

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

Substantive Hearing

**Thursday 12 – Tuesday 17 October 2023
and
9 February 2024**

Virtual Hearing

Name of Registrant: Valerie Anne Cameron

NMC PIN 79G0240E

Part(s) of the register: RN1: Adult Nursing - August 1982
RHV: Health Visitor - September 1994
V100: Community Practitioner Nurse Prescriber
– July 2001

Relevant Location: Cardiff

Type of case: Misconduct

Panel members: Caroline Rollitt (Chair, Lay member)
John McGrath (Registrant member)
Sue Davie (Lay member)

Legal Assessor: Peter Jennings

Hearings Coordinator: Khadija Patwary (12 – 17 October 2023)
Monsur Ali (9 February 2024)

Nursing and Midwifery Council: Represented by James Wilson, Case Presenter
(12 – 17 October 2023)
Matthew Kewley (9 February 2024)

Miss Cameron: Not present and unrepresented at the hearing
(12 –17 October 2023)
Present and represented at the hearing by Jim
Olphert, counsel (9 February 2024)

Facts proved: Charges 1)b) and 2)

Facts not proved:

Charges 1)a) and 3)

Fitness to practise:

Impaired

Sanction:

Suspension order without review (2 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Cameron was not in attendance and that the Notice of Hearing letter had been sent to Miss Cameron's registered address by recorded delivery and by first class post on 11 September 2023.

Further, the panel noted that the Notice of Hearing was also sent to Miss Cameron's representative at Thompsons Solicitors on 11 September 2023.

Mr Wilson, 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 Miss Cameron's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Cameron 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 Miss Cameron

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

The panel had regard to the email from Miss Cameron's representative at Thompsons Solicitors dated 4 October 2023 which stated:

'...The Registrant or her representative will not be attending the hearing. The Registrant understands and agrees for the hearing to proceed in her absence. We have attached the Registrant documents which include a reflective statement and Registrant's bundle of documents for the panel to consider.

[PRIVATE]..'

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 Miss Cameron. In reaching this decision, the panel has considered the submissions of Mr Wilson, the representations from Thompsons Solicitors made on Miss Cameron's behalf, and the advice of the legal assessor. It has had particular regard to the factors set out in the decisions 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 Miss Cameron;
- Miss Cameron's representative has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Three witnesses have been scheduled to give oral evidence;

- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in September 2019;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Cameron in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address. Miss Cameron will not be able to challenge the evidence relied upon by the NMC and will not be able to give oral evidence on her 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. Furthermore, the limited disadvantage is the consequence of Miss Cameron's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and not to provide oral evidence or make oral submissions on her own behalf.

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

Details of charge

That you, a registered nurse working as a health visitor;

- 1) On 17 or 18 September 2019, during a staff meeting, said the following inappropriate words, or words to the effect;

- a) That the area in which you were working was 'disgusting' and/or 'made [your] skin crawl' and/or **(not proved)**

 - b) That you wanted to run over a person or persons in the road because they were black or that it didn't matter if you ran them over because they were black. **(proved)**
- 2) Your conduct at Charge 1b above was racially abusive. **(proved)**
- 3) Your conduct at Charge 1b above was intended to be racially abusive. **(not proved)**

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

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

At the outset of the hearing, Mr Wilson made a request that this hearing be held partly in private on the basis that proper exploration of Miss Cameron's case involves [PRIVATE]. The application was made pursuant to Rule 19.

The email from Thompsons Solicitors also included a request that this hearing should be heard in private.

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

Having heard that there may be references to [PRIVATE], the panel determined to hold parts of the hearing in private in order to preserve the confidential nature of those matters. The panel was satisfied that these considerations justify that course, and that this outweighs any prejudice to the general principle of hearings being in public.

Decision and reasons on whether to admit hearsay evidence

The panel heard an application made by Mr Wilson under Rule 31 in relation to whether to allow the hearsay testimony provided on Miss Cameron's behalf into evidence. He submitted that this morning the panel received a bundle called "*Final Registrant Response Bundle – Redacted*" and within that bundle are nine character references/testimonials all dated in September. He stated that these have been created for the purposes of character references as opposed to evidence of fact. However, Mr Wilson submitted that upon discussion with the legal assessor it became obvious that actually there might be some evidence in there which would assist the panel as it addresses charge 3). This relates to whether the conduct of Miss Cameron at the meeting was intended to be racially abusive so there is the intention element there. He submitted that these statements deal with Miss Cameron's character and the type of person she's been for 10 or so years. He submitted that the nine character references can be accepted into evidence as they relate to Miss Cameron's general character, or at least those individuals who had experience of her general character and that they have never witnessed anything racist.

Mr Wilson submitted that in relation Ms 1's character reference, she is a witness of fact as she was at the meeting and her statement is inadmissible. He submitted that there has been no application from Miss Cameron's representative at Thompsons Solicitors to adduce this evidence. He stated that this is not a witness statement signed with a statement of truth and the witness will not be at this hearing to confirm the context or to have their evidence tested. Mr Wilson submitted that this is not the sole evidence in relation to any of the charges and the NMC have three witnesses. He stated that Miss Cameron has also given her account of what happened. Mr Wilson submitted that to

include this hearsay testimony into evidence would be unfair to the NMC as it contradicts the NMC's case and can't be tested.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application in regard to Ms 1 serious consideration. The panel noted the need for fairness to both the NMC and Miss Cameron. It was of the view that this evidence is not the sole and decisive evidence on any point as there is other evidence available to it which is not entirely different from this evidence. Also, the reliability of the evidence can be tested as the NMC has its own witnesses to the same incident. It further noted that Miss Cameron had decided to include this in her response bundle for the panel to review. However, the panel is conscious of the need to consider the appropriate weight to put on this evidence as it is unable to test it directly in oral questioning.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay evidence of Ms 1 but the panel would give it what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Background

The charges arose whilst Miss Cameron was employed as a Health Visitor at Cardiff and Vale University Health Board (the Board). On 17 or 18 September 2019, Miss Cameron attended a work meeting and during this meeting she allegedly made a racist comment. It is alleged that this comment alluded to Miss Cameron wanting to run someone over as they were "*black*". A local investigation was commenced, and Miss Cameron was given a first written warning which remained on file for one year, she later resigned from the Board in 2021 and retired.

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 with the submissions made by Mr Wilson on behalf of the NMC and by the written representations from Thompsons Solicitors made on Miss Cameron's behalf.

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

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

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

- Witness 1: Community Nursery Nurse at the Board at the time of the allegations;
- Witness 2: Practice Development Co-ordinator for Health Visiting at the Board at the time of the allegations;
- Witness 3: Health Visitor at the Board 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 also the evidence provided by Miss Cameron, including her reflective statement, the reference from Ms 1 and the testimonial evidence.

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

Charge 1)a)

- 1) On 17 or 18 September 2019, during a staff meeting, said the following inappropriate words, or words to the effect;
 - a) That the area in which you were working was ‘disgusting’ and/or ‘made [your] skin crawl’ and/or

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 1’s witness statement, local statement and her oral evidence. It also took into account Miss Cameron’s reflective statement and her local statement dated 27 September 2019.

The panel considered Witness 1’s local statement in which she stated that “*During meeting Health Visitor Val Cameron saying how disgusting the area was and that it is dirty and made her feel horrible...*” Further, Witness 1 in her witness statement stated that “*Valerie was quite new to the team and had recently been moved to the area. I don’t think she was too happy about this. She was moaning to the people at the table about how disgusting the area was and being really nasty about it. She would make comments such as ‘the area makes her skin crawl’.*” The panel also considered Witness 1’s oral evidence in which she told the panel that Miss Cameron had discussions about her going into houses which “*made her skin crawl.*”

The panel also considered Miss Cameron’s reflective statement in which she stated “*I do not accept the facts of this charge. At the meeting on September 18th 2019, I made a factual comment about what I observed as I drove through the area. I do not remember the exact words, or even the particulars of the rubbish to which I was referring but I reported what I saw. I believe this has been taken out of context and applied to the area as a whole which was not what I was describing. It would be dishonest for me to accept*

the charge because it was not what I said or implied” and “I also wish to make it clear that I simply reported what I saw that day. I remember the streets being extensively littered and I believe there was a lot of takeaway rubbish, possibly being attacked by seagulls which often happens as we are coastal here. I also described the person who stepped off the pavement into the path of my car.”

The panel further considered Miss Cameron’s local statement dated 27 September 2019 in which she stated, “[PRIVATE].”

The panel noted that the phrase “*made your skin crawl*” is only referred to by Witness 1. This was not included in her original local statement and was first introduced in her NMC witness statement and then further expanded in her oral evidence. Neither Witness 2 nor Witness 3 recalled Miss Cameron commenting in this way.

On balance, the panel was of the view that this may not have been part of what was originally said by Miss Cameron and therefore placed more weight on Witness 1’s local statement. Further, Witness 1’s witness statement was produced in March 2022, over two years after the incident had occurred whereas her local statement was produced close to the incident. As regards “*disgusting*”, none of the witnesses including Witness 1 in either of her statements suggest that this was a reference to people. It is a reference apparently to the area which she was driving through, and this was also confirmed by Miss Cameron.

The panel determined that in the absence of any other evidence, it could not be satisfied, on the balance of probabilities, that on 17 or 18 September 2019, during a staff meeting, Miss Cameron said the following inappropriate words, or words to the effect; that the area in which she was working was “*disgusting*” and/or “*made her [your] skin crawl.*” The panel accepts Miss Cameron made comments about the area through which she was driving, but it was not persuaded that what she said was inappropriate.

In light of the above, the panel therefore finds that the NMC has not discharged its burden of proof and finds charge 1)a) not proved.

Charge 1)b)

- 1) On 17 or 18 September 2019, during a staff meeting, said the following inappropriate words, or words to the effect;
 - b) That you wanted to run over a person or persons in the road because they were black or that it didn't matter if you ran them over because they were black.

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's and Witness 3's witness statements, local statements and oral evidence. It also took into account Witness 2's witness statement and oral evidence, Miss Cameron's local statement dated 27 September 2019, "Registrant Response" document, her Fitness to Practice Reflective Account and Ms 1's Character Reference dated 20 September 2023.

The panel considered Witness 1's witness statement in which she stated that "*Valerie then said that when she was driving there was a man in the road and because he was black she wanted to run him over.*" Further, Witness 1 in her local statement stated that "*Val then said when she was driving, there was a man on the road and because he was black, she wanted to run him over.*"

The panel also considered Witness 3's witness statement in which she stated that "*I asked Val what she was talking about and she said she had been driving through Tremofa and saw 2 black children in the road and thought about running them over. She then said "yes I do mean black".*" It also considered Witness 3's local statement in which she stated, "*She stated that she had been driving through Tremorfa and saw some black people and wanted to knock them over with a car, she said 'yes and I do mean black'.*"

The panel further considered Witness 2's witness statement in which she stated "*She said something like "As if it wasn't bad enough having to drive around Tremorfa a black man*

stepped out in front of my car. I should have run him over...I remember a person to the left of me saying "What did she say?" I am sure someone else said "You can't say things like that." I am not able to remember who made these comments as lots of people were talking at the same time." The panel noted that there is no evidence before to them to suggest that Miss Cameron had made this kind of comment on previous occasions and that all her colleagues were shocked that this was said by Miss Cameron and that it appears to be out of character for her.

The panel also considered Miss Cameron's statement dated 27 September 2019 in which she stated, *"I commented that a black man walked straight out in front of my car, rhetorically asking whether perhaps I should have knocked him over & flipantly adding "does that count?"* It further considered Miss Cameron's "Registrant Response" document in which she stated, *"The comment that I actually made "perhaps I should have hit him, would that count?" was a rhetorical question used as a processing device as I was still trying to recover from the horror of what could have happened."*

The panel considered Miss Cameron's Fitness to Practice Reflective Account in which she stated *"I mistakenly believed that my colleague had been driving some distance behind me and when I arrived at the meeting, I asked her "did you see that black man walk out in front of me? Perhaps I should have knocked him over? Does that count?" I was trying to process what had happened. I had no intention of either causing offence or appearing threatening in any way but was simply expostulating and words tumbled out in a rhetorical heap as I was in shock at the time."*

The panel noted that this was supported by Ms 1 in her Character Reference dated 20 September 2023 in which she stated, *"...I did not hear Val say black but I did hear her say the man had walked in front of her car. My impression was that Val felt she had a near miss – the man stepped out in front of her car relying on her to stop..."* The panel noted this statement was made four years after the incident had occurred and that it did not have the opportunity to hear direct evidence from Ms 1. It also noted that Ms 1 did not hear the

word “*black*”, which suggest she may not have taken on board the entirety of what had been said.

The panel determined that, whilst there was variation in the evidence from the witnesses, there was a general consistency around the fact that skin colour was referenced, someone had stepped out, and Miss Cameron had spoken about running them over. The panel also considered that the shocked response from the people in the meeting was consistent.

Witness 1 was consistent in her local statement, witness statement and oral evidence that Miss Cameron said she wanted to run the man over because he was black. Witness 3 arrived when the conversation was already in progress; her NMC witness statement contains what she conceded orally was an error in referring to two black children, but the panel accepted her evidence as to how that error arose. Apart from this her recollection in her local statement, witness statement and oral evidence supports Witness 1’s evidence.

Witness 2, Miss Cameron and Ms 1 on the other hand give accounts which are closer to the second formulation set out in the charge, that Miss Cameron did not say she wanted to run the man over but asked whether it would count or whether it would matter. Witness 2 however, does not seem to have made a local statement and her statement to the NMC is some years after the event. Miss Cameron herself has at different times given different versions of what she has said, and the panel has been unable to test her account in oral evidence. As the panel has set out above, Ms 1’s reference was written four years after the incident, it has not been tested by oral questioning, and there is some indication that she either did not hear, or did not recollect, the entirety of what was said. Further, the accounts of Witness 2, Miss Cameron and Ms 1 differ.

In view of those considerations the panel preferred the evidence of Witness 1 and Witness 3.

On that basis, the panel was satisfied on the balance of probabilities that on 17 or 18 September 2019, during a staff meeting, Miss Cameron said the following inappropriate

words, or words to the effect that Miss Cameron wanted to run over a person or persons in the road because they were black (or that it didn't matter if she ran them over because they were black).

In light of the above, the panel therefore finds charge 1)b) proved.

Charge 2)

2) Your conduct at Charge 1b above was racially abusive.

This charge is found proved.

In reaching this decision, the panel took into account the evidence considered in respect of charge 1)b). The panel also considered Miss Cameron's reflective statement.

The panel looked at this charge 2) separately from the next charge. The panel was of the view that although Miss Cameron in her Reflective Statement stated that this was a flippant comment, it noted Witness 1, Witness 2 and Witness 3's evidence as to how they reacted to this. The panel had regard to the facts proved in relation to charge 1)b) and on that basis it was satisfied on the balance of probabilities that Miss Cameron's conduct at charge 1)b) above was racially abusive. It would be unable to view those words in any other way.

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

Charge 3)

3) Your conduct at Charge 1b above was intended to be racially abusive.

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence considered in respect of charge 1)b). The panel also considered Miss Cameron's local reflective statement, and the evidence of Miss Cameron's testimonial witnesses.

The panel considered Miss Cameron's Fitness to Practice Reflective Account in which she stated *"I was trying to process what had happened. I had no intention of either causing offence or appearing threatening in any way but was simply expostulating and words tumbled out in a rhetorical heap as I was in shock at the time. I heard the words as they came out of my mouth and was instantly aware that it was not what I wanted to say and worse still could be perceived to mean that the man's life was unimportant because he was black. I acknowledged how awful it sounded and that it was unchristian. This was an instinctive choice of word as my personal belief is that all people should be treated equally regardless of race, colour or creed and this is completely in accordance with my professional standards as set out in 1.1 & 1.3 of the NMC code," treat people with kindness, respect and compassion /recognise diversity."*

The panel noted the consistent evidence from Witness 2 and Witness 3 that Miss Cameron was visibly upset and flustered when they first saw her at the meeting. [PRIVATE] and there is no reason to doubt that she had just been involved in a traffic incident where she narrowly avoided running into someone who stepped out in front of her car. The panel also noted the consistent evidence from all witnesses, both from the NMC and from the testimonial witnesses, that conduct of this sort was completely out of character.

The panel noted the consistent evidence from all the witnesses that, having made that comment, Miss Cameron immediately recognised that this was the wrong thing to say. She apologised to the meeting in general and to Witness 1. The panel also noted evidence from Witness 2 and Witness 3 that Miss Cameron was very upset after making the comment.

On the basis of all this evidence, the panel was not persuaded, on the balance of probabilities, that Miss Cameron's conduct at charge 1)b) above was intended to be racially abusive.

In light of the above, the panel therefore finds that the NMC has not discharged its burden of proof and finds charge 3) not 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 amounted to misconduct and, if so, whether Miss Cameron's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Miss Cameron's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Wilson invited the panel to take the view that the facts found proved amount to misconduct. He directed the panel to the terms of "The Code: Professional standards of practice and behaviour for nurses and midwives (2018) (the Code) and to the specific

paragraphs where, in the NMC's view, Miss Cameron's actions amounted to a breach of those standards.

Mr Wilson submitted that charges 1)b) and 2) breach the Code of Conduct and, when looking at the guidance produced by the NMC on misconduct in relation to non-clinical misconduct, discrimination in any form, but explicitly racial discrimination, is clearly regarded as unacceptable by the NMC, as would be expected by any professional body. He submitted that the allegations as found proved are clearly misconduct.

Submissions on impairment

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

Mr Wilson submitted that the racial discrimination is not easily remediable and because of its very nature it tends to be ingrained in the person who uttered the comments. He referred the panel to Miss Cameron's reflective accounts, which he stated demonstrated her immediate remorse at the time. He submitted that the panel in their determination at the facts stage noted that a number of witnesses have identified Miss Cameron as being genuine in her apology although one witness did not. There are also a number of reflective pieces in Miss Cameron's bundle which address her remorse.

Mr Wilson submitted that if the panel were satisfied that Miss Cameron has remediated then it might be entitled to find that she is not impaired. He submitted that Miss Cameron had been absent from this hearing, and somebody who would want to adequately show remorse and remediation would do so live in front of a panel.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

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

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

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

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.5 respect and uphold people's human rights

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...integrity at all times, treating people fairly and without discrimination, bullying or harassment'

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

This was a remark made to Miss Cameron's colleagues before the start of a meeting, and related to the fact she had narrowly avoided an accident when someone stepped out into the road in front of her car. In reaching its decision the panel has kept well in mind that

these are circumstances in which someone may well be shaken up and may not express themselves quite as they would do in other circumstances. However, the panel has found proved that what Miss Cameron said was racially abusive. The panel was of the view that the public would be concerned to know that Miss Cameron made a racially abusive comment and in the panel's judgement her actions in respect of the charges found proved, 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, Miss Cameron'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 and to maintain professional boundaries. They must make sure that their conduct 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...show that his/her/ fitness to practise is impaired in the sense that S/He:

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

The panel considered that Miss Cameron's misconduct had breached the principle of treating people with respect which is a fundamental tenet of the nursing profession and she has brought the profession into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find such an incident of racial abuse extremely serious. It went on to consider whether there is a risk of repetition and in doing so it assessed Miss Cameron's current insight, remorse and remediation.

In relation to insight and remorse, the panel took into account a number of Miss Cameron's reflective statements, character references/testimonials and witness evidence. The panel noted Miss Cameron's remorse, and her apology immediately following the incident. This was considered to be genuine by Witness 2 and Witness 3. The panel also considered that Miss Cameron had demonstrated insight in her reflective statements and had pursued a range of remediation activities including undertaking additional equality and diversity training.

While racism is likely to be a difficult characteristic to remedy, the panel noted there is no evidence that Miss Cameron holds racist attitudes generally. On the contrary, the panel

was satisfied that the misconduct related to a single comment on a single occasion. The panel did not find that it was intentional and evidence from all the witnesses and the character references/testimonials agreed that it was completely out of character. The panel determined, therefore, that the misconduct was capable of remediation and, with the level of remorse, insight and remediation shown by Miss Cameron, it was satisfied that it had been remediated and therefore the risk of repetition was low.

The panel therefore decided that a finding of impairment is not necessary on the grounds of public protection. However, 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 also to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding proper professional standards for members of those professions.

The panel concluded that public confidence in the profession would be undermined and that a member of public would be appalled and dismayed if a finding of current impairment were not made in this case due to the seriousness of any racial abuse. It therefore finds Miss Cameron's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel determined that Miss Cameron's fitness to practise is currently impaired, but on public interest grounds alone.

Interim order

Given that the hearing has not completed in its allocated time, the panel invited Mr Wilson to make submissions with regard to an interim order.

Pursuant to Rule 32(5), the panel has considered whether an interim order is required. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or is in Miss Cameron's own interests.

Submissions on interim order

The panel took account of the submissions made by Mr Wilson. He submitted that the public will be significantly concerned if an interim order was not put in place at this stage and that it is a matter for the panel whether to impose an interim order.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary in the public interest. The panel was of the view that due to the serious nature of the incident and Miss Cameron's racially abusive comment this meets the high bar for the necessity of an interim order in the public interest.

The panel made an interim suspension order for a period of 6 months. In reaching this decision the panel has borne in mind the impact of an order, professionally and otherwise, on Miss Cameron. It is satisfied that this order, and for this period, is proportionate.

This case is now adjourned and it will resume on 6 December 2023.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of two months. As a result of this order the NMC register will show that your registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and to the submissions of counsel. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Kewley submitted that, given that you have shown remorse and developed significant insight into your misconduct, it is not incompatible with you remaining on the NMC register. However, having considered the nature and seriousness of the misconduct found proved and the public interest considerations identified by the panel, the appropriate sanction in this matter is a suspension order so as to maintain public confidence in the nursing profession and uphold the reputation of the NMC as its regulator.

Mr Kewley said that, given the nature of the behaviour found proved by the panel, to impose no order or a caution order in this matter would not be appropriate. Similarly, he submitted that a conditions of practice order would not be appropriate as it would be difficult to envisage appropriate conditions which could be formulated given the non-clinical nature of the concerns.

Mr Kewley submitted that your behaviour demonstrated a marked failure to uphold the reputation of the nursing profession and behave in an appropriate manner. He submitted that a suspension order is appropriate given the panel's findings on impairment.

Mr Kewley submitted that a suspension order is necessary to reflect the seriousness of your misconduct, which can only be marked by a period of suspension. He therefore invited the panel to impose a suspension order for a period of 12 months to mark the seriousness of the misconduct and to address the wider public interest.

Mr Olphert, on your behalf, submitted that it is evident that this incident was out of character for you and that with the level of remorse, insight and remediation demonstrated by you, the panel can be satisfied that the misconduct found proved had been remediated. He therefore submitted that the risk of repetition was indeed very low.

Mr Olphert submitted that the misconduct had been found by the panel to have been an isolated incident within what was otherwise a very competent and long, unblemished

career. He submitted that you take full responsibility for your actions, there is no suggestion of any dishonesty or concerns pertaining to your clinical practice and there have never been any concerns about your conduct either before these incidents nor since they occurred.

Mr Olphert submitted that the gravity of the misconduct can be adequately addressed through the imposition of a caution order. He therefore invited the panel to consider a caution order, given the panel's findings and all of the mitigation. However, he submitted that if the panel is not with him on that submission and it deems that this is a suspension case, the panel should consider the imposition of a very short order taking into account that you have already been suspended since the last hearing.

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 NMC Sanctions Guidance (SG). The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating feature:

- The incident itself was serious

The panel also took into account the following mitigating features:

- You have demonstrated significant insight, remorse and remediation
- [PRIVATE].
- There had been a very recent change in your working environment that [PRIVATE].
- You made early admissions to the charges ultimately found proved

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 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, such an order would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum. Furthermore, it did not think that a caution order would address the public interest considerations in this case.

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

- *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;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *The conditions will protect patients during the period they are in force;*
and
- *Conditions can be created that can be monitored and assessed.*

The misconduct in this case did not relate to any aspect of your clinical practice. You made racially abusive comments which were very serious and had the potential to undermine public confidence in the profession. The panel was of the view that there are

no practicable or workable conditions that could be formulated, given the nature of the findings in this case.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not be sufficient to mark the public interest issues identified by the panel.

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

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

The panel was satisfied that this was a single instance of misconduct and there was no evidence of harmful, deep-seated personality or attitudinal problems. It was also satisfied that there was no evidence of repetition and clear evidence that this was an isolated and out of character episode. In its findings of impairment, the panel had determined that you had significant insight and remorse and had remediated, and there was a very low risk of the behaviour being repeated.

The panel considered whether a striking-off order would be proportionate. Taking account of all the information before it, the fact that you had been a nurse for 40 years without other regulatory concerns and the significant insight you have developed, the panel concluded that it would be disproportionate. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with you remaining on the NMC register.

The panel therefore decided that a suspension order is the most appropriate and proportionate sanction to impose in this case. The panel was of the view that this order satisfies the public interest and makes clear, both to nurses and to the public, that the profession takes a serious view of racially abusive comments or behaviour and that these will not be tolerated or overlooked.

The panel noted the hardship such an order may well cause you. However, in the panel's judgment this is outweighed by the public interest.

In deciding on the period of the order, the panel had regard to the SG concerning the effect of interim orders and bore in mind that you have already been suspended for nearly four months in relation to these matters. The panel therefore determined that a suspension order for a period of two months was appropriate in this case to mark the seriousness of the misconduct and to address the wider public interest engaged in your case.

In these circumstances, the panel was satisfied that it will not be necessary to extend the period of the order or to vary the order or make some other order under Article 29 of the Order. The panel therefore decided, pursuant to Article 29(8A) that Article 30 (1) will not apply and that there will not be a review hearing.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to declare to the public and the profession the standard of behaviour required of a registered nurse.

This decision will be confirmed to you in writing.

That concludes this determination.