dated 26 October 2023, witness statement, and oral evidence. It determined that Witness 2 was a credible witness who spoke passionately about the children she cared for and took her responsibility to advocate for Child A seriously. The panel determined that Witness 2 had no reason to fabricate her evidence.

The panel determined that it is reasonable to infer that if Child A's underpants were pulled up so high as to give him wedgies, he would have felt uncomfortable.

The panel determined that on the balance of probabilities, this charge is found proved.

Charge 1b

1) On one or more occasions between May 2022 and May 2023 you:

   b) Engaged in water play with Child A, and repeatedly soaked Child A after each dry change of clothes.

This charge is found proved.

This charge relied on the evidence of Witness 2.

In reaching this decision, the panel took into account Witness 2's witness statement which stated:

> *'*[…] *I tried to stop Ms Allen soaking Child A with water because I repeatedly said please stop he is soaking wet, he has no dry clothes but she kept doing this whilst laughing* […] *Child A tried to get away from Ms Allen after being repeatedly soaked.* […] *Initially, Child A found it funny but after an hour or so he just wanted to do other things.'*

This is consistent with Witness 2's local statement dated 26 October 2023 which stated:

> *'*[…] *Child A was engaged in some water play, which he loved, and KA kept repeatedly soaking him after each dry change of clothes.* [Witness 2] *said she felt that Child A indicated his confusion about this play no longer being fun and pointed this out to KA who again ignored this request to stop and continued her behaviour.* […]*'*

The panel also took into account Witness 2's oral evidence when she said *"We would be doing something else and she'd come from behind or from somewhere else and just redo it again.* […] *it's not what you do yourself and when you ask somebody to stop* […] *and they're not listening to you* […] *you feel victimised as well as the child.* […]*"*

In evidence, Ms Allen claimed that water play took place, which Child A enjoyed and was engaged with. She challenged why Witness 2 changed Child A's clothes if he was not finished playing with the water. The panel took into account Ms Allen's response bundle which stated:

'[…] *I recall* [Witness 2] *being concerned about his clothes and I remember suggesting that she did not change his clothes until he had finished playing.* […]*'*

On the basis of all the evidence, the panel determined that it was more likely than not that the account provided by Witness 2 was both true and accurate, and preferred that evidence to the evidence provided by Ms Allen.

In reaching its decision, the panel took account of the fact that Witness 2 was responsible for Child A all day and determined that it was implausible that Witness 2 would change Child A's clothes repeatedly throughout the day for no good reason if Child A was still engaging with the water activity.

The panel determined that on the balance of probabilities, this charge is found proved.

Charge 1c

1) On one or more occasions between May 2022 and May 2023 you:

c) Threw food at Child A.

This charge is found NOT proved.

This charge relied on the NMC witness statement and the notes from the investigation meeting dated 15 March 2024 of Witness 4 who did not attend to give evidence at this hearing.

In reaching this decision, the panel took into account Witness 4's hearsay witness statement which stated:

'I recall Ms Allen throwing dry food at Child A, in the lounge and this made me feel uncomfortable. […] *Child A was also throwing dry food back at Ms Allen.*

It was very busy in the lounge and it did make me wonder why no one else was reacting to Ms Allen's actions.'

The panel also took into account that Witness 3 was asking during oral evidence about the use of dry food as an activity within the Hospice. Witness 3 responded with *"it would be pasta or rice. You know those sort of items whether it's making a collage or something like that."*

The panel determined that the dry food was being used as a play item, not as food to be eaten by the children. The panel identified that this was a game that was played with the children in the Hospice during an art activity.

The panel found this charge not proved on the basis that the items thrown were not being used as food, and Child A was engaging in the play.

Charge 1d

1) On one or more occasions between May 2022 and May 2023 you:

d) Straddled Child A.

This charge is found NOT proved.

This charge relied on the NMC witness statement and the notes from the investigation meeting dated 15 March 2024 of Witness 4 who did not attend to give evidence at this hearing.

In reaching this decision, the panel considered that it did not hear oral evidence from Witness 4 and only had sight of her hearsay evidence.

The panel took into account Witness 4's witness statement which stated:

'I recall Ms Allen holding Child A's hands and waving and shaking them around whilst stating "ooo Child A". At the time, I was sat on the other side of

the table so I couldn't see his legs but I could see what Ms Allen was doing with Child A's hands while straddling Child A.'

The panel took into account Witness 4's local statement dated 15 March 2024 which stated:

'[…] *I asked* [Witness 4] *if she could remember what other people were there, but* [Witness 4] *could not recall this information as it was a long time ago, and she said* [PRIVATE], *it all felt like a blur.* […]*'*

The panel concluded that there was insufficient detail with which to prove this charge and accordingly, found this charge not proved.

Charge 2

2) Your conduct at Charge 1 was abusive in that it was cruel and/or degrading to Child A.

This charge is found proved in relation to charge 1a alone, in respect of degrading alone.

In reaching this decision, the panel took into account the oral evidence it had heard from Witness 2 and Witness 3 that Child A did not have normal cognitive awareness.

The panel heard from Witness 2 that she felt the need to step in as she determined that Ms Allen's behaviour was inappropriate. Witness 2 said *"it's for me* […] *as his carer to make sure that he is safe and being looked after appropriately.* […]*".* The panel further noted that Witness 2 said "[…] *you feel victimised as well as the child.* […]*"*

The panel determined that Child A was unable to advocate for himself but determined that Ms Allen's actions in relation to charge 1a were not cruel, in that they were not intended to cause suffering. They were however degrading to Child A

in that he had limited cognitive awareness, he would have been uncomfortable, the action was repeated, and his underwear was exposed.

In relation to charge 1b, the panel determined that whilst Ms Allen's action was inappropriate, it was not cruel or degrading to Child A because of the evidence demonstrating that Child A enjoyed repetitive play and water activities.

Charge 3

3) Your conduct at Charge1(a) and/or 1(b) was bullying in that you deliberately acted in this way to make Colleague A uncomfortable.

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 2's witness statement which stated:

> *'*[…] *I believe Ms Allen mainly did this because she could see I was getting upset about it so she did it more. This just questions me to think why you would do that to a child in your care, I felt she did this to poke at me* […]*'*

The panel also took into account Witness 2's oral evidence when she said that Ms Allen "[PRIVATE]."

The panel determined that Witness 2 perceived Ms Allen's actions to be targeted at her and made her feel uncomfortable. [PRIVATE] The panel considered that [PRIVATE] there was no evidence to support the charge that Ms Allen's actions were specifically targeted at Witness 2. The panel therefore determined that the NMC has not provided sufficient evidence to prove that it was Ms Allen's intention to make Witness 2 uncomfortable through her actions in charges 1a, and 1b.

On the balance of probabilities, the panel found this charge not proved.

Charge 4

4) On one or more occasion between May 2022 and May 2023, you flicked Child C's penis without clinical justification.

This charge is found proved.

This charge relied on the evidence of Witness 2.

In reaching this decision, the panel took into account Witness 2's witness statement which stated:

> *'*[…] *Around six months before Ms Allen left the Hospice, she came to help me to clean a patient. Once I cleaned the patient, she flicked his willy and just laughed. I asked Ms Allen "why did you do that?". I then looked at the patient and said "oh that was a silly thing for her to do, wasn't it silly"* […]*. I felt she was so vindictive and that she knew it was completely wrong to do that.* [PRIVATE]. […] *I felt Ms Allen was very manipulative and this made me feel that I did not have a leg to stand on if I raised concerns against Ms Allen, it was her words before mine.'*

The panel also took into account Witness 2's local statement dated 26 October 2023 which stated:

> '[PRIVATE]'

The panel further took into account Witness 2's oral evidence which was clear and consistent with her documentary evidence. Witness 2 was asked why she didn't report her concerns sooner. She responded with *"it was just her words against mine.* […] *I'm a healthcare worker. She's a nurse. were people going to believe me?* […] *I felt there was so many little things that I didn't know what was going to happen and if it hadn't got dealt with properly, I would have had to have left my workplace which I loved working at."*

The panel found Witness 2's account of events to be convincing. Witness 2 informed the panel in her oral evidence that *"It was not an accident.* […] *it's not a slip of your finger, is it? It's a very evident flick. His penis moved. It jumped."* There was no suggestion that the alleged action could have been accidental, nor that there was any clinical reason for such an action.

Ms Allen gave evidence disputing the allegation on the basis that Witness 2 said in her witness statement *'I keep remembering Ms Allen's face when she did this'* and could not recall whether Personal Protective Equipment (PPE) was being worn. Ms Allen said that PPE was being worn at that time in the Hospice. The panel determined that even if PPE was being worn at that time, Witness 2 would still have been able to see part of Ms Allen's face. The panel further determined that Witness 2 had no reason to fabricate the allegation and therefore determined that on the balance of probabilities, this charge is found proved.

Charge 5

5) Your conduct at Charge 4 was abusive in that it was cruel and/or degrading to Child C.

This charge is found proved on the basis of being both cruel and degrading.

In reaching this decision, the panel took into account Witness 2's witness statement which stated:

> *'We changed his pad, gave him a wash, put on a clean pad and that is when she flicked his penis. The patient is also non-verbal and cannot do anything for themselves because they require help with everything due to their physical immobility. The patient was bound to a wheelchair and was not able to feed or change themselves. They are defenceless and were not able to protect themself.'*

The panel determined that Ms Allen made a deliberate decision to flick Child C's penis and determined that this action was cruel in that as an experienced registered

nurse, she would have known that this would cause suffering. The panel determined that Child C was at his most vulnerable due to his physical immobility and being exposed whilst receiving intimate care. The panel determined that Ms Allen did not have consent to flick Child C's penis and considered her action to be degrading.

Therefore, on the balance of probabilities, the panel found this charge proved on the basis of being both cruel and degrading.

Charge 6

6) Your conduct at Charge 4 was sexual in nature, in that you flicked Child C's penis without clinical justification.

This charge is found proved.

The panel determined that a sexual organ had been touched, the action had no clinical justification, and whilst there may be a reason for Ms Allen to touch Child C's penis as he was being cleaned and changed, there was no plausible reason, or clinical justification to flick Child C's penis. Furthermore, there is no suggestion that the contact may have been accidental and Ms Allen did not have consent to flick Child C's penis.

The panel determined that the actions were unwarranted and that on the balance of probabilities, Ms Allen's conduct at charge 4 was sexual in nature.

Charge 7

7) Your conduct at Charge 4 was bullying in that you deliberately acted in this way to make Colleague A uncomfortable.

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 2's witness statement which stated:

‘Ms Allen’s conduct made me feel uncomfortable because it was totally inappropriate and made me think why on earth would someone do that. Ms Allen giggled when I asked her why she did that.’

The panel determined that Witness 2 perceived Ms Allen’s actions to be targeted at her and made her feel uncomfortable. [PRIVATE]. The panel considered that [PRIVATE] there was no evidence to support the charge that Ms Allen’s actions were specifically targeted at Witness 2. The panel therefore determined that the NMC has not provided sufficient evidence to prove that it was Ms Allen’s intention to make Witness 2 uncomfortable through her actions in charge 4.

On the balance of probabilities, the panel found this charge not proved.

Charge 8a

8) On one or more occasions between January 2018 and May 2023, you:

a) Commented on Colleague B’s weight.

This charge is found NOT proved.

This charge relied on the evidence of Witness 3.

In reaching this decision, the panel took into account Witness 3’s witness statement which stated:

‘[…] *On one occasion, Ms Allen mentioned about my weight, what I was wearing, if I had ironed my clothes and that I needed a haircut to me.* […]*’*

In his oral evidence, Witness 3 said *“They seem to be off the cuff comments just made and sort of walked away.* […] *I was talking about why to put on weight* [sic] *and I was just a little bit surprised I wouldn't normally talk to any colleagues about my weight. I certainly wouldn't address it with any of my colleagues either, so I was quite*

shocked by that." Witness 3 denied that there was any conversation between himself and Ms Allen regarding his diet.

The panel also took into account Ms Allen's oral evidence when she said *"*[…] *He was talking about his diet. I commented that he had lost weight and how good he looked.* […]*"*

The panel acknowledged that a conversation took place between Witness 3 and Ms Allen, however, the panel could not be satisfied on the balance of probabilities that Ms Allen made a negative comment about his weight, such as had been suggested by Witness 3. The panel determined that Witness 3 was in a position of authority as her line manager at the time and had the opportunity to challenge Ms Allen on this comment, but he did not do so.

The panel therefore determined on the balance of probabilities that this charge is found not proved.

Charge 8b

8) On one or more occasions between January 2018 and May 2023, you:

b) Commented on Colleague B's clothes.

This charge is found NOT proved.

This charge relied on the evidence of Witness 3.

In reaching this decision, the panel took into account Witness 3's witness statement which stated:

> *'On one occasion, Ms Allen mentioned about my weight, what I was wearing, if I had ironed my clothes* […]*'*

The panel also took into account the investigation meeting notes from a meeting between Witness 1 and Witness 3 on 29 December 2023. The meeting notes stated:

> '[…] *I can remember that KA made remarks around my hair, "state" of uniform, and around my weight at times* […]'

The panel took into account Ms Allen's response bundle which stated:

> '[…] *I have no recollection of this.* […]'

The panel acknowledged that a conversation took place between Witness 3 and Ms Allen, however, the panel could not be satisfied on the balance of probabilities that Ms Allen made a negative comment about his clothes, such as had been suggested by Witness 3. The panel determined that Witness 3 was in a position of authority as her line manager at the time and had the opportunity to challenge Ms Allen on this comment, but he did not do so.

The panel therefore determined on the balance of probabilities that this charge is found not proved.

Charge 8c

8) On one or more occasions between January 2018 and May 2023, you:

   c) Told Colleague B that they needed a haircut.

This charge is found NOT proved.

This charge relied on the evidence of Witness 3.

In reaching this decision, the panel took into account Witness 3's witness statement which stated:

'[…] *On one occasion, Ms Allen mentioned about my weight, what I was wearing, if I had ironed my clothes and that I needed a haircut to me.* […]*'*

The panel also took into account the investigation meeting notes from a meeting between Witness 1 and Witness 3 on 29 December 2023. The meeting notes stated:

'[…] *I can remember that KA made remarks around my hair, "state" of uniform, and around my weight at times* […]*'*

The panel took into account Ms Allen's response bundle which stated:

'I commented that his hair was unusually long and that it suited him, to which he replied that he had been busy and did not have the time to have it cut.'

The panel acknowledged that a conversation took place between Witness 3 and Ms Allen and determined that Ms Allen's account was more plausible and specific than Witness 3's. The panel could not be satisfied on the balance of probabilities that Ms Allen made a negative comment about his hair, such as had been suggested by Witness 3. The panel determined that Witness 3 was in a position of authority as her line manager at the time and had the opportunity to challenge Ms Allen on this comment, but he did not do so.

The panel therefore determined on the balance of probabilities that this charge is found not proved.

Charge 9

9) Your conduct at charge 8(a) and/or 8(b) and/or 8(c) was bullying in that your comments were derogatory towards Colleague B.

This charge is found NOT proved.

As charges 8a, 8b, and 8c were found not proved, this charge falls away.

Charge 10a

10) On one or more occasions between January 2018 and May 2023, you:

a) Told Colleague C *"no, that's tough"* or words to that effect.

This charge is found NOT proved.

This charge relied on the hearsay evidence of Witness 4.

In reaching this decision, the panel took into account the investigation meeting between Witness 1 and Witness 4 dated 15 March 2024, and Witness 4's NMC witness statement which stated:

'[…] *I* [PRIVATE] *requested if I could float instead.'*

The panel took into account Ms Allen's oral evidence when she explained that *"a floater would always be a nurse to help with clinical duties and medication rounds".*

The panel understood that the "float" was a nurse who was not allocated a certain child to look after for the day and would instead be available to support other members of staff if needed. It also considered that Ms Allen was the designated float on this particular day. The panel determined that even though Witness 4 requested to be the float, this would not have been permitted as Witness 4 was not a nurse and therefore would not be eligible to take on the float role.

The panel also took into account Ms Allen's response bundle which stated:

'[…] *I have no recollection of this.* […]*'*

The panel determined that this conversation between Witness 4 and Ms Allen may have taken place, however, it noted that Ms Allen was not shift lead that day and would not have been in a position to re-allocate roles during the shift. It determined that the context in which this comment was made may have been justified, given the

seniority of Ms Allen, and that Witness 4 was being re-introduced to clinical duties [PRIVATE]. The panel had insufficient detail to fully understand what had occurred on this day and therefore determined that this charge could not be found proved.

The panel, therefore, on the balance of probabilities, found this charge not proved.

Charge 10b

10) On one or more occasions between January 2018 and May 2023, you:

a) Told Colleague C *"you have to stand your ground and tell her that you are capable of looking after her"* or words to that effect.

This charge is found NOT proved.

This charge relied on the hearsay evidence of Witness 4.

In reaching this decision, the panel took into account the investigation meeting between Witness 1 and Witness 4 dated 15 March 2024, and Witness 4's NMC witness statement which stated:

> *'*[…] *I* [PRIVATE] *requested if I could float instead.'*

The panel also took into account Ms Allen's response bundle which stated:

> *'*[…] *I do not recall using those words, but would have advised her not to be intimidated.* […]*'*

The panel determined that this conversation between Witness 4 and Ms Allen may have taken place, however, it noted that Ms Allen was supporting Witness 4. As such, it determined that the context in which this comment was made may have been justified, given the seniority of Ms Allen, and that Witness 4 was being re-introduced to clinical duties [PRIVATE]. The panel had insufficient detail to fully

understand what had occurred on this day and therefore determined that this charge could not be found proved.

The panel, therefore, on the balance of probabilities, found this charge not proved.

Charge 11a

11) Your conduct at charge 10(a) and/or 10(b) was bullying in that you:

a) Did not provide adequate support when Colleague C expressed her concern about safely caring for Child B.

This charge is found NOT proved.

As charges 10a, and 10b were found not proved, this charge falls away.

The hearing resumed on 18 June 2025.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Allen was not in attendance and that the Notice of Hearing letter had been sent to Ms Allen's registered email address by secure email on 23 April 2025.

Mr Radley, on behalf of the NMC, submitted that it had complied with the requirements of Rules 11 and 34 of the Rules.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Ms Allen's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Ms Allen 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 Ms Allen

The panel next considered whether it should proceed in the absence of Ms Allen. It had regard to Rule 21 and heard the submissions of Mr Radley who invited the panel to continue in the absence of Ms Allen. He submitted that Ms Allen had voluntarily absented herself.

Mr Radley submitted that Ms Allen has not responded to the Notice of Hearing that was sent to her on 23 April 2025 and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

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

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

- No application for an adjournment has been made by Ms Allen;
- Ms Allen has not engaged with the NMC since the adjournment in March 2025 and has not responded to the Notice of Hearing or follow up emails sent to her about this resuming hearing;

- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

The panel considered the disadvantage to Ms Allen in proceeding in her absence. It noted that Ms Allen has not provided a response in relation to this resuming hearing. The panel determined that it would not be unfair to Ms Allen to proceed in her absence, and that it is also in the public interest to deal with the expeditious disposal of this case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Ms Allen.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Ms Allen's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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, Ms Allen's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Radley invited the panel to take the view that the facts found proved amount to misconduct. Mr Radley invited the panel to have regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) when making its decision.

Mr Radley suggested specific, relevant standards where Ms Allen's actions amounted to misconduct. He submitted that the actions found proved are failings which directly relate to Ms Allen's nursing practice, her integrity, and trust within a difficult nursing setting, and that they are matters that are fundamental to nursing practice.

Mr Radley submitted that Ms Allen's lack of professionalism could have a serious effect on patient trust and confidence in the nursing profession. He submitted that Ms Allen's actions fell far short of the standards expected of a registered nurse, and that her actions amount to serious professional misconduct.

Submissions on impairment

Mr Radley moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin)

Mr Radley submitted that Ms Allen has breached a fundamental tenet of the nursing profession and that a finding of current impairment is required in this case to mark the unacceptability of the behaviour, emphasise the importance of the fundamental tenet breached, and to reaffirm proper standards or behaviour. Mr Radley submitted that Ms Allen's conduct was deliberate, and that she risked the trust and confidence of the public. He submitted that this may be difficult to put right.

Mr Radley submitted that Ms Allen has provided some evidence of engagement in this hearing, but that she has not provided details of steps taken to address the concerns, or training logs/courses undertaken. Mr Radley submitted that Ms Allen has provided some references.

Mr Radley invited the panel to make a finding of current impairment.

The panel accepted the advice of the legal assessor who made reference to the case of *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311.

Decision and reasons on misconduct

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

The panel was of the view that Ms Allen's actions did fall significantly short of the standards expected of a registered nurse, and that Ms Allen's actions amounted to a breach of the Code. Specifically:

> *'**1 Treat people as individuals and uphold their dignity***
> *To achieve this, you must:*
> ***1.1** treat people with kindness, respect and compassion*
> ***1.5** respect and uphold people's human rights*
>
> ***2 Listen to people and respond to their preferences and concerns***
> *To achieve this, you must:*
> ***2.6** recognise when people are anxious or in distress and respond compassionately and politely*
>
> ***3 Make sure that people's physical, social and psychological needs are assessed and responded to***
> *To achieve this, you must:*
> ***3.4** act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care*

8 Work cooperatively

To achieve this, you must:

8.1 *respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*

8.5 *work with colleagues to preserve the safety of those receiving care*

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.4 *acknowledge and act on all concerns raised to you, investigating, escalating or dealing with those concerns where it is appropriate for you to do so*

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 *take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse*

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel considered each of the charges found proved in turn.

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.'*

Regarding charges 1a and 2, the panel considered that the conduct is serious, and was repeated on multiple occasions. It determined that there was no clinical justification for this conduct. The panel heard from Witness 2 in oral evidence that Ms Allen's action made Child A uncomfortable. The panel noted its previous finding that the action was degrading, albeit not cruel. It considered that this action would be considered deplorable by another registered nurse and therefore determined that charges 1a and 2 amount to misconduct.

Regarding charge 1b, the panel determined that whilst Ms Allen's action may have been inappropriate, it was not cruel or degrading to Child A, and there was evidence that Child A enjoyed repetitive play and water activities. The panel therefore did not consider that this amounts to misconduct.

Regarding charges 4, 5, and 6, the panel considered that there was no suggestion that Ms Allen's action at charge 4 could have been accidental, nor that there was any clinical reason for such an action. Child C was vulnerable and was dependant on staff for his care needs. Ms Allen's actions were both cruel and degrading to Child C, and were sexual in nature, as set out in the panel's findings of fact, which had been reached in light of the following features:

- Touching of sexual organ
- Absence of clinical justification
- No other plausible reason to touch
- No suggestion that the touching was accidental
- No consent had been given by the patient

The panel determined that Ms Allen's conduct at charges 4, 5, and 6 is serious, in particular given the vulnerability of Child C and his dependency on staff for his care needs. The panel determined that Ms Allen's actions at charges 4, 5, and 6 would be considered deplorable by another registered nurse and therefore amounts to serious misconduct.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 February 2024, which states:

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not 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 make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

> *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the*

need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

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

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

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

d) *…'*

The panel considered that vulnerable patients were put at risk of physical and emotional harm as a result of Ms Allen's actions. Further, Ms Allen's misconduct had breached some of the fundamental tenets of the nursing profession, as she had not acted kindly, safely, or professionally. Furthermore, Ms Allen had not advocated for vulnerable patients in her care. Ms Allen's misconduct brought the nursing profession into disrepute.

The panel considered the factors set out in the case of *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin) and was satisfied that the

misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Ms Allen has taken steps to strengthen her practice. The panel considered that there is no evidence before it to suggest that Ms Allen has taken any steps to strengthen her practice, and therefore there is a risk of repetition.

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

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

The panel determined that a member of the public would find Ms Allen's actions deplorable and would bring the nursing profession into disrepute. The panel concluded that public confidence in the nursing profession and the NMC as the regulator would be undermined if a finding of impairment were not made in this case and therefore also finds Ms Allen's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Ms Allen'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 Ms Allen off the register. The effect of this order is that the NMC register will show that Ms Allen 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.

Submissions on sanction

Mr Radley identified a number of aggravating and mitigating features in this case. He submitted that there is arguably evidence of an attitudinal issue and that Ms Allen has displayed a lack of full insight into her failings. He submitted that the impact of Ms Allen's misconduct on the nursing profession is high and the public would not expect a nurse to be practicing based on the misconduct identified.

Mr Radley submitted that both public protection and public interest grounds are engaged in this case.

Mr Radley submitted that taking no action or imposing a caution order would not meet the gravity of the charges in this case. He submitted that no workable or proportionate conditions could be imposed to demonstrate the gravity of the mischief in this case and therefore a conditions of practice order would not be appropriate. Regarding a suspension order, Mr Radley submitted that unless Ms Allen were to engage and be willing to act on the guidance through a suspension order and to undertake additional training, a suspension order would not satisfy the public interest in this case. Mr Radley submitted that the only appropriate and proportionate sanction is a striking-off order.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

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

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

The panel took into account the following aggravating features:

- Lack of insight into failings
- The vulnerability of the children that Ms Allen was responsible for caring for

The panel also identified the following mitigating feature:

- A number of positive character and professional references

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 not protect the public or be in the public interest to take no further action.

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

The panel next considered whether placing conditions of practice on Ms Allen's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining, nor has Ms Allen demonstrated any willingness to engage through retraining or supervision. The panel considered

that Ms Allen has not demonstrated any insight. Furthermore, the panel concluded that the placing of conditions on Ms Allen's registration would not adequately address the seriousness of the misconduct and would not protect the public or meet the public interest.

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

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

The panel noted that whilst charges 4 – 6 comprised a single incident of misconduct, charges 1a – 2 comprised repeated misconduct. It took into account that there is no evidence of repetition since the incidents but that Ms Allen is not currently working as a registered nurse. The panel considered that Ms Allen has not demonstrated any insight, and did not demonstrate an understanding of her actions and how they could have impacted patients and her colleagues.

The panel considered that the charges relate to vulnerable children and sexual misconduct, both of which have a serious impact on public confidence in the nursing profession. The panel found that Ms Allen's actions in charges 1a – 2 were degrading and her action in charges 4 – 6 were both degrading and cruel. The patients she abused in both instances were young vulnerable children.

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

breach of the fundamental tenets of the profession evidenced by Ms Allen's actions is fundamentally incompatible with Ms Allen 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?*

Ms Allen's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Ms Allen's actions were serious in that they relate to sexual misconduct and the abuse of vulnerable children. The panel determined that to allow Ms Allen to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel determined that misconduct in this case raises fundamental questions about Ms Allen's professionalism. The charges that the panel found proved are particularly difficult to put right.

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 Ms Allen's actions in bringing the profession into disrepute by adversely affecting the public's

view of how a registered nurse should conduct themself, the panel has concluded that nothing short of a striking-off order 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 Ms Allen 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 Ms Allen's own interests until the striking-off sanction takes effect.

Submissions on interim order

The panel took account of the submissions made by Mr Radley. He submitted that an interim suspension order for a period of 18 months would be appropriate to allow time for any possible appeal.

The panel heard and 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. The panel therefore imposed an interim suspension order for a period of 18 months to allow time for any possible appeal.

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

That concludes this determination.