

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

Substantive Hearing

5 - 8 September 2022 and 12 - 15 September 2022

and

26 - 29 September 2022

Virtual Hearing

Name of registrant: Miss Jane Ann Donnachie

NMC PIN: 04I0697S

Part(s) of the register: Nursing, sub part 1
RNA, Adult Nurse (19 September 2)

Relevant Location: Glasgow

Type of case: Misconduct/Conviction

Panel members: Yvonne O'Connor (Chair, Registrant member)
Jonathan Coombes (Registrant member)
Nicola Strother Smith (Lay member)

Legal Assessor: Simon Walsh

Hearings Coordinator: Monsur Ali

Nursing and Midwifery Council: Represented by James Edenborough, Case
Presenter

Miss Donnachie: Not present and unrepresented

Facts proved: Charges 1a in full, 1b in full, 2a, 2b, 2c, 4, 5a,
5b, 5c, 5d, 9, 10a, 10b, 10c and 11

Facts not proved: Charges 3, 6a, 6b, 6c, 6d, 6e, 7 and 8

Fitness to practise: Impaired

Sanction: Strike-off order

Interim order: Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Donnachie was not in attendance and not represented at the hearing. The electronic Notice of Hearing had been sent to her registered email address on 3 August 2022.

The panel considered that the Notice of Hearing provided details of the substantive hearing, the time, date and the nature of the hearing and, amongst other things, information about Miss Donnachie's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Edenborough, on behalf of the Nursing and Midwifery Council (NMC) submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Miss Donnachie had been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Donnachie

The panel next considered whether it should proceed in the absence of Miss Donnachie. The panel had regard to Rule 21 and heard the submissions of Mr Edenborough who invited the panel to continue in the absence of Miss Donnachie.

Mr Edenborough submitted that Miss Donnachie has expressed her intent to leave the nursing profession and indicated that she will make an application for voluntary removal from the NMC register, although such an application had not been received.

Mr Edenborough submitted that there is ample evidence before the panel which demonstrates that Miss Donnachie is fully aware of this hearing but had voluntarily

absented herself. He further submitted that there are a number of witnesses arranged to give evidence and it is in the interest of justice to proceed in the absence of Miss Donnachie.

The panel decided to proceed in the absence of Miss Donnachie. In reaching this decision, the panel has considered the submissions made by Mr Edenborough and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R v Jones (Anthony William) (No.2)* [2002] UKHL 5 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 had been made by Miss Donnachie;
- Miss Donnachie has confirmed that she will not be in attendance;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There are witnesses lined up to give evidence so any delay would cause unjustifiable inconvenience to them; and
- There is a strong public interest in the expeditious disposal of the case.

The panel had sight of the email from Miss Donnachie, dated 24 August 2020, in which she stated the following:

'Dear Patricia I am not requesting an Adjournment of the hearing. I am fine with the meeting to proceed in my absence.'

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Donnachie.

Details of charge as originally worded

That you a registered nurse:

1. On 15 June 2017, when working a shift on the Ear, Nose and Throat ward at Queen Elizabeth University Hospital (the "Hospital") as part of the Greater Glasgow and Clyde NHS Trust:

a) Behaved unprofessionally towards Colleague 1 in that you:

- i. Said "I'm going to kill you" or words to that effect.
- ii. Raised your voice towards her.
- iii. Shook a pen near to her face.
- iv. Told her to "shut *her* big fat mouth' or words to that effect.
- v. Said that she was a "twisted, mixing little girl' or words to that effect".
- vi. Acted in an aggressive manner towards her.

b) Behaved unprofessionally in that you:

- i. Called Colleague 1 a "bitch" or words to that effect in earshot of colleagues and/or patients and/or relatives.
- ii. Confronted Colleague 1 between the office and the kitchen in view of colleagues and/or patients and/or relatives.

2. On 1 August 2017, while working a shift at the Hospital, in earshot of patients and/or relatives:

a) Complained about Colleague 2.

b) Complained about Colleague 1.

- c) With reference to colleagues said that they were all a “bunch of bitches” and/or “fucking bitch of cunts” and/or “cunts the lot of them” or words to that effect.
- 3. At some point between 5 August 2017 and 7 August 2017 posted a message on Facebook that was offensive and/or intimidating to colleagues from the Hospital.
- 4. On 8 August 2017 sent a Facebook message to Colleague 3 that was offensive and/or intimidating.
- 5. On 30 October 2020 while working at Kinning Park Care Home (the “Home”) communicated unprofessionally and/or in an intimidating manner with Colleague 3 in that you said:
 - a) “You are just the maintenance guy and I’m a senior nurse, who do you think you are?” or words to that effect.
 - b) “You walk around here like you’re a manager” or words to that effect.
 - c) “We all know you ‘do’ more than maintenance everyone knows’.
 - d) “Look at yours all walking around with aprons on, it’s ridiculous and I will be bringing it up with [the manager]”
- 6. On 30 October 2020 sent WhatsApp messages to Colleague 4 that were unprofessional in that:
 - a) Colleague 4 was off duty at the time
 - b) You used residents’ full names;

- c) You responded aggressively and/or inappropriately to Colleague 4's response that any staffing/support/protection issues should have been raised immediately.
- d) Accused Colleague 4 of not carrying out their duties.
- e) You made negative comments about other members of staff at the Home.

7. On dates unknown while working at the Home:

- a) Shouted at a care coordinator.
- b) Flipped folders and books and started shouting in front of care staff before walking off.

8. On the night shift commencing 29 October 2020 at the Home did not record and report a safeguarding issue immediately and/or by the appropriate means.

9. On or around 30 October 2020 breached confidentiality by disclosing an allegation raised by Resident A regarding an employee at the Home with Resident B.

10. Between 23 December 2019 and 21 December 2020 held yourself out as a registered nurse when you had been suspended from practice by the NMC on 23 December 2019 in that you:

- a) Wore a nurses uniform/tunic when on duty at the Home.
- b) Used the title of 'Nurse' when describing your status in the Home.
- c) Carried out nursing duties at the Home.

11. Your actions at Charge 10 were dishonest in that you knew you had been suspended from nursing practice by the NMC on 23 December 2019.

AND in light of the above your fitness to practice [sic] is impaired by reason of your misconduct.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Edenborough on behalf of the NMC, to amend the wording of three charges. He submitted that in two of the charges wrong colleagues have been referred to in the schedule of charges. In charge 4 it reads colleague 3 but it should instead read colleague 4. In charge 5 it currently reads colleague 4 but it should instead read colleague 5.

In charge 9 there is a difference between the way in which witnesses' names had been anonymised in a witness's statement, an exhibit and the charge as drafted. This could be confirmed with the witness. Mr Edenborough informed the panel that where it currently reads Resident A, it should read Resident B and where it reads Resident B, it should read Resident A: there had never been any confusion about who was being referred to, the confusion was only in their anonymisation.

It was submitted by Mr Edenborough that the proposed amendments would provide clarity and more accurately reflect the evidence.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'NMC (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was of the view that such an amendments, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Miss Donnachie and no injustice would be caused to either party by the proposed amendments being allowed. It was therefore appropriate to allow the amendments, as applied for, to rectify typographical and administrative errors, and ensure clarity and accuracy.

Charges in their final version

That you a registered nurse:

1. On 15 June 2017, when working a shift on the Ear, Nose and Throat ward at Queen Elizabeth University Hospital (the "Hospital") as part of the Greater Glasgow and Clyde NHS Trust:

a) Behaved unprofessionally towards Colleague 1 in that you:

- i. Said "I'm going to kill you" or words to that effect.
- ii. Raised your voice towards her.
- iii. Shook a pen near to her face.
- iv. Told her to "shut *her* big fat mouth' or words to that effect.
- v. Said that she was a "twisted, mixing little girl' or words to that effect".
- vi. Acted in an aggressive manner towards her.

b) Behaved unprofessionally in that you:

- i. Called Colleague 1 a "bitch" or words to that effect in earshot of colleagues and/or patients and/or relatives.
- ii. Confronted Colleague 1 between the office and the kitchen in view of colleagues and/or patients and/or relatives.

2. On 1 August 2017, while working a shift at the Hospital, in earshot of patients and/or relatives:

- a) Complained about Colleague 2.
 - b) Complained about Colleague 1.
 - c) With reference to colleagues said that they were all a “bunch of bitches” and/or “fucking bitch of cunts” and/or “cunts the lot of them” or words to that effect.
3. At some point between 5 August 2017 and 7 August 2017 posted a message on Facebook that was offensive and/or intimidating to colleagues from the Hospital.
4. On 8 August 2017 sent a Facebook message to Colleague 3 that was offensive and/or intimidating.
5. On 30 October 2020 while working at Kinning Park Care Home (the “Home”) communicated unprofessionally and/or in an intimidating manner with Colleague 3 & 4 in that you said:
- a) “You are just the maintenance guy and I’m a senior nurse, who do you think you are?” or words to that effect.
 - b) “You walk around here like you’re a manager” or words to that effect.
 - c) “We all know you ‘do’ more than maintenance everyone knows’.
 - d) “Look at yours all walking around with aprons on, it’s ridiculous and I will be bringing it up with [the manager]”
6. On 30 October 2020 sent WhatsApp messages to Colleague ~~4~~ ~~5~~ that were unprofessional in that:
- f) Colleague ~~4~~ ~~5~~ was off duty at the time

- g) You used residents' full names;
 - h) You responded aggressively and/or inappropriately to Colleague-4 5 's response that any staffing/support/protection issues should have been raised immediately.
 - i) Accused Colleague-4- 5 of not carrying out their duties.
 - j) You made negative comments about other members of staff at the Home.
7. On dates unknown while working at the Home:
- c) Shouted at a care coordinator.
 - d) Flipped folders and books and started shouting in front of care staff before walking off.
8. On the night shift commencing 29 October 2020 at the Home did not record and report a safeguarding issue immediately and/or by the appropriate means.
9. On or around 30 October 2020 breached confidentiality by disclosing an allegation raised by Resident A B regarding an employee at the Home with Resident B A.
10. Between 23 December 2019 and 21 December 2020 held yourself out as a registered nurse when you had been suspended from practice by the NMC on 23 December 2019 in that you:
- d) Wore a nurses uniform/tunic when on duty at the Home.
 - e) Used the title of 'Nurse' when describing your status in the Home.

f) Carried out nursing duties at the Home.

11. Your actions at Charge 10 were dishonest in that you knew you had been suspended from nursing practice by the NMC on 23 December 2019.

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

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

Mr Edenborough informed the panel that the documentation before it contains information about Colleague 3's health. He therefore made an application that any mention of Colleague 3's health should be marked as private. The application was made pursuant to Rule 19(3) of the Rules.

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

The panel decided that where Colleague 3's health is mentioned, those parts should be marked as private because it concluded that this was justified by the need to protect her private health matters and that this outweighed any prejudice to the public interest.

Application to leave information out of panellists' minds

Mr Edenborough submitted that the panel had been sent information relating to Miss Donnachie's interim order hearing which it should not have had sight of. He made an application that as a professional panel, the panellists should leave that information out of their minds.

The panel considered whether it is necessary to recuse itself from this case, it however, determined that it is not necessary to do so. The panel determined that the information it

had received was quite serious and related to a number of additional significant events wholly unrelated to the facts alleged in this charge. As a professional panel, it would be able to disregard such information when considering the facts of the case.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Edenborough and the written submissions made by Miss Donnachie.

The panel has drawn no adverse inference from the non-attendance of Miss Donnachie.

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 oral evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Local investigator appointed by the NHS Greater Glasgow and Clyde Health Board (GGC)
- Witness 2: Registered Nurse at Queen Elizabeth University Hospital (the Hospital). Witness 2 is described in the charge as Colleague 1
- Witness 3: Staff Nurse at GGC
- Witness 4: Staff Nurse at the Hospital

- Witness 5: Senior Charge Nurse at GGC
- Witness 6: Manager of Kinning Park Care Home (the Home)
- Witness 7: Maintenance man at the Home. Witness 7 is described in the charge as Colleague 4
- Witness 8: Band 5 Staff Nurse at the GGC at the time of the incidents
- Witness 9: Staff Nurse at the Hospital

At the outset of the hearing, the documentary evidence consisted only of the hearing bundle compiled by the NMC and sent to Miss Donnachie.

It was a matter of great regret that the documentary evidence provided by Miss Donnachie (sent to the NMC in good time and as advised in the Notice of Hearing) was misplaced by the NMC and not provided to the panel until Day 4 of the hearing. In this documentation Miss Donnachie criticised the actions of Witness 6 and took issue with many things Witness 6 said in her witness statement.

Unfortunately, by the time the NMC made Miss Donnachie's documentary evidence available to the panel, Witness 6 had already given her oral evidence on oath and the opportunity to question her about what Miss Donnachie said had been lost. Efforts were made to recall Witness 6, but she declined to assist the panel any further.

Out of fairness to Miss Donnachie the panel determined that where there was a discrepancy between what Witness 6 said about an issue and what Miss Donnachie told the panel about it that could not be resolved by other evidence, the panel would prefer the evidence of Miss Donnachie because of Witness 6's lack of further engagement with the fitness to practise process.

Background

Charges 1 to 4 in this case arise out of events that occurred whilst Miss Donnachie was employed as a charge nurse at the Queen Elizabeth University Hospital, part of NHS Greater Glasgow and Clyde (the Hospital). Charges 5 to 11 arise out of her employment at the Kinning Park Care Home in Glasgow (the Home).

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor who referred to the following cases:

Re B (Children) [2008] UKHL 35

Hosny v GMC [2011] EWHC 1355 (Admin)

Braganza v BP Shipping [2015] UKSC 17

Suddock v NMC [2015] EWHC 3612 (Admin)

Ivey v Genting Casinos [2017] UKSC 67

Hussain v GMC [2014] EWCA (Civ) 2246

Marten v NMC [2016] EWHC 2183 (Admin)

The panel considered the witness evidence and documentary evidence provided by the NMC and the documentary evidence provided by Miss Donnachie.

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

Charge 1a)

On 15 June 2017, when working a shift on the Ear, Nose and Throat ward at Queen Elizabeth University Hospital (the Hospital) as part of the Greater Glasgow and Clyde NHS Trust:

- a) Behaved unprofessionally towards Colleague 1 in that you:
 - i. Said “*I’m going to kill you*” or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account Witness 2's signed witness statement which she confirmed during her oral evidence at the hearing. She provided a detailed description that Miss Donnachie had said to her *'I'm going to kill you'*.

The panel considered that during Miss Donnachie's investigation interview she made no reference to this and she has made no other direct reference to the allegation. The panel accepted Witness 2's account. The panel accepted that these words were said by Miss Donnachie.

Witness 2 said that she never considered the words were meant literally. Nevertheless the panel determined that this behaviour was unprofessional. The panel also found that it is inappropriate language for one professional to use to another within the setting of a workplace. It therefore was satisfied that this behaviour was inappropriate and finds this charge proved.

- ii. Raised your voice towards her.

This charge is found proved.

In reaching this decision, the panel took into account Witness 2's signed witness statement which she confirmed during her oral evidence at the hearing. Witness 2 confirmed that Miss Donnachie was shouting. The panel also took into account Witness 5's signed witness statement which she confirmed during oral evidence at the hearing. She confirmed that Miss Donnachie raised her voice and said:

'I can remember she was angry, her voice was raised and she was emotional.'

The panel also considered the evidence of Witness 4. She confirmed during the internal investigation and again during her oral evidence that Miss Donnachie had raised her voice. The panel was satisfied that Miss Donnachie raised her voice.

The panel was satisfied that this behaviour was unprofessional because raising one's voice in this manner in a clinical environment is unprofessional and inappropriate. The panel therefore finds this charge proved.

- iii. Shook a pen near to her face

This charge is found proved.

In reaching this decision the only evidence the panel heard was from Witness 2. She had stated in her formal record of the incident on 16 June 2017 that:

'She [Miss Donnachie] began shouting at me and gesticulating with her pen, quite aggressively into my face, "No you aren't, I'll be getting the co-ordinator up here".'

The panel also considered the written statement of Witness 2 who stated:

'Jane Ann was coming towards me. She said "what you going to do then?" and "are you going to go home?" She was red in the face. I said "I'm going to do my job". Jane Ann is shorter than me but she was shaking a whiteboard pen into my face. Initially Jane Ann was about three steps away from me but then she was walking towards me until the pen was about an inch away from my face.'

The panel was satisfied that Witness 2 provided an accurate recollection of the event and had made a note of the incident shortly after it had occurred. She had been consistent throughout. The panel accepted Witness 2's evidence and determined that the pen was shaken in her face.

The panel determined that this is threatening, aggressive and unprofessional behaviour conducted by a registered nurse within the workplace. The panel therefore finds this charge proved.

- iv. Told her to *'shut her big fat mouth'* or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account Witness 2's account of the incident. There is reference to those words in Witness 2's initial formal statement written on 16 June 2017. Witness 2 also made reference to those words in her internal investigation interview meeting on 2 August 2017. She further made reference to it in her NMC witness statement. Witness 2 in her oral evidence confirmed this. The panel determined that these or similar words were said.

The panel determined that it is unprofessional for a nurse to speak with a colleague within the workplace using those words and in that manner. The panel therefore finds this charge proved.

- v. Said that she was a "twisted, mixing little girl' or words to that effect".

This charge is found proved.

In reaching this decision, the panel took into account Witness 2's formal record of the incident dated 16 June 2017 and her written statement which she confirmed during her oral evidence. She stated in the written statement that:

'Jane Ann said I was a "twisted, mixing little girl".'

The panel also considered the GGC's investigation report where it is also recorded that Miss Donnachie said that Colleague 2 was, *'nothing but a twisted little girl'*.

The panel determined that Witness 2 was reliable in her account of the incident. The panel determined that these or similar words were said.

The panel concluded that such words are derogatory, demeaning, undermining and unprofessional for one professional to say to a colleague. The panel therefore finds this charge proved.

vi. Acted in an aggressive manner towards her.

This charge is found proved.

In reaching this decision, the panel took into account all the evidence from the previous charges and has determined that this charge incorporates them. The panel therefore finds this charge proved.

Charge 1b)

Behaved unprofessionally in that you:

- i. Called Colleague 1 a “bitch” or words to that effect in earshot of colleagues and/or patients and/or relatives.

This charge is found proved.

In reaching this decision, the panel took into account evidence of Witness 4. She stated in her written statement which she confirmed during her oral evidence, that:

‘I saw Jane Ann coming behind her [Colleague 1] “saying who do you think you are” and she also called her [Colleague 1] “a big fat bitch.”’

The panel also took into account the written witness statement of Witness 5 which she confirmed during her oral evidence. She stated:

‘I think she [Miss Donnachie] told [Colleague 1] to “get into the office” and said something vaguely along the lines of “stupid girl” or “stupid bitch”. I can confirm I cannot remember any other details of this conversation. Jane Ann had said this clearly and it was clearly audible. Everyone could hear what she was saying including patients, staff and relatives.’

The panel further took into account the evidence of Witness 9 which she confirmed during her oral evidence. She stated in the internal investigation interview meeting, dated 22 August 2017:

'JD went to the office and SM stayed in the ward. On the way back as she passed the desk, JD said something like "stupid cow/" or "stupid bitch". There was were patients within earshot and a new nurse who was there looked shot.'

Witness 3 confirmed that these words were said in front of colleagues. Witness 5 and Witness 9 have confirmed that that these words were said in earshot of patients and relatives.

The panel determined that the evidence provided by the witnesses was reliable and consistent. It determined that these or similar words were said.

The panel determined that it was unprofessional and inappropriate to use that kind of language within a workplace environment. The panel therefore finds this charge proved.

- ii. Confronted Colleague 1 between the office and the kitchen in view of colleagues and/or patients and/or relatives.

This charge is found proved.

The panel took into account the evidence of Witness 9. She stated that:

'On the way back as she [Miss Donnachie] passed the desk. JD said something like "stupid cow/" or "stupid bitch".'

The panel was told about the layout of the office and Witness 9 confirmed that Miss Donnachie had said this as she passed the desk. The panel heard from Witness 2 who confirmed that she was followed into the corridor by Miss Donnachie when she left the office after their initial interaction. Witness 4 and Witness 5 confirmed that this incident had occurred in the corridor within view of colleagues, patients and/or relatives. The panel found the evidence of the witnesses credible and consistent, and determined that the confrontation had occurred as described.

The panel determined that this type of confrontation, taking place in view of others, is unprofessional and therefore finds this charge proved.

Charge 2)

On 1 August 2017, while working a shift at the Hospital, in earshot of patients and/or relatives:

- a) Complained about Colleague 2; and
- b) Complained about Colleague 1.

These charges are found proved.

The panel determined that this incident had occurred and was heard by Witness 3.

Witness 3 said in her written statement:

'Jane Ann approached me. She was the nurse in charge as the sister on duty had left. She was complaining about how [Colleague 2] had gone home early, but had not informed her. [Colleague 2] had informed someone that she was leaving early, just not Jane Ann. She was talking in the round desk area. This was within earshot of the patient, nurses were there too and visitors were coming in.'

Witness 3 also stated:

'Jane Ann was determined to sit at computer desk in front of other member of staff. She then started speaking about another member of staff [Colleague 1] who is a Band 5 staff nurse. I was totally confused as she had gone from talking about [Colleague 2] to [Colleague 1]. Her voice had become louder. I asked her to keep her voice down as patients were in the vicinity and relatives were walking nearby.'

The panel found Witness 3's evidence to be reliable. It determined that Witness 3 provided a balanced view during her oral evidence and confirmed what she heard. Further, Witness 3 independently commented that Miss Donnachie was a "very good

nurse to her patients” and the panel considered she showed no animosity towards Miss Donnachie.

The panel finds these charges proved.

- c) With reference to colleagues said that they were all a “bunch of bitches” and/or “fucking bitch of cunts” and/or “cunts the lot of them” or words to that effect.

This charge is found proved.

The panel heard from Witness 3. She stated in her written statement, which she confirmed during her oral evidence, that Miss Donnachie said:

‘they were all "a bunch of bitches", "a clique of bitches", "fucking bitch of cunts" and said words to the effect of "cunts the lot of them". The reason why I remembered them is because I hate the word. She repeated this a few times and said this very loudly. Patients and relatives walking around the area would definitely be able to hear them.’

Witness 8 confirmed during her oral evidence that she had heard two bits of vulgar language and said

‘I could not hear everything she said but I picked up on those words’.

The panel determined that this incident had occurred and it therefore finds this charge proved.

Charge 3)

At some point between 5 August 2017 and 7 August 2017 posted a message on Facebook that was offensive and/or intimidating to colleagues from the Hospital.

This charge is found NOT proved.

The panel carefully read the post in the evidence bundle. It read:

'Hey colleagues, just to notify you's that due to unforeseen circumstances I have made a decision to keep FB private until further notice. Hoping I don't offend too many sincere loyal colleagues..... you all know who u are eh, lol. Again, I'm sure u all know that I like to maintain my professionalism not only as a Nurse but as Manager to the majority of you on here & you's will appreciate & respect my decision for now.

However, being the approachable person that u all know I am..... I have no objections if anyone needs to liaise with me via my mobile, however, only if necessary, lol.

U all know I enjoy life to the full & I'm a wee busy bee due to the abundance of friends within my social life but will still make time for my loyal colleagues too.

Hoping I don't offend Too many of u as you's know I have a way with words that can be misinterpreted.

No need to analyze or dissect anything as life's for living in the fast lane, lol. Try not to miss me too much, someone can step up as the confrontational leader in my absence but only until I'm back, brace yourselves eh, lol.

Try to be good & if not then be careful, smile & the world will smile with u too, it's a walk in the park, well for some of us independent women.'

The panel carefully considered this message and did not find any part to be either offensive or intimidating. It therefore finds this charge not proved.

Charge 4)

On 8 August 2017 sent a Facebook message to Colleague 3 that was offensive and/or intimidating.

This charge is found proved.

The panel took into account Witness 4's written statement and her oral evidence in which she confirmed the statement. She stated in her written statement and in the internal investigation interview that she felt this was a personal attack as Miss Donnachie was aware of [PRIVATE]. She explained to the panel what Miss Donnachie said and why she found the message "uncomfortable". Witness 4 considered that this message was making reference to her [PRIVATE].

The panel noted that the following excerpt from Miss Donnachie's message does appear to make reference to Colleagues 3's [PRIVATE]:

'I'm not entirely sure how you will feel about this as I'm aware that both You and I know You can display [PRIVATE] but please don't feel isolated as I have sent others notification too.'

The panel finds this charge proved in respect of it being offensive but not intimidating.

Charge 5)

On 30 October 2020 while working at Kinning Park Care Home (the "Home") communicated unprofessionally and/or in an intimidating manner with Colleague 4 in that you said:

- a) "You are just the maintenance guy and I'm a senior nurse, who do you think you are?" or words to that effect.
- b) "You walk around here like you're a manager" or words to that effect.
- c) "We all know you 'do' more than maintenance everyone knows'.
- d) "Look at yours all walking around with aprons on, it's ridiculous and I will be bringing it up with [the manager]"

These charges are found proved.

The panel took into account the evidence of Witness 7. His written statement, which he confirmed during his oral evidence, supports charge 5a. Witness 7's grievance documents and his internal interview meeting notes, confirmed by him in his oral evidence, support the rest of charge 5. The panel determined that Miss Donnachie's interview also supports all four of these statements. The panel determined that these words were said.

The panel further determined that all these statements are unprofessional as they lack respect and demonstrate a discourteous attitude towards Colleague 4. However, the panel did not find this to be intimidating. The panel therefore finds all these charges proved in respect of communicating unprofessionally with a colleague within the workplace. The panel did not consider these statements to be intimidating.

Charge 6)

On 30 October 2020 sent WhatsApp messages to Colleague 5 that were unprofessional in that:

- a) Colleague 5 was off duty at the time.

This charge is found NOT proved.

The panel noted that the use of WhatsApp messaging was an acceptable and widely used method of communication between colleagues at the Home. The panel further noted that a nurse sending a WhatsApp message would never necessarily know whether its intended recipient was actually on duty or off duty at the time the message was sent. In this particular case there was no evidence to suggest that the recipient either was on duty or objected to the message being sent in the way it was.

The panel therefore determined that it was not unprofessional for Miss Donnachie to send Colleague 5 WhatsApp messages when she was off duty. It therefore finds this charge not proved.

b) You used residents' full names.

This charge is found NOT proved.

The panel saw no evidence that Miss Donnachie used residents' full names. Witness 6 was not asked whether a particular patient's full name was used by Miss Donnachie. The panel was unable to identify any documentary evidence that showed that residents' full names had been used in the WhatsApp messages. It therefore determined that this charge is found not proved.

c) You responded aggressively and/or inappropriately to Colleague 5's response that any staffing/support/protection issues should have been raised immediately.

This charge is found NOT proved.

The panel carefully considered Miss Donnachie's response to Colleague 5. This covered 13 pages in the bundle of documentary evidence and it is neither necessary nor appropriate to repeat all of it in this determination. In its professional judgement, the panel concluded that the WhatsApp message sent to Colleague 5 was not aggressive or inappropriate, and was not unprofessional. The panel determined this in the context of, and its understanding of, modern day social media communication. It therefore finds this charge not proved.

d) Accused Colleague 5 of not carrying out their duties.

This charge is found NOT proved.

The panel has not seen evidence to demonstrate that Miss Donnachie accused Colleague 5 of not carrying out any particular duty or duties. The panel recognised that in the opening note the NMC was relying on the phrase '*but there are certain things that aren't being dealt with & brushed under the carpet*' but could not construe this phrase, or indeed any other phrase in the message, as an accusation that meets the charge. It therefore finds this charge not proved.

- e) You made negative comments about other members of staff at the Home.

This charge is found NOT proved.

The panel considered the evidence being relied upon by the NMC as detailed in the opening note.

'I truly believe Irene must be allowing staff to do whatever they want as some folk just don't listen'

'I believe he might already be manipulating other staff who I guess will be frightened to challenge him. I've seen it all before as lived with an ex-army Sgt who has the exact same manner'

In its professional judgement the panel considered that these comments made by Miss Donnachie were negative. However, it considered that they were not sufficiently inappropriate to be capable of being considered as unprofessional.

The panel finds this charge not proved.

Charge 7)

On dates unknown while working at the Home:

- a) Shouted at a care coordinator.

- b) Flipped folders and books and started shouting in front of care staff before walking off.

These charges are found NOT proved.

The panel considered the evidence from Witness 6 in which she said the following:

'Jane-Ann's behaviour had deteriorated significantly during 2020. On one occasion she had shouted in front of the Care Coordinator who at that time was working with the Manager. On another occasion she flipped folders and books and started shouting in front of care staff and walked off. This incident was not recorded as we gave her the benefit of the doubt.'

The panel noted that this incident was neither recorded nor investigated at the time. The panel also noted that Witness 6's comments were no more than allegations rather than accepted statements of truth. Whilst acknowledging that this part of Witness 6's evidence had not been challenged by Miss Donnachie in her email dated 17 August 2022, the panel nevertheless treated this evidence with caution because of Witness 6's disengagement with the fitness to practise process.

The panel was mindful that the burden of proof rests with the NMC to prove charges and given that there was no further evidence provided in relation to this charge, the panel finds these charges not proved.

Charge 8)

On the night shift commencing 29 October 2020 at the Home did not record and report a safeguarding issue immediately and/or by the appropriate means.

This charge is found NOT proved.

The panel heard evidence from Witness 6 to confirm that there was an adult safeguarding policy in place, although this was not made available to the panel. In her

oral evidence Witness 6 described the process for reporting an adult safeguarding incident. Somebody in Miss Donnachie's position should have reported an adult safeguarding concern to the nurse on duty. The panel had no evidence to identify who the nurse was on duty on this particular night. It was therefore not possible to determine whether or not the nurse had been told about the adult safeguarding concern by Miss Donnachie. The panel therefore finds this charge not proved.

Charge 9)

On or around 30 October 2020 breached confidentiality by disclosing an allegation raised by Resident B regarding an employee at the Home with Resident A.

This charge is found proved.

Witness 6 told the panel that Resident A had told her that Miss Donnachie had asked him if he had been shouted at by Carer W. Resident A also told Witness 6 that Miss Donnachie had told him that Carer W (who she named in full), had shouted at another resident.

The panel took into account the evidence of the interview notes with Resident A, dated 12 November 2020, when Resident A was asked by Miss Donnachie if anyone or Carer W had shouted at him, explaining that the reason for asking was that Carer W had allegedly shouted at another resident.

The panel then went on to decide whether or not this was a breach of confidentiality. The panel determined that members of staff working in a care home who become aware of an allegation made against a colleague, owe that colleague a duty of confidentiality not to disclose the allegation to other residents other than during the course of a proper investigation. The panel further determined that by informing Resident A that there had already been a complaint made against Carer W, Miss Donnachie had breached her duty of confidentiality to Carer W.

The panel therefore finds this charge proved.

Charge 10)

Between 23 December 2019 and 21 December 2020 held yourself out as a registered nurse when you had been suspended from practice by the NMC on 23 December 2019 in that you:

- a) Wore a nurses uniform/tunic when on duty at the Home.

This charge is found proved.

The panel took into account Miss Donnachie's internal investigation interview notes dated 10 December 2020. Miss Donnachie stated that she was allowed to wear her uniform in order to "*protect her*". The panel noted the email response to the NMC by Witness 6 which states:

'JAD was allowed to wear her nurse tunic for her dignity'

The panel concluded that Miss Donnachie did wear a nurse's uniform when on duty at the Home. It therefore finds this charge proved.

- b) Used the title of 'Nurse' when describing your status in the Home.

This charge is found proved.

The panel noted in the internal investigation interview when Miss Donnachie is responding to the grievance she described herself as a Senior Staff Nurse. She said:

'DM replied you are not my boss and I said I know I'm not but I am a Senior Staff Nurse.'

The panel also took into account Witness 7's evidence. He stated in his written statement which he confirmed during his oral evidence:

'you are just the maintenance guy and I'm a senior nurse, who do you

think you are?’

The panel further noted that Miss Donnachie in the internal investigation interview said:

‘I can report you, I’ve spoken to my solicitor, as I working as a nurse when I shouldn’t have been as I’m not registered.’

The panel concluded that Miss Donnachie used the title of ‘Nurse’ when describing her status in the Home. It therefore finds this charge proved.

c) Carried out nursing duties at the Home.

This charge is found proved.

The panel took into account Miss Donnachie’s internal investigation interview notes where she confirmed that she carried out nursing duties. She stated:

‘I am working as a nurse and it is illegal’.

She also stated *‘I was not a Senior Carer I gave injections’.*

The panel also noted that Miss Donnachie confirmed she was giving injections whilst she was aware that carers were not allowed to do so. The panel noted that Miss Donnachie carried out nursing duties at the Home on several occasions, by her own admission. She was holding herself out as the Senior Nurse at the Home and only the senior staff knew that she was not.

The panel concluded that the Home was hiding the fact that Miss Donnachie was not permitted to practise as a registered nurse from junior staff and from residents and that she carried out nursing duties whilst knowing that this was wrong. The panel therefore finds this charge proved.

Charge 11)

Your actions at Charge 10 were dishonest in that you knew you had been suspended from nursing practice by the NMC on 23 December 2019.

This charge is found proved.

The panel took into account Miss Donnachie's internal investigation interview notes where she confirmed that she was holding herself out as the Senior Staff Nurse in the full knowledge of her interim suspension order which prohibited this. Furthermore, her email to the NMC dated 17 August 2022 confirmed that she was working as a nurse whilst on an interim suspension order and she was aware that this was in breach of the NMC code of conduct.

Although this was done with the knowledge, and indeed the apparent collusion, of the Home management, the panel determined that an ordinary person would find this behaviour dishonest because Miss Donnachie was misrepresenting herself to the residents as a nurse. Any consent given by a resident to be treated by Miss Donnachie was vitiated by this deception. The panel determined that there is sufficient evidence to demonstrate that Miss Donnachie knew that what she was doing was wrong. It therefore finds this charge proved.

Conviction charge

Mr Edenborough addressed the panel in respect of four convictions.

Decision and reasons on service of Notice of Hearing

Miss Donnachie was not in attendance and not represented at the hearing. The electronic Notice of Hearing had been sent to her registered email address on 3 August 2022.

The panel took into account that the Notice of Hearing provided details of the substantive hearing, the time, date and the nature of the hearing and, amongst other

things, information about Miss Donnachie's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Edenborough, on behalf of the Nursing and Midwifery Council (NMC) submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Miss Donnachie had been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Donnachie

The panel next considered whether it should proceed in the absence of Miss Donnachie. The panel had regard to Rule 21 and heard the submissions of Mr Edenborough who invited the panel to continue in the absence of Miss Donnachie.

Mr Edenborough submitted that there is ample evidence before the panel which demonstrates that Miss Donnachie is fully aware of this hearing but had voluntarily absented herself. He drew the panel's attention to its previous decision and submitted the reasons for proceeding in absence.

The panel decided to proceed in the absence of Miss Donnachie. In reaching this decision, the panel has considered the submissions made by Mr Edenborough and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R v Jones (Anthony William) (No.2)* [2002] UKHL 5 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 had been made by Miss Donnachie;
- Miss Donnachie has confirmed that she will not be in attendance;

- 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.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Donnachie.

Details of charge

That you a registered nurse:

12. On 26 March 2018 were convicted at the Glasgow Sherriff Court that you did:

a) Behave in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did shout, swear and utter threats and behave in an aggressive manner contrary to Section 38 (1) of the Criminal Justice and Licensing (Scotland) Act 2010.

b) Behave in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did shout sweat, utter threats, utter offensive remarks and behave in an aggressive manner contrary to Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010.

i. The offence at charge 1b was aggravated by prejudice in relation to sexual orientation as per Section 2 of the Offences (Aggravation by Prejudice)(Scotland) Act 2009.

ii. The offence at charge 1b was racially aggravated as per Section 96 of the Crime and Disorder Act 1998.

c) Assault, Police Constable, the Police Service of Scotland then in the execution of his duty and did repeatedly kick him on the body contrary to

the Police and Fire Reform (Scotland) Act 2012, Section 90(1)(a).

13. On 11 March 2019 were admonished and dismissed at Glasgow Sheriff Court of being an accused person and having been granted bail on 4 September 2017 at Glasgow Sheriff Court in terms of the Criminal Procedure (Scotland) Act 1995 and being subject to the condition inter alia that you not approach, contact or communicate with JK in any way, did on 10 February 2018 at Club Tropicana Renfield Street Glasgow, fail without reasonable excuse to comply with said condition in respect that you did communicate and attempt so to do with JK contrary to the Criminal Procedure (Scotland) Act 1995, section 27(1)(b).
14. On 14 May 2019 were convicted at the Glasgow Sherriff Court of assaulting a Police constable, the Police Service of Scotland then in execution of her duty and did utter threats of violence and kick her in the body, contrary to the Police and Fire Reform (Scotland) Act 2012, Section 90(1)(a).
15. On 16 October 2019 were convicted at Walsall Magistrates Court of assault by beating and that the offence was racially aggravated within the terms of section 28 of the Crime and Disorder Act 1998, contrary to section 29(1)(c) and (3) of the Crime and Disorder Act 1998.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the submissions made by Mr Edenborough and the written submissions made by Miss Donnachie.

The panel has drawn no adverse inference from the non-attendance of Miss Donnachie.

Background

On 3 September 2017, Miss Donnachie had behaved in a threatening and abusive manner to a member of the public at Club Tropicana in Glasgow. Miss Donnachie then

proceeded to behave in the same way in the back of a police vehicle and kicked a police constable. The offence is said to be racially aggravated because Miss Donnachie used the following words:

'you're a fucking black bastard, get back to your own country, you're a fucking Asian and I hate black people touching me.'

'black bastard'

'I'm going to spit on you, stop fucking touching me you fucking gay boy'

It was also ordered that she does not approach the civilian victim while she was on bail pending the court case.

On 10 February 2018, Miss Donnachie went into Club Tropicana despite her bail conditions and this matter was reported to the police. Whilst she was there, she became verbally abusive to a member of staff using the following words:

'I won't get struck off because I'm a ward sister.'

Miss Donnachie was charged with breach of her bail conditions and she was admonished and dismissed on 11 March 2019.

On 26 March 2018 Miss Donnachie was convicted of one act of threatening and abusive behaviour contrary to section 38(1) of Criminal Justice and Licensing (Scotland) Act 2010, one act of racially aggravated threatening and abusive behaviour and one act of assaulting a police constable contrary to Police and FIRE Reform (Scotland) Act 2012, Section 90(1)(a). Miss Donnachie was issued with a fine.

On 31 August 2019 Miss Donnachie was further involved in a racially aggravated incident at the Sunbeam Public House in Wolverhampton. She was convicted on 16 October 2019 of racially aggravated assault and was sentenced to a community order for 12 months. The reason the offence was racially aggravated was because Miss Donnachie called the victim of her attack a *'black bastard'*.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor who referred the panel to Rule 31 (2). It considered all the documentary evidence provided by both the NMC and Miss Donnachie.

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

Charge 12)

On 26 March 2018 were convicted at the Glasgow Sherriff Court that you did:

a) Behave in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did shout, swear and utter threats and behave in an aggressive manner contrary to Section 38 (1) of the Criminal Justice and Licensing (Scotland) Act 2010.

b) Behave in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did shout sweat, utter threats, utter offensive remarks and behave in an aggressive manner contrary to Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010.

i. The offence at charge 1b was aggravated by prejudice in relation to sexual orientation as per Section 2 of the Offences (Aggravation by Prejudice)(Scotland) Act 2009.

ii. The offence at charge 1b was racially aggravated as per Section 96 of the Crime and Disorder Act 1998.

c) Assault, Police Constable, the Police Service of Scotland then in the execution of his duty and did repeatedly kick him on the body contrary to the Police and Fire Reform (Scotland) Act 2012, Section 90(1)(a).

This charge is found proved.

In reaching this decision, the panel took into account the certified copy of the extract conviction. Pursuant to Rule 31 (a) this is conclusive proof of the conviction and admissible for the purpose of this hearing.

The panel noted that the spelling of the registrant's name, namely 'Donachie', is different on the extract conviction issued by the Glasgow Sheriff Court which relates to this charge. However, the certified memorandum of conviction issued by the Black Country Magistrates' Court detailed this spelling under aliases by which the registrant is known in the criminal justice system. The panel therefore concluded that this is sufficient proof that this certified extract conviction relates to the same person and that is Miss Donnachie.

The charge concerns Miss Donnachie's conviction and, having been provided with the copy of the extract conviction, the panel finds the conviction proved in accordance with Rule 31 (2) (a). Pursuant to Rule 31 (2) (b) the panel will treat the finding of fact on which the conviction is based, as set out in the background above, as admissible proof of those facts.

Charge 13

On 11 March 2019 were admonished and dismissed at Glasgow Sheriff Court of being an accused person and having been granted bail on 4 September 2017 at Glasgow Sheriff Court in terms of the Criminal Procedure (Scotland) Act 1995 and being subject to the condition inter alia that you not approach, contact or communicate with JK in any way, did on 10 February 2018 at Club Tropicana Renfield Street Glasgow, fail without reasonable excuse to comply with said condition in respect that you did communicate and attempt so to do with JK contrary to the Criminal Procedure (Scotland) Act 1995, section 27(1)(b).

This charge is found proved.

In reaching this decision, the panel took into account the certified copy of the extract conviction. Pursuant to Rule 31 (a) this is conclusive proof of the conviction and admissible for the purpose of this hearing.

The panel noted that the spelling of the registrant's name, namely 'Donachie', is different on the extract conviction issued by the Glasgow Sheriff Court which relates to this charge. However, the certified memorandum of conviction issued by the Black Country Magistrates' Court detailed this spelling under aliases by which the registrant is known in the criminal justice system. The panel therefore concluded that this is sufficient proof that this certified extract conviction relates to the same person and that is Miss Donnachie.

The charge concerns Miss Donnachie's conviction and, having been provided with the copy of the extract conviction, the panel finds the conviction proved in accordance with Rule 31 (2) (a). Pursuant to Rule 31 (2) (b) the panel will treat the finding of fact on which the conviction is based, as set out in the background above, as admissible proof of those facts.

Charge 14

On 14 May 2019 were convicted at the Glasgow Sherriff Court of assaulting a Police constable, the Police Service of Scotland then in execution of her duty and did utter threats of violence and kick her in the body, contrary to the Police and Fire Reform (Scotland) Act 2012, Section 90(1)(a).

This charge is found proved.

In reaching this decision, the panel took into account the certified copy of the extract conviction. Pursuant to Rule 31 (a) this is conclusive proof of the conviction and admissible for the purpose of this hearing.

The charge concerns Miss Donnachie's conviction and, having been provided with the copy of the extract conviction, the panel finds the conviction proved in accordance with

Rule 31 (2) (a). Pursuant to Rule 31 (2) (b) the panel will treat the finding of fact on which the conviction is based, as set out in the background above, as admissible proof of those facts.

Charge 15

On 16 October 2019 were convicted at Walsall Magistrates Court of assault by beating and that the offence was racially aggravated within the terms of section 28 of the Crime and Disorder Act 1998, contrary to section 29(1)(c) and (3) of the Crime and Disorder Act 1998.

This charge is found proved.

In reaching this decision, the panel took into account the certified copy of the memorandum of conviction. Pursuant to Rule 31 (a) this is conclusive proof of the conviction and admissible for the purpose of this hearing.

The charge concerns Miss Donnachie's conviction and, having been provided with the memorandum of conviction, the panel finds the conviction proved in accordance with Rule 31 (2) (a). Pursuant to Rule 31 (2) (b) the panel will treat the finding of fact on which the conviction is based, as set out in the background above, as admissible proof of those facts.

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 Miss Donnachie's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public 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, Miss Donnachie's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Edenborough submitted that the facts found proved amount to misconduct as Miss Donnachie's actions fell far below what would have been expected of a reasonable and competent nurse.

Mr Edenborough identified the specific and relevant standards where the NMC contends that Miss Donnachie's actions amounted to misconduct. He referred to the following standards from the Code: 1.1, 4.2, 8.2, 19.1, 20, 20.1, 20.2, 20.3, 20.4, 20.5, 20.8, 20.10, and 21.4.

Miss Donnachie's actions showed a complete disregard to several parts of the Code by acting aggressively, using swear words within earshot of residents and relatives. Her honesty and integrity are also called into question by virtue of her holding herself out to be a registered nurse and carrying out nursing duties whilst suspended. These actions demonstrate a total disregard for the Code.

Submissions on impairment

Mr Edenborough moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the

cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Edenborough submitted that each matter found proved, by itself or taken together, is capable of resulting in a finding of impairment. With respect to the conviction matters, each conviction on its own is capable of resulting in impairment of fitness to practise. He submitted that when taking all charges together, a finding of impairment is clearly required.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included:

Nandi v GMC [2004] EWHC 2317 (Admin)

Mallon v GMC [2007] CSIH 17

Holton v GMC [2006] EWHC 2960 (Admin)

Meadow v GMC [2007] QB 462

CHRE v (1) NMC (2) Grant [2011] EWHC 927 (Admin)

SRA v Sharma [2010] EWHC 2022 (Admin)

Parkinson v NMC [2010] EWHC 1898 (Admin)

Professional Standards Authority for Health and Social Care v (1) HCPC and (2)

Leonard Ren-Yi Yong [2021] EWHC 52

Clarke v GOC (CA) [2018] EWCA 1463

The legal assessor also provided the following advice:

“Since the case of Professional Standards Authority for Health and Social Care v (1) HCPC and (2) Leonard Ren-Yi Yong [2021] EWHC 52 it seems that the attention of a panel must, where appropriate, be drawn to s149 of the Equality Act, 2010.

Section 149 sets out the ‘public sector equality duty’ in these terms: “A public authority must, in the exercise of its functions, have due regard to the need to - eliminate discrimination, harassment, victimisation or any other conduct that it prohibited by or under this Act”.

You, as a panel established by Order of the Privy Council for a Regulator listed in Schedule 19 to the Act, are a 'public authority' for these purposes and you must undertake your responsibilities through this prism.

Conduct prohibited by the Equality Act relates to the protected characteristics set out in s4 of the Act. These are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation”.

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: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code) in making its decision.

The panel was of the view that Miss Donnachie's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to breaches of the Code. Specifically:

'Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

In reaching its decision, the panel made a determination on whether individually or collectively charges 1, 2, 4, 5, 9, 10 and 11 amount to misconduct.

The panel determined that the facts found proved in charge 1 do not amount to misconduct.

The panel determined that Miss Donnachie’s actions in this charge are unprofessional and inappropriate but not a regulatory concern.

The panel concluded that all the incidents relating to charge 1, taken individually or together, are not sufficiently serious to amount to misconduct. It was therefore satisfied that Miss Donnachie’s actions in this charge do not amount to misconduct.

The panel determined that the facts found proved in charge 2 do not amount to misconduct.

The panel determined that Miss Donnachie’s actions in this charge are unprofessional, inappropriate and the fact that she used such foul and offensive language in the workplace and in earshot of patients and visitors was unacceptable. However, it is not sufficiently serious to amount to professional misconduct requiring the intervention of the regulator.

The panel determined that the facts found proved in charge 4 do not amount to misconduct.

The panel determined that Miss Donnachie's Facebook message to Colleague 3, sent to her private Facebook account, was insensitive and unprofessional. The message made reference Colleague 3's [PRIVATE]; this was insensitive and was felt to be offensive by Colleague 3. The panel concluded, although this behaviour is unacceptable, it does not reach the high bar required for a finding of misconduct and the panel was therefore satisfied that Miss Donnachie's actions in charge 4 do not amount to misconduct.

The panel determined that the facts found proved in charge 5 do not amount to misconduct.

The panel was of the view that these comments which Miss Donnachie directed towards Colleague 4 are discourteous, rude and unprofessional, especially to say them in an open area, where she could be heard by others.

The panel concluded that although this behaviour is discourteous and rude, it does not reach the high bar of professional misconduct and the panel was therefore satisfied that Miss Donnachie's actions in charge 5 do not amount to misconduct.

The panel determined that the facts found proved in charge 9 do not amount to misconduct.

The panel recognised the important need for confidentiality towards patients/residents or other people in the care of a registered nurse as explained in section 5 of the Code. Although the charge refers to two residents the panel's finding was that the confidentiality that was breached was a duty owed to a colleague (Carer W) and not to anybody in Miss Donnachie's care. In the panel's view this important distinction meant that the breach of confidentiality did not amount to professional misconduct requiring the intervention of the regulator.

The panel was therefore satisfied that Miss Donnachie's action in charge 9 does not amount to misconduct.

The panel determined that the facts found proved in charge 10 do amount to misconduct.

The panel was of the view that Miss Donnachie's behaviour giving rise to charge 10, does amount to misconduct. Miss Donnachie was holding herself out as a registered nurse to the junior staff and the residents and knowingly undertaking nursing duties when she had been suspended from the NMC register. It is clear that she knew what she was doing was wrong.

The panel determined that holding oneself out to be a nurse when suspended is a serious breach of 20.4 of the Code (keep to the laws of the country in which you are practising). It is illegal and clearly amounts to misconduct. The panel took into account that Miss Donnachie deliberately identified herself as a registered nurse, carried out the duties of a nurse which led to some of her colleagues believing that she was a senior nurse. The panel noted that Miss Donnachie was undertaking nursing duties which meant the residents were not given the opportunity to give informed consent for their treatment to be carried out by a person who was not a nurse.

The panel determined that Miss Donnachie's behaviour demonstrates that she ignored and flouted the rules. It determined that the public and nursing professionals would find such behaviour deplorable. The panel found that each individual element of charge 10, as well as charge 10 taken collectively amounts to misconduct.

The panel determined that the dishonesty found proved in charge 11 does amount to misconduct.

Miss Donnachie was dishonest by knowingly misrepresenting herself as a registered nurse. Miss Donnachie said that what she was doing was illegal, but continued to hold herself out to be a nurse and carried out nursing duties which is clearly dishonest.

The panel determined that the issue with regards to dishonesty relates to the public interest. Although the bar for public interest is high, in this situation this bar is reached because nurses hold a position of trust and the public have a right to feel confident in the person who is caring for them. If the person taking care of them is dishonest then the ability to trust that person is called into question.

The panel concluded that this behaviour is dishonest and deplorable, and falls below the standard expected of a nurse. The panel therefore is satisfied that Miss Donnachie's behaviour in charge 11 amounts to misconduct.

Decision and reasons on impairment

In addressing the question of impairment of fitness to practise, the panel considered 3 matters in particular. These were:

- a) Miss Donnachie's misconduct by holding herself out as a registered nurse. This was not done on an isolated occasion but done on an almost daily basis over a period of nearly 12 months;
- b) three criminal convictions for assault (two of them being assaults on police officers who were on duty);
- c) the fact that one of the assaults was racially aggravated and another was aggravated both by racism and also by homophobia.

There has never been any question in this case about Miss Donnachie's clinical ability to practise as a nurse. What was called into question, and what has been found proved, are all matters that relate to Miss Donnachie's character. It is a matter of public interest rather than public protection that people of bad character neither join nor remain on the nursing register. This issue was addressed by Mrs Justice Cox in her decision in the case of *Grant*. In that case the judge held that there is no simple legal test to determine the question of '*fitness to practise*' in the context of the professional regulation of the nursing or midwifery professions. Mrs Justice Cox made the simple point that each case needs to be looked at based on its individual facts. She emphasised that there will be cases where a nurse's behaviour has been so bad the public interest requires the regulator to have the power to take action and impose a sanction to maintain public

confidence in the profession - even if the nurse in question is clinically competent. The question of serious convictions was not addressed in the case of *Grant* but by analogy the panel considered the public interest would be engaged in a similar way.

Put simply in the context of this case: the worse the public would think Miss Donnachie's misconduct or her criminal behaviour has been, the more cautious the panel must be before holding that her fitness to practise is not impaired, however safe and competent Miss Donnachie might be in the workplace or in any other clinical environment.

Addressing the three matters highlighted above, the panel determined that continuing to act as a nurse for almost a year in the full knowledge that an interim suspension order for public protection was in place, was misconduct at the very high end of the spectrum. It fundamentally undermined the trust the public should have in the effectiveness of the NMC as a regulator. In respect of the convictions, the panel considered that having three separate convictions for assault showed a serious flaw in Miss Donnachie's character that would rightly be of concern to those being cared for by her and to those who might leave their vulnerable loved ones in her care. The fact that two of these convictions related to assaults on other '*blue light*' workers in the exercise of their duties significantly compounded the seriousness of the convictions. Finally, the fact that two of the convictions were aggravated by racism and homophobia again significantly compounded their seriousness. In making this last assessment the panel was not only applying its own independent professional judgment but was also upholding its obligations under the public sector equality duty.

In conclusion, the panel had no difficulty in concluding that the public interest required a finding in this case that Miss Donnachie's fitness to practise is impaired in order to allow an appropriate sanction to be imposed.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Donnachie off the register. The effect of

this order is that the NMC register will show that Miss Donnachie 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 who made reference to the following cases:

CHRE v NMC and Leeper, [2004] EWHC 1850 (Admin)

Parkinson v NMC [2010] EWHC 1898 (Admin)

Mojjueh v NMC [2015] EWHC 1999 (Admin)

Submissions on sanction

Mr Edenborough informed the panel that in the Notice of Hearing, dated 3 August 2022, the NMC had advised Miss Donnachie that it would seek the imposition of a striking-off order if it found Miss Donnachie's fitness to practise currently impaired.

Mr Edenborough submitted that the NMC is seeking a striking-off order because what Miss Donnachie has done is so serious that it is fundamentally incompatible with remaining on the NMC register. Her dishonesty that went on for such a long time which compromised informed consent of the residents/patients and the aggravating elements in relation to the violence against the '*blue light professionals*', and the racist and homophobic nature of the convictions, demonstrate that Miss Donnachie's actions are fundamentally incompatible with remaining on the NMC register.

Mr Edenborough submitted that the confidence of the public in the nursing profession cannot be maintained if Miss Donnachie is permitted to remain on the NMC register, having been found to be in serious breach of the fundamental tenets of the nursing profession.

Mr Edenborough submitted that a striking-off order is the only sanction that would be sufficient to protect the public and maintain the public confidence in the nursing profession and the NMC as the regulatory body.

Decision and reasons on sanction

Having found Miss Donnachie'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 and the NMC guidance on 'How we determine seriousness'. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Miss Donnachie continued to portray herself as a registered nurse for almost 12 months despite knowing that she had been suspended from the NMC register; and
- The criminal convictions included elements of homophobic and racist behaviour.

The panel did not find any mitigating features.

The panel first considered, pursuant to Article 29(4) of the Order, whether to take no action or to refer the case to mediation but concluded that this would be inappropriate in view of the seriousness of the case.

The panel then moved on, under Article 29(5) of the Order, to consider the imposition of a caution order but again determined that, due to the seriousness of the charges found proved, a caution order 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 Miss Donnachie's misconduct and the criminal convictions were 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 Miss Donnachie'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, the criminal convictions and the underlying racist and homophobic behaviour, identified in this case were not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Donnachie's registration would not adequately address the seriousness of this case or the

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;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The conduct, as highlighted by the facts found proved did not consist of a single instance of misconduct and there is evidence of harmful deep-seated attitudinal problems. There was a significant departure from the standards expected of a registered nurse.

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

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

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

Miss Donnachie's misconduct coupled with the repeated conduct and underlying attitudinal behaviour evidenced by the criminal convictions 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 Miss Donnachie's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Donnachie's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, 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 decision will be confirmed to Miss Donnachie 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 is in Miss Donnachie's own interest.

Submissions on interim order

The panel took account of the submissions made by Mr Edenborough. He submitted that an interim suspension order is necessary to cover the period until the striking-off order comes into effect, and invited the panel to impose an order for a period of 18 months. Mr Edenborough submitted that it is not always that an interim order is sought on the ground of public interest only but in this situation the high bar has been reached due to the level of seriousness of the misconduct and the criminal convictions.

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 in the public interest. The panel had regard to the seriousness of the facts found proved, the criminal convictions and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel was satisfied that an order is required in the public interest so as to maintain public confidence in the regulator, in the light of the panel's view that a reasonable and informed member of the public would be concerned if someone in Miss Donnachie's position were allowed to continue to practise.

The panel concluded that an interim conditions of practice order would not be appropriate 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. The panel decided the appropriate length of the order is 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 Miss Donnachie is sent the decision of this hearing in writing.

That concludes this determination.