

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

**Substantive Meeting  
Friday 13 January 2023**

Virtual Meeting

<b>Name of registrant:</b>	<b>Siobhan Mary Hickey</b>
<b>NMC PIN:</b>	15A1330E
<b>Part(s) of the register:</b>	Registered Midwife Midwifery – September 2015
<b>Relevant Location:</b>	Buckinghamshire
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	David Evans (Chair, Lay member) Pauleen Pratt (Registrant member) Asmita Naik (Lay member)
<b>Legal Assessor:</b>	John Bassett
<b>Hearings Coordinator:</b>	Chantel Akintunde
<b>Consensual Panel Determination:</b>	Accepted
<b>Facts proved:</b>	Charges 1, 2(a), 2(b) and 2(c)
<b>Facts not proved:</b>	N/A
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Striking-off order</b>
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>

## **Decision and reasons on service of Notice of Meeting**

The panel was informed at the start of this meeting that Miss Hickey was not in attendance and that the Notice of Meeting letter had been sent to Miss Hickey's registered email address by secure email on 6 December 2022. The panel had regard to the email evidence and the signed witness statement from an NMC case officer confirming this.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and confirmed that the case would be considered virtually as a meeting.

In the light of all of the information available, the panel was satisfied that Miss Hickey has been served with the Notice of Meeting in accordance with the requirements of Rules 11A and 34.

## **Details of charge**

*That you, a Registered Midwife, did on or around May 2020, whilst employed as a Band 7 Team Leader with Buckinghamshire NHS Trust:*

- 1. Created and shared a video in which you impersonated an Asian woman in childbirth, a second Asian person and a midwife.*
- 2. The video referred to in charge 1 above was:*
  - a. Racist*
  - b. Created in the knowledge that the impersonation of Asian people you performed was racist.*
  - c. Created with the intent to amuse others.*

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

## **Consensual Panel Determination**

At the outset of this meeting, the panel was made aware that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the Nursing and Midwifery Council (NMC) and Miss Hickey.

The agreement, which was put before the panel, sets out Miss Hickey's full admissions to the facts alleged in the charges, that her actions amounted to misconduct, and that her fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a striking-off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

*"1. The Nursing & Midwifery Council ("the NMC") and Miss Siobhan Mary Hickey ("Miss Hickey") PIN 15A1330E ("the Parties") agree as follows:*

*2. Miss Hickey is aware of the CPD hearing. Miss Hickey does not intend on attending the hearing and is content for it to proceed in her and her representative's absence. Miss Hickey's representative, Thompsons Solicitors, will endeavour to be available by telephone should any clarification on any point be required.*

### **The charge**

*3. Miss Hickey admits the following charges:*

*That you, a Registered Midwife, did on or around May 2020, whilst employed as a Band 7 Team Leader with Buckinghamshire NHS Trust:*

*1. Created and shared a video in which you impersonated an Asian woman in childbirth, a second Asian person and a midwife.*

2. *The video referred to in charge 1 above was:*

a. *Racist*

b. *Created in the knowledge that the impersonation of Asian people you performed was racist.*

c. *Created with the intent to amuse others.*

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

### **Background**

4. *Miss Hickey appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Registered Midwife. Miss Hickey has been on the register since September 2015. This case represents the first time Miss Hickey's fitness to practise has been referred to the NMC.*

5. *On 4 July 2021, the NMC received a referral from an anonymous referrer. At the time of the concerns raised, Miss Hickey was employed as a Band 7 Team Leader and Midwife at Aylesbury and Wycombe Birth Centres, part of Buckingham Healthcare NHS Trust ("BHT").*

6. *Miss Hickey was employed by BHT from 2 January 2019 until 22 June 2021, when she tendered her resignation and accepted a Band 7 role at Northwick Park Hospital, part of London North West University Hospitals NHS Trust ("LNWUT") at the time of the referral.*

7. *As part of the NMC's investigation into Miss Hickey's fitness to practise, witness statements have been obtained from:*

7.1. *Ms Helen Hardy ("Ms Hardy"), who was at the material time, Deputy Chief Nurse at LNWUT; and*

7.2. *Ms Elaine Gilbert ("Ms Gilbert"), Head of Midwifery at BHT.*

8. *On 6 October 2022 Thompsons Solicitors, on behalf of the Respondent, admitted to all the charges and that her fitness to practise is impaired.*

### **Facts relating to the charges**

9. Miss Hickey created the video on the social media platform TikTok and shared the video on WhatsApp, which featured herself playing three separate characters:

9.1. A woman of Asian nationality during childbirth;

Page 3 of 15

9.2. A man of Asian nationality (the woman's partner); and

9.3. Miss Hickey as the healthcare practitioner

10. The video is recorded in five separate parts:

*Part 1: The Asian woman is experiencing birthing pains and is saying in a strong, mock Asian accent, that she can't do this. She then exclaims "Amaa".*

*Part 2: The camera then goes to the character of the healthcare practitioner. Miss Hickey tells the woman that she's doing very well and asks when the contractions started.*

*Part 3: The third section of the film features Miss Hickey playing the Asian man and once again, in a strong, mock Asian accent, tells the healthcare practitioner that his wife has been in labour for about an hour.*

*Part 4: The fourth section of the film features Miss Hickey playing the healthcare practitioner saying "just the one" and asking whether the woman if she wishes to be in the birth centre.*

*Part 5: The final section of the film features Miss Hickey playing the Asian woman asking for an epidural whilst experiencing birthing pains. Once again, Miss Hickey's character exclaims "Amaa".*

11. The video uses the word "Amaa" pronounced as "Ammmmmaaaa". The word is linked with the religion of Islam and the origin is based in Arabic culture. The name "Ammarah" (very similar sounding) was the name of one of the early women to convert to Islam. She was one of the companions of Muhammad. The word is linked with religious meaning and is commonly used by Muslim parents due to this. The word has religious and cultural grounding and importance.

12. *The implication within the video is that the Asian woman and her partner are melodramatic and that the woman has a low pain threshold. The video is racially abusive and degrading to women in childbirth.*

13. *Miss Hickey shared the video with a group of seven former colleagues.*

14. *On 4 July 2021, LNWUT was sent a video by an anonymous person. Ms Hardy investigated the concern and established that the individual in the video was Miss Hickey, who LNWUT had just offered a post to as a Band 7 Midwife. Following this, LNWUT withdrew Miss Hickey's employment offer.*

15. *On 6 July 2021, LNWUT informed BHT of the video that had been shared with them. As a result of the information received Ms Gilbert conducted an investigation into the concerns raised.*

16. *An interview was held between Ms Gilbert and Miss Hickey on 27 July 2021. When Miss Hickey was asked why she had chosen the accent she had mimicked, she was unable to identify a reason.*

17. *On 25 November 2021, a disciplinary hearing was held. As Miss Hickey had tendered her resignation on 22 June 2021, giving three months' notice as per her contract of employment, the disciplinary hearing was convened to consider the allegations and thereafter decide whether to grant Miss Hickey's request to rescind her resignation. The disciplinary panel determined that Miss Hickey's conduct amounted to gross misconduct and that had her employment not ceased in September 2021, she would have been summarily dismissed.*

### **Misconduct**

18. *The Parties agree that Miss Hickey's actions, as outlined in the charges above, amounts to misconduct and that her actions fell significantly short of the standards expected of a registered midwife.*

19. The comments of **Lord Clyde in Roylance v General Medical Council [1999] UKPC 16** may provide some assistance when seeking to define misconduct:

*‘[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances’.*

20. As may the comments of **Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin)** and **Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin)**:

*“[Misconduct] connotes a serious breach which indicates that the doctor’s (nurse’s) fitness to practise is impaired”*

And

*“The adjective “serious” must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner”.*

21. Miss Hickey’s actions as reflected in the admitted charges are serious and fall short of what is expected of a registered midwife. The misconduct is a serious departure from expected standards, and constitutes a risk to patients and a risk to the reputation of the profession.

22. At the relevant time, Miss Hickey was subject to the provision of **The Code: Professional standards of practice and behaviour for nurses and midwives (2015)** (“the Code”). The Parties agree that the following provisions of the Code were engaged, and breached, in this case;

**1 Treat people as individuals and uphold their dignity**

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

## **20 Uphold the reputation of your profession at all times**

To achieve this, you must:

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

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

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

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

*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*

*23. It is acknowledged that not every breach of the Code will result in a finding of misconduct. However, Miss Hickey accepts that the failings set out above are a serious departure from the professional standards and behaviour expected of a registered midwife.*

*24. Miss Hickey is in a position of power, and mimicking someone who would trust her as a midwife, significantly undermines her role and the profession. The video is racist in its content, as the content undermines women of Asian descent and their families. It does not represent midwives as caring professionals. If the video was seen by the general public then this could deter people from seeking treatment.*

*25. Individually, and collectively, the conduct referred to in the charges are sufficiently serious so as to amount to misconduct.*

## **Impairment**



26. The Parties agree that Miss Hickey's fitness to practise is currently impaired by reason of her misconduct.

27. Midwives occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust midwives with their lives and the lives of their loved ones and therefore it is imperative that midwives make sure that their conduct at all times justifies both their patients' and the public's trust in them and in their profession.

28. A general approach to what might lead to a finding of impairment was provided by Dame Janet Smith in her Fifth Shipman Report. A summary is set out in the case of **CHRE v Nursing and Midwifery Council & Grant [2011] EWHC 927** at paragraph 76 in the following terms:

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

- i. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- ii. has in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- iii. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the [nursing] profession; and/or*
- iv. has in the past acted dishonestly and/or is liable to act dishonestly in the future.”*

29. The Parties agree that limbs i, ii and iii above can be answered in the affirmative in this case. Dealing with each one in turn:

***Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm***

30. The concerns raised are serious and related to Miss Hickey's behaviour. Although

*there is no causative link between Miss Hickey's actions and patient harm, behaving in a discriminatory way presents a risk of harm to the public if not addressed. The general public could have seen the video, deterring patients from accessing care. Miss Hickey's actions had the potential to cause patients and members of the public to be concerned about their safety and feel unnecessarily anxious about their healthcare treatment. This, the Parties agree, could result in patients, and members of the public, being deterred from seeking medical assistance when they should.*

***Has in the past brought and/or is liable in the future to bring the medical profession into disrepute***

*31. Registered professionals occupy a position of trust in society. The public, quite rightly, expects nurses to provide safe and effective care, and conduct themselves in ways that promotes trust and confidence. It is agreed that Miss Hickey's conduct has brought the profession into disrepute and that she has breached the trust placed in her. A fully informed member of the public would be appalled by Miss Hickey's alleged actions.*

***Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession***

*32. By failing to act professional at all times and comply with the core principles and specific paragraphs of the Code as set out above, Miss Hickey breached fundamental tenets of the profession.*

*33. The panel may also find it useful to consider the comments of **Cox J in Grant at paragraph 101:***

*"The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of*

*fitness to practise were not made in the circumstances of this case”.*

### **Remediation, reflection, training, insight, remorse**

34. *In considering the question of whether Miss Hickey’s fitness to practise is currently impaired, the Parties have considered the guidance in the case of **Cohen v GMC [2007] EWHC 581 (Admin)**, in which the court set out three matters which it described as being ‘highly relevant’ to the determination of the question of current impairment:*

- a. Whether the conduct that led to the charge(s) is easily remediable;*
- b. Whether it has been remedied;*
- c. Whether it is highly unlikely to be repeated.*

35. *Miss Hickey says there was no malice or hatred intended in the making or sending of the video, but that her intention was to make her colleagues laugh during a particularly stressful time. In a reflective statement dated 15 August 2021, Miss Hickey states:*

*“On reflection I can see the reason I may have chosen an Asian accent was not to highlight a specific ethnicity but instead highlight someone who spoke little English and how it further highlighted how someone is not appropriately triaged and sent to the wrong place.”*

36. *However, this is not reflected in the video as Miss Hickey does not make any comment within the video about the inappropriateness of the woman’s triage, but instead mocks the woman’s low pain threshold in the way she says “one hour” in response to the partner’s confirmation that the woman is giving birth to their first baby and is in pain. The accents Miss Hickey uses are clearly exaggerated and stereotyped. This is reflected in Miss Hickey’s use of the word “Amaa”.*

37. *Miss Hickey mentioned that she instantly regretted her actions. In a further statement provided to the NMC by the Respondent, Miss Hickey states:*

*“In a moment of ill judgement, I made a video that I would share with these ex colleagues and the intention was to make them laugh. The video was created to highlight an example of a patient being sent to a low risk birth centre when they wanted an epidural or had not chosen a birth centre, but when I acted out this scenario I did so using an ethnic accent. The video was an impression and did not use any derogatory terms or incite racial hatred – however on reflection it could clearly cause offence ... At the time of it being shared nobody in the group raised cause for concern or raised offence. The video was never discussed again and was archived in the group conversation.”*

38. *Although Miss Hickey stated that she instantly regretted it, this conflicted with her comments as if she had instantly regretted the video, she would have deleted the video from WhatsApp immediately after sending rather than leaving it in the archive or the chat, for all of those in the WhatsApp group to still have access.*

39. *In relation to whether the conduct is likely to be repeated, it is relevant that concerns of this nature are suggestive of deep-seated attitudinal issues and that, whilst Miss Hickey has sought to reflect on the concerns, they cannot be said to be remediated. Therefore, it is agreed that there is a risk of repetition. Should such conduct/concerns be repeated, there is a risk of further serious, unwarranted, patient harm.*

### **Public protection and public interest impairment**

40. In **CHRE v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)** Cox J commented as follows:

*“71. It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations... namely, the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession...”*

And

*“74. 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.”*

*And*

*“75. I regard that as an important consideration in cases involving fitness to practise proceedings before the NMC where, unlike such proceedings before the General Medical Council, there is no power under the rules to issue a warning, if the committee finds that fitness to practise is not impaired... such a finding amounts to a complete acquittal, because there is no mechanism to mark cases where findings of misconduct have been made, even where that misconduct is serious and has persisted over a substantial period of time. In such circumstances the relevant panel should scrutinise the case with particular care before determining the issue of impairment.”*

*41. Having regard to the serious nature of the misconduct, and the principles referred to above, a finding of impairment is necessary on public interest grounds. As recognised above, an important consideration is that a finding of no impairment would lead to no record of these regulatory charges and the conduct being marked, which would be contrary to the public interest.*

*42. The public would be concerned about the serious failings in this case. The concerns are of such a serious nature the need to protect the wider public interest calls for a finding of impairment to uphold the standards of the profession, maintain confidence in the profession and the NMC as its regulator. Without a finding of impairment, public confidence in the profession and the NMC would be undermined.*

*43. The Parties agree that Miss Hickey's fitness to practice is impaired on public*

*protection and public interest grounds.*

### **Sanction**

*44. In accordance with Article 3(4) of the Nursing and Midwifery Order 2001 (“the Order”) the overarching objective of the NMC is the protection of the public.*

*45. The Order states:-*

*“The pursuit by the Council of its over-arching objective involves the pursuit of the following objectives-*

*(a) to protect, promote and maintain the health, safety and well-being of the public;*

*(b) to promote and maintain public confidence in the professions regulated under this Order; and*

*(c) to promote and maintain proper professional standards and conduct for members of those professions.”*

*46. Whilst sanction is a matter for the panel’s independent professional judgement, the Parties agree that the appropriate sanction in this case is a striking-off order. A striking-off order is the most appropriate and proportionate sanction which properly reflects the seriousness of the misconduct.*

*47. In reaching this agreement, the Parties considered the **NMC’s Sanctions Guidance** (“the Guidance”), bearing in mind that it provides guidance and not firm rules. The panel will be aware that the purpose of sanctions is not to be punitive but to protect the public and public interest. The panel should take into account the principle of proportionality and it is submitted that the proposed sanction is a proportionate one that balances the risk to the public and the public interest with Miss Hickey’s interests.*

*48. The aggravating features in this case have been identified as follows:*

*48.1. The video was forwarded to seven recipients who in turn could have*

*forwarded the video to unknown others*

*49. The mitigating features of this case have been identified as follows:*

*49.1. Some insight, remorse and reflection shown*

*50. With regards to the Guidance, the following aspects have led the Parties to conclude that a striking-off order is appropriate and proportionate. Taking the available sanctions in ascending order starting with the least restrictive:*

*51. **Taking no action or a caution order** - The NMC's guidance (SAN-3a and SAN-2b) states that it will be rare to take no action where there is a finding of current impairment and this is not one of those rare cases. The seriousness of the misconduct means that taking no action would not be appropriate. A caution order would also not be in the public interest nor mark the seriousness and would be insufficient to maintain high standards within the profession or the trust the public place in the profession.*

*52. **Conditions of Practice Order** - The NMC's guidance (SAN-3c) states that a conditions of practice order may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):*

- no evidence of harmful deep-seated personality or attitudinal problems*
- identifiable areas of the nurse, midwife or nursing associate's practice in need of assessment and/or retraining*
- no evidence of general incompetence*
- potential and willingness to respond positively to retraining*
- the nurse, midwife or nursing associate has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision*
- patients will not be put in danger either directly or indirectly as a result of the conditions*
- the conditions will protect patients during the period they are in force*

- *conditions can be created that can be monitored and assessed.*

*53. The misconduct and the concerns behind the misconduct, indicate harmful deep seated personality or attitudinal problems. A conditions of practice order would not reflect the seriousness of the concerns raised or maintain public confidence. Furthermore, there are no conditions in place which could address the areas of concern.*

*54. **Suspension Order** - Imposing a suspension order would only temporarily protect the public. There is evidence of harmful deep-seated personality or attitudinal problems. This sanction would not reflect the seriousness of the conduct and therefore public confidence in the profession would not be maintained. According to the NMC guidance (SAN-d), a suspension order would not be appropriate in this case as the misconduct is fundamentally incompatible with Miss Hickey continuing to be a registered professional. The overarching objective of public protection would not be satisfied by a suspension order and it would not be in the public interest to impose a suspension order in this case. The confidence in the NMC as a regulator would be undermined if Miss Hickey was allowed to practice once the suspension order comes to an end.*

*55. **Striking-off Order** – Miss Hickey’s behaviour has raised fundamental questions about her professionalism and public confidence which can only be maintained if she is removed from the register. Equality, diversity and human rights are enshrined in the NMC Code and racist conduct is fundamentally incompatible with continued registration. Taking into account all of the factors, the conduct is fundamentally incompatible with ongoing registration as a nurse. Only a striking-off order would be sufficient to protect the public and maintain public confidence in the profession.*

## **Appendixes**

*56. Appendix 1: Reflective statement (unknown date)*

*57. Appendix 2: Reflective statement dated 15 August 2021*



### ***Interim order***

*58. An interim order is required in this case. The interim order is necessary for the protection of the public and is otherwise in the public interest. The interim order should be for a period of 18 months in the event Miss Hickey sought to appeal against the panel's decision. The interim order should take the form of an interim suspension order.*

*59. The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The Parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so."*

Here ends the provisional CPD agreement between the NMC and Miss Hickey. The provisional CPD agreement was signed by Miss Hickey and the NMC on 20 October 2022.

### **Decision and reasons on the CPD**

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice. He referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Miss Hickey. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Miss Hickey admitted the facts of the charges. Accordingly, the panel was satisfied that the charges are found proved by way of Miss Hickey admissions as set out in the signed provisional CPD agreement.

### **Decision and reasons on misconduct and impairment**

The panel then went on to consider whether Miss Hickey's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Miss Hickey, the panel has exercised its own independent judgement in reaching its decision on impairment.

In relation to misconduct, the panel determined that all the proven charges amounted to breaches of the Code as specified in the CPD agreement, and amounted to misconduct. In this respect, the panel endorsed paragraphs 18 to 25 of the provisional CPD agreement.

The panel then considered whether Miss Hickey's fitness to practise is currently impaired by reason of misconduct. The panel determined that Miss Hickey's fitness to practise is currently impaired in light of the reflection statement she provided dated 12 July 2021 (Appendix 5) which demonstrates limited insight into her behaviour and the impact this had on patients, their families, colleagues and the midwifery profession. In this respect, the panel endorsed paragraphs 26 to 43 of the provisional CPD agreement.

### **Decision and reasons on sanction**

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

The panel took into account the following aggravating features:

- The video was forwarded to seven recipients who in turn could have forwarded the video to unknown others; and
- The behaviour was of a discriminatory nature and involved the mockery of patients.

The panel also took into account the following mitigating features:

- Some insight, remorse and reflection shown

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

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

The panel next considered whether placing conditions of practice on Miss Hickey's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining as it involved serious deep-seated personality and attitudinal issues. Furthermore, the panel concluded that the placing of conditions

on Miss Hickey's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It had regard to paragraph 54 of the CPD agreement which stated:

*"54. **Suspension Order** - Imposing a suspension order would only temporarily protect the public. There is evidence of harmful deep-seated personality or attitudinal problems. This sanction would not reflect the seriousness of the conduct and therefore public confidence in the profession would not be maintained. According to the NMC guidance (SAN-d), a suspension order would not be appropriate in this case as the misconduct is fundamentally incompatible with Miss Hickey continuing to be a registered professional. The overarching objective of public protection would not be satisfied by a suspension order and it would not be in the public interest to impose a suspension order in this case. The confidence in the NMC as a regulator would be undermined if Miss Hickey was allowed to practice once the suspension order comes to an end."*

The panel had regard to that part of the NMC guidance on seriousness that deals with 'discrimination, bullying, harassment and victimisation'. It noted that there is an expectation that if a registrant is not to receive a 'significant sanction such as removal from the register' they will have shown 'insight at the most fundamental level at the earliest stage'.

In her reflective statement, Miss Hickey stated:

*"There will be actions I will take to ensure I never repeat a scenario like this again. The education, training, reflection and restorative practice I plan to embark on will ensure I never take part in a scenario like this again and as mentioned earlier in this reflection will ultimately better equip me to a well informed midwife who will act as an ally and advocate for patients and colleagues from ethnically diverse cultures..."*

*Action Plan will include the following:*

- *Apology letters to be written and sent to both Northwick Park Hospital and BHT*
- *Reflective piece for scenario*
- *Engage fully and wholly with any investigations my local Trust takes part in and the NMC plan*
- *Complete accredited courses/online programmes on ethnic diversity and ethics in midwifery*
- *Re-read local policies and adhere to said policies at all times*
- *Engage with a PMA to aid better reflection and discuss ways to grow from this*
- *Engage with RCM representatives to aid reflection and learn ways I can grow from this”*

However, the panel received no evidence from Miss Hickey by way of testimonials from colleagues attesting to her character, an updated reflection statement showing developed insight, or any information around steps she has taken to address her behaviour.

The panel considered that the behaviour, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered midwife. Such discriminatory behaviour is highly unacceptable in any circumstances and demonstrates a serious breach of the fundamental tenets of the profession. The panel considered that such behaviour displayed by Miss Hickey in this matter is fundamentally incompatible with her remaining on the register.

In this particular case, the panel determined that a suspension order would not be in the public interest as it considered that such a sanction neither sufficient, appropriate or proportionate, given the nature of this case.

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

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*

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

Miss Hickey's behaviour was a significant departure from the standards expected of a registered midwife, and are fundamentally incompatible with her remaining on the register. The panel was of no doubt that the findings in this particular case demonstrate that Miss Hickey's discriminatory behaviour is serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Miss Hickey's behaviour in bringing the profession into disrepute by adversely affecting the public's view of how a registered midwife should conduct herself, 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 midwife.

### **Decision and reasons on interim order**

As the striking-off order cannot take effect until 28 days after Miss Hickey has received written notification of it and, should she give notice of appeal within that period, until her appeal has been heard, 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 Miss Hickey's own interest.

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

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

The panel agreed with the CPD that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months due to prevent Miss Hickey from undertaking midwifery work during the appeal period.

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

That concludes this determination.