

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

**Substantive Meeting
Friday 13 February 2026 – Tuesday 17 February 2026**

Virtual Meeting

Name of Registrant: James Mark Allen

NMC PIN: 18B0857E

Part(s) of the register: Nursing Sub part 1
RNA, Registered Nurse – Adult

Relevant Location: Kent

Type of case: Misconduct

Panel members: Des McMorrow (Chair, Registrant member)
Jason Flannigan-Salmon (Registrant member)
Alyson Young (Lay member)

Legal Assessor: Graeme Henderson

Hearings Coordinator: Fionnuala Contier-Lawrie

Facts proved: Charges 1(a), 1(b), 2(a), 2(b)(ii), 3(a)(i), 3(a)(ii),
3(a)(iii), 3(a)(iv), 3(b)(i), 3(b)(ii), 3(b)(iii), 3(b)(iv),
4(a), 4(b) and 4(c)

Facts not proved: Charge 2(b)(i)

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Mr Allen's registered email address by secure email on 8 December 2025.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, and that a meeting would take place on or after 26 January 2026. In light of all of the information available, the panel was satisfied that Mr Allen been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a Registered Nurse:

1. In respect of Colleague A:
 - a. On 30 July 2022, hit her on the forehead.
 - b. Referred to her as 'Polish'.

2. Your actions at charge 1b above harassed Colleague A in that:
 - a. Your conduct was unwanted conduct and related to a protected characteristic, namely race.
 - b. Your conduct had the purpose or effect of:
 - i. Violating Colleague A's dignity.
 - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

3. In respect of Colleague B:
 - a. On 22 December 2022:
 - i. Grabbed her from behind.

- ii. Grabbed the sides of her face.
- iii. Attempted to kiss her.
- iv. Said 'you are so cute', 'you are so pretty' or words to that effect.

b. On one or more occasions in 2022:

- i. Put your hands on her waist.
- ii. Touched her neck and/or face
- iii. Told her she is 'pretty', 'cute', or words to that effect.
- iv. Made comments such as 'look at Colleague B, she is so pretty, I he is single' or words to that effect.

4. Your actions at charges 3a and/or 3b:

- a. Were unwanted by Colleague B.
- b. Were sexually motivated in that you sought or derived sexual gratification from your actions.
- c. Were intended to violate Colleague B's dignity and/or create an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B.

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

Background

On 9 July 2023, the NMC received a referral from Guys' and St Thomas' NHS Foundation Trust (the Trust), raising concerns about Mr Allen. Mr Allen had been employed as a Band 5 staff nurse since 30 May 2022

The referral raised concerns that on 30 December 2022, whilst in the emergency department, Mr Allen hugged a colleague from the back and attempted to kiss her. There were already prior concerns regarding his behaviour towards a female junior doctor. One concern was Mr Allen had repeatedly referred to the junior doctor as '*Polish*', rather than using their name or job description. In addition, it is alleged that

Mr Allen used an open hand to tap on the same colleague's forehead. Mr Allen received a final written warning on 30 November 2022.

Mr Allen worked his last day with the Trust on 23 April 2023.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

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 had regard to the written statements taken by the NMC from the following witnesses on behalf of the NMC:

- Witness 1: Junior Doctor, Guys and St Thomas' Hospital
- Witness 2: Staff Nurse in Emergency Department, Guys and St Thomas' Hospital
- Witness 3 Deputy Head of Nursing for Ambulatory services, Guys and St Thomas' Hospital
- Witness 4 ED Practice Development Nurse, Guys and St Thomas' Hospital

It also considered the documentary evidence provided by the NMC.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor:

Charges 2 and 4(c) involve allegations of harassment. In this respect the Protection from Harassment Act 1997 is not relevant. Reference to protected characteristics can be taken as reference to the Equality Act 2010 where one of the listed protected characteristics is race. It is enough that the recipient of the behaviour feels disrespected.

Charge 3(b) contains language taken from Mr Justice Mostyn in the case of *Basson v GMC* [2018] EWHC 505 (Admin) where he attempted to provide a working definition of ‘*sexual motivation*’ in the context of regulatory cases for health professionals:

‘A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.’

In this case the NMC were offering to prove that what was done was in pursuit of sexual gratification but not that it was in pursuit of a future sexual relationship. In order to find this charge proved the panel had to consider what inferences could be drawn based upon what the panel found Mr Allen to have said and done.

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

Charge 1(a)

“That you, a Registered Nurse:

In respect of Colleague A:

a. On 30 July 2022, hit her on the forehead”

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Witness 1 and Witness 4.

The panel first considered Witness 1's witness statement in which Witness 1 explains that the following events occurred in relation to charge 1a:

'The consultant came in for the handover, so had to cross over the floor, walking past James to go over to the consultant. As I walked past, James put his hand up and just hit me on the forehead. I cannot remember exactly how he hit me, I think it was with an open palm, but I remember it was strong because it hurt me and was painful. At first I was so shocked and surprised, I just carried on walking. Then I realised that he had just hit me on the head for absolutely no reason. I stopped and said to James "What was that?". James did not say sorry, I do not think he said anything at all.'

The panel next considered the witness statement of Witness 4 who was assigned to investigate the allegations in charge 1a:

'James didn't deny the allegation and the words Colleague A mentioned James had said to her, he agreed with. James agreed he had made physical contact with her head, but he had to watch the CCTV back to remember this.'

The panel considered the witness statement of Witness 1 and determined that this was a coherent and objective statement of the events. The panel considered that as outlined in Witness 4's witness statement regarding the internal investigation into the allegations, Mr Allen did not deny the allegations and once he was shown the CCTV footage of the events, he agreed he had made physical contact with her.

The panel was therefore satisfied that the events in charge 1a took place and accordingly, found the charge proved.

Charge 1(b)

“In respect of Colleague A:

b. Referred to her as ‘Polish’.”

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Witness 1 and Mr Allen’s local statement from the internal investigation.

The panel first considered the witness statement of Witness 1 which stated:

‘I cannot remember the exact date, but there was one time that I was speaking to James and he asked me where I was from. I told him from Poland and from then on he would shout at me “polish” to get my attention, rather than saying “Dr” or using my name.’

The panel then considered Mr Allen’s local statement which stated:

‘In regards to the statement about calling Colleague A “Polish” rather than her name I can recall doing this a couple of times as a joke and she didn’t comment so I thought she understood I was joking.’

The panel was satisfied that based on Witness 1’s evidence and Mr Allen admitting that the events occurred as alleged in charge 1b, this fact was found proved.

Charge 2(a)

“Your actions at charge 1b above harassed Colleague A in that:

a. Your conduct was unwanted conduct and related to a protected characteristic, namely race.”

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Witness 1 and the investigation meeting held between Witness 1 and Witness 4.

The panel also took into account the definition of harassment under the Equality Act 2010, Section 26 as:

'harassment is defined as unwanted conduct related to a protected characteristic (or sexual nature) that has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating, or offensive environment.'

In this case Witness 1 was a junior Doctor of polish national origin. Her complaint was that he always greeted her by using the word *'Polish'* and not by her name or job title.

The panel first considered the witness statement of Witness 1 which stated:

'I found it quite disrespectful, but at the time I thought it was best to pick my battles and I just ignored him when he spoke to me in that manner.'

The panel next considered the local investigation meeting held on 16 August 2022 in which it stated Witness 4 had asked Witness 1 how she was feeling now, to which Witness 1 responded that she felt she had done the right thing as she was very affected by it after and described feeling upset and disappointed.

The panel noted that although it was unable to establish what Mr Allen's intentions were, however, it was satisfied that the actions were inappropriate and met the threshold for what is deemed as harassment.

The panel therefore found this charge proved.

Charge 2(b)(i)

“Your actions at charge 1b above harassed Colleague A in that:

b. Your conduct had the purpose or effect of:

i. Violating Colleague A’s dignity”

This charge is found NOT proved.

In reaching its decision on this charge, the panel considered the local statement of Witness 1, dated 30 July 2022 which states:

‘For example, during one of the shifts he asked where I was from and I answered that I was raised in Poland. Since then, he repeatedly addressed me in a loud tone as “polish” as opposed to using my name. I was uncomfortable with this, however I tried to ignore it for the sake of a good professional relationship.’

The panel found that the evidence it had before it shows that although Witness 1 stated this conduct made her feel uncomfortable, there was no evidence to suggest that the event was serious enough to be described as a violation of Witness 1’s dignity and therefore could not find this charge proved.

Charge 2(b)(ii)

“Your actions at charge 1b above harassed Colleague A in that:

b. Your conduct had the purpose or effect of:

ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.”

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Witness 1 and the investigation report dated 28 September 2022.

The panel considered the investigation report which stated that Witness 1 had described Mr Allen's tone as *'loud and unpleasant'* and that she did not report these at the time but made the decision to report them following the physical contact.

The panel also considered that Mr Allen had stated in the investigation report that although he admitted to using *'polish'* instead of Witness 1's name, he denied shouting it or doing it in a malicious way.

The panel determined that regardless of Mr Allen's intent, it was satisfied that it was evident that his actions made Witness 1 feel the way it is described as in this charge. In particular, he created an offensive environment.

The panel therefore found this charge proved.

Charge 3(a)(i)

"In respect of Colleague B:

a. On 22 December 2022:

i. Grabbed her from behind."

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Witness 2 and the witness statement of Witness 3.

The panel first considered the witness statement of Witness 2 which stated:

'At that point I didn't realise that James had actually come into the medication room as I was so busy. James then grabbed me from behind, by my shoulders and sort of turned me around to face him.'

The panel also considered the witness statement of Witness 3 whereby she described interviewing another witness to the alleged incident and stated:

'He recollected a normal working day, nothing manic, normal staffing levels etc. He recalled clearly the incident, he said it happened around lunchtime, he was already in the Omnicell room with and then James came in. [Mr 1] said he saw the interaction, he saw James attempted to hug from her back and then attempted to kiss her.'

The panel determined that based on the description of events from Witness 2 and that the events were witnessed by another member of staff, it was satisfied that this charge was proved.

Charge 3(a)(ii)

"In respect of Colleague B:

a. On 22 December 2022:

ii. Grabbed the sides of her face."

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Witness 2, the witness statement of Witness 3 and the records from the disciplinary investigation with Mr Allen, dated 12 May 2023.

The panel first considered the witness statement of Witness 2 whereby she recounted the events:

'At that point I didn't realise that James had actually come into the medication room as I was so busy. James then grabbed me from behind, by my shoulders and sort of turned me around to face him. He grabbed the sides of my face and pulled my face towards his in type of kissing gesture. We were wearing masks at the time so I couldn't see lips, but the gesture of grabbing face in front of his face and pulling my face towards his as if he was going to kiss me.'

The panel considered the witness statement of Witness 3 which refers to an interview with another colleague who was present when the alleged actions were carried out. This colleague stated that they had witnessed inappropriate actions of that nature.

The panel also considered the records from the disciplinary investigation with Mr Allen in which he stated that he had no recollection of this incident.

The panel determined that Witness 2's statement of events, which was also witnessed by the colleague in Witness 3's statement, was coherent and an objective statement of the events. The panel noted that Mr Allen had not denied the allegations but stated that he did not remember the incident. Based on these factors, the panel found this charge proved.

Charge 3(a)(iii)

"In respect of Colleague B:

a. On 22 December 2022:

iii. Attempted to kiss her."

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Witness 2 and the records from the disciplinary investigation with Mr Allen, dated 12 May 2023.

The panel first considered the witness statement of Witness 2 whereby she recounted the events:

'At that point I didn't realise that James had actually come into the medication room as I was so busy. James then grabbed me from behind, by my shoulders and sort of turned me around to face him. He grabbed the sides of my face and pulled my face towards his in type of kissing gesture. We were wearing masks at the time so I

couldn't see lips, but the gesture of grabbing face in front of his face and pulling my face towards his as if he was going to kiss me.'

The panel also considered the records from the disciplinary investigation with Mr Allen in which he stated that he had no recollection of this incident.

The panel determined that Witness 2's statement of events, which was also witnessed by the colleague in Witness 3's statement, was coherent and an objective statement of the events. The panel noted that Mr Allen had not denied the allegations but stated that he did not remember the incident. Based on these factors, the panel found this charge proved

Charge 3(a)(iv)

"In respect of Colleague B:

a. On 22 December 2022:

iv. Said 'you are so cute', 'you are so pretty' or words to that effect."

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Witness 2, the investigation meeting with Witness 2, and the records from the disciplinary investigation with Mr Allen, dated 12 May 2023.

The panel first considered the witness statement of Witness 2 whereby she recounted the events:

'At that point I didn't realise that James had actually come into the medication room as I was so busy. James then grabbed me from behind, by my shoulders and sort of turned me around to face him. He grabbed the sides of my face and pulled my face towards his in type of kissing gesture. We were wearing masks at the time so I couldn't see lips, but the gesture of grabbing face in front of his face and pulling my face towards his as if he was going to kiss me.'

While he did that James said something like “you are so cute, or you are so pretty’

The panel considered the investigation meeting with Witness 2, whereby Witness 2 stated:

‘yes, we had masks on, he did a facial gesture he leaned around me to be face to face with me, said ‘Oh you’re so pretty’ he didn’t touch my neck but grabbed my head and attempted to put his face to me gestured to try and kiss me’

The panel also considered the records from the disciplinary investigation with Mr Allen in which he stated that he has no recollection of this incident.

The panel determined that on the basis of the above evidence given by Witness 2, this charge was found proved.

Charges 3(b)(i), 3(b)(ii), 3(b)(iii) and 3(b)(iv)

“On one or more occasions in 2022:

- i. Put your hands on her waist.*
- ii. Touched her neck and/or face*
- iii. Told her she is ‘pretty’, ‘cute’, or words to that effect.*
- iv. Made comments such as ‘look at Colleague B, she is so pretty, I he is single’ or words to that effect”*

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Witness 2 and the witness statement of Witness 3.

The panel considered the witness statement of Witness 2 which states:

'This is not the first time James has physically touched me. Pretty much every time I saw him on shift he would tell me I am pretty or cute, and he would also touch me physically by putting his hands on my waist or touching my neck and face. This always made me feel really uncomfortable. I do not mind colleagues touching my hand or something but touching me elsewhere is not appropriate. James would make comments such as "look at she is so pretty, I wonder why she is single?" I just tried to ignore it at first, the comments were not work related so I tried to just get on with my job. But the touching was disturbing, that made me feel really uncomfortable, especially because we are not friends. Not even my close friends would touch me like that. I kept telling him to stop and that I didn't like it, but James would just see it as a joke.'

The panel also considered the witness statement of Witness 3 which states:

'She described the interaction with James and the words he said about her being so pretty. confirmed her position in the room at the time, how James had tried to hug her from behind and she said she elbowed him to try to get him off of her. She said that James had a mask on so she couldn't see his lips but he had held her head and pulled it towards him as if he was trying to kiss her. It transpired that it wasn't the first time James had behaved in an inappropriate way towards but this one was more serious. James had made previous advances to her in the past: similar comments about her being pretty, similar gestures, he had touched her waist and grabbed her face before'

The panel was satisfied that the actions stated in the above charges, had happened on more than one occasion and therefore found charges 3(b)(i), 3(b)(ii), 3(b)(iii) and charge 3(b)(iv) proved.

Charge 4(a)

“Your actions at charges 3a and/or 3b:

a. Were unwanted by Colleague B.”

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Witness 2 which states:

‘It all happened very quickly but I remember elbowing him from behind when he grabbed me, it is like the adrenaline kicked in and I lashed out to protect myself, he is a man so a lot stronger than me, and I told him to stop it. No one said anything then.’

‘This is not the first time James has physically touched me. Pretty much every time I saw him on shift he would tell me I am pretty or cute, and he would also touch me physically by putting his hands on my waist or touching my neck and face. This always made me feel really uncomfortable.’

The panel noted that there was no evidence of Mr Allen responding to these allegations or on the impact they had on Colleague B.

The panel determined that based on the evidence given by Witness 2, it was evident that the actions carried out by Mr Allen were entirely unwanted by Colleague B and therefore this charge is found proved.

Charge 4(b)

“Your actions at charges 3a and/or 3b:

b. Were sexually motivated in that you sought or derived sexual gratification from your actions.”

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Witness 2 and the local investigation.

The panel noted that as Mr Allen has not engaged with the proceedings, there is no evidence before it that shows what he has stated what his state of mind was and intentions were when carrying out these actions. The panel noted that in relation to 3(a) and/or 3(b), Mr Allen stated in the local investigation that he did not remember the incidents. The panel could only find the charge proved if it considered that it was reasonable to draw an inference that what was done and said was for some form of sexual gratification.

The panel found that that there was evidence that Colleague B had clearly felt extremely uncomfortable by the actions of Mr Allen. There were multiple times when Mr Allen's actions and words involved unwanted touching of a female colleague and using terms of affection. The panel inferred through these many incidents that it was more likely that not that he was seeking some form of sexual gratification from his actions.

Therefore, the panel found this charge proved.

Charge 4(c)

"Your actions at charges 3a and/or 3b:

c. Were intended to violate Colleague B's dignity and/or create an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B."

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Witness 2 and the local investigation.

The panel considered the witness statement of Witness 2 whereby she stated that on several occasions Mr Allen's actions made her feel uncomfortable, and that on one occasion she remembers having to elbow Mr Allen from behind when he grabbed her, in order to make him stop.

The panel determined that Mr Allen's intent was to obtain sexual gratification. The panel was satisfied that it was evident that his actions were entirely inappropriate and made Witness 2 feel the way it is described in this charge. The panel accepted her evidence that his attention was not welcome, yet he persisted in repeating his conduct. In any event he created an offensive environment for Colleague B.

The panel therefore found this charge proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Allen's fitness to practise is currently impaired.

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

Representations on misconduct and impairment

In coming to its decision, the panel had regard to the case of *Roylance v GMC (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.'

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of "The Code: Professional standards of practice and behaviour for nurses and midwives (2015" ("the Code") in making its decision.

The NMC identified the specific, relevant standards where Mr Allen's actions amounted to misconduct and considered the following provisions of the Code had been breached:

'1. Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

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*

20.3 *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*

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 NMC submitted that:

'...Mr Allen's actions, as detailed in the charges, fall significantly short of what would be expected of a registered nurse. The areas of concern identified relate to unprofessional conduct, sexual misconduct and harassment. Mr Allen's actions in failing to maintain professional boundaries for sexual gratification were a significant departure from the fundamental principles of the Code of prioritising people and promoting professionalism and trust. Misconduct of a sexual nature is considered to be so serious that it is likely to undermine the NMC's professional standards and public confidence in the profession.'

The panel were then invited, in the event that it made a finding of misconduct to consider the issue of impairment.

The NMC submitted that the NMC's overarching objective was to protect 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. The panel was referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Mr Allen's fitness to practise impaired by reason of his misconduct on the basis that limbs (a) – (c) of the Grant test were engaged.

The NMC submitted that Mr Allen's fitness to practise is impaired on the grounds of public interest.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance, Grant and Cohen v GMC* [2008] EWHC 581 (Admin).

Decision and reasons on misconduct

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

The panel was of the view that Mr Allen's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Allen's actions amounted to a number of breaches 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

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

...

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 was of the view that Mr Allen's actions as represented by the charges found proved, fell seriously short of the conduct and standards expected of a nurse and therefore amounted to misconduct.

Decision and reasons on impairment

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

In this regard the panel considered the test approved by Mrs Justice Cox in the case of *Grant* paragraph 76:

'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/their fitness to practise is impaired in the sense that S/He/They:

- 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 was satisfied that Mr Allen's conduct breached limbs b and c of the *Grant* test with regard to the past.

The panel found that there was no evidence to suggest that any patients were harmed in the past as a result of Mr Allen's conduct. His behaviour was directed towards fellow members of staff and not patients. There is no evidence to suggest that these members of staff were sufficiently distracted that they could not face patients or that his behaviour affected their work.

The panel determined that any well-informed member of the public who heard of Mr Allen's conduct would be highly concerned that a registered nurse was behaving in this manner. Therefore, it determined that Mr Allen's misconduct has brought the nursing profession into disrepute.

The panel further determined that Mr Allen, by engaging in sexually motivated, unwanted touching and harassment of fellow staff members, breached the fundamental tenets of the nursing profession.

The panel noted that Mr Allen had not engaged with the process, had not demonstrated any insight into his actions and that there was no evidence of remediation or strengthening of practice and as such, a high risk of repetition remains.

Accordingly, the panel determined that limbs (b) and (c) of the *Grant* test were engaged with regard to the future.

The panel bore in mind that the overarching objectives of the NMC include upholding and protecting 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 concluded that public confidence in the profession would be seriously undermined if a finding of impairment were not made in this case and therefore found Mr Allen's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr 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 Mr Allen off the register. The effect of this order is that the NMC register will show that Mr 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. The panel accepted the advice of the legal assessor.

Representations on sanction

The NMC submitted that a striking-off order is the only appropriate sanction, should the panel find Mr Allen impaired.

Decision and reasons on sanction

Having found Mr 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
- A pattern of behaviour over a period of time
- Failure to attend or engage in the proceedings
- Failure to work collaboratively with colleagues including sexual harassment and unwanted physical contact

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, an order that does not restrict Mr Allen's practice would not be appropriate in the circumstances. The panel considered that Mr Allen's misconduct was too serious to impose a caution order.

The panel next considered whether placing conditions of practice on Mr 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. Furthermore, the panel concluded that the placing of conditions on Mr Allen's registration would not adequately address the seriousness of this case and would not satisfy the wider public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel had regard to the SG and considered that the misconduct identified was fundamentally incompatible with continuing to be a registered professional. It considered that an outcome less severe than striking-off, would not satisfy the overarching objective of the NMC.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Mr Allen's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Allen's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. There was no evidence of insight, and the panel could not be satisfied that there would be a realistic prospect that Mr Allen would have gained insight had the panel imposed a period of suspension.

The panel formed the view that the misconduct involving unwanted physical contact and sexual harassment was too serious for it to impose any lesser sanction.

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.

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 Allen's own interests

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

Representations on interim order

The panel took account of the representations made by the NMC that an interim suspension order should be imposed on the basis that it is otherwise in the public interest.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary to uphold 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.

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

This will be confirmed to Mr Allen in writing.

That concludes this determination.