

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

**Substantive Hearing
Monday 21 March 2022 – Friday 25 March 2022
Tuesday 28 June 2022
Thursday 30 June 2022**

Virtual Hearing

Name of registrant: Sarah Jane Hewston

NMC PIN: 08H1332E

Part(s) of the register: RNMH, Registered Nurse – Mental Health
(31 October 2008)

Relevant Location: West Midlands

Type of case: Misconduct

Panel members: Andrew Harvey (Chair, Lay member)
Sandra Lamb (Registrant member)
David Newsham (Lay member)

Legal Assessor: Christopher McKay

Hearings Coordinator: Emma Bland, Shela Begum

Nursing and Midwifery Council: Represented by Kevin Brown, Case Presenter

Miss Hewston: Present and represented by Nicholas Hall,
instructed by the Royal College of Nursing (RCN)

Facts proved: Charges 1a, 2a, 3a (charges admitted)
Charges 1b, 1c, 1d, 2b, 2c, 2d, 3b, 3c, 3d.

Facts not proved: N/A

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Details of charge [as amended]

That you, a registered nurse

1. At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made

- (a) inappropriate and/or
- (b) discriminatory and/or
- (c) offensive and/or
- (d) racist

Remarks or words to the effect set out in Schedule 1

2. At the same hospital in the EAS office in the week commencing the 13th August 2018 made an

- (a) inappropriate and/or
- (b) discriminatory and/or
- (c) offensive and/or
- (d) racist

Remark or words to the effect set out in Schedule 2.

3. Between November 2016 and August 2018, reposted and / or shared images and / or posts with colleagues from your Facebook social media page which were

- (a) inappropriate and/or
- (b) offensive and/or
- (c) racist and/or
- (d) liable to incite hatred

Which include images and / or posts listed in Schedule 3

Schedule 1:

To Colleague A and B

1. That Polish and/or foreigners generally come over here with expectations, that there are too many of them, something needs to stop it and send them back.

To Colleague A, B and C

2. That Asians and/or Muslims and/or Polish and/or foreigners are responsible for acid attacks and/or increase in acid attacks

To Colleague B

3. That having done wrong, the persons set out in (2) play the racist card.

To Colleague B

4. That immigrants come into country and they think it is all roses, and when they get here, it is not what they thought it would be

To Colleague B

5. That Asian males groom (as amended)

To Colleague C

6. That Eastern Europeans use the UK welfare system to their advantage

To Colleague C

7. That burkas should be banned in this country [England]

Schedule 2

To Colleague A

That in the context of an Asian man presenting unusually, stated it was because they all married their cousins.

Schedule 3

Adopting the top right corner appendix number to VG/4

1. Appendix 11: "I am proud to be English" – picture of a bacon sandwich.
2. Appendix 12: "Respect Ramadan No Bikinis".
3. Appendix 13: "I thought I was being spied over the fence"; image of an umbrella resembling a burka (as amended)
4. Appendix 14: "That's not his daughter – that's his wife"
5. Appendix 16: "So you can advertise Ramadan on buses"
6. Appendix 17: "Gun Totin Christians – "Should bacon be banned?"
7. Appendix 19: Muslims in Birmingham UK during Ramadan they want the road closed so they can break fast"

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

Decision and reasons on application to admit written statements

The panel heard an application made by Mr Brown under Rule 31 to allow into evidence the written statements of Witness 4 and Witness 5. Witnesses 4 and 5 were not present at

this hearing and, whilst the NMC had made sufficient efforts to ensure that these witnesses were present, both witnesses were unable to attend today due to ill health.

Mr Hall indicated that he did not oppose the application.

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 Witness 4 and Witness 5 serious consideration. The panel noted that the statements of both witnesses had been prepared in anticipation of being used in these proceedings and contained the paragraph, 'This statement ... is true to the best of my information, knowledge and belief' and were signed.

The panel considered whether you would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Witness 4 and Witness 5 to that of a written statement.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statement of Witness 4 and Witness 5, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

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

At the outset of the hearing, Mr Brown made a request that parts of this hearing be held in private on the basis that proper exploration of your case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Hall indicated that he supported the application to the extent that any reference to [PRIVATE] 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.

The panel determined to rule on whether or not to go into private session in connection with the [PRIVATE] as and when such issues are raised in order to protect their interests.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Brown, on behalf of the NMC, to amend the wording of schedule 1, item 5.

Mr Brown invited the panel to allow an amendment to schedule 1, item 5 to include the insertion of a single word, "*males*". The complete proposed amendment would therefore read, "*That Asian males groom*". It was submitted by Mr Brown that the following proposed amendment would provide clarity and more accurately reflect the evidence:

"Schedule 1:

...

To Colleague B

5. That Asian **males** groom"

Mr Hall did not raise objections to the proposed amendment.

A subsequent application was made by Mr Brown to amend the wording of schedule 3, item 3.

Mr Brown invited the panel to allow an amendment to schedule 3, item 3 to remove the words “*burka over drainpipe*”, and the insertion of “*image of an umbrella resembling a burka*”

It was submitted by Mr Brown that the following proposed amendment would provide clarity and more accurately reflect the evidence:

“Schedule 3:

...

3 . Appendix 13 “I thought I was being spied over the fence: ~~image of burka over drainpipe~~ **image of an umbrella resembling a burka**”

Mr Hall did not raise objections to the proposed amendment.

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

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

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Hall, who informed the panel that you made full admissions to charges 1a, 2a and 3a.

The panel therefore finds charges 1a, 2a and 3a proved in their entirety, by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Brown on behalf of the NMC and by Mr Hall on your behalf.

The panel accepted the advice of the legal assessor.

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 witnesses called on behalf of the NMC:

- Witness 1: Safeguarding Practitioner then employed by Dudley & Walsall Mental Health Partnership Trust.
- Witness 2: Registered Mental Health Nurse then employed by Dudley & Walsall Mental Health Partnership Trust.
- Witness 3: Senior Clinical Lead for Mental Health Assessment Services then employed by Dudley and Walsall Mental Health Partnership Trust.

The witness statements of Witness 4 and Witness 5 were also read out.

The panel also heard evidence from you under affirmation.

Background

The charges arose whilst you were employed as a Band 6 Community Psychiatric Nurse at Dorothy Pattison Hospital, which was then part of Dudley and Walsall Mental Health Partnership NHS Trust.

It is alleged that you behaved inappropriately in the workplace by making discriminatory comments whilst on shift and in conversation with numerous colleagues on two occasions. These conversations are alleged to have taken place in office environments and no patients were present. However, the conversations were overheard by other members of staff.

It is further alleged that you behaved inappropriately on social media by sharing or re-posting discriminatory posts on your Facebook profile. You had also allegedly shown a discriminatory post from your phone to a colleague whilst on shift.

The conversation was reported to your manager and a local investigation followed. During the local investigation, discriminatory posts that you are alleged to have shared or re-posted on your Facebook profile were brought to the attention of your manager and the local investigation panel. You were subsequently dismissed from the Trust and your appeal was unsuccessful.

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 both the NMC and Mr Hall.

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

Charge 1a, Items 1 - 7 in Schedule 1

That you a registered nurse

1. At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made

(a). inappropriate

Remarks or words to the effect set out in Schedule 1

Schedule 1:

To Colleague A and B

- 1. That Polish and/or foreigners generally come over here with expectations, that there are too many of them, something needs to stop it and send them back.*

To Colleague A, B and C

- 2. That Asians and/or Muslims and/or Polish and/or foreigners are responsible for acid attacks and/or increase in acid attacks*

To Colleague B

- 3. That having done wrong, the persons set out in (2) play the racist card.*

To Colleague B

- 4. That immigrants come into country and they think it is all roses, and when they get here, it is not what they thought it would be*

To Colleague B

- 5. That Asian males groom*

To Colleague C

6. *That Eastern Europeans use the UK welfare system to their advantage*

To Colleague C

7. *That burkas should be banned in this country [England]*

This charge is found proved by admission.

In reaching this decision, the panel took into account the evidence within the documentation, the witness evidence and also your evidence. The panel noted that you accept that you had made these statements and further, you accept that these statements are inappropriate.

The panel determined that the statements were outside of any clinical discussion that was taking place. The panel further noted your reflective statement dated March 2022 and your oral evidence in which you accept you had made these statements as you thought you were *“being humorous having banter and was winding [Witness 1] up...”*. The panel was of the view that this was a wholly inappropriate approach to such sensitive subject matters. The panel further noted that these statements were wholly inappropriate in a work-place setting within an office in a mental health unit with a number of colleagues present.

Charge 1b, Schedule 1 Item 1

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(b) discriminatory

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 1:

To Colleague A and B

1. That Polish and/or foreigners generally come over here with expectations, that there are too many of them, something needs to stop it and send them back.

This charge is found proved.

The panel considered the definition of “*Discrimination*” and “*Discriminatory*” which was provided by the Independent Legal Assessor. Discrimination is “*the unfair treatment of a person, racial group, minority etc based on prejudice.*” Discriminatory is understood to mean being “*based on or showing prejudice, biased*”.

The panel was of the view that your statement highlighted specific racial or ethnic groups and made unfounded generalisations with regard to their view points and the number of people from such groups in the country. It was of the view that your words in stating that something should be done to “*send them back*” demonstrated that this was a discriminatory statement.

The panel also had regard to the statement of Witness 1 who noted your words and stated that she was “*shocked*” by them and that in response, she had told you that she “*[did] not agree*” with your view and “*[welcomed] diversity*”.

Charge 1b, Schedule 1 Item 2

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(b) discriminatory

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 2:

To Colleague A, B and C

2. That Asians and/or Muslims and/or Polish and/or foreigners are responsible for acid attacks and/or increase in acid attacks

This charge is found proved.

The panel was of the view that this statement was discriminatory as it made unfounded generalisations and attributed serious criminal conduct to particular ethnic and religious groups. In reaching this decision, the panel had regard to your own admissions and the accounts of Witness 1 and Witness 2, contained in their witness statements and the accounts given in their oral evidence.

Charge 1b, Schedule 1 Item 3

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(b) discriminatory

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 3:

To Colleague B

3. That having done wrong, the persons set out in (2) play the racist card.

This charge is found proved.

The panel was of the view that the term, “[playing] the racist card” was discriminatory and implied that members of the ethnic and religious groups you had cited, namely, Asian males, Polish people and other foreigners, cynically exploit their race or religion as an excuse, or to gain an advantage. The panel was of the view that the term displayed clear prejudice to the ethnic and religious groups you had identified. Further, as this term mentions “race”, it is by its very nature discriminatory.

The panel took into account the evidence of Witness 2 who as an Asian male, was of the same ethnic group you had made the comment about. As one of your colleagues, he was particularly impacted by your comments and he noted in his statement that his understanding of your words was that “immigrants and Asian males carry out acid attacks and then cry racist without taking responsibility”.

Charge 1b, Schedule 1 Item 4

That you a registered nurse

- 1. At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(b) discriminatory

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 4:

To Colleague B

4. That immigrants come into country and they think it is all roses, and when they get here, it is not what they thought it would be”

This charge is found proved.

The panel considered this comment in the wider context of the discussion that was taking place. The panel noted this was a generalised statement relating to a minority and asserts that the minority group in question, namely immigrants, all behave in the same way and think in the same way. As this comment related to a minority group and displayed a level of prejudice, the panel determined the comment was discriminatory.

Charge 1b, Schedule 1 Item 5

That you a registered nurse

1. At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made

(b) discriminatory

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 5:

To Colleague B

5 That Asian males groom.

This charge is found proved.

The panel noted that this comment makes generalised assumptions that a particular minority ethnic group, namely Asian males, engage in the criminal activity of grooming. The panel determined that this comment was prejudiced and discriminatory. The panel also noted that this comment did not arise in a clinical discussion context.

Charge 1b, Schedule 1 Item 6

That you a registered nurse

- 1. At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(b) discriminatory

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 6:

To Colleague C

6 That Eastern Europeans use the UK welfare system to their advantage

This charge is found proved.

The panel noted this remark arose in the context of a Polish patient who had expressed worry regarding her care and dissatisfaction with the NHS. It was of the view that your comments were a reactionary and antagonistic way of responding to legitimate clinical and service concerns from a patient. The panel determined that this comment was a generalised statement regarding group behaviour of an ethnic minority of Eastern European people, and as such, this comment was discriminatory.

Charge 1b, Schedule 1 Item 7

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(b) discriminatory

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 7:

To Colleague C

7 That burkas should be banned in this country [England]

This charge is found proved.

The panel considered the context in which this remark arose. The panel noted your reflective statement dated March 2022 in which you describe your comments as “*banter*” to be “*humorous*”, and that you were doing so to “*wind [Witness 1] up*”.

It further noted the written statement of Witness 4 which stated that you showed her a picture from Facebook which “*was a joke about somebody wearing the burka*”. Their witness statement went on to state that you “*showed [her] this photo before [you] made the comments about Muslims to [Witness 2] and [Witness 1]*”. The panel was of the view that your comment regarding the banning of burkas was a generalised statement which was prompted by the immediate context in which you shared an image which joked about the burka. As such, the panel determined that this remark was discriminatory.

The panel acknowledged that you accept you made the remark and noted that you offered a justification for this. You stated that as a mental health nurse your preference was to see people’s faces to read their expressions and emotions. However, the panel noted that your

remarks on burkas did not arise from a professional or clinical discussion, rather, it arose from the sharing of an image with another colleague. Taking this context into account, the panel determined this was a discriminatory remark and not based on professional judgement.

Charge 1c, Schedule 1 Item 1

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(c) offensive

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 1:

To Colleague A and B

1. That Polish and/or foreigners generally come over here with expectations, that there are too many of them, something needs to stop it and send them back.

This charge is found proved.

The panel considered the definition of “*offensive*” and determined that the ordinary everyday meaning would be applied to this word.

The panel determined that this was an offensive remark. The panel was mindful that the remark was also found to be inappropriate and discriminatory. It was of the view that a reasonable member of the public would be offended by a registered nurse making such

remarks in a work environment. The panel further determined that a Polish patient or patient of another nationality would also find these remarks offensive, particularly as they were made in a healthcare setting.

Charge 1c, Schedule 1 Item 2

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(c) offensive

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 2:

To Colleague A, B and C

2. That Asians and/or Muslims and/or Polish and/or foreigners are responsible for acid attacks and/or increase in acid attacks

This charge is found proved.

The panel was mindful that these remarks were found to be both inappropriate and discriminatory. The panel determined that this statement was offensive. In support of this conclusion, the panel noted the witness statement of Witness 2, who was particularly impacted and offended by your comments in relation to acid attacks. He notes his immediate reaction to your comments: *"I am an Asian male, and so I went quiet at this point. I was speechless...I felt really uncomfortable about the whole situation...this conversation made me think about whether she felt the same about me she felt about Asian males in general"*. In his evidence before the panel, Witness 2 further stated that he continues to find these remarks offensive and that they made him feel *"vulnerable"*.

Further, you acknowledge in your reflective statement dated March 2022 that “two colleagues had taken offence to what [you] had said and had made a complaint in writing”.

Charge 1c, Schedule 1 Item 3

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(c) offensive

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 3:

To Colleague B

3. That having done wrong, the persons set out in (2) play the racist card.

This charge is found proved.

The panel determined that this was an offensive remark. It was mindful that it had also found these remarks inappropriate and discriminatory. In reaching this conclusion, the panel had regard to the particular impact this had on Witness 2 and noted that he was offended by this and continued to be concerned at the point at which he gave evidence. His witness statement stated that he felt “*uncomfortable*” following your remarks. He further stated: “*I was the only Asian male in the office at the time. I could not wait to leave the office but I did not want to walk out ... I felt angry, but I also felt insecure to say anything back*”.

Charge 1c, Schedule 1 Item 4

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(c) offensive

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 4:

To Colleague B

4. *That immigrants come into country and they think it is all roses, and when they get here, it is not what they thought it would be”*

This charge is found proved.

The panel determined that this was an offensive comment within the wider context of the other inappropriate and discriminatory remarks. The panel noted that a patient may feel offended and concerned that a nurse, who is responsible for providing care to patients of a diverse background, would make such comments within the work place.

Charge 1c, Schedule 1 Item 5

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(c) offensive

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 5:

To Colleague B

5That Asian males groom.

This charge is found proved.

The panel determined that this was an offensive remark. The panel was of the view that an Asian male would be offended by this generalised and discriminatory comment, as would any other member of the public or a patient. In reaching this conclusion, the panel had regard to the evidence of Witness 2 who stated he was “*speechless*” and went quiet in response to your specific comments regarding Asian males grooming for abusive sexual purposes.

In evidence before the panel, witness 2 also stated that these comments highlighted a wider issue in healthcare about professionals’ views and opinions and the adverse impact this may have on public confidence in the wider nursing profession.

Charge 1c, Schedule 1 Item 6

That you a registered nurse

- 1. At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(c) offensive

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 6:

To Colleague C

6 That Eastern Europeans use the UK welfare system to their advantage

This charge is found proved

The panel noted the context in which this remark arose, which was in response to concerns expressed by a Polish patient. The panel determined that this remark was offensive in light of the context in which it was made. The panel was of the view that an Eastern European patient would be offended and worried to find that a nurse had such views and would question whether this would disadvantage their care. These remarks may also dissuade patients of Eastern European origin, or others, from using the professional services of a nurse or accessing healthcare.

Charge 1c, Schedule 1 Item 7

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(c) offensive

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 7:

To Colleague C

7 That burkas should be banned in this country [England]

This charge is found proved

The panel was mindful that this comment was inappropriate and discriminatory. The panel determined that both Muslim and non-Muslim people would find this comment offensive. The panel acknowledged the specific context in which this remark arose, which was prompted by an image which joked about the burka. The panel noted that an element of this image would have been ridiculing and mocking of an ethnic minority group's religious dress. In light of this context, the panel determined that this was an offensive remark.

Charge 1d, Schedule 1 Item 1

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(d) racist

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 1:

To Colleague A and B

1. That Polish and/or foreigners generally come over here with expectations, that there are too many of them, something needs to stop it and send them back.

This charge is found proved.

The panel accepted the definition of racism provided by the independent legal assessor, “racism is the *belief that races have distinctive cultural characteristics determined by hereditary factors and that this endows some races with an intrinsic superiority*”. The independent legal assessor further highlighted another aspect of racism: “*abusive or aggressive behaviour towards a member of another race on the basis of a belief of superiority*”.

The panel determined that this remark was racist. It had regard to the immediate context in which this remark was made. The panel was of the view that these comments were antagonistic towards a Polish patient who had raised concerns with regard to her care. The panel had particular regard to the words “*send them back*” which the panel found enforced a distinction and racial superiority between non-Polish and Polish people.

Charge 1d, Schedule 1 Item 2, 3 and 5

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(d) racist

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 2:

To Colleague A, B and C

2. *That Asians and/or Muslims and/or Polish and/or foreigners are responsible for acid attacks and/or increase in acid attacks*

Schedule 1 Item 3:

To Colleague B

3. That having done wrong, the persons set out in (2) play the racist card.

Schedule 1 Item 5:

To Colleague B

5 That Asian males groom.

These charges are found proved.

The panel determined these comments were racist. It found that these were abusive and aggressive comments which assigned behaviours and characteristics to a race which is both discriminatory and racist.

The panel also had regard to the statement of Witness 2 who acknowledged his experiences of racism in his school life and professional life and stated the following with regard to the racism displayed in your remarks: *“racism is racism and there is no place in nursing for it”*.

Charge 1d, Schedule 1 Item 4 and 6

That you a registered nurse

- 1. At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(d) racist

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 4:

To Colleague B

4. That immigrants come into country and they think it is all roses, and when they get here, it is not what they thought it would be”

Schedule 1 Item 6:

To Colleague C

6 That Eastern Europeans use the UK welfare system to their advantage

These charges are found proved.

The panel determined that these were racist comments. The panel was of the view that the comments assigned views and behaviours to a group based on its ethnicity. The panel further noted that an immigrant patient would find the comments derogatory and abusive. The panel therefore found that these comments were racist.

Charge 1d, Schedule 1 Item 7

That you a registered nurse

1. *At the Dorothy Pattison Hospital in the Walsall Crisis Team office on the 18th August 2018 made*

(d) racist

remarks or words to the effect set out in Schedule 1

Schedule 1 Item 7:

To Colleague C

7 That burka should be banned in this country [England]

This charge is found proved.

The panel determined that this was a racist comment. It noted the specific context in which this remark arose, whereby you had shown Witness 4 a photograph which joked about the burka. The panel noted that you accept you had made these comments to be “*humorous*” and this was distinct from the issue of not being able to see a patients face in a clinical context. The panel determined your comment stemmed from the image alone, and therefore is abusive towards a particular race or part of the population and is therefore racist.

Charge 2

That you a registered nurse

2. At the same hospital in the EAS office in the week commencing the 13th August 2018 made an

(a) inappropriate and/or

(b) discriminatory and/or

c) offensive and/or

(d) racist

Remark or words to the effect set out in Schedule 2.

Schedule 2

To Colleague A

That in the context of an Asian man presenting unusually, stated it was because they all married their cousins.

(a) Inappropriate

This charge is found proved.

The panel noted that this element of charge 2 was admitted.

The panel determined that this was an inappropriate remark that was not made in the context of a clinical diagnosis. Rather, this was a broad generalisation that was not appropriate for the workplace.

The panel further noted that you are a Band 6 nurse and these remarks have the potential to generate the same biases and prejudices in more junior and inexperienced colleagues, and as such, the comments were also inappropriate for this reason.

(b) Discriminatory

This charge is found proved.

The panel determined that this was a discriminatory remark. The panel was of the view that you had highlighted a particular racial group and made unfounded allegations with regard to an entire racial group's heritage. The panel was of the view that this was particularly dangerous as this was an unfair comment on a patient based on their racial group and an unscientific and unproven dismissal of their clinical needs. The panel did not accept your explanation for these comments which was that you had watched a documentary about genetics and were discussing this patient in that context.

(c) Offensive

This charge is found proved.

The panel was of the view that this was an offensive comment and that members of the public as well as Asian people would be offended. The panel noted that Mr Brown had questioned you and asked if you accept that this is offensive, to which you replied “*absolutely, yes*”.

(d) Racist

This charge is found proved.

The panel determined that these remarks were racist. The panel noted this was a generalised statement with the use of the word “*all*” which aligned specific behaviours to distinct cultures and a particular race. The panel also noted that this comment was abusive in unfairly attributing his health conditions to his parentage. It noted that in direct questioning by Mr Brown, you were asked if you accepted that this comment was racist and you stated “*absolutely, yes*”.

These charges were found proved.

Charge 3

3. Between November 2016 and August 2018, reposted and/or shared images and/or posts with colleagues from your Facebook social media page which were

(a) inappropriate and/or

(b) offensive and/or

(c) racist and/or

(d) liable to incite hatred

Which images and/or posts are listed in Schedule 3

Schedule 3: Appendix 11 – 19

(a). Inappropriate

This charge is found proved.

The panel acknowledged that you had made admissions at the outset that all social media posts contained in Appendix 11 – 19 were inappropriate. The panel determined that these posts were inappropriate given your status as a registered nurse.

Schedule 3 - Appendix 11: “I am proud to be English” – Picture of bacon sandwich.

(b). Offensive

This charge is found proved.

The panel determined that this was an offensive social media post. The panel noted that the image and tone of the text was antagonistic which stated *“I am proud to be English”* and *“How many people dare to like and share it?”*. The panel was of the view that this was an offensive post which clearly targeted Muslims.

The panel noted that you stated that you did not read the text due to your dyslexia. However, this explanation was not found to be compelling and the panel did not find a plausible reason as to why you shared this image and text.

(c). Racist

This charge is found proved.

The panel determined that this social media post was racist. The panel was mindful that there is no explicit reference to the Muslim faith in this particular post. However, it considered the totality of the social media posts made and the surrounding remarks.

Having considered this context which displayed clear prejudicial themes and attitudes towards Islam and members of the Muslim faith, it concluded that this social media post was racist.

The panel further considered the evidence of Witness 2 who regarded the social media posts as racist and noted that this was a “*clear dig at the Islamic community*” and that it was “*clearly against Muslim beliefs*”.

(d). Liable to incite hatred

This charge is found proved.

The panel accepted the advice of the Independent Legal Assessor with regard to the meaning of the word “*incitement*”. The panel adopted a definition of incitement as being “*to stir up or provoke*”. The panel noted that proof of this allegation required particularly cogent and compelling evidence to support it because of the serious nature of the allegation.

The panel determined that this social media post was liable to incite hatred. It noted that in response to panel questions, you acknowledged that this social media post was capable of inciting hatred although this was not your intention when you posted it. Further, in response to questioning from Mr Brown, you also accepted that this post could make people angry about Muslims and may also prompt people to think negatively of Muslims.

The panel was mindful that this post was found to be racist and therefore the act of sharing this on Facebook could have a negative impact on someone reading it and could be liable to incite hatred.

Schedule 3 - Appendix 12 “Respect Ramadan No Bikinis”.

(b) Offensive

This charge is found proved.

The panel determined that this was an offensive social media post and would also be deemed so by members of the public.

The panel noted the direct juxtaposition of an image of a sign requesting respect for Ramadan and the image of naked people beneath. The panel found that the aim of the image was to be offensive and that it was an attempt at humour and to ridicule, directed at a sacred religious fasting period.

The panel noted your explanation for posting this image, that you had done so out of respect for Ramadan and because you wanted to display your respect during the Ramadan period. However, the panel did not find your purported respect for the Muslim faith credible nor consistent with the re-posting of this image on social media. It further noted that the social media post itself was not informative with regard to Ramadan and further, was inherently offensive to people of the Muslim faith.

(c) Racist

This charge is found proved.

The panel determined that this was a racist social media post. The panel noted that you accepted re-posting the image without accompanying comment, which could be interpreted as anti-Islamic and racist. The panel also noted the clear sarcastic and mocking tone of the image which acknowledges that some Muslims have specific beliefs with regard to attire during religious periods. The panel further noted that the image made generalisations with regard to Muslim culture.

(d). Liable to incite hatred

This charge is found proved.

The panel determined that this was a racist social media post which was clear in its racist imagery. The panel was of the view that the image had no purpose other than to incite racial hatred. It noted that it may incite racial hatred and tension by influencing non-Muslim

people to have adverse feelings towards Ramadan and the rules associated with it, and also incite tensions within the Islamic community about the perceptions of non-Muslim's.

Schedule 3 - Appendix 13 "I thought I was being spied over the fence"; image of an umbrella resembling a burka.

(b) Offensive

This charge is found proved.

The Panel determined that the text and image of this social media post was offensive. It was of the view that the post was designed to be offensive and mocking of burkas and Islamic religious dress. The public would be of the same view.

The panel noted that you confirmed you now know that this social media post is offensive because it relates to the Islamic religion and beliefs, although at the time you found this post to be humorous.

(c) Racist

This charge is found proved.

The panel determined that this social media post is racist. It noted that the image in the photograph is an umbrella. The panel was of the view that the image and text together mock burkas and Islamic dress and would be deemed abusive by members of the public and people of the Muslim faith.

The panel noted that during questioning, you accepted that the main aim of the image was to compare the umbrella to a woman in a burka and you accepted that this could be deemed as offensive as this was related to people's religious beliefs.

The panel further noted that the image was derogatory to people of the Islamic faith by suggesting that Muslim people "*spied on*" or monitored the activities of other people, and as such, this was a racist social media post.

(e). Liable to incite hatred

This charge is found proved.

The panel determined that this social media post was liable to incite hatred. It noted that the image of the umbrella and the associated text has been found to be derogatory to the Islamic faith and racist. In the context of how it was viewed and discussed with a colleague and then posted on Facebook, the panel was of the view that this could incite hatred.

The panel further noted that the text of the social media post which suggested that Muslim people “*spied on*” or monitored the activities of others, was liable to generate hatred.

Schedule 3 - Appendix 14: “That’s not his daughter – that’s his wife”

(b) Offensive

This charge is found proved.

The panel determined that this was an offensive social media post.

The panel considered your purported reasons for posting this social media image of an older man and a young girl. You explained that this was because you wished to highlight a safeguarding issue. However, the panel did not accept this explanation and was of the view that this was highly implausible. The image was not of a patient in your care and you had no knowledge with regard to who the people were.

The panel noted that you had simply re-posted the image without any questions or comment requesting further information regarding the purported safeguarding issue. The panel further noted that you stated that you did not see the comments at the top of the page regarding Sharia law nor the inflammatory comments at the bottom, which the panel found implausible.

The panel was of the view that this social media post was designed to make a highly offensive judgement about the Islamic community and could not plausibly have been mistaken for a safeguarding issue. During questioning, the panel noted that you stated that you did not know the man and child in question and you did not take any other actions in escalating this as a safeguarding concern.

(c) Racist

This charge is found proved.

The panel determined that this was a racist social media post.

The panel was of the view that this was abusive to members of the Muslim faith and sought to attribute a highly inflammatory generalisation to a particular religious group.

The panel noted that the definition of racism that “*endowed some races with an intrinsic superiority*” was engaged in these circumstances by the quote at the bottom of the post which stated “*yet the world is silent...*”. This was clearly divisive and seeking to highlight the perceived differences between Muslims and non-Muslims.

(d) Liable to incite hatred

This charge is found proved.

The panel was of the view that this social media post was liable to incite hatred.

The panel noted that this was an emotive social media post that sought to link the alleged abuse of children with a particular community of faith in a highly inflammatory and racist manner. The panel was of the view that the whole purpose of it is to be derogatory, antagonistic and to potentially incite hatred.

The panel noted that you were asked directly during questioning by Mr Brown if you accepted that this post could cause people to have a negative view of Muslims, and you accepted that it would.

Schedule 3 - Appendix 16; “So you can advertise Ramadan on buses”

(b) Offensive

This charge is found proved.

The panel determined that this was an offensive social media post.

The panel noted that the text alongside the image was aiming to be critical of Ramadan, which is offensive.

The panel noted that you stated you were unaware of the text and had not seen it. It noted that the image in isolation made no sense without the text. You justified sharing this image by stating that you simply wanted to display your support for Ramadan. The panel found this justification implausible and lacking credibility in light of the general context and anti-Muslim theme of your other social media posts.

(c) Racist

This charge is found proved.

The panel determined that this social media post is racist. It determined that the purpose of the image and text was to be derogatory to the Muslim faith.

(d) Liable to incite hatred

This charge is found proved.

The panel determined that this social media post was liable to incite hatred.

It noted the prejudiced subtext of the post which sought to convey that Muslim periods of observance receive special treatment over Christian periods of observance such as

Easter. The panel noted that the post was inflammatory and designed to elicit negative feelings towards members of the Muslim faith.

Schedule 3 - Appendix 17: “Gun Totin Christians – “Should bacon be banned?”

(b) Offensive

This charge is found proved.

The panel was of the view that this was an offensive social media post that was designed to offend members of the Muslim faith with no other purpose behind it.

The panel noted the juxtaposition between the image of a Muslim person with a sign that says “*Respect our Quaran*” and the image of a person holding a copy of the Quaran next to a picture of bacon. The panel concluded this was highly offensive to both Muslims and non-Muslims.

(c) Racist

This charge is found proved.

The panel was of the view that this social media post was racist and is clearly designed to be abusive to people of the Muslim faith.

The panel further observed the divisive nature of the post with text at the bottom of the page which encouraged people to like and share the image. The panel noted that you effectively expressed these views by sharing the image without any further comments.

The panel noted that you also acknowledged this was racist in your response to questions.

(d) Liable to incite hatred

This charge is found proved.

The panel noted that this social media post was liable to incite hatred. It was of the view that posting a picture of bacon next to a group of Muslim people holding the Quran is inherently offensive and racist and encourages a confrontational attitude towards people of the Muslim faith.

The panel further noted that this was consistent with the general theme of your previous social media posts.

The panel noted that you also acknowledged this was liable to incite hatred in your response to questions.

Schedule 3 - Appendix 19; Muslims in Birmingham UK during Ramadan they want the road closed so they can break fast”

(b) Offensive

This charge is found proved.

The panel determined that this social media post was offensive, in particular, the text that accompanied the image.

You told the panel that your justification for posting the image was that you were concerned that there might be riots or civil unrest occurring in Birmingham. The panel found this justification to be lacking in credibility and implausible. The panel noted that the image provided no identifying detail as to the location of any potential riot or civil unrest, and that the text alongside the image was clear in its derogatory purpose towards Muslims and the practice of Ramadan. The panel noted the contradiction in your purported support of Ramadan, and your continued posting of social media images that were offensive to the Muslim faith.

(c) Racist

This charge is found proved.

The panel was of the view that this social media post was racist. In particular, it is abusive towards Muslim's observance of Ramadan and in relation to them fasting.

The panel also noted contradictions in your evidence where you initially denied that this post referenced Muslims, and then later acknowledged that it did.

The panel also noted the evidence of Witness 3 who was the investigation manager at the Trust who also reviewed the posts. He was of the view that your social media posts were racist. This is consistent with the panel's view, and it further identified a common theme that reflects a racist ideology towards people of the Muslim faith.

(d) Liable to incite hatred

This charge is found proved.

The panel determined that this social media post was liable to incite hatred. The text of the image is potentially divisive in that it seeks to suggest that Muslims are treated differently to, or more favourably than anyone else. This may generate negative or hostile feelings towards the Muslim community. The panel was of the view that this was an aim of the image and text in the post.

The panel further acknowledged that you agreed during questioning that this post could cause others to have a negative view of the Muslim community.

Submissions on interim order

Mr Brown reminded the panel that it may impose an order on grounds of public protection, or it may find that an order is otherwise in the public interest. He invited the panel to consider the facts found proved to assess the risk of harm.

Mr Brown submitted that the primary ground engaged in the current circumstances is the public interest, and he reminded the panel that there was a high threshold to satisfy with regard to this ground.

Mr Brown informed the panel that the NMC has conducted its own risk assessment and came to the conclusion that an interim order is not necessary. As such, no interim order is currently in place upon your registration. Mr Brown submitted that in these circumstances, there is no requirement to impose an interim order whilst awaiting a resumption of these proceedings.

Mr Hall submitted that an interim order is not necessary on public interest nor public protection grounds. He reminded the panel that this incident took place in 2018 and no regulatory concerns have been reported to the NMC since then. He therefore submitted an order is not required on public protection grounds.

Mr Hall submitted that the concerns in this matter are based on public interest concerns alone and do not involve patients. He reminded the panel of the case of *Shiekh (The Queen on the Application of Shiekh v General Dental Council [2007] EWHC 2972 (Admin))* which states that there is a high threshold for the imposition of an interim order on public interest grounds alone.

Mr Hall informed the panel that an interim order would impact you financially and that you [PRIVATE]. He further informed the panel that you are currently on a career break, your PIN has lapsed, and you will have to do a return to practice course to resume nursing in any event.

In light of the reasons outlined above, Mr Hall submitted that the imposition of an interim order in these circumstances would be disproportionate, punitive and draconian.

The panel accepted the advice of the legal assessor.

Decisions and reasons on interim order

The panel took into account that the test for the imposition of an interim order is that it must be necessary for the protection of members of the public or otherwise in the public interest or in the interests of the registrant. The panel decided that it was not necessary for the protection of the public to impose an interim order. In addition, the panel did not consider it was in your own interest for such an order to be made.

The panel determined that the high bar for imposition of an interim order on public interest grounds alone was satisfied in the circumstances of this case.

The panel was of the view that a reasonable member of the public in possession of the facts of this case would be concerned to find that a nurse in your circumstances would continue to appear on the register unrestricted.

The panel was of the view that conditions of practice would not be appropriate as there are no clinical skill issues in your case, and the charges that the panel has now found proven are serious and relate to behaviour and attitudinal concerns.

The panel decided to impose an interim suspension order for a period of up to 18 months.

The interim order shall be reviewed every 6 months or may be reviewed earlier on the application of either party. The interim order will lapse on the resumption of the substantive hearing.

[This hearing adjourned on 25 March 2022 after the panel made its findings in relation to the facts of the case. The hearing resumed on 28 June 2022].

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

The panel adopted a two-stage process in its consideration. 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, your fitness to practise is currently impaired as a result of that misconduct.

The panel heard live evidence from you under oath and from Witness 6 under Affirmation in relation to misconduct and impairment.

Submissions 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.*'

Mr Brown invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) in making its decision. Mr Brown identified the specific, relevant standards where your actions amounted to misconduct.

Mr Brown referred the panel to its findings in relation to the charges found proved. He submitted that they are extremely serious and that they relate to racism. He further submitted that although the comments made by you during the conversation were outside of any clinical discussions, they were made in a healthcare setting.

Mr Brown submitted that the behaviour which was demonstrated by you making the comments and publishing posts on social media does fall far below the standard expected of nurses. He further submitted that your actions amount to misconduct and demonstrate serious failures to meet the required standards of the nursing profession. Mr Brown submitted that racism has no place within the nursing profession and that respect for others is a fundamental tenet of nursing.

Mr Brown referred the panel to the case of *The Nursing and Midwifery Council v Hayes [2021]*. He informed the panel that the NMC published a report in relation to this case and specifically racism and fitness to practise. The report addresses the negative impact that racist and other discriminatory attitudes and behaviours have on people. The NMC has legal duties as a regulator to protect the public. The values of equality, diversity and human rights are fundamental requirements to be on the NMC register and these are enshrined in the Code and professional standards.

Mr Hall submitted that misconduct is accepted but that impairment is contested.

Submissions on impairment

Mr Brown moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant [2011] EWHC 927 (Admin)*.

Mr Brown began by referring to Dame Janet Smith's "test". He submitted that limbs b and c of the test are relevant to this case in that your actions have brought the nursing profession into disrepute and have breached fundamental tenets of the nursing profession. Mr Brown invited the panel to consider two separate aspects of the test. Firstly, the personal component which considers your current competence and behaviours. The second is the public component which addresses the need to protect service users and to declare and uphold proper standards of the nursing profession.

Mr Brown submitted that it is a matter for the panel to determine whether you have remediated your actions. He submitted that the charges found proved indicate attitudinal concerns which are more difficult to remediate.

In relation to insight, Mr Brown acknowledged that you have accepted making the remarks, and that the material you shared on social media was inappropriate, however he noted that you maintained that it was not offensive, discriminatory, or intentionally racist. Mr Brown submitted that you have given conflicting explanations for your actions during your evidence. He referred to comments made by you which suggested your Facebook posts were for the purpose of spreading awareness and inviting the opinions of others which does not support your suggestion that your actions were due to your ignorance or an unconscious bias. Mr Brown suggested that you were aware of the racist connotations associated with the contents of the posts you shared. He submitted that harm was caused and that your explanation that you were not intentionally being racist does not excuse the behaviour.

Mr Brown invited the panel to consider whether there is a risk of repetition of your misconduct. He submitted that your conflicting reasoning behind your actions demonstrates your lack of understanding of the seriousness of your comments and actions. However, Mr Brown invited the panel to consider evidence given by you and Witness 6.

Mr Brown submitted that public confidence in the profession would be undermined if a finding of impairment was not made in these circumstances. He invited the panel to consider what message would be sent to the public if a regulator does not mark the seriousness of racist comments as set out in the charges and make a finding of impairment. Mr Brown submitted that it is important to demonstrate that racist terminology will not be tolerated.

Mr Brown submitted that in this case, the public interest calls for a finding of impairment due to the serious, clear, and repeated racist comments which were made during the conversation and shared in social media posts over a period of several months. Mr Brown submitted that these posts were shared on a platform where there was potential for it to be brought to the attention of the public and bring the profession into disrepute. He submitted that the public expects standards to be maintained particularly in relation to racism in the profession.

In closing, Mr Brown submitted that it is necessary to make a finding of impairment on public interest grounds to declare and uphold proper standards.

Mr Hall addressed the panel on your behalf. He accepted that the facts found proved in the charges amount to misconduct. He then made submissions on impairment.

Mr Hall began by referring to the Dame Janet Smith's "test" set out in the case of Grant (supra) and submitted that limb a, which addresses public protection, is not relevant in this case. He referred the panel to its earlier reasons on the need for an interim order in March 2022 in which it determined that an interim order was not necessary for the protection of the public. Mr Hall supported the panel's findings on this matter and reiterated it. He submitted that the misconduct in this case, does not involve your clinical practice around patients.

Mr Hall referred to the public interest and submitted that a fully informed member of the public, who has witnessed the hearing and taken account of all the evidence and your circumstances would not expect or require a finding of impairment on public interest alone. Mr Hall submitted that there is a high bar in relation to a finding of impairment on public interest alone.

Mr Hall submitted that he appreciates the guidance about how racism is treated seriously by the NMC and further submitted that this is part of the reason for him accepting misconduct on your behalf.

Mr Hall submitted that it would be overly simplistic to say that you were intentionally acting in a racist manner or to call this the paradigm example of racial attitudes. He submitted that ultimately the comments made by you during the conversation emerged out of context and referred to the evidence of Witness 1. In relation to your comments relating to an Asian man presenting unusually, Mr Hall asked *"it's fair to say that she's made that comment jokingly and she was flippant."* To which Witness 1 responded *"Yeah, that's right"*.

Mr Hall referred to the evidence of Witness 2 which emphasised that you were a good colleague and that you got on well with Witness 2. Witness 2 expressed that he felt let down by you and Mr Hall submitted that the remarks made by you were a result of your ignorance and manifestation of an unconscious bias or unconscious racism.

Mr Hall referred to the charges that relate to Facebook posts. He submitted that although they were found proved, they are not as extremely serious as the NMC has suggested in the grand scheme of charges found proved.

Mr Hall submitted that ultimately there were no complaints about you and no evidence of these posts being made public as your Facebook account was private in that only a small group of your friends could see your posts. He submitted that the posts shared by you were not offensive and were not from illegal groups.

Mr Hall further informed the panel that there was no evidence of your profile showing that you were a nurse but that you informed the panel during your evidence that there may have been information relating to education and training in mental health.

In relation to insight and contesting a case, Mr Hall submitted that it is overly simplistic for the panel to place too much weight on the fact that allegations were contested as it is the registrant's right to do so. He further submitted that contesting the case should not be a mechanism that demonstrates a registrant is not showing insight.

Mr Hall submitted that this is particularly relevant in this case, as you accepted the misconduct, but it was ultimately for the NMC to prove its case and the panel to determine whether or not the actions were racist. Mr Hall acknowledged the importance of insight and submitted you have demonstrated an extreme level of insight. He submitted that you have satisfied the three factors in relation to insight in that you have taken a step back, realised what should have been done differently and acted differently in the future. He referred to the evidence of Witness 6 who informed the panel that you have established the route of why the misconduct occurred in order for it not to reoccur.

Mr Hall submitted that you have shown remorse from the outset and that you wanted to apologise when concerns were raised and took down the Facebook posts immediately after them being flagged.

Mr Hall submitted that you have engaged in these proceedings, during the hearing and during the NMC's investigation as well as the Trust's internal investigation. He further submitted that you should be given credit for your engagement.

In relation to remediation, Mr Hall submitted that whilst it is difficult to remediate attitudinal concerns, it is more difficult to prove remediation in relation to these concerns. However, he submitted that it does not mean the remediation has not occurred.

Mr Hall referred to the cross cultural awareness course you had undertaken in 2021 and that you now understand that different service users can present in different manners.

Mr Hall submitted that there is not a risk of repetition in this case as you have explained what you would do differently and how you would challenge these situations. He referred to the evidence of Witness 6 who explained seeing you act within a community of people from diverse ethnic backgrounds and act with the upmost integrity as well as be a vital member of the community.

Mr Hall submitted that the misconduct has not been repeated since the original concerns and that the misconduct occurred due to your ignorance and not thinking about the comments you were making.

Mr Hall invited the panel to consider the impact of these proceedings on you. He submitted that it has taken four years to get to the substantive hearing and this delay has caused mental and physical strain on you and your family.

In closing, Mr Hall submitted that a fully informed member of the public would not expect for a finding of impairment to be made in the public interest. He submitted that your fitness to practise is no longer impaired and you deserve the ability to move on and put these incidents behind you.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Rylands v General Medical Council* [1997] Lloyds Rep Med 139, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Cohen* [2008] EWHC 581 (Admin) and Grant (supra).

Decision and reasons on misconduct

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

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

'1 Treat people as individuals and uphold their dignity

1.1 treat people with kindness, respect and compassion

1.3 avoid making assumptions and recognise diversity and individual choice

1.5 respect and uphold people's human rights

3 Make sure that people's physical, social and psychological needs are assessed and responded to

3.4 act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care

9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues

9.3 deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

20.4 keep to the laws of the country in which you are practising (in respect of the incitement of hatred)

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

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your actions as set out in the charges fell far below the conduct and standards expected of a nurse. Further, the panel determined that your actions demonstrated a serious departure from the fundamental tenets of nursing practice. The panel first considered the charges individually and found that your actions did amount to misconduct in respect of each of the charges.

In relation to charge 1, the panel has considered the seven remarks or words to the effect set out in Schedule 1 separately. The panel found that the first remark on its own is discriminatory and offensive as well as racist. It further considered the context of the conversation and noted that initially there was a professional discussion taking place which you had entered and subsequently initiated an inappropriate conversation. The panel determined that the first remark does constitute misconduct.

The second remark relates to Asians, Muslims or Polish people being responsible for acid attacks. The panel found that this remark demonstrates racial stereotypes as well as

having been made in a professional environment and it determined that this constitutes misconduct.

The third remark (which relates to persons set out in the second remark) who “*play the racist card*”. The panel determined that this comment demonstrates professional misconduct, noting that it had already found this comment on its own racist.

In relation to the fourth remark, the panel determined that this comment was made during a conversation that was initially professional regarding a patient and therefore determined that such a remark being made displays a serious departure from the behaviours expected of a nurse.

The panel found that your comments in the fifth remark were offensive, racist and are not in line with the Code. The panel also noted that Witness 2 was affected by this remark. The panel therefore concluded that this amounts to misconduct.

In relation to the sixth remark, the panel considered that this related to an ethnic minority group and determined that in any circumstances, such a remark is not acceptable. The panel considered that this remark was made in a professional environment and does amount to misconduct.

The panel found that the seventh remark relating to the banning of burkas also constitutes misconduct. The panel is of the view that this remark was defamatory and determined that it is not acceptable to make such remarks in any environment and specifically in a professional environment.

In relation to charge 2 the panel determined that, having found each of the limbs proved, making discriminatory and racist comments demonstrates a serious departure from the Code and the fundamental tenets of the nursing profession. The panel is of the view that the remark as set out in Schedule 2 relates to ‘Asian men’ and ‘presenting unusually’ and

it is of the view that it is wholly unjustifiable to make such remarks. The panel therefore concluded that this amounts to misconduct.

The panel next considered Charge 3 and the images and social media posts as set out in Schedule 3. The panel considered the NMC guidance in respect of the use of social media for nurses and determined that the posts displayed a serious departure from what is expected of a registered nurse. The panel considered that you described having a 'private' account, however it determined that there was potential for your social media posts to end up in the public domain. The panel considered the context of the images and the associated captions and words. The panel noted that a number of the posts target the Muslim religion and a sacred Muslim festival, namely Ramadan, and it was of the view that these posts were wholly disrespectful towards the religion. The panel determined that, having found this charge to be offensive, racist and liable to incite hatred, these do constitute misconduct.

Having considered each of the facts proven individually constitute misconduct, the panel concluded that these facts collectively amounted to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. To justify that trust, nurses must act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. 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 determined that limbs b and c identified in the case of Grant are engaged in this case. It determined that your failures demonstrated a serious departure from the standards expected of a registered nurse. The panel is of the view that your misconduct has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel considered that there is no place for racism within the

nursing profession and that your actions as set out in the charges breached the fundamental tenets of the nursing profession.

Regarding insight, the panel considered that you have accepted that the contents in Facebook posts that you shared were inappropriate and that the remarks you made during a conversation within the work environment were inappropriate. However, the panel noted that the explanations you provided for your actions were conflicting and that these explanations did not demonstrate that you were taking full accountability for your actions. The panel noted that you explained that your actions were due to your ignorance or an unconscious bias. The panel found that the insight you demonstrated at this hearing predominantly related to the impact of your actions as well as these proceedings on you. The panel is of the view that your insight in relation to how your actions negatively affected your colleagues, the profession and the public confidence in the profession was far from sufficient.

The panel considered that the misconduct in this case would be difficult to remediate but not impossible. The panel carefully considered whether or not you have remedied your misconduct. The panel took into account the certificate of completion for the Cross-Cultural Awareness course dated 19 August 2021 as well as the certificate of completion of a number of online courses between 12 March 2019 and 16 March 2019. However, the panel is of the view that the concerns have not been sufficiently remedied. [PRIVATE]. The panel determined that this is suggestive of deep-seated attitudinal concerns. It also considered that during your evidence, you suggested feeling like you would be walking on eggshells or 'repressed' if you were to find yourself in a similar situation. The panel therefore determined that the concerns have not been remedied.

The panel is of the view that there is a risk of repetition. The panel noted that the charges do not relate to one single incident but instead concern several posts on social media as well as a conversation that had taken place at work. The panel is of the view that this demonstrates deep seated attitudinal concerns and given that it determined the insight was insufficient, there remains a risk of repetition.

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

The panel determined that a finding of impairment on public interest grounds is required as public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your 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 you off the Register. The effect of this order is that the NMC register will show that you have been struck-off the Register.

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

Submissions on sanction

The panel had regard to the Notice of Hearing, dated 9 February 2022, in which the NMC had advised you that it would seek the imposition of a striking-off order if the panel found your fitness to practise to be currently impaired.

Mr Brown invited the panel to carefully consider what sanction to impose upon your registration. He referred the panel to the SG and invited the panel to take this into account when making its decision. Mr Brown submitted that the NMC takes regulatory concerns relating to racism very seriously and accordingly recommends a sanction of strike-off. He submitted that the panel should consider what sanction would meet the public interest and declare and uphold professional standards.

Mr Brown submitted that your misconduct fell far below the standards expected of a registered nurse and breached fundamental tenets of the profession. He submitted that the regulatory concerns relate to racist conduct and publishing of Facebook posts which are liable to incite hatred and are considered very serious by the NMC. He submitted that these concerns are difficult to remediate as they demonstrate attitudinal concerns which may be deep seated. Mr Brown submitted that the panel will need to see strong evidence of remediation in order for it to be able to determine that you can return to nursing practice.

Mr Brown referred the panel to its findings in relation to your insight. He submitted that four years have passed since the original concerns and that the panel has made a finding of current impairment. He submitted that there has been a failure to sufficiently address and remedy the concerns in the four-year period since the incidents. He further submitted that given there has been a failure to take full accountability, address and remedy the concerns in the time elapsed, a suspension order would not be sufficient to maintain public confidence and trust in the profession.

In closing, Mr Brown submitted that only a striking off order would avoid damaging the public confidence and the reputation of the profession. He reiterated that the NMC takes a strong stance in cases concerning racism and discriminatory behaviours.

The panel also bore in mind the submissions of Mr Hall made on your behalf. He submitted that to impose a striking off order would be punitive, disproportionate, and unnecessary.

Mr Hall submitted that it is unusual in a case of public interest alone, for the registrant to be struck off. He submitted that the concerns are capable of remediation and demonstration of further insight and that this implies that further work can be done by you to address the concerns.

Mr Hall referred the panel to the SG and submitted that a striking-off order is reserved for the most serious of cases. He invited the panel to consider the seriousness of the concerns in this case on an overall spectrum of seriousness. He referred the panel to cases of sexual offences with patients, serious levels of dishonesty and cases of non-engagement by registrants. Mr Hall submitted that this is a case of racism that arose from an unconscious bias and ignorance.

Mr Hall submitted that the NMC did not initially require an interim order when the concerns arose, nor did the NMC require one after findings of fact, however, is now seeking a striking-off order four years beyond the incident.

Mr Hall submitted that the panel has found that you demonstrated a degree of insight and that this insight stems from you working with your pastor to analyse and determine where your views arose from in order to rectify the concerns.

Mr Hall informed that you have engaged with the NMC throughout these proceedings despite it being a difficult process for you. He told the panel that you have been open and honest with the panel and that you would like to have the option to return to nursing.

Mr Hall submitted that any sanction must be proportionate. [PRIVATE]. He further informed the panel that [PRIVATE] and to remove you from the register would essentially deprive you of a source of income from nursing in the future.

Mr Hall turned to the topic of remorse and told the panel that as soon as these matters were raised, you were remorseful. You wanted to apologise to all of the individuals concerned and sought to remedy your actions by removing the social media posts.

Mr Hall submitted that the panel should consider that you have already been subject to an interim order of suspension and that this marks the public interest along with the finding of misconduct and impairment. He submitted that delays caused during the investigatory period are unfortunate and punitive to the registrant and should be taken into account.

In closing, Mr Hall appreciated that the panel found that there were multiple posts over a period of time, however he submitted that the charges relate to one series of allegations that have not been repeated. Mr Hall submitted that a fully informed member of the public would not expect or demand a striking-off order in these circumstances. He therefore invited the panel to impose a suspension order for the minimum time period.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- The charges relate to racism and discriminatory behaviours;
- This misconduct occurred on more than one occasion and over a period of time;
- There were conflicting explanations for the behaviours, namely either they were the result of your unconscious bias or your ignorance;

- Lack of sufficient insight;
- Lack of evidence demonstrating remediation; and
- The behaviours as set out in the charges upset and adversely affected colleagues.

The panel also took into account the following mitigating features:

- Remorse was shown when the concerns were raised;
- An attempt by you to apologise to those affected by your behaviour;
- You made admissions to some of the charges;
- Although limited, some insight was shown; and
- You have undertaken some relevant training.

In coming to its decision, the panel considered all the aggravating and mitigating features and it noted your positive engagement throughout the hearing. The panel acknowledged that proceedings such as these may be difficult for registrants.

The panel reminded itself that, after it had made its findings on facts in this case, it had considered it necessary to impose an interim order of suspension in the public interest.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*

The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG which states that a conditions of practice order would be appropriate in cases where there is no evidence of harmful deep-seated personality or attitudinal problems. The panel is of the view that in this case, there is evidence of deep-seated personality and attitudinal concerns. The panel heard from you that your views stem from your childhood and that had developed into an unconscious bias. The panel further considered that the concerns in this case would not be addressed by a conditions of practice order. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not meet the public interest.

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 concluded that, with the exception of there being no evidence of repetition, none of these factors were apparent in this case.

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 your actions is fundamentally incompatible with you remaining on the register. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

The panel also had regard to the SG and gave careful consideration to how it determines the seriousness of cases. The panel noted that the SG sets out that cases relating to discrimination in particular may require restrictive regulatory action to be taken against nurses who've been found to *'display discriminatory views and behaviours and haven't demonstrated comprehensive insight, remorse and strengthened practice, which addresses the concerns from an early stage'*. The panel also noted that the Code says people must be treated fairly without discrimination and should be aware of how their behaviour can affect others and to ensure not to express personal beliefs inappropriately and to use all forms of communication responsibly.

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?*

The panel has decided that the answer to all of these questions leads it to conclude that a striking-off order is necessary in this case.

Your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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

This will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Brown. He submitted that an interim suspension order is necessary on public interest grounds as the interim order

imposed after the finding of facts in March 2022 has now lapsed and therefore a further interim suspension order for a period of 18 months is required to cover the 28-day appeal period.

The panel also took into account the submissions of Mr Hall on your behalf. He submitted that it is not necessary for an interim order to be imposed. He submitted that there are no concerns in relation to patient safety and referred the panel to his earlier submissions in March 2022.

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

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel determined that an interim order is necessary on public interest grounds to declare and uphold confidence in the profession and the NMC as a regulator. The panel therefore imposed an interim suspension order for a period of 18 months in order to cover the period that an appeal may be lodged and for any appeal to be heard.

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

That concludes this determination.