

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

**Substantive Hearing  
Monday 15 May – Thursday 25 May 2023**

Virtual Hearing

<b>Name of Registrant:</b>	<b>Neill Antony Gold</b>
<b>NMC PIN</b>	15F1931E
<b>Part(s) of the register:</b>	Nursing – Sub Part 1 Mental Health Nursing – March 2016
<b>Relevant Location:</b>	Bury
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Michael Murphy (Chair, Registrant member) Sharon Peat (Registrant member) Lorraine Wilkinson (Lay member)
<b>Legal Assessor:</b>	Gillian Hawken
<b>Hearings Coordinator:</b>	Elena Nicolaou
<b>Nursing and Midwifery Council:</b>	Represented by Yusuf Segovia, Case Presenter
<b>Mr Gold:</b>	Not present and unrepresented
<b>Facts proved:</b>	All
<b>Facts not proved:</b>	None
<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 Hearing**

The panel was informed at the start of this hearing that Mr Gold was not in attendance and that the Notice of Hearing letter had been sent to his registered email address by secure email on 11 April 2023.

Mr Segovia, on behalf of the Nursing and Midwifery Council (NMC) referred the panel to the Notice of Hearing bundle which shows a screenshot of the NMC's registration system. This screenshot contained Mr Gold's name as well as his contact details. Mr Segovia then referred the panel to Exhibit 1 of the notice bundle, which he submitted shows a screenshot of another registrant's details from the system, which should not have been included in the bundle.

Upon clarification, Mr Segovia recirculated an amended notice of hearing bundle received from the Listings Officer at the NMC, with the correct information under Exhibit 1, including the correct screenshot of the NMC's registration system containing Mr Gold's name and contact details. He submitted that, despite the error contained within the initial notice of hearing bundle, the notice letter was indeed sent to Mr Gold's correct email address as recorded on the NMC register.

Mr Segovia also referred to Exhibit 2 of the notice bundle, which is a screenshot of an email to Mr Gold advising him of the dates of his hearing, and that the notice of hearing bundle was attached. He referred the panel to the date of this email, which stated 21 February 2023, however the notice letter itself was dated 11 April 2023.

Upon clarification, Mr Segovia submitted that, although this exhibit remains the same in the amended bundle, he received further information from the Listings Officer who stated in an email that the notice letter was served to Mr Gold on 11 April 2023, and this date can be seen on the bottom right-hand corner of the screenshot. Further, he submitted that the date of 21 February 2023 appears to be the date the template used by the Listing Officer was created.

Mr Segovia submitted that, in light of the information above and the clarification sought, the panel can be reassured that the NMC has complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

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

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

### **Decision and reasons on proceeding in the absence of Mr Gold**

The panel next considered whether it should proceed in the absence of Mr Gold. It had regard to Rule 21 and heard the submissions of Mr Segovia who invited the panel to continue in the absence of Mr Gold.

Mr Segovia submitted that there had been no engagement by Mr Gold with the NMC for some time in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion. Mr Segovia referred to the Proceeding in Absence (PIA) bundle, which contains emails from the NMC to Mr Gold in relation to these proceedings. He referred to the emails, dated 19 January 2023, 24 April 2023 and 4 May 2023.

Mr Segovia submitted that Mr Gold is not represented, and he has not indicated that he intends to be represented in his absence. He submitted that there was a single occasion when a phone call took place between Mr Gold and the NMC in October 2022, however this phone call appeared to have nothing to do with the matters before the panel today, and there has been no further engagement from Mr Gold since that phone call.

Mr Segovia submitted that he cannot say that Mr Gold has voluntarily absented himself today, as there has been no correspondence to indicate that he has done so. He also submitted that there has been no application to adjourn the hearing by Mr Gold so that he or a representative can attend on a different occasion. He submitted that there is always a public interest where there are outstanding matters, and that these matters should be dealt with expeditiously. He also referred to the number of witnesses due to attend to give live evidence over the upcoming days, and the inconvenience to them should they need to be rescheduled for a future date.

The panel accepted the advice of the legal assessor.

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

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

- No application for an adjournment has been made by Mr Gold;
- Mr Gold has not engaged with the NMC since October 2022, and has not responded to any of the correspondence sent to him about this hearing;

- All reasonable efforts have been made to contact Mr Gold;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Two witnesses have attended today to give evidence, others are due to attend in the upcoming days;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that are alleged to have occurred in 2021;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

The panel considered that there is some disadvantage to Mr Gold in proceeding in his absence. Although the evidence upon which the NMC relies has been sent to Mr Gold to his registered email address, he has made no response to the allegations brought by the NMC. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Gold's decision to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

### **Decision and reasons on application to admit further evidence**

Mr Segovia made an application to admit further documentation into evidence, namely: a local statement of Witness 1 and a Datix report, dated 13 May 2021. He submitted that these are the documents that Witness 1 referred to in his oral evidence, and the panel had also requested these documents following his evidence to assist it further.

Mr Segovia submitted that he cannot say with certainty that these documents are specifically what Witness 1 was referring to, as neither Mr Segovia nor the panel had these documents to hand at the time of Witness 1's oral evidence. Witness 1 referred to a statement dated 14 May 2021 containing 20 paragraphs, and this would appear to be his local statement about an alleged incident relating to charge 4.

Mr Segovia submitted that the NMC has always been in possession of Witness 1's local statement, as it formed part of the Case Examiners bundle. He submitted that the Case Examiners bundle would have been sent to Mr Gold, and it is common practice to forward this bundle on to a registrant, in advance of the Case Examiners making a decision.

Mr Segovia submitted that the Datix report was completed by Colleague I. He submitted that the NMC was not in possession of this document until today, 16 May 2023, and it did not form any part of the evidence that the NMC had previously; therefore, it would not have been disclosed to Mr Gold. He submitted that he cannot say Mr Gold has never had sight of this document as he may have seen it as part of a local reporting or investigation process.

In relation to relevance, Mr Segovia submitted that it would seem on the face of it that these documents individually, but also taken together, are relevant to the issues set out in charges 4 and 5. He submitted that Witness 1 gave evidence in relation to charges 4 and 5, and these documents are supportive of his evidence.

In relation to fairness, Mr Segovia submitted that Mr Gold has had sight of Witness 1's local statement already, albeit it was not included in the final NMC bundle for this hearing.

He submitted that Mr Gold would not have had an expectation that this statement would have been used as part of the evidence. However, in terms of fairness, the panel has had a significant amount of evidence already regarding charges 4 and 5, so it is not the case that this statement would speak to an entirely new matter. In the context of the evidence the panel have already had, Mr Segovia submitted that there would be no unfairness to Mr Gold regarding the panel receiving these documents, and considering them as part of the evidence.

Mr Segovia submitted that there may be an element of prejudice as Mr Gold has not had the opportunity to comment on these documents, but reminded the panel that Mr Gold has not engaged with these proceedings or commented on any of the evidence thus far. He reminded the panel that Mr Gold has chosen not to take part in these proceedings.

Mr Segovia submitted that the reason he makes this application at this stage is because, on the face of it, Witness 1's statement is something that would have been sent to Witness 4 as the name referred to is the same. Mr Segovia submitted that it would be his intention to ask Witness 4 about these two documents during her oral evidence. Therefore, he submitted that there would be no requirement to recall Witness 1 to address these new documents, as his evidence is already clear on these matters.

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 legal assessor also referred the panel to the judgment in the case of *Reza v General Medical Council* [1991] 2AC which held that the criterion for admissibility of evidence indicated the duty, to some extent inquisitorial, of the committee.

The panel considered the submissions of Mr Segovia regarding Witness 1's local statement and the Datix report, dated 13 May 2021. The panel had asked the NMC to

attempt to locate these documents on day one of the hearing following Witness 1's evidence.

The panel noted that these documents are more contemporaneous than the other records, as they were written much closer to the time of the alleged incident, and therefore may be considered reliable. It considered that this is the only evidence from Colleague I, and they have not been called as a witness to give live evidence at this hearing, nor have they provided a statement. The panel considered that Colleague I is clearly the main individual relating to charges 4 and 5.

The panel considered that Mr Gold would not be at a disadvantage should these documents be admitted into evidence, as he would have been aware that Witness 1's local statement existed from the Case Examiner's bundle, and he has not provided a response to it. In relation to the Datix report, Mr Gold would not have been sent this document, and he may not have seen it during the Trust's local investigation. The panel considered that, even if Mr Gold has not seen the Datix report, it did not highlight anything within that document that is not covered in other witnesses' statements.

In light of the above, the panel considered that it would be fair to admit the local statement of Witness 1 and the Datix report into evidence.

Although the panel has made its decision to admit the two documents, and despite Mr Gold having already seen the local statement of Witness 1, out of fairness to Mr Gold, the panel has directed that the NMC Case Officer write to him with the documents attached, and invite Mr Gold to provide a response to the NMC with a deadline of 13:00 hours tomorrow, 17 May 2023. The panel considered that the position has changed and new evidence is being admitted, and this would allow Mr Gold the opportunity to comment on and/or provide written representation on these documents if he wishes to do so.

### **Decision and reasons on application to amend the charge**



The panel heard an application made by Mr Segovia to amend the wording of charges 4 and 6.

In relation to charge 4, Mr Segovia submitted that it is not certain from the evidence whether the incident occurred on 13 May or 14 May 2021, and from the oral evidence heard from the NMC witnesses, this amendment would be appropriately covered as the alleged request from Mr Gold may have been before midnight on 13 May or just afterwards, as it was a night shift. Out of caution, Mr Segovia invited the panel to amend the stem of charge 4 to instead say:

4. *On **or around** 13th May 2021 asked Colleague I to forge your signature on a medication card.*

It was submitted by Mr Segovia that the proposed amendment would provide clarity and more accurately reflect the evidence.

In relation to charge 6, Mr Segovia submitted that it is clear from the oral evidence heard from the NMC witnesses that the date in question related to 13 May 2021. He submitted that this is merely a typographical error within the charge, and he invited the panel to amend the stem of charge 6 to instead say:

6. *On ~~14~~ **13** May 2021 you failed to ensure safe patient care in that you:*

It was submitted by Mr Segovia that the proposed amendment would provide clarity and more accurately reflect the evidence.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel considered that the proposed amendments do not alter the nature of the charges, and there was also some local acceptance by Mr Gold at the time of the investigation, in relation to parts of these charges. 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 Mr Gold by the proposed amendments being allowed. It was therefore appropriate to allow the amendments to charges 4 and 6, as applied for, to ensure clarity, accuracy, and reflect the evidence that has been heard.

### **Details of charge (as amended)**

That you, a registered nurse, whilst working at Greater Manchester Mental Health NHS Foundation Trust:

1. On 28 February 2021:
  - a) Swore repeatedly around colleagues and within hearing distance of patients.
  - b) Banged a telephone receiver down and described the ward manager as a “useless cunt”.
  - c) Called Colleague E a “foreign cunt”.
  - d) Stated that Colleague E needed to “speak English properly”.
  - e) Mimicked Colleague E’s pronunciation of ‘Eskdale’ ward.
2. Your conduct at charges 1 c and/or d and/or e was racially motivated in that it was done in the light of your perception of Colleague E’s race.
3. Your conduct at charges 1 c and/or d and/or e was racist in that you treated Colleague E differently to other colleagues in the light of your perception of Colleague E’s race.
4. On or around 13th May 2021 asked Colleague I to forge your signature on a medication card.

5. Your conduct at charge 4 lacked integrity in that you were seeking to persuade Colleague I to conceal an error you had made.
  
6. On 13 May 2021 you failed to ensure safe patient care in that you:
  - a) Left Loweswater ward whilst on duty.
  - b) Left Loweswater ward without informing the site duty manager.
  - c) Left Loweswater ward with the medication keys in your possession.
  
7. Your conduct at charge 6 b lacked integrity in that you did not inform the site duty manager that you were leaving the ward so as not to draw a record keeping error you had made on Loweswater ward to their attention.

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

## **Background**

The charges arose whilst Mr Gold was employed as a registered nurse by Greater Manchester Mental Health NHS Foundation Trust (the Trust). At the time, Mr Gold worked at the Edenfield Centre (the Centre) as a staff nurse, and he had been working there since March 2016. Since December 2020, Mr Gold worked on Eskdale Ward, and provided care for patients with mental health needs.

It is alleged that on 28 February 2021, Mr Gold swore around colleagues and within hearing distance of patients. Mr Gold also allegedly displayed unacceptable behaviour towards his ward manager. It is alleged that, on the same day, Mr Gold also made comments and displayed actions towards Colleague E that were racially motivated.

It is alleged that on or around 13 May 2021, Mr Gold had asked Colleague I to forge his signature on a medication card, and it is also alleged that this action demonstrated a lack of integrity.

It is alleged that on 13 May 2021, Mr Gold failed to ensure safe patient care in that he left Loweswater Ward whilst on duty, left the ward without informing the site duty manager and left the ward with the medication keys in his possession. It is alleged that these actions also lacked integrity.

### **Decision and reasons on facts**

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

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

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

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

- Witness 1: Team Leader; the Trust
- Witness 2: Support Worker; the Trust
- Witness 3: Support Worker; the Trust

- Witness 4: Interim Operational Manager and Investigator; the Trust
- Witness 5: Staff Nurse; the Trust

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

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

### **Charge 1**

*That you, a registered nurse, whilst working at Greater Manchester Mental Health NHS Foundation Trust:*

1. *On 28 February 2021:*
  - a) *Swore repeatedly around colleagues and within hearing distance of patients.*
  - b) *Banged a telephone receiver down and described the ward manager as a “useless cunt”.*
  - c) *Called Colleague E a “foreign cunt”.*
  - d) *Stated that Colleague E needed to “speak English properly”.*
  - e) *Mimicked Colleague E’s pronunciation of ‘Eskdale’ ward.*

**This charge is found proved in its entirety.**

### **Charge 1a**

In reaching this decision, the panel took into account the written and oral evidence before it.

Before making its decision, the panel considered the specific wording of this sub-charge and was mindful of the three elements that needed to be made out, namely: that Mr Gold swore repeatedly, that he did so around colleagues, and that he also did so within hearing distance of patients. The panel was satisfied that there was sufficient evidence in relation to these three elements of the sub charge, to find it proved as set out below.

The panel first considered the evidence of Witness 2, in particular her NMC witness statement, in which she stated:

*'I remember on the day the number of tasks and level of patient care was demanding and [Mr Gold] was reacting to it by at times coming across with tension which I feel flowed into the energy on the ward.'*

The panel also considered the interview notes of Witness 2's local interview, dated 23 March 2021, in which she stated:

*'The TV was on loud. I saw [Mr Gold] was arguing at the INS door, all patients sat watching and then he went back to the office.'*

The panel also considered Witness 2's local statement, which stated:

*'With regards to [Mr Gold] swearing he used the F word quite a lot so it is hard to determine at which point he swore... I think he was swearing again but I cannot be sure of the exact sentence.... I do remember looking at the patients and looking at [Colleague E] as I was aware they were all watching at this point...'*

The panel considered that the evidence of Witness 2 above indicated that the incident alleged occurred on a day shift when the patients would have been awake and watching TV in the communal area. Witness 2 in her oral evidence also told the panel that *'the patients were not that far away, perhaps five metres'*, and she also stated that patients

would have been able to see into the office, based on where it was situated on the ward. She said that she thought patients would have been able to hear.

The panel considered that Witness 2 was also clear, credible and consistent throughout her written and oral evidence.

The panel also considered Witness 3's NMC statement, which stated:

*'[Mr Gold] is quite an expressive person and swears as part of his everyday language. Words such as "Cunt" are normal to him, to the point where I doubt he is using it to offend people. Although I don't think that sort of language should be used at work but I do not think he could stop himself from swearing.'*

The panel considered Witness 3's local statement, which stated:

*'...[Mr Gold] was shouting about how staff cannot do their job properly saying "That [Colleague] is a useless cunt" Then he shouted out "And that foreign cunt in there (Pointing to seclusion) on the fucking radio, can't speak fucking English properly, I can't understand a word he says"...'*

The panel considered that Witness 3 was clear, credible and consistent in both his written and oral evidence, and appeared to have a clear memory of the incident. It noted the consistency and similarity of Witness 3's written and oral evidence. Witness 3 also told the panel in his oral evidence that the office was situated in the middle of the ward and patients would be able to see in and hear what was going on, albeit it may have been muffled. He said that Mr Gold was *'quite loud'*.

Mr Gold, in his local interview with Witness 4, admitted that he may have sworn.

The panel was satisfied that Witness 2, Witness 3 and Colleague E were present during the time of the incident and determined that Mr Gold had sworn repeatedly around colleagues, and in hearing distance of patients.

Therefore in light of the above, and on the balance of probabilities, the panel finds charge 1a proved.

### **Charge 1b**

In reaching this decision, the panel took into account the written and oral evidence before it.

The panel first considered the evidence of Witness 3, in particular his NMC witness statement, which stated:

*'[Mr Gold] couldn't get through to the manager... it kept going to voicemail. He slammed the phone and called the manager a "useless cunt". I could tell that he was in a very bad mood and very frustrated.'*

Witness 3 also repeats this in his near-contemporaneous account within his local statement, albeit he does not mention the banging of the phone receiver, which stated:

*'...[Mr Gold] was shouting about how staff cannot do their job properly saying "That [Colleague] is a useless cunt"'*

The panel acknowledged that Witness 3 was a direct witness to this incident, and that he was clear, credible and consistent in both his written and oral evidence, and appeared to have a clear memory of the incident. It noted the consistency and similarity of Witness 3's oral and written evidence.



The panel then considered the evidence of Witness 2, namely her local statement:

*'Another incident I witnessed was [Mr Gold] banging the handle of the phone in the office against the phone and the desk because it wasn't connecting again [Mr Gold] seemed agitated. I think he was swearing again but I cannot be sure of the exact sentence'.*

The panel considered that Witness 2's account above was supportive of her oral evidence. Witness 2 had also demonstrated the way she saw Mr Gold banging the phone receiver down during her oral evidence. The panel considered that Witness 2 was clear, credible and consistent throughout her written and oral evidence.

The panel also took account of Mr Gold's response as noted during his local interview with Witness 4 on 2 March 2021:

*'He stated that he may have sworn sometimes, saying that he does swear and that sometimes he cannot get through a shift without swearing... He stated that he may have banged the phone down adding 'who doesn't bang the phone down?' – I certainly did not lose it'.*

The panel noted that Mr Gold, in his interview with Witness 4 on 16 July 2021, stated that he had not lost his composure and that he had *'felt like throwing the phone'*. The panel also considered Witness 4 in her oral evidence told the panel that using foul language was not acceptable.

Therefore in light of the above, and on the balance of probabilities, the panel finds charge 1b proved.

### **Charge 1c**

In reaching this decision, the panel took into account the written and oral evidence before it.

The panel first considered the evidence of Witness 3, in particular his NMC witness statement, which stated:

*'This is the first I have heard [Mr Gold] specifically saying "foreign cunt" but as stated previously, he swears all the time.'*

Witness 3 was also consistent within his local statement, which stated:

*'...[Mr Gold] was shouting about how staff cannot do their job properly saying "That [Colleague] is a useless cunt" Then he shouted out "And that foreign cunt in there (Pointing to seclusion) on the fucking radio, can't speak fucking English properly, I can't understand a word he says"...'.*

Witness 3 also repeated the above account in an email to management, dated 1 March 2021. The panel noted that this email was sent close to the time of the incident. Witness 3 also repeated the above in his local interview with Witness 4, dated 21 March 2021:

*'...returned to the ward area and saw [Mr Gold] was ranting and pointing to seclusion. I heard him saying 'that foreign cunt in there', repeating himself'.*

The panel acknowledged that Witness 3 was a direct witness to this incident, and that he was credible and consistent in both his written and oral evidence, and appeared to have a clear memory of the incident. In oral evidence, Witness 3 told the panel that it was what he considered to be the racial aspect of the term that made him report and escalate the matter because he had a duty of care to Colleague E.

The panel also considered Mr Gold's response during his local interview with Witness 4, which stated:

*'[Mr Gold] reported there had been issues with the communication, but he would not have said anything derogatory. [Mr Gold] added that he tries to pick his words carefully... He added that he certainly was not racist about ethnicity or accent... [Mr Gold] reported that he had approached [Colleague E] whilst he was in seclusion to talk about how he spoke on the radio and that he had tried to be as 'sensitive as possible'.*

The panel noted that it is clear from Mr Gold's account above that there are some inconsistencies relating to the incident, compared to what other witnesses have said in evidence. The panel also considered Witness 4 in her oral evidence told the panel that using foul language was not acceptable.

Therefore in light of the above, and on the balance of probabilities, the panel finds charge 1c proved.

### **Charge 1d**

In reaching this decision, the panel took into account the written and oral evidence before it. The panel considered that the evidence for this charge is similar to that in charge 1c as it was part of the same incident.

The panel considered the evidence of Witness 3, namely his NMC witness statement:

*'Then he mimicked [Colleague E] on the 2 way radio stating he couldn't speak English properly in front of patients too.'*

The panel also took account of Witness 3's local statement, which stated:

*Then he shouted out “And that foreign cunt in there (Pointing to seclusion) on the fucking radio, can’t speak fucking English properly, I can’t understand a word he says”... He then at the end of the shift told the day staff he liked the staff member however he stated “But he can’t speak English, I can’t understand a word he says”..’*

Witness 3 also repeated the above account in an email to management, dated 1 March 2021. The panel noted that this email was sent close to the time of the incident.

The panel acknowledged that Witness 3 was a direct witness to this incident, and that he was clear, credible and consistent in both his written and oral evidence, and appeared to have a clear memory of the incident.

The panel considered that Witness 2, in her local statement, said:

*‘..and [Mr Gold] said “well he needs to speak English properly”...’*

Witness 2, during her oral evidence to the panel, also confirmed that Mr Gold made this comment. The panel considered that Witness 2 was clear, credible and consistent throughout her written and oral evidence. Her evidence was generally supportive of Witness 3’s evidence.

The panel also considered Mr Gold’s response during his local interview with Witness 4, in which he did not accept making this comment. The panel noted that it is clear from Mr Gold’s account above that there are some inconsistencies relating to the incident, compared to what other witnesses have said in evidence.

Therefore in light of the above, and on the balance of probabilities, the panel finds charge 1d proved.

## **Charge 1e**

In reaching this decision, the panel took into account the written and oral evidence before it.

The panel considered Witness 3's NMC witness statement, in which he said:

*'Then he mimicked [Colleague E] on the 2 way radio stating he couldn't speak English properly in front of patients too.'*

The panel noted that Witness 3's local statement repeated the above in which he stated:

*'He then mimicked how he heard the staff member of the radio saying "Esk a dale"..'*

Witness 3 also repeated this comment in his email to management, dated 1 March 2021.

The panel also took account of Witness 3's local interview with Witness 4, dated 21 March 2021, in which he said:

*'[Mr Gold] was saying 'Eskedale'...'*

Witness 3 in his oral evidence also used the word 'mimicked' when describing this incident and highlighted the way Mr Gold would repeat Colleague E's pronunciation of 'Eskdale' due to his accent.

In Witness 2's local statement, she said:

*'[Colleague E] then said "I said Eskdale", which he did in his own pronunciation and [Mr Gold] said "Its not Eskedale you say Eskdale." This went back and fourth [sic] a few times and [Colleague E] appeared took back by this as voices became tense.'*

Witness 2 in her evidence was generally consistent with Witness 3, however the only difference appeared to be that she did not use the word 'mimicked', but rather described the interaction as having been 'tense'. Witness 2 was broadly corroborative with what Witness 3 said in evidence, and was clear, credible and consistent throughout her written and oral evidence.

The panel considered Mr Gold's response during his local interview with Witness 4, and although there does not appear to be anything within that interview that amounts to acceptance of the incident, he did accept he had issues with his own communication.

Therefore in light of the above, and on the balance of probabilities, the panel finds charge 1e proved.

## **Charge 2**

*That you, a registered nurse, whilst working at Greater Manchester Mental Health NHS Foundation Trust:*

- 2. Your conduct at charges 1 c and/or d and/or e was racially motivated in that it was done in the light of your perception of Colleague E's race.*

**This charge is found proved.**

In reaching this decision, the panel took into account the oral and documentary evidence before it.

In relation to this charge, framed in terms of "racial motivation", the panel was provided with a copy of the judgment in the recent appeal case of *Lambert-Simpson v Health and Care Professions Council* [2023] EWHC 481 (Admin). The panel adopted the approach of

a two-part assessment described by Mr Justice Fordham as “helpful” for, in that case, when a social media communication would be “racially motivated”, as follows:

*‘(i) that the act in question (here, the posting of the content) had a purpose behind it, which, at least in significant part was referable to race; and*

*(ii) that the act was done in a way showing hostility or a discriminatory attitude to the relevant racial group.’*

The panel considered Mr Gold’s subjective state of mind – that is, what he had in his mind, when he made those comments. The panel was mindful that Mr Justice Fordham observed that the purpose of a comment may be referable to race in a significant part, and the necessary hostility and/or discriminatory attitude may be established, even if a practitioner makes the comment to “*get a laugh*” as was submitted in that case of Mr Lambert-Simpson.

*“This combination was a racial slur (blatantly racist) and a well-known racist trait (highly derogatory), in "combination". The intention to try and get a "laugh" does not in any way detract from the fact that this was entirely or in significant part a purpose referable to race; nor from the fact that this was done in a way showing hostility and/or a discriminatory attitude. The Registrant could provide no explanation, other than descriptions of regrets and cringing and his protestations that he was not racist and everybody knew it.” [para 24(iii)]*

The panel considered that, when the sub charges of 1c, 1d and 1e are broken down, they clearly refer to the fact that Colleague E was not British. The evidence before the panel from Witnesses 2 and 3 was that Colleague E was [PRIVATE] and that he had a ‘foreign accent’. The panel considered that the comments by Mr Gold directed towards Colleague E were in light of his perceived race and ethnicity.

The panel considered the evidence of Witness 2 and Witness 3, who were present at the time of the incident. Although Colleague E has not provided direct evidence about their thoughts on the comments made, Witness 2 and Witness 3 identified these comments as being racist and were said in a hostile manner. Witness 2 and 3 also described Colleague E as being [PRIVATE] by the comments made, within their written and oral evidence.

The panel established that it is clear from the evidence heard that Mr Gold was angry and agitated during the time of the incident, as he could not understand what was being said by Colleague E over the two-way radio, and it may have been that Mr Gold had directed his anger and frustration towards Colleague E by making these comments. Mr Gold appears to have used his perception of Colleague E's race and ethnicity as a driving force for these comments. Charge 1c, in particular, was a powerful and abusive statement, that goes to the core of racial motivation.

The panel noted that when Mr Gold referred to the manager as a "useless cunt", he only used the word "useless", and it further proves that Mr Gold's comments towards Colleague E were focused, deliberate and offensive.

Therefore in light of the above, and on the balance of probabilities, the panel finds charge 2 proved.

### **Charge 3**

*That you, a registered nurse, whilst working at Greater Manchester Mental Health NHS Foundation Trust:*

- 3. Your conduct at charges 1 c and/or d and/or e was racist in that you treated Colleague E differently to other colleagues in the light of your perception of Colleague E's race.*



**This charge is found proved.**

In reaching this decision, the panel took into account the oral and documentary evidence before it.

The panel first considered the definition of 'race', as set out by the Equality Act 2010, which states:

- (1) *'Race includes –*  
    (i) *colour;*  
    (ii) *nationality;*  
    (iii) *ethnic or national origins.'*

The panel then considered the definition used by the Crown Prosecution Service to identify racist incidents, which states:

*'Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; ...'*

The legal assessor referred the panel to the criminal case of *R v Rogers* [2007] UKHL 8, in which the House of Lords held that it could be racist to make reference to, in that case, "*bloody foreigners*", even though the insult did not specify a group of people identifiable as a race. The judges determined that whether the evidence in any particular case, taken as a whole, proves that the offender's conduct demonstrated hostility to a racial group, or was motivated by such hostility, is a question of fact for the fact-finding court or tribunal.

The panel took account of Witness 2's local statement, in which she stated:

*'... [Colleague E] experienced discrimination because of his accent this was clear.'*

Witness 2 also described, during her oral evidence, that this incident was racist as it was directed towards Colleague E's accent.

Witness 3, in his local interview with Witness 4, indicated that this was the first time he had heard racial abuse from Mr Gold. He also stated that Mr Gold swore often, however on this occasion he used it in an aggressive and hostile way towards Colleague E.

The panel had no doubt that the words "foreign cunt" used by Mr Gold, and his comments in sub charges 1c, 1d and 1e, were motivated by hostility or prejudice, and were based on Colleague E's race.

Therefore in light of the above, and on the balance of probabilities, the panel finds charge 3 proved.

#### **Charge 4**

*That you, a registered nurse, whilst working at Greater Manchester Mental Health NHS Foundation Trust:*

- 4. On or around 13th May 2021 asked Colleague I to forge your signature on a medication card.*

#### **This charge is found proved.**

In reaching this decision, the panel took into account all the oral and documentary evidence before it.

The panel accepted that there was a phone call that took place between Mr Gold and Colleague I on 13 May 2021 regarding the signing of a medication card.

Witness 1 was clear in his local statement, dated 30 June 2021, that he had heard the conversation between Mr Gold and Colleague I, as he stated:

*'I was on duty with [Colleague I] and 1 other, a phone call came through, [Colleague I] received the call and told me about it. A discussion was going on between [Mr Gold] and [Colleague I] then gave me a report back. [Mr Gold] wanted her to take the prescription card for him from the ward to loweswater. She explained she could not do that.... Phone call then came through from [Mr Gold] and it was on loud speaker, [Colleague I] and myself were there. I heard him ask [Colleague I] to put his initials on the card. Qualified nurse asking that could loose [sic] pin number... [Mr Gold] said just make sure you don't have a convo with other people, pretend you have gone across to the ward.'*

Witness 1, in his NMC witness statement, said:

*'I can confirm that [Colleague I] first had a conversation with [Mr Gold] on the phone to which she relayed to me. I categorically said that she could not sign the card. Then [Mr Gold] called back, and this time, the phone was on loudspeaker so... I could hear the full conversation.'*

Witness 1, in his oral evidence, could not recall if the phone was on loudspeaker but he confirmed that he heard the conversation that took place, as Colleague I was repeating what Mr Gold was asking of her. The panel determined that there was some inconsistency between Witness 1's various accounts, although it did not consider that there had been any intention to mislead the panel.

Witness 5 was also clear in his NMC witness statement, in which he said:

*'Colleague I, who was on Keswick ward, came to Ullswater nursing office and informed me that [Mr Gold] had called her and asked her take Patient A's prescription card to him on Loweswater ward for him to sign. Colleague I reported*

*that he then asked her to forge his signature on Patient A's prescription card (the card)... At 00:39 on Thursday 13 May 2021 it was reported by the staff of Keswick ward that [Mr Gold] had again asked Colleague I to forge his signature on Patient A's prescription card...'*

The panel also took account of Mr Gold's local statement regarding this incident, which raises some inconsistencies, in which he stated:

*'I most definitely did not ask any person to sign the script...'*

The panel determined that, in the light of the inconsistency as to whether Witness 1 had or had not directly heard the conversation between Mr Gold and Colleague I, the evidence amounted to hearsay. There was, however, supportive evidence in the form of a Datix report completed by Colleague I. This was her contemporaneous record of the incident and it would likely be an accurate account of what occurred, as it was written close to the time of the event.

Therefore in light of the above, and on the balance of probabilities, the panel finds charge 4 proved.

## **Charge 5**

*That you, a registered nurse, whilst working at Greater Manchester Mental Health NHS Foundation Trust:*

- 5. Your conduct at charge 4 lacked integrity in that you were seeking to persuade Colleague I to conceal an error you had made.*

**This charge is found proved.**

In reaching this decision, the panel took into account the oral and documentary evidence before it.

The legal assessor advised the panel in relation to the judgment in the combined appeals of *Wingate and Evans v Solicitors Regulation Authority; Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366. She advised that the case of *Williams v Solicitors Regulation Authority* [2017] EWHC1478 Admin held that in professional codes of conduct, the term integrity is used as a “*useful shorthand*” to express “*the higher standards which society expects from professional persons, and which the professions expect from their own members.*” The general principle was established that integrity connotes adherence to the ethical standards of one's own profession, and professional integrity is linked to the manner in which that particular profession professes to serve the public.

A useful starting point in the panel's deliberations around Mr Gold's alleged lack of integrity was the following section of the '*The Code: Professional standards of practice and behaviour for nurses and midwives* (2015' (the Code), in particular:

***'Promote professionalism and trust***

*You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other healthcare professionals and the public'*

The panel then considered the evidence of Witness 5, in particular his witness statement:

*'... I emailed [Mr Gold] on that day to inform him that he needed to sign this when he was next on at the Edenfield Centre... I made it clear that what [Mr Gold] was asking his colleagues to do was not acceptable...'*

Witness 5, in his local statement, said that Mr Gold had been concerned about other staff knowing about his error. In his statement to the NMC, Witness 5 also said that Mr Gold had made ‘*a simple mistake that is often made under pressure*’ and that he did not need to cover up his error.

The panel noted that Witness 5 gave a clear explanation as to how Mr Gold could have responsibly dealt with this situation, by returning at a convenient time and marking the medication card as having been signed retrospectively. Witness 4, in her witness statement, also gave an explanation as to what actions Mr Gold could have taken instead:

*‘This concern is serious because it goes against Medicine Policy which states that the card must be signed by a Doctor or Registered Nurse... It should only be the person who administers the medication that should sign the prescription card. He could have signed it next on duty (the conversation could have been documented and at least there could have been a record of it) but rather, he attempted to be dishonest and have his signature forged.’*

The panel was in no doubt that the NMC requires integrity and a high standard of professionalism from its registered professionals, and Mr Gold’s actions in charge 4 clearly fell far below those standards expected of him. The panel considered that this was a deliberate attempt to persuade Colleague I to forge his signature on the medication card. The panel was clear in that Mr Gold had a duty of candour to be honest, and this incident was linked to his professional duties as a nurse.

Therefore in light of the above, and on the balance of probabilities, the panel finds charge 5 proved.

## **Charge 6**

*That you, a registered nurse, whilst working at Greater Manchester Mental Health NHS Foundation Trust:*

*6. On 13 May 2021 you failed to ensure safe patient care in that you:*

- a) Left Loweswater ward whilst on duty.*
- b) Left Loweswater ward without informing the site duty manager.*
- c) Left Loweswater ward with the medication keys in your possession.*

**This charge is found proved in its entirety.**

In reaching this decision, the panel took into account the oral and documentary evidence before it.

The panel first considered the word 'failure'. Failure indicates that Mr Gold would have had a duty to undertake something as part of his responsibilities as a registered nurse.

The panel then considered Witness 4's explanation of the ward and the expectations required in her witness statement:

*'Loweswater is a Psychiatric ward - there must always be a nurse on duty; 1 nurse and 2 HCAs must be present at all times as it is a 15 bedded male ward. By [Mr Gold] leaving the ward, the staffing numbers dropped to an unsafe staffing level. There must be 3 (1 nurse and 2).'*

When Witness 4 was asked about the level of risk posed at that time in her oral evidence, she stated that there could have been an emergency whilst Mr Gold was absent, and the ward would have been left with no qualified cover, and nobody would have been able to assist with immediate life support if required.

The panel then considered each of the sub charges.

## **Charge 6a**

The panel considered that Witness 4, in her witness statement, said:

*'[Mr Gold] confirmed that he had left Loweswater with two Band 2 support workers in order to attend Ullswater ward at Edenfield to sign the medication card.'*

The panel considered Witness 5's witness statement, in which he said:

*'At 06:30 on Thursday 13 May 2021 [Mr Gold] entered Ullswater ward...'*

The panel noted that in his oral evidence, Witness 5 repeated the above statement in that Mr Gold was seen walking onto the ward at 06:30 hours, and he confirmed that the night shift would have finished at 07:15 hours, indicating that Mr Gold did leave Loweswater ward whilst he was on duty. In oral evidence, Witness 5 said that there was normally only one nurse in charge of a ward on a night shift.

The panel considered Mr Gold's response to the incident, in his local statement, in which he said:

*'...hence why I ran all the way back down to the unit to sign myself. As the night shift was coming to an end I panicked and decided to run all the way down to Edenfield at just after 6am on my break as I had not had one up until that point. I was off the ward for no more than 20 minutes as Like I said I ran all the way there, signed the card and then ran all the way back up.'*

The panel considered that Mr Gold himself, albeit unsigned, appears to accept that he left Loweswater ward during his break in his local statement above, and he felt that it was the right thing to do. The panel considered that Mr Gold failed to ensure safe patient care in that he left Loweswater ward without a qualified nurse, and that this charge is proved.



### **Charge 6b**

The panel took account of Witness 4's witness statement, in which she said:

*'...he did not arrange cover before leaving or inform the duty manager that he was leaving the ward...'*

The panel also considered Mr Gold's response to the incident, in his local statement, in which he said:

*'I did not contact the top site duty manager as I believed that everything was in hand, the ward was settled, and I was utilising my break.'*

Given the local acceptance and the evidence of Witness 4, the panel determined that this charge is found proved. The panel was satisfied that failing to inform the site manager represented a failure to provide safe patient care in that the ward was left without a qualified nurse on duty.

### **Charge 6c**

The panel took account of Witness 4's witness statement, in which she said:

*'...he did not arrange cover before leaving or inform the duty manager that he was leaving the ward with the medication keys therefore sufficient qualified cover was not provided which may have impacted in the care provided to patients in a medical emergency or access to medication as [Mr Gold] had left the ward with the medication keys which is in breach of medication management policy and local procedures.'*

The panel considered Mr Gold's response to the incident, in his local statement, in which he said:

*'The 2 staff members on Loweswater had my mobile number and stated that I could leave the medication keys in a drawer which I refused to do and ran down to Edenfield and back up again with the keys safely attached to my lanyard.'*

The panel considered Witness 5's witness statement, in which he said:

*'I saw that [Mr Gold] had the medication keys from Loweswater ward on him. He was holding the main Edenfield keys in his hand, which are large and dark metal, and also clearly visible was a bunch of smaller mostly silver keys that are typical medication keys... medication keys should never be taken off a unit due to them being critical in delivering patient care.'*

In oral evidence, Witness 5 said that Mr Gold was definitely holding a set of medication keys and that there would have been no reason why he would have had access to any other wards medication keys. The panel accepted this evidence.

The panel considered that there is clear and sufficient written and oral evidence before it to indicate that Mr Gold failed to ensure safe patient care as charged in 6a, 6b and 6c. The panel considered that Mr Gold himself appears to accept his failings within his local statement (albeit unsigned) and provides mitigation as to why he took those actions.

Therefore in light of the above, and on the balance of probabilities, the panel finds charge 6 proved in its entirety.

## **Charge 7**

*That you, a registered nurse, whilst working at Greater Manchester Mental Health NHS Foundation Trust:*

- 7. Your conduct at charge 6 b lacked integrity in that you did not inform the site duty manager that you were leaving the ward so as not to draw a record keeping error you had made on Loweswater ward to their attention.*

**This charge is found proved.**

In reaching this decision, the panel took into account the oral and documentary evidence before it. The panel adopted a similar approach to that set out in charge 5 in determining whether Mr Gold's conduct, in leaving Loweswater ward without informing the site duty manager, lacked integrity.

The panel took account of Witness 5's witness statement, which stated:

*'...when I spoke to [Mr Gold] I encouraged him to finish his shift on Loweswater ward before coming over to Ullswater ward. However, he appeared excessively concerned about other staff discovering that the administration of Amisulpride to Patient A was not signed by him in the patient's prescription card.'*

Witness 5 also makes a similar point regarding the above statement in an email he sent to management, dated 12 May 2021:

*'[Mr Gold] called Ullswater at 04:15 to ask who was on shift in the morning. He said he would have to come down this morning as he isn't in until Saturday. I informed him of the day staff and asked if he wanted me to let them know he'd be coming on the ward after his shift had finished. He replied that he'd prefer if other staff didn't know...'*

The panel has heard evidence that this situation could have been easily resolved in the appropriate way. The panel also considered Mr Gold's response to the incident as highlighted previously, that he thought everything was in hand and that he had a good reason for leaving the ward.

The panel considered the section of the Code as previously set out in charge 5. It considered that the NMC requires integrity and a high standard of professionalism from its registered professionals, and Mr Gold's actions in charge 7 clearly fell far below those standards expected of him. The panel considered that this is not something a reasonable registered professional would find acceptable, and it was clear from the evidence that Mr Gold was trying to avoid his error becoming known. The panel was clear in that Mr Gold had a duty of candour to be honest, and this incident was linked to his professional duties as a nurse.

Therefore in light of the above, and on the balance of probabilities, the panel finds charge 7 proved.

### **Fitness to practise**

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

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

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

### **Submissions on misconduct**

Mr Segovia invited the panel to take the view that the facts found proved amount to misconduct. He referred to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311, in particular paragraph 38, which states:

*'...Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word "professional" which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the word "serious". It is not any professional misconduct which will qualify. The professional misconduct must be serious...'*

Mr Segovia submitted that there is very little doubt that, for a registered nurse to have engaged in this type of conduct, it would be considered professional misconduct. He submitted that Mr Gold's actions fell far short of what is expected of a registered nurse.

Mr Segovia referred to sections of the Code. In relation to charge 6, the panel had found that Mr Gold failed to ensure safe patient care in May 2021 by leaving Loweswater ward, failing to inform the site duty manager, and leaving with the medication keys in his possession. He submitted that the most relevant section of the Code is before section six, which is titled '*Practise effectively*'. He also referred to section eight, which relates to working co-operatively, namely 8.2 '*maintain effective communication with colleagues*',

and 8.3 *'keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff'*.

In relation to charge 4, Mr Segovia referred to section 20 of the Code. He submitted that 20.2 states *'act with honesty and integrity at all times...'*. He submitted that it is not acceptable to ask another colleague to forge a signature on a medication card. Mr Segovia referred to 20.3 of the Code, which states *'be aware at all times of how your behaviour can affect and influence the behaviour of other people'*. He submitted that a colleague was put under pressure and found herself in a difficult position when Mr Gold had asked her to forge his signature. Mr Segovia also referred to section 20.8 of the Code, which states *'act as a role model of professional behaviour...'*.

In relation to charges 5 and 6, Mr Segovia again referred to section 20 of the Code and submitted that this part is also relevant and links together with what the panel have found proved.

In relation to charges 2 and 3, Mr Segovia submitted that the panel have found that Mr Gold's actions were racially motivated. He referred back to a number of findings that the panel had previously made in regard to charges 2 and 3. He submitted that section 20 of the Code, in particular 20.2, 20.3 and 20.5, treating people fairly is essential to upholding the reputation of the profession. He submitted that the panel heard how Colleague E was [PRIVATE] about what took place, and it may be that a colleague whose first language is not English, may feel an element of vulnerability within the work environment. He submitted that there is nothing wrong with the principle of ensuring that all colleagues are able to pronounce a word correctly, for example due to safeguarding or public protection issues, but the concerns relate to how the actions were undertaken by Mr Gold and the manner in which they occurred.

Mr Segovia submitted that, in summary, the panel is unlikely to have to look at the sections of the Code to find that the matters found proved demonstrate that Mr Gold's

behaviour fell so significantly short of a healthcare professional, that it does amount to misconduct.

### **Submissions on impairment**

Mr Segovia 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 cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Segovia referred to paragraph 74 of the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant*:

*'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.'*

Mr Segovia also referred to paragraph 76 of *CHRE v NMC and Grant*, which sets out a number of questions for the panel to consider:

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

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

Mr Segovia reminded the panel that this is not a case involving dishonesty, however it may be important for the panel to consider the question of integrity in this case. He reminded the panel that Mr Gold did act without integrity on two occasions (within charges 5 and 7).

In relation to limb a) Mr Segovia reminded the panel that it has found Mr Gold failed to ensure safe patient care, and therefore he did put patients at unwarranted risk of harm.

In relation to limbs b) and c), Mr Segovia referred to charges 2 and 3. He submitted that, as the panel have found these charges proved, it is obvious how that behaviour brings not only Mr Gold's own reputation into disrepute, but also has the potential to impact the wider nursing profession. He submitted that this behaviour is not what the public or other colleagues would expect from a registered nurse.

Mr Segovia submitted that, looking back at section 20 of the Code, and when considering fundamental tenets, the panel may consider that there has no doubt been a breach by Mr Gold. He submitted that the NMC's position is, that even on the basis of what has already occurred and without considering the future risk, there are good reasons for a finding of impairment to be made in this case. He reminded the panel that charges 2 and 3, as well



as the lack of integrity, are so significant in terms of the how these actions would be perceived by the public and other healthcare professionals, that it is the NMC's view to find current impairment. This will mark the fact that it is important uphold professional standards and maintain public confidence in the profession.

Mr Segovia submitted that every registrant has the right to deny the allegations they face and Mr Gold has chosen not to participate, and so he would not be able to read and reflect on the panel's decision nor give an indication as to why he behaved in the way that he did. He reminded the panel that it has had no evidence from Mr Gold by way of reflection, to demonstrate that he fundamentally understands the issues that the panel have found proved, when it comes to understanding the importance of not acting in a discriminatory way. Mr Segovia submitted that Mr Gold has provided no evidence of remorse or insight and, in the absence of insight, the NMC say it is difficult to understand how there would not be a real risk of repetition in the future.

Mr Segovia referred to the case of *Grant*, and submitted that this case expressed the importance of insight, namely paragraph 116. He submitted that, although the matters surrounding racially motivated behaviour may not be considered an issue of risk, the NMC say that Mr Gold's actions do present a level of risk. He submitted that the issues surrounding public protection are also important for colleagues, as they too have a right to be protected from the behaviour of a registered nurse. He submitted that this behaviour could have a detrimental impact on the working environment, and that it is not too far a leap to say that it could even impact patient care.

Mr Segovia submitted that there is undoubtably current impairment on both public protection and public interest grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v GMC*, *CHRE v NMC and Grant*, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *General Medical Council v*

*Meadow* [2007] QB 462 (Admin), and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

## **Decision and reasons on misconduct**

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

The panel was of the view that Mr Gold's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Gold's actions amounted to multiple breaches of the Code. In particular, the panel considered that the following sections of the Code has been breached:

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

*To achieve this, you must:*

**1.1     *treat people with kindness, respect and compassion***

**7     *Communicate clearly***

*To achieve this, you must:*

**7.2     *take reasonable steps to meet people's language and communication needs, providing, wherever possible, assistance to those who need help to communicate their own or other people's needs***

**8     *Work co-operatively***

*To achieve this, you must:*

**8.2     *maintain effective communication with colleague***

**8.3     *keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff***

**8.5     *work with colleagues to preserve the safety of those receiving care***

**11 Be accountable for your decisions to delegate tasks and duties to other people**

*To achieve this, you must:*

- 11.2** *make sure that everyone you delegate tasks to is adequately supervised and supported so they can provide safe and compassionate care*

**Preserve safety**

*You make sure that patient and public safety is not affected. You work within the limits of your competence, exercising your professional ‘duty of candour’ and raising concerns immediately whenever you come across situations that put patients or public safety at risk. You take necessary action to deal with any concerns where appropriate.*

**19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice**

**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...*
- 20.3** *be aware at all times of how your behaviour can affect and influence the behaviour of other people*
- 20.8** *act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*

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

*To achieve this, you must:*

**25.1** *identify priorities, manage time, staff and resources effectively and deal with risk to make sure that the quality of care or service you deliver is maintained and improved, putting the needs of those receiving care or services first.'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel bore in mind that the fundamental tenets of the nursing profession are outlined in the Code under four themes. These are:

- Prioritising people
- Practising effectively
- Preserving safety
- Promoting professionalism and trust

The panel found that Mr Gold had breached each of these themes.

The panel considered that all of the charges found proved, both individually and cumulatively, amounted to misconduct in this case. It identified three particular areas, namely: racially motivated behaviour, a failure to maintain safe patient care, and an attempt to falsify documentation. The panel considered that these three areas fell far short of what is expected of a registered nurse, and any other reasonable healthcare professional would consider these actions to be misconduct. Mr Gold's actions could have had serious consequences, and his behaviour was wholly inappropriate in the circumstances.

The panel considered that Mr Gold displayed a lack of professionalism as well as attitudinal concerns, and there is an expectation that all nurses will behave in a non-discriminatory way, towards both staff and patients. The panel took account of the NMC's guidance, in which it is clear that racism will not be tolerated in healthcare.

The panel considered each of the charges. Charge 1 related to abusive language regarding the ward manager and racist and discriminatory behaviour towards Colleague E,

which is unacceptable. Charges 2 and 3 follow in that Mr Gold's actions were found to be racially motivated in respect of his conduct towards Colleague E, and that he treated him differently based on his perception of Colleague E's race.

Charge 4 relates to a minor record keeping error that occurred, but it resulted in a fraudulent response by Mr Gold in that he had asked Colleague I to forge his signature on a medication card. Mr Gold was found to have lacked integrity by this action. The panel considered that asking another colleague to falsify documentation is serious, wholly unacceptable, and could have serious consequences. Charge 5 follows in that Mr Gold's actions above demonstrated a lack of integrity.

Charge 6 in its entirety relates to a direct risk to patient care and was a failure on Mr Gold's part. Mr Gold had a duty, as a registered nurse, to remain on Loweswater ward as the only qualified nurse on duty. Mr Gold chose to leave the ward without another qualified nurse being present at the time, without having informed the site duty manager that he would be leaving, and he had also left with the medication keys in his possession. This would have presented a risk of harm to patients, should an emergency have occurred whilst he was absent, yet Mr Gold considered that it was the right thing to do at the time. Charge 7 follows in that Mr Gold's actions in charges 6b demonstrated a lack of integrity.

The panel therefore found that Mr Gold's actions above did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. 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) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) ...'

The panel considered that limbs a), b) and c) of *Grant* are engaged in this case in relation to both his past misconduct and the future risk.

*Limb a)*

In the panel's view, limb a) applies to charge 6 in that Mr Gold failed to ensure safe patient care and put patients at unwarranted risk of harm by leaving the ward. However, it also considered that Mr Gold had sworn within hearing distance of patients, in relation to charge 1, and this action could have also put patients at risk of emotional harm or distress, especially when considering the nature of the healthcare setting.

*Limb b)*

In the panel's view, limb b) applies to all of the charges in this case, in that Mr Gold's actions did bring the profession into disrepute. The actions as charged related to racist and discriminatory behaviour, as well as asking a colleague to falsify documentation on Mr Gold's behalf, which the panel considered was very serious. The panel considered that making the care of people a first concern, working with others to promote the health and wellbeing of patients and acting with integrity were fundamental to upholding the reputation of the profession, and Mr Gold had failed in this regard.

*Limb c)*

The panel considered that Mr Gold's actions within all of the charges breached fundamental tenets of the profession, and that there is a high risk of repetition. Mr Gold has failed to adhere to the standards of professionalism and trust expected of nurses, and has thereby breached fundamental tenets of the nursing profession.

The panel has received no evidence of insight, reflection or any evidence that Mr Gold has strengthened his practice. Mr Gold has not engaged with these proceedings, nor given an explanation as to why he behaved in the way that he did. The panel took account of Mr Gold's local statement during the Trust's investigation, but this did not provide any further explanation for his actions. The panel considered that it is extremely difficult to address attitudinal issues, lack of integrity and discriminatory views. It also noted that Mr Gold thought he was doing the right thing in relation to charge 6.

The panel took account of the NMC's guidance 'How we determine seriousness':

*'The Code says that nurses... must treat people fairly without discrimination, bullying or harassment... To be satisfied that conduct of this nature has been addressed, we'd expect to see comprehensive insight, remorse and strengthened practice from an early stage, which addresses the specific concerns that have been raised. In addition, we must be satisfied that discriminatory views and behaviours have been addressed and are not still present so that we and members of the public can be confident that there is no risk of repetition.'*

The panel considered that there is a real risk of harm and a high risk of repetition in this case. Mr Gold demonstrated on multiple occasions his disregard of his duties as a registered nurse. In all the circumstances, and in the absence of any evidence from Mr Gold to demonstrate his remorse, insight and reflection, the panel cannot be satisfied that his behaviour will not be repeated again in the future.

In light of the above, the panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC: to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public



confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required. A reasonable member of the public would be shocked to know that registered nurse has behaved in this manner, and would expect the NMC to take action. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Gold's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Gold's fitness to practise is currently impaired.

## **Sanction**

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

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

## **Submissions on sanction**

Mr Segovia informed the panel that in the Notice of Hearing, dated 11 April 2023, the NMC had advised Mr Gold that it would seek the imposition of a striking-off order if it found his fitness to practise currently impaired.

Mr Segovia submitted that this case involves racially motivated behaviour, a failure to maintain safe patient care and the attempt to falsify documentation. He submitted that Mr Gold has demonstrated a lack of professionalism and attitudinal issues. He reminded the panel that attitudinal issues and discriminatory views are difficult to address, and invited the panel to consider the above when making its decision on sanction.

Mr Segovia submitted that the panel have found a real risk of harm and a high risk of repetition in this case, and that Mr Gold had demonstrated his disregard for his duties as a registered nurse. There has been no evidence of insight, remorse or reflection from Mr Gold in respect of his actions, and the panel has decided it cannot be satisfied that his behaviour will not be repeated in the future. He submitted that Mr Gold has not engaged with the NMC's proceedings nor has he provided any evidence to assist the panel in understanding whether he has addressed the issues or moved forward from such views.

Mr Gold has also not offered any personal mitigation, however Mr Segovia submitted that this would be less relevant to the panel, as the duty of the regulatory authority is to protect the public and maintain the public interest. He also submitted that Mr Gold has had no previous regulatory history, however he again reminded the panel that this is likely to be of minimal value to the panel in relation to the issue of sanction, when considering the nature of the case.

Mr Segovia informed the panel that Mr Gold has been subject to an interim suspension order since January 2022. He submitted that this information may be of no benefit to the panel, especially if the panel decide to impose a striking-off order.

Mr Segovia referred to the NMC's guidance, titled '*How we determine seriousness*', under the heading '*Discrimination, bullying, harassment and victimisation*':

*'In such cases where displaying discriminatory views and behaviours is proved, some level of sanction will likely be necessary unless there's been insight at the most fundamental level and the earliest stage. However, if a nurse, midwife or*

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

Mr Segovia reminded the panel that there has been no engagement or evidence of insight provided by Mr Gold in respect of his actions.

Mr Segovia submitted that the most fundamental aspect, when looking at the concerns, is that this is a case that has not only a public interest element to it, but also a public protection element. Mr Segovia submitted that, in light of the above, the NMC maintain that a striking off order is the most appropriate sanction in the circumstances, and any lesser sanction would not protect the public or maintain public interest moving forward.

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

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

The panel took into account the following aggravating features:

- Mr Gold demonstrated a serious departure from the expected standards as set out in the Code and internal Trust policies;
- Discriminatory language used towards a colleague;
- Evidence of actual distress caused to colleagues from Mr Gold's conduct;
- Conduct which put vulnerable patients at risk of emotional and physical harm;
- A lack of evidence of insight, remorse and reflection by Mr Gold;

- A lack of professionalism and deep-seated attitudinal issues present; and
- A lack of engagement with the NMC's proceedings.

The panel also took into account the following mitigating features:

- Documentary evidence that Mr Gold [PRIVATE] at the time of the incidents;
- Evidence heard that Mr Gold [PRIVATE] and equipment occasionally not working; and
- Evidence that Mr Gold [PRIVATE] at the time.

The panel went on to consider the seriousness of the case. It noted that this is not a dishonesty case, but there is a lack of integrity present as well as racist and discriminatory behaviour. The panel took account of the NMC's guidance '*How we determine seriousness*' as set out below:

Under the heading titled '*Discrimination, bullying, harassment and victimisation*', it states:

*'In such cases where displaying discriminatory views and behaviours is proved, some level of sanction will likely be necessary unless there's been insight at the most fundamental level and the earliest stage. However, if a nurse, midwife or nursing associate denies the problem or fails to engage with the FtP process, it's more likely that a significant sanction, such as removal from the register, will be necessary to maintain public trust and confidence.'*

Under the heading titled '*Serious concerns which could result in harm to patients if not put right*', it states:

***'Promote professionalism and trust***

*The evidence shows that the nurse, midwife or nursing associate has failed to:*

- *uphold the reputation of the profession, by not acting with honesty and integrity, treating people fairly, without discrimination, bullying or harassment, in a way that does not take advantage of their vulnerability or cause them upset or distress.'*

The panel firstly 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 would also not protect the public.

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

The panel next considered whether placing conditions of practice on Mr Gold'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. Some of the misconduct identified in this case was not something that can be addressed through retraining, which includes racist and discriminatory views and attitudinal issues which are difficult to address. The panel considered that there has been no evidence of insight, remorse or reflection from Mr Gold. There is also no suggestion that Mr Gold would engage with conditions of practice. Furthermore, the panel concluded that the placing of conditions on Mr Gold's registration would not adequately address the

seriousness of this case and would not protect the public, nor would it be in the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that 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;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel considered that the concerns involved were not a single incident of misconduct, rather several incidents of a different nature, over a period of time. There is evidence of deep-seated attitudinal concerns in this case. The panel has not seen evidence of Mr Gold's behaviour being repeated since May 2021, however he has not engaged with these proceedings and he has been subject to an interim suspension order since January 2022. The panel considered that Mr Gold has shown no evidence of insight, remorse or remediation in respect of his actions and his understanding of the impact they had, and could have further had, on colleagues, patients and the wider public. The panel considered that there is a real risk of harm and a high risk of repetition 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 Mr Gold's actions is fundamentally incompatible with him remaining on the register.

[PRIVATE].

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction. It determined that, although it would protect the public for a period of time, it would not address the seriousness of the case, nor would it satisfy the public interest.

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

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

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

The panel took account of its findings above. The panel considered that the regulatory concerns in this case do raise fundamental questions about Mr Gold's professionalism as a registered nurse. It decided that public confidence in the profession and the NMC as regulator could not be maintained if Mr Gold is not removed from the register. The panel

decided that a striking-off order is the only sanction that would be sufficient to protect the public, would be in the public interest and would maintain professional standards.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Gold's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Mr Gold 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 Mr Gold's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Mr Segovia. He submitted that an interim suspension order for a period of 18 months should be imposed to cover the appeal



period, and it would be consistent with the decision the panel has already made regarding sanction.

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

The panel heard and accepted the advice of the legal assessor in relation to Article 31(1)(c) and Article 31(2) of the Nursing and Midwifery Order (2001).

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.