

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

**Substantive Hearing
Tuesday, 26 September 2023 – Friday, 29 September 2023
Tuesday, 2 January 2024 – Friday, 5 January 2024**

Virtual Hearing

Name of Registrant: Kinga Maria Lesniak

NMC PIN: 20B1612E

Part(s) of the register: Registered Nurse – Sub part 1
Adult Nursing (Level 1) - 6 March 2020

Relevant Location: City of Westminster

Type of case: Misconduct

Panel members: Gregory Hammond (Chair, Lay member)
Terry Shipperley (Registrant member)
Ashwinder Gill (Lay member)

Legal Assessor: Nigel Ingram

Hearings Coordinator: Petra Bernard (26 – 29 September 2023)
Stanley Udealor (2 – 5 January 2024)

Nursing and Midwifery Council: Represented by Jane Carver, Case Presenter

Miss Lesniak: Present and represented by Sharmistha Michaels
(instructed by the Royal College of Nursing)

Facts found proved by admission: Charges 1a, 1d, 1f, 1g, 2a, 2b, 3c, 5 (in relation to the admitted charges)

Facts proved: 1b, 1c, 1e, 2c, 2d, 3a, 3b, 4a, 5 (in relation to the other charges found proved)

Facts not proved: N/A

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Details of charge (as read)

That you, a registered nurse:

- 1) On 8 August 2021 when speaking to Colleague A you said:
 - a) *"I don't care. You will be like those black nurses there."*
 - b) *"You black monkeys."*
 - c) *"I hate you people."*
 - d) *"Black bitches."*
 - e) *"Black monkeys."*
 - f) *"You think European people are coming to the UK to take your jobs"*
 - g) *"Black shit"*

Or words to that effect

- 2) On 8 August 2021 you said to Colleagues B
 - a) *"You black people are all the same. You bully me"*
 - b) *"Black shit"*
 - c) *"Black Negro"*
 - d) *"Nigger"*

Or words to that effect

- 3) On 8 August 2021 you said to Colleagues B and/or C:
 - a) *"I hate black people."*
 - b) *"Black bastards"*
 - c) *"Black bitches"*

Or words to that effect

- 4) On 8 August 2021 you said to Colleagues A, B and C:
 - a) *"You negroes you are jealous of us, we are European, you are trying to steal our jobs."*

Or words to that effect

5) Your conduct in charges 1 to 4 above was racially motivated.

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

Decision and reasons on application to amend a charge (Day three)

The panel heard an application made by Ms Carver, on behalf of the Nursing and Midwifery Council (NMC), to amend a typographical error in a word in the stem of charge 2.

The proposed amendment was to remove the letter 's' on the end of the word 'colleagues'. It was submitted by Ms Carver that the proposed amendment would provide clarity and more accurately reflect the evidence.

Original Charge

'That you, a registered nurse:

- 2) *On 8 August 2021 you said to Colleagues B*
 - a) *"You black people are all the same. You bully me"*
 - b) *"Black shit"*
 - c) *"Black Negro"*
 - d) *"Nigger"*

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

Amended Charge

That you, a registered nurse:

- 2) On 8 August 2021 you said to Colleague B
 - a) *“You black people are all the same. You bully me”*
 - b) *“Black shit”*
 - c) *“Black Negro”*
 - d) *“Nigger”*

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

Ms Michaels, on your behalf, raised no objection to the amendment.

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice. It was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. The panel decided, therefore, that it is appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Decision and reasons on application of no case to answer (Day three)

The panel considered an application from Ms Michaels that there is no case to answer in respect of Charges 1b, 1c, 1e, 2d, 3a and 3b. This application was made under Rule 24(7).

In relation to this application, Ms Michaels provided the panel with written submissions. In brief, she submitted there are inconsistencies in the evidence in relation to the above-mentioned charges. She submitted that the evidence that has been called is so tenuous in

character that a properly directed panel could not find these allegations proved. She submitted that there is insufficient evidence to substantiate the remaining allegations in charge 1, 2(d) and 3 and that the contemporaneous evidence that has been produced makes no reference to any of these comments being made or the specific words in the charges being used. She submitted that, in these circumstances, the above-mentioned charges should not be allowed to remain before the panel.

Ms Carver opposed the application and made oral submissions. She submitted that there was sufficient evidence to support each of the above-mentioned charges and that the evidence that has been called is not so tenuous in character that a properly directed panel could not find the allegations proven.

Ms Carver submitted that, in respect of each of the above-mentioned charges, the wording in the charges arises directly from the witness statements relied on in evidence. She submitted that all five of the NMC witnesses have attested that the contents of their statements are true and accurate to the best of their belief and have all remained consistent with the content of the evidence / witness matrix before the panel. Further, they have maintained, and in fact been firm, in their respective positions under cross-examination.

Ms Carver submitted that the only amendments to any of the witness statements which were all adopted as evidence in chief, was the addition of the two words "*black negroes*" to the list referred to by Witness 3. She referred the panel to the relevant part in Witness 3's witness statement, as follows:

'[Mr 1], Band 6 charge nurse, was with me during this time because he was in charge of the ward. [Witness 1], and [Witness 2] were all saying the same things to me. They told me that Ms Lesniak was calling them "black niggers" and "black bitches"...

She submitted that this statement does not undermine the charges. Ms Carver submitted that the evidence is not of a tenuous nature and in accordance with *Galbraith*. She submitted that the question of the credibility of the witnesses is a matter for the panel and at the facts stage and, at this stage, there is sufficient evidence to proceed. She submitted that, adopting a proper approach and taking into account all of the evidence at this stage,

the evidence taken at its highest could support the contested charges, and she therefore submitted that the no case to answer application is without merit. She invited the panel to dismiss the application of no case to answer.

The panel took account of the submissions made by both parties. It also heard and accepted the advice of the legal assessor, which included reference to the NMC Guidance (DMA-5) and the legal authority of *R v Galbraith* (1981) 1WLR 1039.

In reaching its decision, the panel has made an initial assessment of all the evidence adduced by the NMC. The panel was solely considering whether at this stage, there was a real prospect that the facts alleged could be proved and therefore whether you have a case to answer.

The panel was aware that in reaching its decision it must take the evidence currently before it at its highest. Further, if in regard to any allegation there is no evidence capable of satisfying the panel, or if the evidence is tenuous in that it is inconsistent, inherently weak or otherwise unreliable, then the submission succeeds.

Charges 1b, 1c and 1e – Proceeding

This charge is linked to Witness 1. The panel considered Witness 1's oral evidence and written witness statement which includes the following:

'Ms Lesniak stood in the doorway of the kitchen and said "You black monkeys. I hate you people. Black bitches. Black monkeys. You think European people are coming to the UK to take you jobs" I was still in the kitchen.'

The panel considered that the words you allegedly said in this charge are in this statement and, further, Witness 1 was also adamant in her oral evidence that these words were said by you.

The panel also considered the evidence of other witnesses who, whilst there may have been some inconsistencies among them in relation to the detail of what you are alleged to have said to Witness 1, were all firm in their view in cross-examination that you did use

some, but not necessarily all, of this language. The panel has also considered your earlier admission to using some of the words set out in other limbs of charge 1.

The panel has determined that there is sufficient evidence upon which to find that charges 1b, 1c and 1e could be proved. The panel has therefore decided that there remains a case to answer in respect of Charges 1b, 1c and 1e.

Charge 2d - Proceeding

The panel took account of the respective oral evidence and witness statements of Witness 1, Witness 2, Witness 3 and Witness 5. It considered that, despite some inconsistencies, the evidence particularly of Witness 5 and Witness 3 could support the allegation that you said the word “*nigger*” to Witness 5. The panel considered that you have admitted to Charges 2a and 2b which also includes racist language.

The panel considered that, whilst the Datix report dated 14 February 2022 from Witness 5 did not mention this specific word, Witness 5 both in her oral evidence and her near contemporaneous written internal statement was very clear that she heard you use that word. Further, Witness 3 said in her witness statement that it was reported to her that this word was used by you during the incident.

The panel has therefore decided that there remains a case to answer in respect of Charge 2d.

Charges 3a and 3b – Proceeding

The panel took account of Witness 1’s written statement, which includes the following:

‘I went to the main kitchen to get water for a patient, so I do not know what [Mr 1] said to Ms Lesniak. Ms Lesniak then came from the blue bay to the nurse’s station to attack [Witness 5] and [Witness 2]. She said “I hate black people. Black bastard. Black bitches”.’

The panel considered that the words you allegedly said in this charge are in this statement and, further, Witness 1 was firm in her cross-examination that these words were said by you.

The panel considered the written statement of Witness 2:

'[Witness 5] and I tried to stop Ms Lesniak from saying racist language, but she carried on. She was so angry. It was non-stop.'

'We were shocked. I heard Ms Lesniak say to [Witness 1] "you black bitch". We said to Ms Lesniak that that was enough. Ms Lesniak then started calling Witness 5, Witness 1 and I "black negroes". Ms Lesniak's racist comments were unacceptable.'

The panel considered Witness 2's evidence and written statement. The panel was of the view that, whilst other witnesses were not so sure as to the specific alleged racist language used by you, they have all given evidence to say that it was an outburst of a number of racist comments.

The panel therefore determined that Witness 1's evidence can be tested further in the fact-finding stage. It decided that there remains a case to answer in respect of Charges 3a and 3b.

The panel has concluded that there is sufficient evidence to support Charges 1b, 1c, 1e, 2d, 3a and 3b at this stage and, as such, it was not prepared, based on the evidence before it, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all of the evidence placed before it.

Background

The charges arose whilst you were employed as a Band 5 Nurse by Imperial College Healthcare NHS Trust (the Trust) at St Mary's Hospital, London (the Hospital). On 20 August 2021, you were referred to the NMC by Witness 4 following an incident on the morning of 8 August 2021 at the Hospital.

At the time of the incident on 8 August 2021, you were working in the Manvers Ward (the Ward) at the Hospital. The Ward dealt with chronic respiratory and endocrinology patients. At the time of the incident, there was a section of the Ward allocated for Covid-19 patients

where you were allocated as the nurse to care for four patients who had contracted COVID-19.

You allegedly had an argument with Witness 1, a catering assistant, who had left your patients' breakfast outside the bay.

It was alleged that you used racist and derogatory language towards Witness 1, in front of patients and colleagues. You allegedly used words including '*you black monkeys; I hate you people; Black bitches; Black monkeys; You think European people are coming to the UK to take your jobs; Black shit*'.

Staff nurses Witness 2 and Witness 5, advised you that your language was unacceptable, and you allegedly responded by using racist language towards them as well. Witness 5 alerted the site nurse practitioner, Witness 3, who spoke to you about the incident. You admitted making racial remarks, explaining that you had also been racially abused by staff on the ward.

You were suspended and sent home pending an investigation. You resigned from the Trust the following day. On 13 September 2021, you sent an unprompted letter of apology to your colleagues on the ward.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Michaels, who informed the panel that you made full admissions to charges 1a, 1d, 1f, 1g, 2a, 2b and 3c. You also admitted charge 5 in respect of the other admitted charges.

The panel therefore finds charges 1a, 1d, 1f, 1g, 2a, 2b, 3c and 5 in relation to the admitted charges found proved by way of your admissions.

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

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

- Witness 1: Catering assistant at the Trust, at the time of the incident.
- Witness 2: Adult nurse at the Trust, at the time of the incident.
- Witness 3: Site Nurse Practitioner at the Trust, at the time of the incident.
- Witness 4: Matron at the Trust, at the time of the incident.
- Witness 5: Staff nurse at the Trust, at the time of the incident.

The panel also heard evidence from you under affirmation.

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

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

Charge 1

- 1) On 8 August 2021 when speaking to Colleague A you said:
 - a)
 - b) *"You black monkeys."*
 - c) *"I hate you people."*
 - d)
 - e) *"Black monkeys"*

Or words to that effect

This charge is found proved.

The panel took into account that Witness 1/Colleague A stated in her witness statement dated 14 June 2022 that:

'Ms Lesniak stood in the doorway of the kitchen and said "You black monkeys. I hate you people....Black monkeys....." I was still in the kitchen.'

You denied the allegation and stated that you never used such words towards Witness 1/Colleague A as they were words you could never say to a person.

The panel considered the surrounding circumstances at the time of the alleged incident. It noted that you stated [PRIVATE] and had lost your temper. The panel took into account that you stated during your oral evidence that you could not recall some of the words you used in the course of the heated exchange of words between you and Witness 1/Colleague A. However, the panel noted that Witness 1/Colleague A was consistent and clear in her evidence, both in her witness statement and oral evidence, that the words *"You black monkeys; I hate you people; Black monkeys"* were used by you while speaking to her. Although none of the other witnesses in these proceedings could confirm that such words were used, the panel was of the view that it was reasonable to infer that Witness 1/Colleague A would remember such words due to their racial connotations and that they were directed towards her. The panel found no reason for Witness 1/Colleague A to embellish her evidence and it therefore accepted her evidence.

The panel further considered that you had admitted that you had used the similarly degrading phrases *"black shit; black bitches"* in the course of your heated exchange of words with Witness 1/Colleague A, which corroborates the witness' evidence. The panel was therefore satisfied that it was more likely than not, that on 8 August 2021, when speaking to Witness 1/Colleague A, you said *"You black monkeys; I hate you people; Black monkeys"* or words to that effect. Accordingly, charges 1b, 1c and 1e are found proved.

Charge 2

2) On 8 August 2021 you said to Colleague B

- a)
- b)
- c) "Black Negro"
- d) "Nigger"

Or words to that effect

This charge is found proved.

The panel took into account that Witness 5/Colleague B stated in her witness statement dated 27 June 2022 that:

'...Ms Lesniak had walked a little bit further away from B bay so I proceeded to walk up to her and say "Look, that's not acceptable." Ms Lesniak then said "You black people are all the same. You bully me." Ms Lesniak then called me a "black shit", a "black negro" and a "nigger".'

The panel considered the witness statement of Witness 2/Colleague C dated 24 June 2022, in which she stated:

'[Witness 5] and I tried to stop Ms Lesniak from saying racist language, but she carried on. She was so angry. It was non-stop.'

'We were shocked. I heard Ms Lesniak say to [Witness 1] "you black bitch". We said to Ms Lesniak that that was enough. Ms Lesniak then started calling Witness 5, Witness 1 and I "black negroes". Ms Lesniak's racist comments were unacceptable.'

Further, Witness 3 stated in her witness statement dated 15 June 2022 that: *'[Witness 2], and [Witness 1] were all saying the same things to me. They told me that Ms Lesniak was calling them "black niggers" and "black bitches". It was appalling and I was gobsmacked.'*

The panel took into consideration that it was reported in the Datix submitted by Witness 5/Colleague B dated 8 August 2021, the Internal Statement of Witness 2/Colleague C

dated 8 August 2021 and the Internal Statement of Witness 3 dated 8 February 2022, that you called Witnesses 2 and 5, "*black negroes*". The panel also noted that Witness 5/Colleague B reported in her Internal Statement dated 17 August 2021 that: '*Kinga then turned to me and said "You black people are all the same. You bully me. "You are a black shit and black negro and nigger".*'

You denied the allegation and stated that you have never used such words in your life as you were aware that such words are unacceptable.

The panel considered the circumstances at the time of the alleged incident. It noted that you stated [PRIVATE] and had lost your temper. The panel took into account that you engaged in a shouting row with Witnesses 1, 2 and 5 and you had admitted to having used some racial slurs at the time of the incident. The panel noted that Witness 5/Colleague B was consistent and clear in her evidence, both in her witness statement and oral evidence, that the words "*black negro; nigger*" were used by you while speaking to her. She further stated in her oral evidence that, although she was used to such words being said to her by patients, she was shocked that such words could be used by a fellow nurse. She elaborated that such words prompted her to report the incident to Witness 3 and she would not have done so if you had 'only' used the phrases "*Black shit*" or "*Black bitch*". The panel found no reason for Witness 5/Colleague B to embellish her evidence and it therefore accepted her evidence.

Based on the evidence before it, the panel was therefore satisfied that it was more likely than not, that on 8 August 2021, you said to Colleague B "*Black Negro; Nigger*" or words to that effect. Accordingly, charges 2c and 2d are found proved.

Charge 3

3) On 8 August 2021 you said to Colleague B and/or C:

- a) "*I hate black people.*"
- b) "*Black bastards*"
- c)

Or words to that effect

This charge is found proved.

The panel took into account that Witness 1/Colleague A stated in her witness statement dated 14 June 2022 that:

'I went to the main kitchen to get water for a patient, so I do not know what [Mr 1] said to Ms Lesniak. Ms Lesniak then came from the blue bay to the nurse's station to attack [Witness 5] and [Witness 2]. She said "I hate black people. Black bastard. Black bitches".

You denied the allegation and stated that you have never used such words towards a person.

The panel took into consideration that there was no report to the Trust by Witness 2/Colleague C and Witness 5/Colleague B that you said such words to them nor did they hear such words at the time of the incident.

The panel considered the circumstances at the time of the alleged incident. It was of the view that, given the situation in which you were engaged in a shouting row with Witness 1/Colleague A, it was more likely than not that Witness 2/Colleague C and Witness 5/Colleague B would not have heard all the words used at the time of the incident. The panel considered that Witness 1/Colleague A was consistent and clear in her evidence, both in her witness statement and oral evidence, that the words "*I hate black people; Black bastards*" were used by you while speaking to Witness 2/Colleague C and Witness 5/Colleague B. The panel found no reason for Witness 1/Colleague A to embellish her evidence and it therefore accepted her evidence.

The panel further found that you had admitted that you used the similarly degrading phrases "*black shit; black bitches*" in the course of your heated exchange of words with Witness 2/Colleague C and Witness 5/Colleague B which corroborates the witness' evidence. The panel was therefore satisfied that it was more likely than not, that on 8 August 2021, you said to Colleague B and/or C "*I hate black people; Black bastards*" or words to that effect. Accordingly, charges 3a and 3b are found proved.

Charge 4

4) On 8 August 2021 you said to Colleagues A, B and C:

a) *“You negroes you are jealous of us, we are European, you are trying to steal our jobs.”*

Or words to that effect

This charge is found proved.

The panel took into account that Witness 2/Colleague C stated in her witness statement dated 24 June 2022 that:

‘[Witness 5/Colleague B] and I were trying to listen to [Witness 1/Colleague A]’s side of the story, but Ms Lesniak remained aggressive and she was swearing. She said “You negroes you are jealous of us, we are European, you are trying to steal our jobs”. Ms Lesniak was referring to me, [Witness 5/Colleague B] and [Witness 1/Colleague A] at this point.’

You denied the allegation and stated that you did not remember making such statement.

The panel took into consideration that words to the effect *“Negroes” “you are jealous of us, we are Europeans”* were reported in the Datix submitted by Witness 5/Colleague B dated 8 August 2021 and in the Internal Statement of Witness 2/Colleague C dated 8 August 2021, to have been said by you to Colleagues A, B and C at the time of the incident. The panel also noted that you admitted that you had said words to the effect *“You think European people are coming to the UK to take your jobs”* at charge 1f.

Based on the evidence before it, including its earlier findings at charge 2c, the panel was satisfied that it was more likely than not, that on 8 August 2021, you said to Colleagues A, B and C *“You negroes you are jealous of us, we are European, you are trying to steal our jobs”* or words to that effect. Accordingly, charge 4a is found proved.

Charge 5

- 5) Your conduct in charges 1 to 4 above was racially motivated.

This charge is found proved.

The panel took account of your conduct found proved in charges 1 to 4. In considering whether your conduct was racially motivated, the panel had regard to the test laid down in the case of *Lambeth-Simpson v Health and Care Professions Council* [2023] EWHC 481 (Admin) per Mr Justice Fordham at paragraph 24 (iii):

*‘(i) that the act in question had a purpose behind it which at least in significant part was referable to race; and
(ii) that the act was done in a way showing hostility or a discriminatory attitude to the relevant racial group.’ [para 24(iii)]’*

In applying the first limb of the test to this case, the panel found that there were multiple references to the black race in the words you said to Colleagues A, B and C at the time of the incident. Such words as “*black nurses*” “*black negro*” “*black people*” which you used at the time of the incident clearly demonstrated that you were referring to the racial group to which Colleagues A, B and C belong.

In applying the second limb of the test to this case, the panel determined that the nature of the words used in charges 1 to 4 or words to those effect, demonstrated a hostile attitude towards the racial group to which Colleagues A, B and C belong.

Having considered the respective charges both jointly and severally, the panel was satisfied that there was sufficient evidence before it to determine that it was more likely than not, that your conduct in the limbs of charges 1 to 4 found proved was racially motivated. Accordingly, charge 5 is found 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 your 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. Firstly, 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, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Ms Carver referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Carver stated that in *Remedy UK Ltd v General Medical Council* [2010] EWHC 1245 (Admin), misconduct was described as '*sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise.*'

Ms Carver submitted that your conduct fell short of the acceptable standards expected from a registered nurse and breached 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' ("the Code"). She submitted that you had breached the following sub-paragraphs of the Code: 1.1, 8.2, 20.1, 20.2, 20.3 and 20.8.

Ms Carver submitted that your racist comments clearly represent a failure to communicate appropriately and effectively with colleagues. She highlighted that you made discriminatory remarks to your colleagues who were shocked, appalled and upset by your conduct. She submitted that derogatory and discriminatory remarks have the potential to damage the reputation of the nursing profession and set poor examples for colleagues.

Ms Carver submitted that the findings of the panel in relation to the charges proved are extremely serious and relate to racism in a healthcare setting. She asserted that racism has no place in the nursing profession and upholding the dignity and respect for others is a fundamental tenet of the nursing profession.

Ms Carver stated that in reference to the fitness to practise case of *NMC v Hayes* (2021), the NMC published a report specifically on racism and fitness to practise. The report addresses the negative impact that racism and other discriminatory attitudes have on people. The NMC has legal duties as a regulator to protect the public. The values of equality, diversity and human rights are fundamental requirements to be on the NMC register, and these are enshrined in the codes and professional standards. Ms Carver therefore invited the panel to find that your actions amount to serious misconduct.

Ms Michaels submitted that you had accepted responsibility for your actions, you had expressed remorse and had sent a letter of apology to the Trust dated 13 September 2021. She submitted that your conduct was an isolated incident as you had not made such comments prior to the incident and thereafter. At the time of the incident, [PRIVATE], but Ms Michaels acknowledged that this does not excuse your behaviour.

Ms Michaels referred the panel to the case of *Roylance* 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.'* She told the panel that you accepted that your actions fell significantly short of the standards expected of a registered nurse and amounted to misconduct. She stated that you acknowledge that you should have acted differently, regardless [PRIVATE] at the time working in the Ward as a newly qualified nurse.

Submissions on impairment

Ms Carver referred the panel to the *NMC Guidance on Impairment* especially the question which states:

'Can the nurse, midwife or nursing associate practise kindly, safely and professionally?'

Ms Carver submitted that the impairment stage is a forward-looking exercise and therefore the question for the panel is whether your fitness to practise is currently impaired as of today's date. She referred the panel to the cases of *Cohen v General Medical Council* [2008] EWHC 581 (Admin); and *Zygmunt v General Medical Council* [2008] EWHC 2643 (Admin). She stated that in accordance with Rule 31 (7) (b) NMC Fitness to Practise rules 2004, a departure from the Code is not of itself sufficient to establish an impairment of fitness to practise. There is no burden or standard of proof to apply, and this is a matter for the panel's professional judgement. The NMC defines impairment as the ability of a registered professional to remain on the register without restriction.

Ms Carver referred the panel to the test formulated By Dame Janet Smith in the *Fifth Shipman Report*, quoted in the case of *Grant* which provides:

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

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

Ms Carver submitted that limbs a, b and c of the *Grant* test are engaged in this case.

With regards to limb a of the *Grant* test, Ms Carver submitted that fitness to practise is about managing the risk that a professional poses to patients or members of the public. This includes colleagues who are also members of the public. She submitted that your

colleagues were therefore placed at risk of harm by your conduct. She further submitted that your conduct also placed patients at risk if your colleagues' performance had been affected as a result of your conduct towards them. Therefore, such conduct could have a serious effect on workplace culture and therefore patient safety. Ms Carver submitted that there is also a risk that patients who overheard this behaviour would be concerned about seeking medical treatment from that nurse.

In relation to limb b of the *Grant* test, Ms Carver submitted that your use of racially discriminatory language clearly has the potential to bring the nursing profession into disrepute.

With respect to limb c of the *Grant* test, Ms Carver highlighted that one of the fundamental tenets of the nursing profession is treating professional colleagues with dignity and respect. There is no place for racism within the nursing profession. She submitted that your actions were racially abusive in that you made comments that discriminated against colleagues by reason of their protected characteristics under Section 4, the Equality Act 2010.

Ms Carver further referred the panel to the judgment of Mrs Justice Cox in the case of *Grant*. In paragraph 74, she said:

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

Ms Carver submitted that the consideration of impairment as outlined in this case can be broadly divided into two distinct questions:

- a) Whether you pose a current risk to the public through your nursing practice, and
- b) Whether a finding of impairment is needed to maintain public confidence in the profession and uphold professional standards.

Ms Carver referred the panel to the case of *Cohen v GMC* [2008] EWHC 581 (Admin), where the court addressed the issue of impairment with regard to the following three considerations:

- a. *'Is the conduct that led to the charge easily remediable?*
- b. *Has it in fact been remedied?*
- c. *Is it highly unlikely to be repeated?'*

Ms Carver also referred the panel to the NMC Guidance (FTP 13-8) which stated:

'Decision makers should always consider the full circumstances of the case in the round when assessing whether or not the issues in this case can be remedied. This is true even where the incident itself is a thought of conduct which would normally be considered to be particularly serious.'

Ms Carver submitted that in considering whether the concern is easy to put right, this case does not fall into such category. She highlighted that the concerns in this case are not clinical errors which could be addressed through training. She submitted that the concerns were not isolated incidents as they were part of a continued behaviour on that specific date towards three colleagues. Ms Carver asserted that where an individual has engaged in discriminatory behaviour, in line with the NMC Guidance FTP 3A, this represents a serious concern which would be more difficult to put right. Discriminatory conduct usually represents deep seated attitudinal issues that would be difficult for a registrant to remediate. Indeed, the panel may be of the view that the comments in this case were so egregious that they speak to a manifestation of character and not simply a loss of temper [PRIVATE]. Therefore, your conduct suggests underlying problems with your attitude, and it is less likely to be addressed by taking steps such as completing training courses or supervised practice.

Ms Carver submitted that although it could be suggested that there has been some insight in this case, you have not expressed sufficient and genuine insight. The panel may find in this case that it is difficult to accept that you did not harbour racist views at the time of the incident, given the severe nature of the words used. She submitted that although you had

taken some responsibility for some of your comments, you had refused to take full responsibility. She highlighted that you had not fully accepted to have said the words contested during the facts stage, and during your oral evidence at the misconduct stage, you maintained that you could not remember saying those words. Ms Carver submitted that, in light of this, it might also be suggested that there is only limited remorse.

Ms Carver highlighted that you had stated that you were unaware of the multicultural environment in the UK and the importance of upholding and promoting equality and diversity. She submitted, however, that you had been working for the National Health Service (NHS) in London since 2008 and you would have seen the diversity within the environment in which you were working. Therefore, it may be considered that you had worked in that capacity for a number of years, presumably harbouring racist views, and it may be difficult to accept that these have been addressed so soon after the incident.

Ms Carver submitted that, although you had provided several reflective statements, completed various training courses and presented several testimonials, the panel may be of the view that, given the deep-seated attitudinal concerns in terms of the racist comments that were made, the concerns in this case have not been fully addressed by you in a more challenging situation and there has not been sufficient remediation. Ms Carver submitted that, in light of this, there is a risk of repetition.

Ms Carver submitted with regard to the public interest that discriminative behaviour of any kind negatively impacts professional standards and undermines public confidence and trust. She submitted that consideration is to be given as to what message would be sent to the public if a regulator does not mark the seriousness of racially motivated comments as detailed in the charges found proved and make a finding of impairment. It is important to demonstrate that racist comments will not be tolerated. Ms Carver referred the panel to *NMC Guidance on public confidence (FTP 3C)*.

Ms Carver submitted that there is a need to take action because the public may not feel able to trust nurses generally if they are aware that a member of the nursing profession may have displayed discriminatory views and behaviour. This can have a particularly negative impact on public confidence, which may lead to members of the public avoiding using health and care services.

Ms Carver referred the panel to the case of *PSA v HCPC and Roberts* [2020] EWHC 1906 (Admin) per Forster J:

'Rightly there is, through going repugnance, for racially offensive language and attitudes at the heart of a worthwhile society must come respect for others. Such behaviour may well be indicative of an attitude that is wholly incompatible with professional practise. In such a case, the public interest may only be vindicated by impairment and significant sanction. Such cases call always for the utmost caution on the part of the regulator. Where there is a matter is (sic) delicate and abhorrent as a racial slur, it will be rare that anyone who allows themselves to trespass into this repugnant territory will not be considered impaired going forward.'

In conclusion, Ms Carver invited the panel to find that your fitness to practise is impaired on both public protection and public interest grounds.

Ms Michaels referred the panel to your several reflective statements and your oral evidence. She submitted that you are now a changed person and have “*grown up*” from your experience. You have taken detailed steps, since the incident, to reflect and learn more about equality and diversity, to undertake communication, training and anger management, and to apply what you have learnt into your nursing practice and working relationships with colleagues.

Ms Michaels referred the panel to the *NMC Guidance on Impairment* especially the question which states:

'Can the nurse, midwife or nursing associate practise kindly, safely and professionally?'

Ms Michaels also referred the panel to the test formulated By Dame Janet Smith in the *Fifth Shipman Report*, cited in the case of *Grant*. She further referred the panel to the test laid down in the case of *Cohen*.

Ms Michaels submitted that your fitness to practise must be gauged by looking at your past conduct and how you are likely to behave in the future. She submitted that in considering whether your misconduct impairs your fitness to practise, it is necessary to determine

whether any impairment present at the time of the incident is still present today. She highlighted that the NMC Guidance sets out that it should not be the aim of fitness to practise proceedings to punish a professional for past events.

Ms Michaels referred the panel to the case of *Professional Standards Authority v HCPC and R* (2020) 3 WLUK 95, where Mrs Justice Foster RE reaffirmed important legal principles in relation to the test for impairment as follows:

1. The test of impairment is in the present tense, i.e. whether the registrant's fitness and practise is impaired now.
2. Isolated incidents could show a momentary lapse, not reflective of a deep-seated attitude.
3. A finding of misconduct does not necessarily mean that fitness to practise is impaired.

Ms Michaels submitted that, in terms of impairment, your fitness to practise is not currently impaired. She submitted that the incident occurred in one day, at a time that you lost your temper, and this was totally out of character, given your previous history. It was therefore not reflective of a deep-seated attitudinal problem.

Ms Michaels reiterated that you have been working in the NHS since 2008, initially as a healthcare assistant before you qualified as a registered nurse in 2020. She highlighted that you have had an otherwise unblemished career prior to the incident and thereafter. Ms Michaels submitted that, whilst it is accepted that your behaviour may have been considered shocking, the NMC's attempt to label you as a racist was unnecessary and does not form part of the allegation. Although you had admitted that your conduct was racially motivated and that you had started the racial abuse, there is no requirement for the panel to find you to be a racist.

Ms Michaels submitted that you have demonstrated remorse and insight into your conduct. She highlighted that you had provided eight reflective statements from your own volition and demonstrated focused remediation. She stated that in your several reflections, you have examined various issues faced by ethnic minorities, particularly those from the black community in the United Kingdom, you have expressed your sincere remorse and regret for your conduct, and you have gained a better understanding of its impact on your

colleagues. Ms Michaels specifically referred the panel to your reflective statement dated 5 January 2022 and the impact it had on you.

Ms Michaels submitted that you have done everything that you could possibly do to remediate and reflect on your conduct. She also referred the panel to the various training courses that you have completed and highlighted that some of the training courses were virtual due to the pandemic.

Ms Michaels submitted that you are currently practising as a registered nurse without any concerns being raised about your nursing practice and you are viewed positively by your colleagues at work as clearly demonstrated throughout your testimonials. She referred the panel to the various positive references made on your behalf. She submitted that it is clear from your oral evidence and from the testimonials that you have a strong belief that patient welfare should be at the centre of nursing care and that you have good relationship with all members of staff, regardless of race. Ms Michaels therefore invited the panel to take the view that you do not pose a risk to the public and there is no risk of repetition.

Ms Michaels submitted that public confidence would not be undermined if the panel did not make a finding of impairment. She submitted that a member of the public, fully apprised of all the circumstances of this case including your in-depth reflections and the steps that you have undertaken to remediate the concerns, would not be concerned if the panel finds your fitness to practise not to be impaired.

Ms Michaels therefore invited the panel to find that your fitness to practise is not currently impaired.

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

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 your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code, specifically:

'8 Work cooperatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

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 profession 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

20.3 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'

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

The panel carefully considered the respective charges both jointly and severally. It took into account that you stated that, at the time of the incident, you were [PRIVATE], working under pressure due to the workload during the coronavirus pandemic and had lost your temper. However, the panel was of the view that there was no justification for your outburst of racist comments which you directed towards your colleagues. It considered your

conduct to be wholly unacceptable and that it constituted a serious breach of fundamental standards of professional conduct and behaviour that a registered nurse is expected to maintain.

The panel noted that your conduct caused serious concern, shock and distress to your colleagues. Witness 2/Colleague C, in her witness statement dated 24 June 2022, stated that:

'I felt threatened by Ms Lesniak. I did not feel safe and I did not want to work with Ms Lesniak anymore. It was hurtful to hear the comments made by Ms Lesniak.'

'....We were just shocked. We had never experienced such hate and racism. The staff had been let down by Ms Lesniak. She used racist language in front of everyone including the patients.'

The panel was seriously concerned with your conduct as your racist comments indicated contempt towards the black race; although the words were said in the heat of an argument, they were directed in a way that was hurtful to your black colleagues. The panel found that, as a result of your conduct, you failed to respect and uphold the dignity of your colleagues on the Ward. The panel therefore found your actions to be extremely serious and unprofessional, and that they would be seen as deplorable by other members of the profession and members of the public.

Consequently, having considered the charges individually and as a whole, the panel determined that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. The panel concluded that to characterise your actions as anything other than serious misconduct would send the wrong message about the nursing profession to both patients and colleagues.

Decision and reasons on impairment

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

Registered nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their

families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision, specifically paragraphs 74 and 76 previously quoted.

The panel found that limbs a, b and c of the Grant test are engaged in this case. It was of the view that your racist comments to your colleagues on the Ward were more likely than not overheard by patients and could have undermined their confidence in the nursing team, and this could have led patients to refuse further care from the nursing team. The panel also noted that your racist comments caused distress and hurt to your colleagues. This could have affected the quality of care provided to patients on the Ward and therefore indirectly placed patients at unwarranted risk of harm.

The panel further determined that your conduct constituted a serious breach of the fundamental tenets of the nursing profession as you failed to uphold the standards and values of the nursing profession, thereby bringing the reputation of the profession into disrepute.

The panel had regard to the NMC Guidance on Impairment especially the question which states:

'Can the nurse, midwife or nursing associate practise kindly, safely and professionally?'

The panel is aware that this is a forward-looking exercise and, accordingly, it went on to consider whether your misconduct is remediable and whether you had strengthened your nursing practice.

The panel had regard to the case of *Cohen v GMC*.

In considering the first limb, the panel found that the nature of your misconduct made it difficult to remediate. A racist outburst could only be a symptom of an attitudinal problem. The panel considered that the language you used was particularly egregious and that the words came from within you.

The panel went on to consider the efforts you had made to remediate. Regarding insight, the panel took account of your oral evidence and your eight reflective statements. It noted that you had shown remorse for your conduct and apologised to your colleagues for your racist comments towards them. The panel took into account that you have demonstrated some insight on the seriousness of your conduct and its impact on your colleagues, the nursing profession and the wider public. You have also set out how you would act differently if a similar situation should occur in the future or to prevent such a situation from re-occurring.

However, the panel determined that your insight is still developing. It was of the view that you have not demonstrated sufficient understanding of the severity of your misconduct, in particular with respect to the charges you denied, and its impact on patients, your colleagues, the nursing profession, the black community and public confidence in the profession.

In considering whether you have strengthened your nursing practice, the panel took account of the various training courses that you had completed in the relevant areas of concern. It noted that you had been practising as a registered nurse for the past two years since the incident occurred, with no further concerns raised about your nursing practice. It took into account the various positive references made on your behalf.

Nevertheless, the panel found that your misconduct is indicative of serious attitudinal concerns which are difficult to remediate, and that your insight is not complete, and so it concluded that there remains a risk of repetition.

The panel was also of the view that your misconduct was so deplorable that it could discourage members of the public, especially members of the black community, from seeking/accessing clinical care when required. A well-informed member of the public may be reluctant to receive clinical care if they were aware that a member of the nursing profession had exhibited such racist conduct as you had chosen to do.

In light of this, the panel determined that your misconduct poses a significant risk of harm to the public and that a finding of impairment is necessary on the grounds of public protection.

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

The panel had regard to the serious nature of your misconduct and determined that public confidence in the profession, particularly as it involved use of racist language towards your colleagues, would be undermined if a finding of impairment were not made in this case. It was of the view that a well-informed member of the public, aware of the misconduct in this case, would be very concerned if you were permitted to practise as a registered nurse without restrictions. For these reasons, the panel determined that a finding of current impairment on public interest grounds is required. It decided that this finding is necessary to mark the seriousness of the misconduct, the importance of maintaining public confidence in the nursing profession, and to uphold the proper professional standards for members of the nursing profession.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on both public protection and public interest grounds.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike your name off the register. The effect of this order is that the NMC register will show that you have 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 heard and accepted the advice of the legal assessor.

Submissions on sanction

Ms Carver referred the panel to the *NMC Guidance on Factors to consider before deciding on sanctions* (SAN-1) which states that any sanction must be proportionate and find the right balance between the rights of the nurse and the NMC's overarching objective to protect the public.

Ms Carver submitted that the aggravating factors in this case are as follows:

- Lack of sufficient insight: Although you had admitted some of the words used, you did not admit that you used the most serious words. Also, while you have taken some steps in remediation, you have not gone far enough in challenging your views and the significant attitudinal concerns in this case.
- A pattern of misconduct over time: Whilst this was an incident on 8 August 2021, there were a number of degrading comments towards three colleagues which were racially motivated, demonstrating a hostile attitude towards the racial group to which those colleagues belong.
- Conduct which puts patients at risk of suffering harm: You had used such racist language within the hearing of patients and this placed them at risk of harm. Patients may be dissuaded from seeking the appropriate care, and racist language can negatively impact the workplace and affect the quality of care provided by colleagues.

Ms Carver submitted that in respect of mitigating factors, there is evidence that you have shown some insight and understanding of the level of seriousness of your conduct and its impact on your colleagues, the nursing profession and the wider public. She stated that this started at an early stage, you provided a letter of apology and completed some training courses in the areas of concern. You have also provided some testimonials made on your behalf.

Ms Carver referred the panel to the *NMC Guidance on Considering sanctions for serious cases* (SAN-2). She stated that in respect of cases relating to discrimination, these cases are always serious as the Guidance provides that:

'We may need to take restrictive regulatory action against nurses, midwives or nursing associates who've been found to display discriminatory views and behaviours and haven't demonstrated comprehensive insight, remorse and strengthened practice, which addresses the concerns from an early stage.

If a nurse, midwife or nursing associate denies the problem or fails to engage with the fitness to practise process, it's more likely that a significant sanction, such as removal from the register, will be necessary to maintain public trust and confidence.'

Ms Carver also referred the panel to the *NMC Guidance on Available sanction orders* (SAN-3) and submitted that the proper approach is to consider the full range of sanctions, starting with the least severe.

Ms Carver submitted that taking no action or imposing a caution order would not be appropriate in this case. She submitted that given the seriousness of your misconduct and the panel's findings, neither of these options would be sufficient to uphold standards within the profession or be in the public interest.

Ms Carver highlighted that the SG provides that a condition of practice order may be appropriate where there is no evidence of harmful deep-seated personality or attitudinal problems, and there are identifiable areas of the registered professional's practice in need of assessment or retraining. She submitted that in this case, your misconduct raises significant attitudinal concerns. Ms Carver submitted that a conditions of practice order would not be appropriate on the basis that this case involves serious attitudinal problems, which are more difficult to remediate. You have also failed to demonstrate sufficient insight, and this would be difficult to monitor and assess if a conditions of practice order was imposed. She submitted that there are no conditions that would adequately address the concerns in this case or reflect the seriousness of your misconduct.

Ms Carver submitted that a suspension order would not be appropriate in this case as it does not meet any of the factors provided in the SG. She submitted that this was not a single comment that was made but a number of comments made to three colleagues. She asserted that the very nature of the deplorable words used, and the number of times used, suggests deep-seated personality or attitudinal concerns that are fundamentally incompatible with ongoing registration.

Ms Carver submitted that a striking-off order is the most appropriate order in this case given the fundamental questions raised about your professionalism. She submitted that the order is necessary in order to maintain public confidence in the profession and to protect patients, members of the public and maintain professional standards.

Ms Carver submitted that your actions show a significant departure from the standards expected of a registered nurse and is fundamentally incompatible with your remaining on the register. She submitted that the findings in this case demonstrate that your actions were serious and to allow you to continue to practise as a registered nurse would undermine public confidence in the profession and the NMC as a regulatory body.

In conclusion, Ms Carver invited the panel to impose a striking-off order as the most appropriate and proportionate order in this case.

Ms Michaels highlighted that, in considering the appropriate sanction to be imposed, the SG provides that the panel should start with the least serious sanction and then to move on to consider the next sanction and so on if necessary. The panel should also take into consideration any aggravating and mitigating factors in this case.

Ms Michaels submitted that a striking-off order, as proposed by the NMC, is not warranted, would be disproportionate in the particular circumstances of this case and in light of the evidence of remediation and insight that has been heard.

Ms Michaels submitted that there are several mitigating factors in this case. The panel should consider that you accepted responsibility for your actions and admitted that you had started the racist abuse towards your colleagues. You made some early admissions and sent a letter of apology within a month of leaving the Trust. You have demonstrated genuine remorse for your conduct, and the panel had found that you have developing insight and have shown some remediation. Further, the panel also found that you have shown an appreciation of what could and should be done differently if a similar situation should occur, or to prevent such a situation occurring again.

Ms Michaels submitted that this was a one-off incident, it occurred in one day and this behaviour has not been repeated. It has been two and a half years since the incident occurred and you have been working as a nurse with no regulatory or disciplinary

concerns. She asserted that you are a good and conscientious nurse, respected by your managers and the testimonials demonstrate that you have been following the principles of good practice since the incident. You have taken steps to strengthen your practice through training, both face to face and online, and you have actively engaged with the fitness to practise investigation and hearings.

Ms Michaels referred the panel to the *NMC Guidance on Considering sanctions for serious cases*, in particular on *Cases relating to discrimination*. She submitted that a removal from the register would not be appropriate as you had met the criteria in the Guidance, given that the panel has found that you have developing insight, have shown remorse and it is not disputed that you have engaged with the fitness to practise process.

Ms Michaels invited the panel to consider imposing a conditions of practice order on your registration. She submitted that this is the most appropriate and proportionate order in this case and there are workable and measurable conditions that would protect the public and address the public interest.

Ms Michaels referred the panel to the *NMC Guidance on Conditions of practice order (SAN-3c)* and submitted that the factors listed in the Guidance were met in this case. She submitted that, in light of the panel's findings, a conditions of practice order would be appropriate in these circumstances and would address the issues raised in relation to strengthening your practice and developing further insight. Ms Michaels suggested that possible conditions could include supervision for a period of time followed by no supervision, subject to satisfactory feedback or reports from your supervisor, a Professional Development Plan (PDP) addressing the areas of concern and further training in accordance with this PDP.

Ms Michaels submitted that, given that you have fully engaged with the fitness to practise proceedings and have taken steps to undertake as much focused remediation as possible on your own, there is no doubt that you would be willing to comply with any conditions imposed by the panel with the support of your employer.

Ms Michaels submitted that, if the panel should determine that a conditions of practice order is not appropriate in this case, it should consider that your misconduct is not

fundamentally incompatible with your role as a nurse, such that it requires permanent removal from the register. She submitted that based on the factors highlighted within the SG, the panel should consider that this was a single instance of misconduct on one day in your career, there is no evidence of repetition, there is no evidence of such misconduct prior to the incident on 8 August 2021, there is evidence of developing insight and remediation, you made early admissions and there are positive references made on your behalf. Ms Michaels highlighted that you are passionate about nursing, and you are a compassionate nurse who puts patient care at the heart of your profession while you take great pride in your role as a nurse.

Ms Michaels submitted that [PRIVATE]. She stated that you are devastated about the prospect of not being able to practise as a nurse anymore. She reiterated that you have worked hard to improve and develop yourself over the past two years, to attempt to remediate your misconduct, to prove that you are not someone who would ever be racially abusive again, or someone who holds such racist views, and you genuinely believe that you are now a changed person. You are willing to do whatever it takes to further develop your insight.

Decision and reasons on sanction

Having found your 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 also had regard to the *NMC Guidance on Considering sanctions for serious cases*, in particular, *Cases relating to discrimination*.

The panel took into account the following aggravating features:

- Your comments to your colleagues used the most offensive racist words.
- Your racist comments demonstrate deep-seated attitudinal concerns.
- It was a sustained outburst of racist comments even when requested to cease.

- Failure to demonstrate comprehensive insight on the severity and impact of your misconduct, in particular with respect to the charges you denied.
- Your misconduct placed patients at indirect risk of harm and harmed colleagues.

The panel also took into account the following mitigating features:

- Early admissions to some of the charges.
- Evidence of some developing insight and remorse into your misconduct.
- Various positive references on your behalf.
- Evidence of steps taken to remediate the concerns through reflective statements and training courses, albeit attitudinal concerns are difficult to fully remediate.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. It had found that you pose a risk of harm, had breached fundamental tenets of the nursing profession and your misconduct would undermine the public's confidence in the nursing profession if you were allowed to practise without restrictions. The panel therefore determined that it would be neither proportionate nor in the public interest to take no further action.

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

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

'Conditions may be appropriate when some or all of the following factors are apparent:

- *no evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *.....;*
- *potential and willingness to respond positively to retraining;*
- *.....;*
- *patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *the conditions will protect patients during the period they are in force;*
and
- *conditions can be created that can be monitored and assessed.'*

The panel was of the view that the misconduct identified in this case could not be addressed through retraining and was difficult to remediate. The panel had also identified deep-seated attitudinal problems on your part. It determined that, given the seriousness of the concerns, the deep-seated attitudinal problems and your lack of comprehensive insight into the severity and impact of your misconduct, in particular with respect to the charges you denied, on patients, your colleagues and the public, there are no practicable or workable conditions that could be formulated. Accordingly, a conditions of practice order would not address the risk of repetition and therefore the risk of harm to the public. Consequently, the panel decided that a conditions of practice order would not protect the public nor be in the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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;*

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The panel was of the view that, although the incident occurred in one day, your sustained racial outburst towards more than one of your colleagues, even when requested to cease, demonstrated a deep-seated attitudinal problem and an entrenched contempt towards the black race. This was compounded by your failure, particularly at an early stage, to demonstrate comprehensive insight into the severity of your misconduct and its impact on patients, your colleagues, the nursing profession, the black community and public confidence in the profession. The panel was therefore not satisfied that in the two-year period since the incident, you have demonstrated sufficient steps to address and remediate the concerns. Therefore, the panel concluded that there is a risk of repetition of your misconduct.

Consequently, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction and would not protect the public nor satisfy the public interest consideration in this case.

Finally, in looking at a striking-off order, the panel considered the following questions raised in the SG:

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

In the panel's judgement, the answer to these questions is 'Yes'. Therefore, the panel was of the view that all of the criteria as set out above, are met in this case.

The panel determined that your conduct, as highlighted by the facts found proved, constituted a serious breach of fundamental standards of professional conduct and behaviour that a registered nurse is expected to maintain.

The panel was deeply concerned about your attitude immediately after the incident. Although you stated that you had lost your temper at the time of the incident, you did not immediately recognise the serious nature of your conduct and the impact it had on your colleagues despite being asked to cease your racist comments. During your interviews with Witness 3 and Witness 4 respectively, you sought on several occasions to deflect responsibility for your actions and accused your black colleagues of bullying. Even when reminded by Witness 3 of the seriousness of your conduct and its breach of the NMC Code, you said to her "*Send me on an FTP course, I don't care*". You chose to resign when you were informed that there would be a disciplinary process against you at the Trust and you only sent your letter of apology a month after the incident when you became aware of the NMC referral against you. You subsequently refused to acknowledge that you said some of the racist comments, which led to your colleagues having to give evidence at this hearing and re-live the same hurtful incident. Even after the findings of the panel, you still did not acknowledge making some of the racist comments during your oral evidence at the misconduct and impairment stage of these proceedings.

The panel was of the view that your attitude demonstrated a deep-seated racist attitude and a lack of understanding and accountability for your conduct. The panel determined that your actions towards your colleagues were significant departures from the standards expected of a registered nurse.

The panel concluded that the serious breach of the fundamental tenets of the profession, evidenced by your conduct towards your colleagues, is fundamentally incompatible with your remaining on the register. The panel was of the view that the findings in this case raise serious and significant questions about your professionalism and your understanding of the impact of your behaviour on the profession. The panel determined that to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the nursing 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 standards of behaviour expected and required of a registered nurse.

This will be confirmed to you in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the striking-off sanction takes effect.

Submissions on interim order

The panel took account of the submissions made by Ms Carver. She submitted that, given that the panel has determined that a striking-off order is appropriate and proportionate, an interim suspension order for a period of 18 months is necessary in order to protect the public and also in the public interest, to cover the 28-day appeal period before the substantive order becomes effective.

The panel also took into account the submissions made by Ms Michaels. She submitted that an interim order should not be an automatic decision to be made by the panel. She highlighted that you have been practising as a registered nurse without restrictions for two and a half years and there has been no repetition of the misconduct. She therefore submitted that an interim order is not necessary in this case.

Ms Michaels submitted that, given the panel's findings on public protection and public interest, if the panel should determine that an interim order is necessary, an interim order should not be imposed for 18 months but for a shorter period of time. She stated that the NMC could apply for an extension of the interim order if an appeal is made. You have been working as a nurse and you will need to inform your team of the panel's decision.

Ms Michaels invited the panel to consider imposing an interim conditions of practice order if an interim order is necessary, pending the determination of an appeal if it is made.

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

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months in order to protect the public and otherwise in the public interest, during any potential appeal period. The panel determined that not to impose an interim order would be inconsistent with its earlier decisions.

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

That concludes this determination.