

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

**Substantive Hearing
Monday 4 March 2024 – Monday 11 March 2024**

Virtual Hearing

Name of Registrant: Denis Berarie

NMC PIN: 06H1930E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – September 2007

Type of case: Misconduct

Panel members: David Lancaster (Chair, Lay member)
Carol Porteous (Registrant member)
Colin Sturgeon (Lay member)

Legal Assessor: Gaon Hart

Hearings Coordinator: Khadija Patwary

Nursing and Midwifery Council: Represented by Alban Brahimi, Case Presenter

Mr Berarie: Not present and unrepresented

Facts proved: Charges 1), 2) and 3)

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Berarie was not in attendance and that the Notice of Hearing letter had been sent to Mr Berarie's registered email address by secure email on 30 January 2024.

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

The panel accepted the advice of the legal assessor.

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

In the light of all of the information available, the panel was satisfied that Mr Berarie has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Berarie

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

Mr Brahimi referred the panel to the telephone notes between Mr Berarie and his NMC case officer dated 28 February 2024 in which it was stated that:

'Reg stated that he has no interest in the case and went on to say "if you don't mind me saying all public services are corrupt, I haven't received any support from any public service and not from the NMC in 10 years. The NMC is also the same. I am not interested in the case".

I went on just to explain that I would provide his response to the panel as they will need to consider PIA. Reg responded and stated again that he has no interest whatsoever in the case he has left nursing and asked that no one from the NMC contacts him again via telephone or email. I confirmed to reg I would make a notice of this and pass his response on by way of a telephone note to the panel.

I thank reg for his time and ended the call. [sic]

The panel accepted the advice of the legal assessor.

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

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

- No application for an adjournment has been made by Mr Berarie;
- The panel had sight of the telephone notes dated 28 February 2024;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- One witness has been scheduled to give oral evidence;

- Not proceeding may inconvenience the witness and their employer;
- The charges relate to events that occurred in 2020;
- Further delay may have an adverse effect on the ability of the witness and to accurately recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Berarie in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to Mr Berarie to his registered email address, he will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Additionally, the panel can incorporate into their deliberations the information provided in Mr Berarie's bundle consisting of 12 pages. Furthermore, the limited disadvantage is the consequence of Mr Berarie's decision to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

Details of charge

That you, a registered nurse:

- 1) On your personal Facebook account: **[proved in its entirety]**
 - a) On 29 May 2019, posted a status using the words:
"Should gay people in England be entitled to a disabled badge? Is being gay a genetic defect or a Vice? If it is a genetic defect then surely they should be entitled to a disabled badge. They should apply for a badge from the council.

There is a case to be made here. Share if you agree that Gay People should have a disabled badge.”

b) On 28 September 2019, posted a status using the words:

“Social Services is largely staffed by People with the wrong moral fibres. They aim to destroy fathers and their children while pretending they are helping. Surrey Children Social Services is a Sadistic Service hope to drive fathers suicidal like many who have taken their own lives already. It is a travesty to see a child at his dad’s funeral watching the crocodile tears from their mother like she cared.”

c) On 9 May 2020 posted a status which:

i) Used the words “*queer minded Social Worker*”

ii) Used the words “*even an arse tickling faggot could become a magistrate if he or she has the support of their child abusing friends with power.*”

iii) Used the words “*Recently I learned from a friend that a dirty old English Bastard has been abusing children. I guess this is something common in British blood and culture.*”

2) The language used in charges 1(a), 1(b), 1(c) (i), and 1(c)(ii) is homophobic and/or discriminatory and/or offensive. **[proved]**

3) The language used in charge 1(c)(iii) is racist and/or discriminatory and/or offensive. **[proved]**

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

Background

On 10 June 2020, the NMC received a referral regarding Mr Berarie from a member

of the public, Witness 1. In this referral, Witness 1 set out that while working [PRIVATE] in his capacity as a social worker he had come across several public Facebook posts made by Mr Berarie which were offensive, derogatory and inappropriate. Witness 1 highlighted that [PRIVATE], he found the homophobic comments made by Mr Berarie very offensive. With his referral, Witness 1 provided the NMC with screenshots of the posts from Mr Berarie which he identified as problematic.

Mr Berarie has admitted to making the posts as alleged, but outlines he did not make these posts public, and set them so they could only be seen by himself to act as a diary. Mr Berarie contends his Facebook account was hacked, and attributes this possibly to one or more of the following parties:

1. [PRIVATE]
2. Social Services
3. The Police
4. Witness 1

The allegations reported to the NMC were initially investigated by the police, and Mr Berarie was initially interviewed in connection with these matters. However, on 31 March 2022, the allegations were not progressed by the Police. The NMC have been provided with a copy of the MG5 police report.

Mr Berarie confirmed he was no longer working as a nurse and retraining as a gas engineer.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Brahimi on behalf of the NMC and Mr Berarie's evidence in the Registrant's Bundle.

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

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

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

- Witness 1: Social Worker at the time of the allegations.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC and the Registrant's Bundle.

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

Charge 1)

- 1) On your personal Facebook account:
 - a) On 29 May 2019, posted a status using the words:
“Should gay people in England be entitled to a disabled badge? Is being gay a genetic defect or a Vice? If it is a genetic defect then surely they should be entitled to a disabled badge. They should apply for a badge from the council. There is a case to be made here. Share if you agree that Gay People should have a disabled badge.”
 - b) On 28 September 2019, posted a status using the words:
“Social Services is largely staffed by People with the wrong moral fibres. They aim to destroy fathers and their children while pretending they are helping.

Surrey Children Social Services is a Sadistic Service hope to drive fathers suicidal like many who have taken their own lives already. It is a travesty to see a child at his dad's funeral watching the crocodile tears from their mother like she cared."

- c) On 9 May 2020 posted a status which:
 - i) Used the words "*queer minded Social Worker*"
 - ii) Used the words "*even an arse tickling faggot could become a magistrate if he or she has the support of their child abusing friends with power.*"
 - iii) Used the words "*Recently I learned from a friend that a dirty old English Bastard has been abusing children. I guess this is something common in British blood and culture.*"

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's oral evidence and witness statement. It also took into account Mr Berarie's letter dated 24 August 2020, the Police report and the screenshots of his Facebook posts.

The panel considered the Police report in which it was stated that '...He states he likes to write on Facebook about his own political views and marks the post as 'private' meaning only he can see the post. The defendant states he has no idea how the post was on his Facebook wall. The defendant states he no longer works as a nurse and is currently training to be a gas engineer. He was shown the two Facebook posts and admits that he wrote them and posted them. He states they are his own personal notes on his frustration with the police and social services...'

The panel also considered Mr Berarie's letter dated 24 August 2020 in which he stated that 'I did post everything [Witness 1] said I did, they were for my personal notes and reflection which I intended for future used when I write my book about institutional abuses. The words I used was to remind me of my frustration when I revisit them in the future.

However, these posts were posted as (Me only) meaning no one should have been able to see them not even my friends...'

The panel was of the view that there have been two instances where Mr Berarie has accepted that he made these posts on Facebook. The panel also had sight of the screenshots of these comments made by Mr Berarie on his Facebook.

The panel determined that on the balance of probabilities Mr Berarie on his personal Facebook account on 29 May 2019 posted a status using the words as referred to above, on 28 September 2019 posted a status using the words as referred to above, and on 9 May 2020 posted a status using the words as referred to above.

In light of the above, the panel therefore finds charge 1) proved in its entirety.

Charge 2)

- 2) The language used in charges 1(a), 1(b), 1(c) (i), and 1(c)(ii) is homophobic and/or discriminatory and/or offensive.

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's oral evidence and witness statement. It also took into account Mr Berarie's letter dated 24 August 2020, the Police report and the screenshots of his Facebook posts.

Charge 1)a)

The panel considered Witness 1's witness statement in which he stated that '*Mr Berarie's posts on his Facebook page were very homophobic in content...*'

The panel determined that Mr Berarie's Facebook post on 29 May 2019 on the ordinary meaning of the word is objectively homophobic. The panel also considered that the post is subjectively homophobic, considering Witness 1's oral evidence in which he told the panel that he found this comment to be [PRIVATE] homophobic [PRIVATE]. The panel was of the view that Witness 1's oral evidence in relation to this charge was relevant and consistent as this illustrated a direct impact that it had on Witness 1. The panel concluded on a balance of probability that reasonable people would consider the post homophobic.

The panel was of the view that the comments made in this charge were discriminatory, as although the word is difficult to define on the ordinary meaning of the word the posts were objectively discriminatory. The panel also considered that the post was subjectively discriminatory and that Witness 1 told the panel in his oral evidence that [PRIVATE] he found the comments made in this charge to be discriminatory. The panel also concluded on a balance of probability that reasonable people would consider the post discriminatory. The panel was of the view that the comments made in this charge were offensive, as although the word is difficult to define, on the ordinary meaning of the word the posts were objectively offensive. The panel also noted that the post was subjectively offensive and considered Witness 1's witness statement in which he stated that '*[PRIVATE], I find the homophobic comments made by Mr Berarie to be very offensive...*' It also considered Witness 1's oral evidence in which he told the panel that he was "*personally deeply offended by those comments.*" The panel concluded on a balance of probability that reasonable people would consider the post offensive.

The panel determined that Witness 1's evidence was relevant although prejudicial to Mr Berarie. It concluded that Mr Berarie's comments made in this charge was homophobic, discriminatory and offensive.

Charge 1)b)

The panel determined that Mr Berarie's Facebook post on 28 September 2019 on the ordinary meaning of the word was not objectively homophobic. The panel also considered

that the post was not subjectively homophobic and during Witness 1's oral evidence he did not acknowledge that he found this comment to be homophobic.

The panel was of the view that the comments made in this charge were not discriminatory, as although the word is difficult to define on the ordinary meaning of the word the posts were not objectively discriminatory nor subjectively discriminatory, nor considered as such by reasonable people.

The panel was of the view that the comments made in this charge were offensive, as although the word is difficult to define, on the ordinary meaning of the word the posts were objectively offensive as it was stated that '*Surrey Children Social Services is a Sadistic Service hope to drive fathers suicidal like many who have taken their own lives already...*'. The panel determined that the words were subjectively offensive as at the time [PRIVATE] and there was context to the comment.

It determined that on the balance of probability it was reasonable that a group of people from Surrey Children Social Services would find this offensive. It concluded that Mr Berarie's comments made in this charge was not homophobic nor discriminatory however, it was offensive.

Charge 1)c)i)

The panel determined that Mr Berarie's Facebook post on 9 May 2020 on the ordinary meaning of the word is objectively homophobic in that the panel determined that '*queer minded*' was a homophobic phrase. The panel also considered that the post is subjectively homophobic. The panel considered Witness 1's witness statement in which he stated that '[PRIVATE], I know that homophobia can be direct or indirect. Both forms have a negative impact on any LGBTQ person.' The panel noted the context of this charge and determined that the comment '*queer minded Social Worker*' was intended to be homophobic. The panel concluded on a balance of probability that reasonable people would consider the post homophobic.

The panel was of the view that the comments made in this charge were discriminatory, as although the word is difficult to define on the ordinary meaning of the word the posts were objectively discriminatory as it distinguished gay members of the community. The panel also considered that the post was subjectively discriminatory as it was applied to the gay members of the community in a derogatory manner which is discriminatory. It also noted that Witness 1 told the panel during his oral evidence that this personally impacted on him. The panel also concluded on a balance of probability that reasonable people would consider the post discriminatory.

The panel was of the view that the comments made in this charge were offensive, as although the word is difficult to define, on the ordinary meaning of the word the posts were objectively offensive as it implied gay members of the community were different. The panel also noted that the post was subjectively offensive as the panel also considered Witness 1's oral evidence in which he confirmed that he found the comment in relation to this charge offensive. The panel concluded on a balance of probability that reasonable people would consider the post offensive.

The panel was of the view that in this context it was Mr Berarie's intention to be offensive. It concluded that Mr Berarie's comments made in this charge was homophobic, discriminatory and offensive.

Charge 1)c)ii

The panel determined that Mr Berarie's Facebook post on 9 May 2020 on the ordinary meaning of the word is objectively homophobic in that the panel determined that '*even an arse tickling faggot could become a magistrate if he or she has the support of their child abusing friends with power,*' was a homophobic phrase. The panel also considered that the post is subjectively homophobic as Witness 1 confirmed in his oral evidence. The panel concluded on a balance of probability that reasonable people would consider the post homophobic.

The panel was of the view that the comments made in this charge were discriminatory, as although the word is difficult to define on the ordinary meaning of the word the posts were objectively discriminatory as it distinguished gay members of the community. The panel also considered that the post was subjectively discriminatory as it was applied to the gay members of the community in a derogatory manner which is discriminatory. The panel also concluded on a balance of probability that reasonable people would consider the post discriminatory.

The panel was of the view that the comments made in this charge were offensive, as although the word is difficult to define, on the ordinary meaning of the word the posts were objectively offensive as it implied gay members of the community were different. The panel concluded on a balance of probability that reasonable people would consider the post offensive. The panel also considered that the post is subjectively offensive as Witness 1 confirmed in his oral evidence. The panel concluded that Mr Berarie's comments made in this charge was homophobic, discriminatory and offensive.

The panel determined that on the balance of probabilities Mr Berarie's language used in charges 1)a), 1)b), 1)c)i), and 1)c)ii) is homophobic and/or discriminatory and/or offensive.

In light of the above, the panel therefore finds charge 2) proved.

Charge 3)

- 3) The language used in charge 1(c)(iii) is racist and/or discriminatory and/or offensive.

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's oral evidence and witness statement. It also took into account Mr Berarie's letter dated 24 August 2020, the

Police report, the screenshots of his Facebook posts and the content of the bundle of his evidence.

The panel determined that Mr Berarie's Facebook post on 9 May 2020 on the ordinary meaning of the word is objectively racist as Mr Berarie used the words '*English*' and '*British*' and added derogatory and unpleasant characteristics towards these words. The panel also considered that the post is subjectively racist as Witness 1 confirmed in his oral evidence. The panel also concluded on a balance of probability that reasonable people would consider the post racist.

The panel was of the view that the comments made in this charge were discriminatory, as although the word is difficult to define on the ordinary meaning of the word the posts were objectively discriminatory as Mr Berarie was attaching certain opinions to the English or British in a negative light. The panel was also of the view that the words '*I guess this is something common in British blood and culture*' attributes to negative characteristics to British blood and culture. The panel also concluded on a balance of probability that reasonable people would consider the post discriminatory.

The panel was of the view that the comments made in this charge were offensive, as although the word is difficult to define, on the ordinary meaning of the word the posts were objectively offensive. The panel concluded on a balance of probability that reasonable people would consider the post offensive. The panel also considered that the post is subjectively offensive as Witness 1 confirmed in his oral evidence. The panel concluded that Mr Berarie's comments made in this charge was racist, discriminatory and offensive.

The panel determined that on the balance of probabilities Mr Berarie's language used in charge 1)c)iii) is racist and/or discriminatory and/or offensive.

In light of the above, the panel therefore finds charge 3) proved.

Fitness to practise

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

Submissions on misconduct

Mr Brahim, in his written submissions dated 8 March 2024, stated that:

1. *'Misconduct is a matter for the Panel's professional judgment. The leading case is Roylance v GMC [2000] 1 AC 311 which says: "misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances.'*

2. *In Calhaem v GMC [2007] EWHC 2006 (Admin) Mr Justice Jackson commented on the definition of misconduct and he stated: ‘it connotes a serious breach which indicates that the doctor’s fitness to practise is impaired.’*
3. *Mr Justice Collins in Nandi v GMC [2004] EWHC 2317 (Admin) stated that: “the adjective ‘serious’ must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners.”*
4. *The NMC submit that the proven charges amount to misconduct. The following submissions are collectively made in respect of the proved charges:*
 - a. *To have posted online and expressed homophobic views as per charge 1(a), is an act which falls short of what would be proper in the circumstances of how a registered nurse behaves. Nurses will treat a variety of patients and those reading such posts while potentially being under his care would be deeply offended.*
 - b. *To have posted a graphic and discriminatory comment as per charge 1(c)(ii) is a viewpoint that is not acceptable from a registered nurse. This is language beyond to that of an opinion and steps into the territory of connoting a serious breach.*
 - c. *To have used comparisons between the English/British and “foreign fathers” is inflaming a situation however this also extends into a form of racist and offensive language. This is conduct that would be considered as deplorable by fellow practitioners.*
5. *The NMC say that the following parts of The Code have been breached, but of course the Panel is able to consider any other parts as it sees fit (note that it is the 2018 version of the Code that applies in this case):*
 - 1 Treat people as individuals and uphold their dignity;*
 - 2 Listen to people and respond to their preferences and concerns;*
 - 4 Act in the best interests of people at all times;*

8 Work cooperatively;

20 Uphold the reputation of your profession at all times;

21 Uphold your position as a registered nurse, midwife or nursing associate;

25 Provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care system.

6. Overall, the NMC further submits that the Registrant's actions as proven fall far short of what would be expected of a Registered Nurse. The public would expect that the registered nurses will uphold a professional medical reputation. The Panel may find that most in breach are that of "1" and "21" above. The Registrant has shown a deliberate disregard for how others might be affected from his language. He has made a public post where all can read and see, while he was operating and appearing (uniform) as a registered nurse.

7. The NMC therefore invite the Panel to find misconduct.

Registrant's latest position

8. The Registrant did not give evidence and therefore the panel are limited to the Registrant's bundle. Within this bundle, the Registrant challenges the evidence rather than accepting any of the charges as they are formed. He shows very little (if any) insight in changing his ways and rather makes counter-allegations. This will not assist the panel in whether he has addressed any concerns of impairment below.'

Submissions on impairment

Mr Brahim, in his written submissions dated 8 March 2024, stated that:

9. *'Current impairment is not defined in the Nursing and Midwifery Order of the Rules. However, the NMC as of 27th March 2023, states the following on how to decide on impairment (reference DMA-1): "The question that will help decide whether a professional's fitness to practise is impaired is: "Can the nurse, midwife or nursing associate practise kindly, safely and professionally?" If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired".'*

10. *The Panel may be assisted by the questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin): "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:*

(i) Has in the past, and/or is liable in the future to act as so as to put a resident or residents at unwarranted risk of harm;

(ii) Has in the past, and/or is she liable in the future to bring the profession into disrepute;

(iii) Has in the past, and/or is she liable in the future to breach one of the fundamental tenets of the profession;

(iv) Has in the past, and/or is she liable in the future to act dishonestly."

11. *As further stated at paragraph 74 of Grant, the Panel should: "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.

12. *The NMC say that the Registrant is impaired and that (at least) the second and third limbs of Grant are engaged in this case.*

13. *The second limb is engaged as a result of the Registrant's behaviour, as found proven, plainly brings the profession into disrepute:*

a. *An accepted argument of a nurse's basic traits are that they are kind and fair. In this instance, the proven charges demonstrate that the Registrant has projects nurses as being offensive (thus unkind) and portraying negative views towards gay people (thus homophobic). This Registrant does not reflect how a nurse should conduct themselves and has brought the profession into disrepute.*

14. *The third limb is engaged, where the Registrant has plainly breached fundamental tenets of the profession in numerous areas of the Code of Conduct as referred to above, but in particular:*

a. *Treat people as individuals and uphold their dignity (1.1 and 1.3);*
b. *Uphold your position as a registered nurse, midwife or nursing associate (21.4 and 21.5);*

15. *As further stated at paragraph 74 of Grant, the Panel should: "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."*

16. The NMC submit that there is a serious departure from the standards expected of a nurse and the Panel should consider impairment on the following grounds:

17. Public protection

a. While there is no suggestion that this individual has caused any physical harm, the NMC submit that his use of language inflames potentials for a risk of harm. The argument is that the Registrant is demonstrating a particularly negative views towards gay people and also the English/British. In respect of both gay and English/British people he is placing them within “child abusing” paragraphs and this could inflame others to act differently, if not violently, towards them. The Registrant has also specifically targeted social workers, magistrates and the police and, as above, this could similarly inflame others to develop a negative opinion (potentially turning violent) against them. Therefore, there is argument for a risk of harm and a risk of repetition (given the number of posts and period between them).

18. Otherwise in the public interest

a. The more focused argument is that impairment should be found on public interest grounds. The behaviour that the Registrant has shown in these posts are incredibly unprofessional. He has deliberately left these posts as public or has been entirely reckless that all audiences can see his use of language. Even if it were to have been a private post, it has now been uncovered and the panel are aware of his discriminatory behaviour. This has demonstrated an attitudinal concern that the Registrant holds all the while he had been operating as a Registered nurse. The purpose of a nurse is to treat all individuals fairly and be respectful. However, upon a member of public learning of this behaviour – they may be not only upset by what they read but also be cautious of whether nurses might hold their sexuality, nationality and job role (social worker, magistrate or police) against them while being treated. Homophobia, racism and discrimination are forms of language that

demonstrate a serious breach and such behaviour strongly undermines the professionalism that nurses are expected to show. As a result of the Registrant's conduct, the NMC submit that the integrity of the medical profession has been challenged and evidently been put into disrepute.

19. As such the NMC invite the Panel to find that the Registrant is currently impaired.'

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. This included *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. The panel also considered the social media guidance issued by the NMC.

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

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.5 respect and uphold people's human rights

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

20.7 make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that on three occasions over a period of a year Mr Berarie had made comments on his Facebook posts which involved language that was homophobic and/or, discriminatory and/or, offensive and/or racist. The panel noted that the public will be concerned to know that Mr Berarie made these posts which used derogatory language about gay members of the community, individuals who work with Surrey Children Social Services and people of British nationality or from an English nationality.

The panel noted that Mr Berarie maintained that the posts were made for his own private view and that he further alleged an individual had hacked into his Facebook account and changed the privacy settings, but he produced no evidence to support this. The panel further noted that the Facebook post in relation to charge 1)a) included the phrase '*share if you agree*' which potentially demonstrates that Mr Berarie's Facebook post was not intended to be private. In addition, the panel was of the view that at least one member of the public did access and saw Mr Berarie's Facebook post as this was confirmed by Witness 1 in his oral evidence. The panel determined that Mr Berarie's actions would by the standards of ordinary people, and healthcare professionals, be judged to be deplorable, falling far below the standard expected of a registered nurse.

The panel considered Mr Brahimi's comments around taking judicial notice of the Facebook '*world*' symbol's meaning but did not consider it added anything to their decision.

In respect of all the charges found proved, the panel found that Mr Berarie's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or

determination show that his/her/ fitness to practise is impaired in the sense that S/He:

a) ...

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

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

d)'

The panel considered that limbs b) and c) were engaged. The panel considered that Mr Berarie's misconduct had breached the fundamental tenets of the nursing profession and brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges 1), 2) and 3) extremely serious. The panel then went on to consider whether there is a risk of repetition and in doing so it assessed Mr Berarie's current insight, remorse and remediation.

Regarding insight, the panel determined that Mr Berarie's insight was extremely limited. The panel noted that Mr Berarie did not recognise how his conduct has impacted negatively on the reputation of the nursing profession, gay members of the community, individuals who work with Surrey Children Social Services and people of British nationality or from an English nationality and that he has not demonstrated an understanding of the serious nature of his failings. Although, the panel noted that Mr Berarie did apologise for his derogatory comments up to a point and he contended that he did not intend to target Witness 1 directly through his Facebook posts.

In relation to remorse, the panel noted that Mr Berarie did not express an understanding of how what he did was wrong or how this impacted negatively on the reputation of the

nursing profession. The panel noted that Mr Berarie in his letter dated 24 August 2020 stated that he did post these comments as they were for his own personal notes and reflection however, he had failed to address whether he had gained any further insight into the concerns identified as he stated that his Facebook account was hacked.

The panel was satisfied that the misconduct is capable of remediation. However, the panel noted that it is difficult to remediate attitudinal issues. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Berarie had remedied his practice. The panel was of the view that Mr Berarie did not demonstrate any remediation, nor has he evidenced any relevant training.

The panel was of the view that Mr Berarie has not yet been able to demonstrate that he remedied his practice or demonstrated any meaningful insight. Mr Berarie did not satisfy the panel that the risk of repetition was sufficiently reduced.

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. Additionally, the panel decided that a finding of impairment is not necessary on the grounds of public protection.

The panel concluded that public confidence in the profession would be undermined if a finding of current impairment were not made in this case and therefore finds Mr Berarie's fitness to practise impaired on the grounds of public interest. Although a finding of impairment on purely public interest grounds alone requires a high threshold, the panel determined that this had been crossed due to the nature of the charges found proved.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Berarie off the register. The effect of this order is that the NMC register will show that Mr Berarie has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Brahim, in his written submissions dated 11 March 2024, stated that:

1. *'The Panel have now reached a stage of finding misconduct in respect of the Registrant's behaviour and have concluded that fitness to practice is currently impaired. The Panel should therefore consider what sanction is appropriate to address:*
 - a. *The proven charges which includes findings of homophobia and racism.*
2. *The Panel should first take into account relevant factors before deciding on sanction, as set out by the NMC Fitness to Practice Library guidance SAN-1:*
3. *Proportionality*
 - a. *Finding a fair balance between Registrant's rights and the overarching objective of public protection;*
 - b. *To not go further than it needs to, the Panel should think about what action it needs to take to tackle the reasons why the Registrant is not currently fit to practise;*
 - c. *The Panel should consider whether the sanction with the least impact on the nurse practise would be enough to achieve public protection, looking*

at the reasons why the nurse isn't currently fit to practise and any aggravating or mitigating features.

4. Aggravating features

- a. Lack of insight into failings;*
- b. A pattern of misconduct over a period of time;*
- c. Further observations:*
 - i. Multiple posts;*
 - ii. Comments upset those caring for him;*
 - iii. Combination of homophobic and racist views that are discriminatory against protected characteristics of race and sexual orientation;*
 - iv. Seeking to justify comments;*
 - v. Posts left public.*

5. Mitigating features

- a. Registrant has been qualified since 1995;*
- b. Made admissions in respect of the posts;*
- c. No clinical concerns*

6. Previous interim order and their effect on sanctions

- a. The Registrant has not been subject to an Interim Order.*

7. Previous fitness to practice history

- a. Previous self-referral:*

- b. [PRIVATE].*

Sanctions available

8. *NMC submit that taking no action and a caution order are not suitable options for this case due to the number and variety of concerns. Guidance is found at SAN-3a and 3b.*
 - a. *Taking no action: this would not be an appropriate course of action as the regulatory concern of discriminatory behaviour is serious. The public protection and public interest elements in this case are such that taking no action would not be the appropriate response;*
 - b. *Caution Order: similarly, a Caution Order is also not suitable as this is a sanction aimed at misconduct that is at the lower end of the spectrum. In this case the concern involved multiple forms of inappropriate language. Given these concerns, a more effective sanction is required.*

9. *With regards to a conditions of practice order (COPO), the NMC submit that this option does not adequately address and reflect upon the number of breaches in this case. NMC guidance is found at reference SAN-3c.*
 - a. *It is always difficult to formulate or consider such conditions that effectively deal with homophobia/racism, which is an attitudinal problem in this case.*
 - b. *The level of concern in this case would require a higher level of sanction than a COPO. The guidelines refer to “When conditions of practice are appropriate” and the Panel may find that these conditions are not met.*
 - c. *Measurable, workable and appropriate conditions can be put into place to address instances such as clinical failures, however, a COPO would not suitably address discriminatory language or the attitudinal and behavioural concerns that were demonstrated over multiple posts.*

10. *The NMC submit the Registrant’s actions do warrant a suspension order (SO) but this would not be sufficient. Suspension guidance is found at reference SAN-3d, and includes some of the following (but not limited to):*
 - a. *“Key things to weigh up before imposing this order include:*

- *whether the seriousness of the case require temporary removal from the register?*
- b. *“Use the checklist below as a guide to help decide whether it’s appropriate or not. This list is not exhaustive:*
 - *a single instance of misconduct but where a lesser sanction is not sufficient”*
- c. *The seriousness of the regulatory concerns does warrant a temporary removal from the Register; however, the Registrant’s actions are not isolated but in fact a repeated misconduct where he expressed his views publicly over a longer period of time.*
- d. *A suspension order will not address the concerns in this case or proportionately provide for an appropriate response to such serious charges.*

11. The NMC submit that a striking-off order is appropriate in this case. The Panel may be assisted by guidance provided at reference SAN-3e. The NMC make the following submissions in response to the guidance:

- a. *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*
 - i. *The NMC submit that yes, they do. The charges found proven are those in the higher category of seriousness as per the guidance. There has been limited (if any) insight into these incidents and rather the Registrant has sought to counter-accuse those around him.*
- b. *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate is not removed from the register?*
 - i. *The NMC submit that no, it cannot. There has been repeated conduct over a period of time. The Registrant has been particularly unkind, and the public would be concerned that the Registrant be allowed to remain on the register; in particular when knowing the*

varied language used by the Registrant will have affected many people both as part of the general public, his workplace and those helping him.

- c. *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*
- i. *The NMC submit that yes, it is. As outlined in the guidance Panels "...will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse, midwife or nursing associate from the register". There is no further evidence that the Panel has read or seen which would justify pointing to a less severe sanction. A member of public may be concerned why a less severe sanction is imposed and most likely not accept that it would be a true and proportionate measure in response to the serious proven charges.*
- d. *Given that the charges involve discrimination, the Panel will also be assisted with guidance at reference FTP-3. This guidance says "The NMC takes concerns about bullying, harassment, discrimination and victimisation very seriously. Although bullying is not included as a prohibited behaviour under the Equality Act, it can have a serious effect on workplace culture, and therefore patient safety, if it is not dealt with" – further consideration includes:*
- i. *"When a professional on the register engages in these types of behaviours, the possible consequences are far-reaching";*
- ii. *"Members of the public may experience less favourable treatment, or they may feel reluctant to access health and care services in the first place";*
- iii. *"Where a professional on our register displays discriminatory views and behaviours, this usually amounts to a serious departure from the NMC's professional standards".*

iv. *“We've made clear that no form of discrimination including, for example, racism, should be tolerated within healthcare”*

e. *The law about healthcare regulation makes it clear that a nurse, midwife or nursing associate who has been discriminatory will always be at risk of being removed from the register. He had engaged in this conduct until his posts were reported and he would have most likely continued to make such posts until matters were brought to the NMC's attention. A striking off order should then be considered proportionate as the misconduct will raise fundamental questions surrounding the Registrant's respect and professionalism. Ultimately his actions (abusive comments, homophobia and racism) will be considered incompatible with continued registration.*

Sanction request:

12. *This case presents attitudinal concerns in nature. For all the reasons previously argued, the NMC submit that the appropriate sanction in this case is a:*

Striking-off Order

13. *The NMC have sought to assist the Panel by going through each of the possible sanctions and when weighing the evidence against the set guidance, it is justified that there be a striking-off order. Discrimination is a difficult form of behaviour to remediate. Although the Registrant has provided a Registrant's bundle, there is limited insight into his wrongdoings. These are behavioural concerns and the Registrant is no longer working in a nursing capacity to prove to the Panel that he has since changed his ways or received any further positive feedback from colleagues around him. His opinions offend multiple people, including those that are designed to protect him and his family (police and social services). This sanction would reflect that the conduct of the Registrant has been properly addressed and*

maintain trust with the public that the NMC do take such allegations seriously and will take swift and appropriate action.

14. Of course, the Panel are entirely at liberty to proceed as they deem most suitable.'

Decision and reasons on sanction

Before the panel considered their decision on sanction it took into account the telephone notes between Mr Berarie and his NMC case officer dated 28 February 2024 which stated that:

'Reg stated that he has no interest in the case and went on to say "if you don't mind me saying all public services are corrupt, I haven't received any support from any public service and not from the NMC in 10 years. The NMC is also the same. I am not interested in the case".

.... Reg responded and stated again that he has no interest whatsoever in the case he has left nursing and asked that no one from the NMC contacts him again via telephone or email. I confirmed to reg I would make a notice of this and pass his response on by way of a telephone note to the panel.

I thank reg for his time and ended the call. [sic]'

Having found Mr Berarie's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Mr Berarie's limited insight into his failings;
- A pattern of misconduct over a period of time;
- Multiple Facebook posts; and
- Combination of homophobic and/or discriminatory and/or offensive and racist language that are discriminatory against protected characteristics of race and sexual orientation.

The panel also took into account the following mitigating features:

- No previous clinical concerns;
- Mr Berarie engaged with NMC up until the hearing;
- Mr Berarie made admissions in respect of the Facebook posts; and
- The panel acknowledged Mr Berarie's circumstances around the time of the Facebook posts; and
- A reference from Mr Berarie's previous employer.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

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

The panel next considered whether placing conditions of practice on Mr Berarie's registration would be a sufficient and appropriate response. The panel is of the view that given the charges found proved reflect deep-seated attitudinal problems it would be difficult to formulate practical or workable conditions to address this. Furthermore, the panel concluded that the placing of conditions on Mr Berarie's registration would not adequately address the seriousness of this case and would not address the public interest issues identified. The panel noted that Mr Berarie had indicated to the NMC that he has no intention of returning to nursing.

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;*
and
- *No evidence of repetition of behaviour since the incident.*

The panel considered that this was not a single instance of misconduct as there were three Facebook posts over a 12 month period. The panel further considered whether Mr Berarie acknowledged the offensive nature of his Facebook posts or whether he continued to justify them and whether the Facebook posts demonstrated a deep-seated attitudinal problem. The panel noted Mr Berarie's letter dated 24 August 2020 in which Mr Berarie stated that '*they were for my personal notes and reflection which I intended for future use [sic] when I write my book about institutional abuses.*' The panel was of the view that this was demonstrative of Mr Berarie's true attitude and demonstrated an attitudinal problem.

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

the fundamental tenets of the profession evidenced by Mr Berarie's actions is fundamentally incompatible with Mr Berarie remaining on the register.

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

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

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

Mr Berarie's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that relevant circumstances included the extreme nature of the words used, the number of posts and length of the incident, the fact that Mr Berarie admitted making the posts, the fact that they were targeted at organisations and specific groups, the fact that others saw the posts, the fact that there was no repudiation of the words used and the fact Mr Berarie has not engaged with the hearing. The panel was of the view that the findings in this particular case demonstrate that Mr Berarie's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Berarie's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse

should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse. It further noted that this decision will have limited impact on Mr Berarie as identified in the telephone notes between Mr Berarie and his NMC case officer dated 28 February 2024 in which he stated that he is no longer working as a nurse.

Interim order

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

Decision and reasons on interim order

Mr Brahim, in his written submissions dated 11 March 2024, stated that:

15. 'Should the Panel make an order as to sanction beyond that of a caution, the NMC would invite that there be an interim order for a period of 18 months. The Panel will appreciate that the decision on sanction will not take effect until at least 28 days. The period of 18 months would therefore be sufficient should an appeal be lodged by the Registrant. The request and grounds argued for why an interim order is required would be the same as those previously presented at the misconduct and impairment stage. The Panel may agree that having no interim order would not be reflective of their finding that a sanction is required, beyond a caution.'

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary, proportionate and in the wider public interest. The panel had regard to the seriousness of the misconduct and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. It considered that to not impose an interim suspension order would be inconsistent with its earlier findings. It further noted that this decision will have limited impact on Mr Berarie as identified in the telephone notes between Mr Berarie and his NMC case officer dated 28 February 2024 in which he stated that he is no longer working as a nurse.

Therefore, the panel made an interim suspension order for a period of 18 months.

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

This will be confirmed to Mr Berarie in writing.

That concludes this determination.