

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

Substantive Hearing

Monday 23 - Wednesday 25 October 2023
and
Friday 27 October 2023

Virtual Hearing

Name of Registrant: **Charlotte Imogen Balneaves**

NMC PIN 10Y0036E

Part(s) of the register: Registered Nurse Sub part 1
RNA: Adult nurse, level 1 (March 2010)
Nurse independent/supplementary prescriber
(October 2015)

Relevant Location: Luton

Type of case: Misconduct

Panel members: Rachel Forster (Chair, Lay member)
Kim Bezzant (Registrant member)
Jan Bilton (Lay member)

Legal Assessor: Nigel Pascoe KC

Hearings Coordinator: Monsur Ali

Nursing and Midwifery Council: Represented by Alastair Kennedy, Case
Presenter

Mrs Balneaves: Present and represented by Nearir Maqboul,
instructed by Royal College of Nursing (RCN)

Facts proved: Charges 1, 2a, 2b, 2c and 2d

Fitness to practise: Impaired

Sanction: **Suspension order (3 months)**

Interim order: **No order**

Details of charge

“That you, a Registered Nurse:

- 1) *Between April to December 2019, sent one/more of the messages set out in Schedule 1 to colleagues. (Proved by admission)*

- 2) *Your conduct at Charge 1:*
 - a. *was disrespectful; (Proved by admission)*
 - b. *was derogatory; (Proved by admission)*
 - c. *was racially motivated; and/or*
 - d. *breached patient confidentiality. (Proved by admission)*

AND in light of the above your fitness to practice is impaired by reason of your misconduct.”

Schedule 1 is Exhibit LA/01 which refers to instant messages from you to various colleagues.

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

Ms Maqboul, on your behalf, made an application that parts of this case may need to be held in private on the basis that proper exploration of your case involves references to your personal circumstances. The application was made pursuant to Rule 19 of the ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules).

Mr Kennedy, on behalf of the NMC, indicated that he did not object to the application.

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

The panel decided to hold parts of the hearing which refer to matters of personal circumstances in private because it concluded that this was justified by the need to protect your privacy and that this outweighed any prejudice to the public interest. However, where there is no reference to your private life, the hearing will be held in public.

At the outset of the hearing, the charges were read into the record. Ms Maqboul informed the panel that you made full admissions to charges 1, 2a, 2b and 2d. You denied Charge 2c and you also denied that your fitness to practise is impaired.

Background

On 3 January 2021 the NMC received a referral from the Chief Executive Officer of Atrumed Healthcare which is contracted to run the GP Clinic for Bedfordshire Hospitals Foundation Trust.

The referral stated that on 23 December 2019 a CCTV camera in the Clinic was tampered with. This led to an investigation which included a review of your messages on System One. (System One is the Clinic's internal messaging system used to send quick messages to colleagues about for example, advice needed, equipment sought and updates about going on lunchbreak.) It is not part of NMC's case that you were involved in tampering with the CCTV camera.

An examination of your messages in System One showed a number of messages which, it is the NMC's position, were disrespectful towards patients, some of which contained derogatory remarks about patients and some of which revealed patients' identities.

Mr Kennedy said that he understood your case to be that you thought System One was a private communication system and if you had realised that it was not private, you would not have made the comments that you did. He submitted that it is also the NMC's position that three or four of the comments were racially motivated and these are entries dated 15 April 2019 and 20 September 2019.

Mr Kennedy informed the panel that the NMC does not propose to call any witnesses in this case and the only witness statement the panel has is from Witness 1 who is the Chief Executive Officer of Atrumed Healthcare and the referrer in this case. The NMC does not intend to call Witness 1 as his evidence is not controversial. Witness 1 has produced the messages and you admit that you sent these messages. Therefore, it is the NMC's position that obtaining further evidence from Witness 1 would add nothing more to this case. Mr Kennedy said that what Witness 1 says is not controversial and what he speaks to has been admitted. He submitted that the dispute in this case relates to motivation. Mr Kennedy stated that Witness 1 could add nothing to the disputed Charge 2c.

As Witness 1's evidence was agreed between parties it was admitted into the record as evidence without the need for a formal hearsay application.

Decision and reasons on facts

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

In reaching its decisions on the disputed facts, the panel took into account all of the oral and documentary evidence in this case together with the submissions made by Mr Kennedy on behalf of the NMC and those made by Ms Maqboul on your behalf. It also heard from you under oath.

The panel heard and accepted the advice of the legal assessor. He initially advised that the NMC must establish a hostile intent on behalf of the registrant to show that you were racially motivated in respect of Charge 2c. The legal assessor provided the following further advice:

“if the words used by the registrant showed either hostility or a discriminatory attitude to a relevant racial group that would be sufficient to establish racial motivation. He referred the panel to the case of Robert Lambert-Simpson v Health and Care Professions Council [2023] EWHC 481 (Admin) where the Court

encapsulated when an inappropriate and/or offensive communication will be 'racially motivated' as follows:

(i) that the act in question was at least in a significant respect 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 Court also gave a clear indication in the case that, when considering the intentions behind racist language, the suggestion that it was done to 'get a laugh' among friends was unlikely to detract from the fact that it was referable to race and done in a way showing hostility and/or a discriminatory attitude:

It was appropriate and important that a regulatory supervisory authority should be able to see in this a serious "attitudinal" problem. Attitudes matter."

He added:

"Unconscious bias is a complete defence, if that is all it was.

Please decide the issue on all the evidence: the agreed documentary evidence, parts of the reflective statement and the evidence of the Registrant, which includes cross-examination, re-examination and the questions from you.

Lastly, I point out that if you find that the NMC has proved the sub charge on the balance of probabilities so that the defence failed, that does not at all exclude your consideration of mitigation at a later stage."

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 considered written evidence from the following witness:

- Witness 1: Chief Executive Officer of Atrumed Healthcare.

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

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

Charge 2c

1. Between April to December 2019, sent one/more of the messages set out in Schedule 1 to colleagues.
2. Your conduct at Charge 1:
 - c) was racially motivated

This charge is found proved.

In reaching this decision, the panel took into account all the documentary and oral evidence. The panel noted that you do not deny writing those comments but do not accept that these comments were racially motivated.

The panel looked at the following messages from Schedule 1:

15 April 2019 message to receptionist

15:45 *“(Dirty Romanians!) :(”*

15:45 *“My room needs a good spray!!”*

14 June 2019 message to receptionist

09:45 *“NOt a fucking word of english!?”*

09:45 *“We’re literally playing charades in here!!”*

30 August 2019 message to receptionist

12:50 *"I feel really sorry for that..[patient].. the twat foreign docs misinformed her"*

20 September 2019 message to receptionist

11:08 *"Not a bloody word of English between these dicks"*

The messages of 15 April 2019

The panel first considered the messages on 15 April 2019 and whether the words *"dirty Romanians"* were racially motivated. The panel determined that it is very difficult to interpret these comments in any other way than that of a hostile and negative racial slur towards a group of people of a particular race and nationality. Using this language and sending this as a comment to a colleague on System One is likely, in the panel's view, to create hostility towards that group of people and shows a discriminatory attitude.

The panel noted that you said that you were angry and frustrated because of the way the patient and his accompanying male friend had behaved towards you during the consultation. Whilst noting this unacceptable conduct, which the panel recognises would likely have made you feel uncomfortable, the panel noted that you had shared the messages with your colleague on System One which was intended to be used for quick non-clinical messaging.

Although the panel noted that you thought these messages were private, you should have known that they were not private because System One was intended for sharing information and you sent them to another colleague. They were not written in a diary or private notebook for your own personal record. The panel noted that you recognised that you should be a role model within the Clinic as a Senior Clinician but nevertheless you shared the comments with the receptionist over whom you had potential influence. The panel heard from you that there was a culture of using System One as a means of venting frustrations with colleagues and that there was a culture of using gossipy and inflammatory language on that chat. However, the panel noted that by sharing your frustrations about these 2 people, you encouraged that culture to continue.

The panel heard from you that you made those comments as a result of your unconscious bias. However, the panel was not persuaded that this was an issue of unconscious bias as your comments were direct, and showed a discriminatory attitude towards the Romanian patients. These were preceded by a negative comment, the word *'dirty'*. The panel did not accept that these comments were made as a result of your unconscious bias. The panel heard from you that you had not had any prior negative experiences with Romanian people and therefore the panel did not accept that you were making those comments as a result of pre-formed negative associations. The panel heard from you that you were instead venting your anger about the way that you had been treated by these men and that you chose to use words that made direct reference to their race when doing so. The panel sympathised with your account of the negative and unacceptable behaviour towards you during the consultation by the two men in question, but did not accept that this justified the words that you subsequently shared with your receptionist colleague on the System One messaging platform. The panel found that this was a racial slur used with a derogatory remark which is likely to lead to offence and generate hostility towards that group of people and shows a discriminatory attitude.

The panel next considered your comment, *"My room needs a good spray!!"* It noted that you documented in your reflective piece that you sprayed the room because of the poor hygiene of the men in question. However, during your oral evidence you told the panel that the men were smelling of marijuana which required your room to be subsequently deodorised. The panel noted you did not mention this in any other evidence. The panel noted this inconsistency in your evidence.

The message of 14 June and the message of 20 September 2019

The panel next considered the comments *"we're literally playing charades here!! Not a fucking word of English!?"* and *"Not a bloody word of English between these dicks"*, and determined that these were not only offensive and disrespectful comments but also demonstrated a level of hostility towards people who do not have a good command of the English language because of their ethnic background. As they include swear words, these comments are likely to generate hostility and show a discriminatory attitude towards this group of people.

The panel took into account that your work environment was very busy and you needed to see patients very quickly and that having patients who cannot speak English would have delayed the appointment and could have been frustrating for you. However, the panel determined that this did not justify the way you expressed your frustration and found that the comments were racially motivated.

The messages of 30 August 2019

The panel also considered your comments *“I feel really sorry for that..[patient].. the twat foreign docs misinformed her”*. The panel heard from you that you had concern for this patient and that your reference to the foreign doctors was in connection with treatment received in another country and the doctors not having identified her condition correctly. The panel noted this concern but did not find that this justified you using a derogatory word when describing the doctors as being foreign. It determined that using that wording together with the identification of the doctors as being foreign and conveying this to your receptionist colleague shows a discriminatory attitude and hostility towards this group of people.

The panel noted that although there may have been valid reasons for some of your frustration, nevertheless, it found that the words used and the discrimination shown were racially motivated.

Whilst the panel heard that there are significant mitigating circumstances [PRIVATE], and the culture in the Clinic, the panel determined that it does not absolve you from the fact that you wrote and sent racially motivated messages to colleagues. The panel heard from you that this does not reflect the person that you are, nor how you behave in your face to face consultation with patients, but these were comments you made due to your own frustration in the workplace. However, the panel found that these comments perpetuated the negative culture at the Clinic and demonstrated hostility and a discriminatory attitude by you towards groups of people through the racial slurs and offensive language that you used.

Having taken all of the above into consideration, the panel concluded that this charge is found 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 your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the Register unrestricted.

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

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

Submissions on misconduct

Mr Kennedy reminded the panel that the question of impairment involves a two-stage test and the panel first has to be satisfied that the facts proved amount to serious professional misconduct. Only if the panel is satisfied of that, can it go on to consider whether your fitness to practise is currently impaired.

With regard to the question of misconduct, Mr Kennedy reminded the panel of the decision of the High Court in *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a:

‘word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. 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 Kennedy drew the panel’s attention to the following provisions of ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015’ (the Code). He submitted that that the following provisions of the Code have been breached:

*‘20.1 keep to and uphold the standards and values set out in the Code.
20.2... treating people fairly and without discrimination...
20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people
20.7 make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way
20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times’*

Mr Kennedy invited the panel to consider the NMC’s Guidance on using social media responsibly which is underpinned by the Code to which nurses and midwives should refer along with any guidance issued by their employer on social media. The NMC’s guidance makes specific reference to paragraph 20.10 of the Code.

Mr Kennedy also invited the panel to consider the NMC’s Guidance on the issue of seriousness when deliberating on the question of misconduct. He said that this makes it clear that the NMC takes concerns about bullying, harassment, discrimination and victimisation very seriously. There is further guidance available in relation to serious concerns regarding public confidence in professional standards.

Mr Kennedy submitted that the facts found proved against you demonstrate that your conduct fell below the standards expected of a registered nurse and were sufficiently serious to amount to professional misconduct.

Ms Maqboul submitted that you accept that your behaviour amounted to misconduct.

Submissions on impairment

Mr Kennedy 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. Mr Kennedy submitted that the principal guidance on the meaning of impairment and the appropriate approach for a panel to take on the issue is given in the case of *CHRE v (1) NMC (2) Grant* [2011] EWHC 927 (Admin).

Mr Kennedy reminded the panel that you had exhibited a considerable level of insight, you have provided good testimonials from your current employer and colleagues who attest to your positive presence in the team, and that there are no clinical concerns against you. However, he submitted that there remains a risk of you repeating the misconduct because you are yet to develop full insight into your actions as your reflective piece does not address the impact of your actions on your patients, colleagues, your profession and on the nursing profession as a whole. He questioned whether you are fully aware of the effect your behaviour had on the bond of trust, the bedrock of the nurse/patient relationship, on colleagues and the reputation of the profession. Nevertheless, he submitted that there is nothing to suggest that you have repeated your behaviour.

The charges relate to events that took place four years ago and you have continued to work as a nurse without restriction. There have been no other reported issues with your practice; the panel has read positive testimonials about your performance which show remediation. He reminded the panel that it had heard from you about the personal pressures you faced at the time of the misconduct, the treatment you have received and the coping mechanisms you have developed. In light of that information, Mr Kennedy submitted that the panel may regard the risk of repetition as low.

Mr Kennedy submitted that the panel will have to consider the questions of public protection and public interest. He referred the panel to the case of *Cohen v GMC* [2008] EWHC 581 (Admin) which says:

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

Mr Kennedy submitted that with regards to public protection, although the misconduct in your case is not at the top end of the scale, there is a level of risk as the misconduct could have had a detrimental impact on your practice and your manner could have allowed junior colleagues to think that such comments were acceptable. This could well have led to an impact on patient care. He also said that issues of confidentiality also raise questions of public protection.

Mr Kennedy submitted that a finding of current impairment is also necessary to satisfy the public interest. He said the public would be appalled to learn that a nurse referred to her patients in the way that you did. The public would have genuine concerns that your attitude could lead to poor treatment of the people you held in such low regard. It is the type of behaviour and attitude, he submitted which could lead to people being reluctant to engage with members of the nursing profession.

Mr Kennedy submitted that notwithstanding the insight, remorse and reflection provided by you, a finding that there is no current impairment would send out a message to the public and the profession that it is acceptable to behave in this way as nothing will come of it. He said that this would send out the wrong message and could affect public confidence. He said that the NMC rules do not permit the panel to issue a warning if a finding of no impairment is made. He therefore reminded the panel that a finding of no impairment is effectively a total acquittal. You would metaphorically leave here without a stain on your character.

Mr Kennedy submitted that a finding of current impairment is necessary in order to protect the public, uphold public confidence in the NMC as regulator, protect the reputation of the profession and maintain proper standards in the profession.

Ms Maqboul submitted that your practice is not currently impaired. She referred to Mr Kennedy's submissions that the NMC has no power under the current rules to issue a warning if no impairment is found proved. She submitted that this should not be used to penalise you and that the panel should consider the case law outlined to determine whether it finds that your practice is currently impaired.

Ms Maqboul said that the panel should look at the insight you have shown and based on that, it is clear that there is no risk of repetition of the misconduct as you have accepted from the outset that your behaviour, in writing those comments, was abhorrent.

Ms Maqboul submitted that no patient harm was caused by your conduct and there is no suggestion that patients were aware of these comments nor was there any indication that their consultations with you were affected by the comments you had made. She said that you accept that you breached patient confidentiality by sharing those comments, but submitted that it is a leap to think that your writing and sharing of those comments would affect patient care.

Ms Maqboul said that these events occurred four years ago and there have been no concerns before that time or since then. She said this occurred during an isolated period in an otherwise unblemished career.

Ms Maqboul told the panel that you are a good nurse with a decent character and that there is no risk of repetition and therefore there is no risk to the public as demonstrated by the fact that you have practised with no restrictions for the last four years and there have been no concerns since then.

Ms Maqboul said that in relation to public interest grounds, the panel must look at your practice as of today, and she invited the panel to look at the great strides you have taken to remedy the concerns, the considerable remorse you have demonstrated and

the insight you have developed because you recognise that behaviour was wrong and unacceptable. You have faced your behaviour, subjected yourself to robust questions during the process and have continued to reflect on what you did.

Ms Maqboul said that you have reflected about your misconduct and this is an ongoing process. She said that the nurse before the panel today is a different one than the nurse in 2019 as you have made significant changes since then. She said that you were working within a culture that considered it acceptable to express frustration in this way but you do not put the blame on anyone and have taken full responsibility for what you have done, recognising your part in that culture.

Ms Maqboul directed the panel to the positive testimonials from senior colleagues which show that you are doing very well in your current workplace, that you have a supportive employer and that you are thought of very highly by many colleagues. She submitted that the testimonials attest to the changes you have made. You work in a diverse environment where you go above and beyond for your Black and Minority Ethnic patients and this has been recognised. Ms Maqboul invited the panel to attach considerable weight to the testimonials when determining current impairment.

Ms Maqboul invited the panel to find that your fitness to practise is not currently impaired and reiterated that you have made significant progress since the misconduct in question. She said you accepted the entirety of the charges other than the part which states your comments were racially motivated. She said you now understand how your comments could be perceived as racially motivated and are ashamed of it.

Ms Maqboul invited the panel to take into consideration the culture you were working in, the personal difficulties you were experiencing at the time and the progress you have made since then. She reassured the panel that based on the evidence before it, there is no risk of repetition of the misconduct. She said that a well informed member of the public would not be offended if a panel returned a finding of no impairment on public interest grounds for a nurse who worked very hard in four years to prove matters would not happen again. She accepts that what she did was abhorrent, has made significant progress since then which including attending self-funded courses, is well regarded in

her practice and has been practising since then without any concerns. Her GP colleague expressed his willingness to speak to the panel on her behalf, although Ms Maqboul submitted that his written testimony was sufficient.

Ms Maqboul invited the panel to make a finding of no impairment on both grounds.

Decision and reasons on misconduct

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

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

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

5 Respect people's right to privacy and confidentiality As a nurse or midwife, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately.

To achieve this, you must:

5.1 respect a person's right to privacy in all aspects of their care

8 Work cooperatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

20 Uphold the reputation of your profession at all times

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

20.2 act with honesty and integrity at all times, treating people fairly and

without discrimination, bullying or harassment

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It also took note of the NMC Guidance on seriousness. The panel was of the view that your actions were a serious departure from the standards expected of a registered nurse.

The panel determined that the comments were disrespectful, derogatory, some were racially motivated and at least one breached patient confidentiality, which are very serious. The panel therefore decided that when considering the charges individually or collectively, as it is required to do, they amounted to serious professional misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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 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 finds limbs b-c are engaged. Your misconduct has breached the fundamental tenets of the nursing profession and has brought the reputation of the profession into

disrepute. The panel found that over a period of eight months, you sent many messages to colleagues, including those junior to you, which were derogatory, disrespectful, and in some cases racially motivated. The comments referred to patients, their condition, their appearance, their behaviours, their clinical needs and their personal hygiene. On at least one occasion, you also breached patient confidentiality.

The panel noted that you have developed a significant level of insight, have reflected on your actions and the reasons why you behaved in the way that you did and you have accepted responsibility for most of your actions from the outset. The panel also noted that you have submitted evidence of additional training you have undertaken to address the concerns, including developing training for other colleagues, based on your own experience and reflection, which the panel finds encouraging. The panel considered that this demonstrates a deeper level of reflection and willingness to embed your learning.

The panel heard the significant mitigating circumstances in your case [PRIVATE]. The panel could see from your messages the level of frustration you held towards many groups of people at that time. This was compounded by the fact that you were working in an environment where this type of behaviour went unchallenged.

The panel also heard that you are now working in a very supportive and diverse practice with senior colleagues who value you and have encouraged your further learning and development. The panel heard that you have continued to practise without restriction and that in the four years since the incidents in question, there have been no incidents or concerns at all. It read the many very positive testimonials from colleagues including senior clinicians who wholeheartedly support you and believe in you. The panel also read your detailed reflection and heard you express your remorse and your apologies. It saw evidence that you have strengthened your practice significantly and you are a fundamentally different practitioner from the person at the time of the allegations. Having taken all these factors into account, it determined that you have faced uncomfortable truths about yourself and have learnt lessons. Therefore the panel considers that there is no risk of repetition of this behaviour and consequently no risk to the public. Therefore on the grounds of public protection, the panel did not find that your practice is impaired.

The panel went on to consider the ground of public interest. It 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 considered your misconduct to be very serious and noted that the NMC takes racism and abusive comments very seriously. The panel has seen evidence of your remediation, and the insight you have developed into your misconduct, and the steps you have taken to put things right. However, notwithstanding this, the panel determined that the public would be concerned if there were no finding of impairment on public interest grounds for a nurse who had behaved in this way. The panel is of the view that it is important to mark the seriousness of the facts found proved and to send out a clear message to other professionals and to the public that this type of behaviour is totally unacceptable.

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

Sanction

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

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

Submissions on sanction

Mr Kennedy informed the panel that in the Notice of Hearing the NMC advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired.

Mr Kennedy submitted that the NMC is seeking a striking-off order because your misconduct fell so seriously below the standard expected of a registered nurse that it is fundamentally incompatible with you remaining on the Register. However, at this stage the matter is left to the panel's experience and expertise, and the NMC's submission carries no special weight.

Mr Kennedy submitted that as your behaviour is not at the lower end of the spectrum of misconduct, it would not be appropriate for no further action to be taken or for a caution to be applied. He submitted that this is misconduct which needs to be marked. He also submitted that as the issues involved do not concern your clinical practice but involve attitudinal issues, that no practical or workable conditions could be applied and so a conditions of practice order is not appropriate either.

Mr Kennedy submitted that a suspension would not satisfy the wider public interest given the serious nature of the misconduct concerned. Mr Kennedy said that your behaviour was serious, continued for a period of over eight months and demonstrated a lack of professionalism which could affect public confidence in the profession and in the NMC if you remain on the Register.

Ms Maqboul submitted that the proposed sanction bid was advanced prior to your testimony before this panel and before the submission by you of the comprehensive remediation bundle. Consequently, Ms Maqboul submitted that the prospect of imposing a strike-off order can be properly discounted.

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

Ms Maqboul submitted that it is pertinent to note that these matters have lingered for an extended period of four years, during which you not only had to deal with the process but also continued to practice without any further concerns emerging. Your proactive disclosure of these allegations to your employer indicates your commitment to addressing these serious issues.

Furthermore, she submitted that there is public interest in maintaining a highly competent nurse in the profession. There is a limited pool of advanced nurse practitioners, and consequently, Ms Maqboul submitted it is in the interest of the public to permit you to continue serving the community. Any concerns that may arise could be managed without resorting to the extreme measure of a strike-off order. She submitted that the gravity of the misconduct can be adequately addressed through the imposition of a lengthy caution order for four to five years, which would serve as a persistent reminder. Should any future concerns arise in your professional conduct, these current circumstances could be duly factored into the assessment.

Ms Maqboul also suggested that, in the event of the panel not finding a caution order to be appropriate, it may consider the imposition of a conditions of practice order. She submitted that this could entail monthly meetings with surgery partners and the development of a Personal Development Plan. Your current employer has indicated their willingness to facilitate this arrangement. Additionally, the panel could also request a supplementary reflective piece before the next review, as a testament to your ongoing commitment to improvement. She submitted that this would be far more advantageous over a suspension order of up to 12 months which would require your current clinic having to source a locum clinician to fill your post. She stated that suspension would not be proportionate given the strides to improve your practice that you have undertaken.

Ms Maqboul submitted that a suspension order would impose a considerable financial burden on you.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that

any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- The misconduct continued over a period of eight months
- The misconduct demonstrated a lack of professionalism
- The concerns are serious and have the potential to affect public confidence in the profession
- You held a position of trust as a senior member of the team and therefore you were a role model to others
- There was a risk of harm to colleagues due to the position of influence you had in that clinic

The panel also took into account the following mitigating features:

- You made an early admission to most of the charges
- You have developed considerable insight into your behaviour
- You have demonstrated remorse for your actions
- You have apologised for your actions and tried to put things right
- You have taken significant steps to strengthen your practice
- You were experiencing very difficult personal circumstances at the time of the misconduct
- The culture of your working environment was non person-centred, offered little support and left poor behaviour unchallenged
- There was significant work pressure
- There has been no previous history of misconduct, nor any other regulatory concerns since then

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case and the public interest issues identified, such an order would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum but also considered that in the light of its finding that you had taken significant steps to strengthen your practice and you are a different person from the nurse at the time of the misconduct, it would not be appropriate for you to be subject to a lengthy caution order as this would serve no purpose. The panel did not think that you continue to exhibit underlying attitudinal issues that needed to be monitored and therefore did not consider that a caution order would be inappropriate. Furthermore, it did not think that a caution order would address the public interest in this case.

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

- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force;*
and
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that given the nature of the charges in this case and the fact that your clinical practice is not in question, there would be no conditions that could be formulated that would be workable. You wrote and shared with colleagues disrespectful

and derogatory comments about multiple groups of people, some of which were racially motivated. Such misconduct is very serious and has the potential to undermine public confidence in the profession.

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

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident; and*
- *The panel is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;.*

The panel considered whether a striking-off order would be proportionate but, taking account of all the information before it, and in light of the mitigation provided and the significant steps you have undertaken to strengthen your practice, the panel concluded that it would be disproportionate. It also considered that in the light of the very positive testimonials from senior colleagues who are aware of the concerns in these proceedings and have worked with you in the last four years, it would not be in the public interest to permanently remove from the Register such a qualified nurse who is so well regarded by colleagues. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the Register.

It therefore decided that a suspension order is the most appropriate and proportionate order to impose in this case. The panel believed that this would send a message to other professionals that such misconduct would not be tolerated but it would also send a message to those people in society who have been subjected to racially motivated comments and behaviour that such behaviour will not be overlooked.

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

The panel determined that a suspension order for a period of three months was appropriate in this case to mark the seriousness of the misconduct and to address the wider public interest engaged in your case.

The panel considered that this order is 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.

The panel made the substantive order on the basis that it had found your practice to be impaired in the wider public interest. The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the nursing profession as well as the NMC as the regulator. Further, the substantive order will declare and uphold proper professional standards. Accordingly, the current substantive order will expire, without review, on 24 February 2024.

This decision will be confirmed to you in writing.

Interim order

As the substantive suspension 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 is in your own interests until the suspension 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 Kennedy. He submitted that an interim suspension order for the period of 18 months is necessary to cover the period of

any potential appeal. He said that this order would fall away after 28 days if no appeal of the substantive suspension order is made.

Ms Maqboul submitted that this application is strenuously opposed. She said that the panel had noted that there are no attitudinal issues and there is no risk to the public. This is a matter that is on public interest grounds only. She submitted that is no need for interim order. The 28 days before this order takes effect will give you the opportunity to discuss with your current employer and get your house in order.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

The panel was not satisfied that an interim order was necessary on any ground.

That concludes this determination.