

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

**Substantive Hearing
Monday 9 – Friday 13 October 2023**

Virtual Hearing

Name of registrant:	Rachel Price
NMC PIN:	16H1734E
Part(s) of the register:	Registered Nurse: Learning Disabilities RNLD (26 September 2023)
Relevant location:	Stoke-on-Trent
Type of case:	Misconduct
Panel members:	Dave Lancaster (Chair, lay member) Catherine Devonport (Registrant member) Karen Shubert (Registrant member)
Legal Assessor:	Fiona Barnett
Hearings Coordinator:	Sherica Dosunmu
Nursing and Midwifery Council:	Represented by Matthew Cassells, Case Presenter
Mrs Price:	Not present and unrepresented
Facts proved:	1a, 1b, 2, 3 in relation to 1b
Facts not proved:	3 in relation to 1a
Fitness to practise:	Impaired
Sanction:	Striking-Off Order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Price was not in attendance and that the Notice of Hearing letter had been sent to Mrs Price's registered address by recorded delivery and by first class post on 7 September 2023.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and means of joining the virtual hearing and, amongst other things, information about Mrs Price's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Cassells, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Price 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 Mrs Price

The panel next considered whether it should proceed in the absence of Mrs Price. It had regard to Rule 21 and heard the submissions of Mr Cassells.

Mr Cassells informed the panel that the NMC made various attempts to contact Mrs Price and there has been no engagement at all from her. He stated the NMC has made efforts to trace Mrs Price's current address and referred the panel to a Trace Report received on 30 May 2023, which confirmed Mrs Price's current address registered with the NMC. He stated that the NMC sent an email about this hearing to Mrs Price's registered email

address on 5 June 2023, which was returned with a delivery failure notification. He explained that this was followed by a letter about this hearing, which was sent to both Mrs Price's previously registered address with the NMC and her current registered address.

Mr Cassells invited the panel to continue in the absence of Mrs Price on the basis that she has voluntarily absented herself from today's proceedings. He submitted that there has been no application for an adjournment and there was no reason to believe that an adjournment would secure Mrs Price's attendance on some future occasion. He reminded the panel that the allegations in this case date back to 2019 and submitted that there is clear public interest in the expeditious disposal of this case.

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 Mrs Price. In reaching this decision, the panel has considered the submissions of Mr Cassells, 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 Mrs Price;
- Mrs Price has not engaged with the NMC and has not responded to any of the letters sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- The charges relate to events that occurred in 2019;
- Witnesses are due to give live evidence;

- Further delay may have an adverse effect on the ability of witnesses to accurately recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Price in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Price's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Decision and reasons on application to amend charge 1b

At the end of the NMC's evidence, the panel heard an application made under Rule 28 by Mr Cassells to amend the wording of charge 1b.

The proposed amendment was to change the wording in charge 1b from '*dinner's ready*' to '*breakfast ready*'. Mr Cassells submitted that Witness 1 corrected this as an error in her live evidence and explained that the wording should be breakfast, which accords with all of the other evidence in this case. He submitted that the proposed amendment to this charge would more accurately reflect the evidence.

Original charge 1b:

1. 'On 11 August 2019, during a shift, said the following inappropriate words, or words to this effect, with reference to Person A, to a colleague;
- b. "*dinner's ready*" in a tone meant to mimicking or mock Person A's accent.'

Proposed charge 1b:

1. 'On 11 August 2019, during a shift, said the following inappropriate words, or words to this effect, with reference to Person A, to a colleague;
- b. "~~*dinner's*~~ ***breakfast*** *ready*" in a tone meant to mimicking or mock Person A's accent.'

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

The panel was of the view that such amendment did not change the nature or gravity of the charges against Mrs Price, and clarified the case against her. The panel was satisfied that there would be no prejudice to Mrs Price and no injustice would be caused to either party by the proposed amendments being allowed. The panel observed that Mrs Price's own evidence in terms of documents relating to the disciplinary investigation mentioned breakfast, not dinner. The panel determined that it was therefore appropriate to allow the amendment, to ensure clarity and accuracy.

Details of charge (as amended)

That you, a registered nurse;

1. On 11 August 2019, during a shift, said the following inappropriate words, or words to this effect, with reference to Person A, to a colleague;

a. *“...that bloody Chinese woman or whatever she is needs to learn to speak English properly, no one can understand what she is saying”* and/or
[PROVED]

b. *“breakfast ready”* in a tone meant to mimicking or mock Person A’s accent.
[PROVED]

2. Your conduct at Charge 1a and/or Charge 1b above was racially abusive.
[PROVED]

3. Your conduct at Charge 1a and/or Charge 1b above was intended to be racially abusive. **[PROVED IN RELATION TO 1B] [NOT PROVED IN RELATION TO 1A]**

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

Background

The NMC received a referral regarding Mrs Price’s fitness to practise on 10 February 2020 from North Staffordshire Combined NHS Trust (the Trust). At the time of the concerns raised in the referral Mrs Price was working as a Band 5 Registered Staff Nurse at Harplands Hospital (the Hospital), part of the Trust.

On 11 August 2019, Mrs Price was working on Ward Seven (the Ward) alongside Witness 1. Mrs Price was also working alongside, Person A, a Support Team Assistant (STA) at the Hospital, employed by Serco. Part of Person A’s role was to prepare and deliver meals to patients on the wards at the Hospital. English is not Person A’s first language, as Person A had emigrated from China to the UK.

During this shift, Person A encountered Mrs Price and stated that breakfast was ready. After this encounter, it is alleged that Mrs Price went to the clinic room on the Ward, where

Colleague 1 was located and said, *'that bloody Chinese woman or whatever she is needs to learn to speak English properly, no one can understand what she is saying'*. It is alleged that Mrs Price also said *'breakfast ready'* in a mocking tone as though she was mimicking how it had been said by Person A. In response, Witness 1 explained to Mrs Price that Person A was her stepmother and Mrs Price apologised to Witness 1. Mrs Price later also apologised to Person A.

Witness 1 reported concerns about Mrs Price's alleged comments to Witness 2, the Deputy Manager, who was on call for the Ward. Witness 2 spoke with Mrs Price and escalated the matter the same day.

Witness 3, an Advanced Nurse Practitioner at the Hospital, was later instructed to investigate the alleged inappropriate comments on behalf of the Trust. This investigation included interviews with Mrs Price, Witness 1, Person A and Witness 2.

Decision and reasons on application to admit hearsay evidence of Witness 2

The panel heard an application made by Mr Cassells to allow the following exhibits into evidence:

- An email from Witness 2, dated 11 August 2019, which escalated the allegations at the time the complaint was made.
- Witness 2's witness statement from the Trust's investigation, dated 17 September 2019.

Mr Cassells referred the panel to the case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin)*. He submitted that the above exhibits related to a witness who will not be called by the NMC to give live evidence in this case.

Mr Cassells submitted that Witness 1 reported the alleged inappropriate comments made by Mrs Price to Witness 2 in the first instance. He stated that Witness 2 then reports his

account of the complaint to senior colleagues in the email dated, 11 August 2019, which was sent on the same day. Further, he stated that Witness 2 was interviewed as part of the Trust's investigation into the complaint and the statement, dated 17 September 2019, illustrates Witness 2's account of what Witness 1 said to him at the time. On this basis, he stated that the email and witness statement from the Trust from Witness 2 were relevant to the allegations.

Mr Cassells submitted that it would be fair for Witness 2's email and witness statement from the Trust to be admitted as they were not the sole and decisive evidence in support of any of the charges, and the panel will hear live evidence from the Witness 1 and Witness 3 in relation to this matter.

Mr Cassells submitted that in the information provided by Witness 2, it is apparent that what he reported was a somewhat different account to what Witness 1 provided at the Trust's investigation and in her NMC witness statement. He stated that the fact that Witness 2's account leads away from Witness 1's account makes the evidence fair to be admitted as this gives the panel the opportunity to compare and contrast.

Mr Cassells submitted that the allegations in this matter are serious and relate to racial abuse. He submitted that at the time this was reported to Witness 2 by Witness 1 he immediately recognized the seriousness of the matter and raised it with senior colleagues. He submitted that there is no reason to believe that Witness 2 fabricated anything other than reporting to the best of his ability what he recalled Witness 1 said to him. He submitted that the information from Witness 2 potentially provides a fuller picture of what happened and allows other accounts to be tested.

Mr Cassells stated that although it may be fair to say the NMC could have done more to secure the attendance of Witness 2, in point of fact he had no information at all about what steps the NMC had taken. He submitted that the panel should consider allowing Witness 2's material into evidence regardless.

Mr Cassells referred to the final principal in the case of *Thorneycroft*; whether Mrs Price had prior notice that a witness statement would be read. He submitted that Mrs Price has not engaged in these proceedings at all, but if she had, it would have been perfectly apparent to her that Witness 2 was not someone who the NMC has taken a witness statement from, and so this final point falls away.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application, which included Rule 31. This provides that, subject only to the requirements of relevance and fairness, a panel may admit oral, documentary, or other evidence, whether or not it is admissible in civil proceedings.

The panel approached its decision by considering firstly the relevance of the hearsay evidence and then secondly whether it would be fair to admit it having regard to the principles identified in the case of *Thorneycroft*.

The panel considered whether the email from Witness 2 about the complaint, and Witness 2's witness statement from the Trust's investigation are relevant to the charges it needs to decide. The panel considered that allegations were directly reported to Witness 2 while he was performing his duties as an on-call manager on the Ward. It was of the view that the information supplied in both the email and witness statement from the Trust Witness 2 concerned the substance of the allegations in these charges and would be relevant to the matters of this case.

The panel next considered whether it would be fair to admit this evidence. The panel determined that in respect of Witness 2's email and witness statement from the Trust the following applied:

- The information from Witness 2's email and witness statement from the Trust were not the sole and decisive evidence in relation to any of the charges;

- Witness 2's email and witness statement from the Trust to some extent differ from the account of a NMC live witness, which is important to examine in the absence of Mrs Price;
- There is no suggestion that Witness 2 had reason to fabricate the information he provided;
- The charges are serious and relate to racial abuse.

The panel noted that no evidence has been put before it to suggest that the NMC has made any attempts to secure the attendance of Witness 2. However, the panel had regard to the fact that Witness 2 was not an eyewitness to the matters alleged and therefore his attendance during these proceedings was not particularly crucial. In these circumstances, the panel was satisfied that it would be fair to admit Witness 2's email and witness statement from the Trust as hearsay evidence. It will of course give appropriate weight to this evidence and will bear in mind that it will not be fully tested.

Decision and reasons on application to admit hearsay evidence of Person A

The panel heard another application made by Mr Cassells to admit the following exhibit as hearsay evidence:

- Person A's witness statement from the Trust's investigation, dated 17 September 2019.

Mr Cassells referred to the case of *Thorneycroft*, and submitted that the exhibit related to Person A who will not be called by the NMC to give live evidence in this case.

Mr Cassells explained that Person A is the individual who Mrs Price's alleged comments were made against. He submitted that the information contained in Person A's witness statement from the Trust does not go to any factual issue of the case as Person A did not hear the alleged comments. However, he submitted that Person A's witness statement

from the Trust was relevant as it provides factual background and context in which the alleged comments were made.

Mr Cassells submitted that Person A's witness statement from the Trust was relevant in a peripheral way, and therefore there is no unfairness to any party allowing it into evidence.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application, which included Rule 31.

The panel approached its decision by considering firstly the relevance of the hearsay evidence and then secondly whether it would be fair to admit it having regard to the principles identified in the case of *Thorneycroft*.

The panel considered whether the witness statement of Person A from the Trust's investigation was relevant. The panel considered that although Person A did not hear firsthand the alleged comments made about her by Mrs Price, she was present for the subsequent actions of Mrs Price, in particular, she received an apology from her. It was of the view that the information supplied in Person A's witness statement from the Trust provided background and context to the allegations in this matter and would be relevant in the circumstances of this case.

The panel next considered whether it would be fair to admit this evidence. The panel noted that the information from Person A's statement only provided relevant background and context for the allegations, and was not the sole and decisive evidence relied upon for the matters charged.

The panel noted that a number of attempts were made to get Person A to engage with the NMC process without success. The panel could also see no reason to suggest why Person A would fabricate any of the evidence.

In these circumstances, the panel was satisfied that this evidence was relevant and that it would not be unfair to Mrs Price if it were admitted. The panel will of course give appropriate weight to this evidence and will bear in mind that it will not be fully tested.

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 Cassells on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Mrs Price.

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

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

- Witness 1: Staff Nurse at the Hospital, who was working on the Ward on 11 August 2019 (Person A's stepdaughter);
- Witness 3: Advanced Nurse Practitioner at the Hospital, who conducted the Trust's investigation into the allegations.

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

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

Charge 1a

1. On 11 August 2019, during a shift, said the following inappropriate words, or words to this effect, with reference to Person A, to a colleague;
 - a. *“...that bloody Chinese woman or whatever she is needs to learn to speak English properly, no one can understand what she is saying”* and/or

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 1. The panel also had regard to the documentary evidence exhibited, which included notes from interviews at the Trust’s investigation, a reflective statement from Mrs Price provided at the Trust’s investigation, and an email from Witness 2 dated 11 August 2019.

The panel noted that Witness 1 provided an account in respect of what Mrs Price said to her in the clinic room on 11 August 2019. It noted the following evidence from Witness 1’s written witness statement:

‘On 11 August 2019 at 12:00, I was in the clinic room doing medicine rounds. At around 12:25, Mrs Price came into the room and said, “that bloody Chinese woman or whatever she is needs to learn to speak English properly, no one can understand what she is saying”.’

The panel considered that Witness 1’s written witness statement was consistent with her oral evidence, in which she maintained that Mrs Price stated *‘that bloody Chinese woman or whatever she is needs to learn to speak English properly, no one can understand what she is saying’* when referring to Person A after an encounter on the Ward. It was of the view that Witness 1 provided a very detailed account of what happened, Witness 1 had no

reason to fabricate or exaggerate what she had heard. Her evidence was, and the panel accepted, that she was sufficiently concerned to escalate this immediately. This escalation is corroborated by the email from Witness 2 and his witness statement from the Trust.

Further, the panel considered that Witness 1's written witness statement and oral evidence were largely supported by documentary evidence from the Trust's investigation. It noted that during the Trust's investigation, in an informal interview on 13 August 2019 and a formal interview on 17 September 2019, Witness 1 asserts on both occasions that Mrs Price said words to the effect of '*that bloody Chinese woman or whatever she is needs to learn to speak English properly, no one can understand what she is saying*'. Additionally, it noted that in an email escalating the matter shortly after the complaint was raised with Witness 2, he described what he recalled being told by Witness 1 as '*something to the effect of "That Chinese lady has just called everyone for breakfast- I think she needs to take English lessons"*'. For these reasons the panel accepted Witness 1's evidence in relation to this charge.

The panel also took into account Mrs Price's response in a written reflective statement at the Trust's investigation, in which she provides a partial admission:

'I passed [Person A] going in the opposite direction returning to the kitchen and I accept that I did say something to the effect that "maybe some staff could benefit from English lessons".

[...]

I did go on to discuss this with a colleague and I said, "Some staff need to be able to speak clearer English to communicate with staff and patients".'

The panel noted Mrs Price's explanation given during the Trust's investigation. It was clear from the evidence before the panel that in all accounts given by Mrs Price during the Trust's investigation she accepted that she had made some comments about Person A. However, her account made no reference to swearing or to Person A's race and Mrs Price specifically denied that she ever swears. However, the panel heard from Witness 1 that

Mrs Price often swore during handovers. The evidence before the panel showed that Mrs Price apologised immediately both to Witness 1 and to Person A which suggests she knew she must have done something wrong. The panel was of the view that Mrs Price by that time was trying to minimise what she had said earlier and that her responses were influenced by a desire to mitigate the consequences of what she had said. For these reasons the panel did not accept the accounts provided by Mrs Price and preferred the evidence of Witness 1.

The panel was therefore satisfied that, on the balance of probabilities, Mrs Price said words to the effect of *'that bloody Chinese woman or whatever she is needs to learn to speak English properly, no one can understand what she is saying'* during a shift on 11 August 2019 to a colleague. It was also satisfied that such words were inappropriate.

Accordingly, the panel found charge 1a proved.

Charge 1b

1. On 11 August 2019, during a shift, said the following inappropriate words, or words to this effect, with reference to Person A, to a colleague;
 - b. *"breakfast ready"* in a tone meant to mimicking or mock Person A's accent.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 1 and Witness 3. The panel also had regard to the documentary evidence exhibited, which included notes from interviews at the Trust's investigation, and an email from Witness 2 dated 11 August 2019.

The panel noted that Witness 1 provided an account in respect of what Mrs Price said to her in the clinic room on 11 August 2019. It noted the following evidence from Witness 1's written witness statement:

'Mrs Price then said, "dinner's ready" in a mocking tone, as if she was trying to imitate how it had been said. The individual that Mrs Price was referring to and mocking is [Patient A], who is my father's wife'

The panel bore in mind that Witness 1 referred to *'dinner'* in her NMC witness statement rather than breakfast. She corrected her written witness statement in her oral evidence and stated that Mrs Price actually said *'breakfast'* as opposed to *'dinner'*. It was also mindful that the reference to *'breakfast ready'* in a mimicking/mocking tone was not mentioned in the email written by Witness 2's which contained an account of the events reported to him by Witness 1. This email was sent to other managers shortly after the complaint was made, escalating the matter further.

However, the panel noted that although this could be an inconsistency in Witness 1's evidence, the account she gave in her oral evidence was supported by documentary evidence from the Trust's investigation. It noted that during the Trust's investigation, in an informal interview on 13 August 2019 and a formal interview on 17 September 2019, Witness 1 asserts on both occasions that Mrs Price said words to the effect of *'breakfast ready'* in a mimicking way about Person A.

The panel saw evidence in the interview from Witness 1 describing the words as *'bekfast ready'* indicating the mimicking/mocking tone and this was confirmed by Witness 3 that this was what was reported in the investigation, was not a typographical error, but a pronunciation of what Witness 1 reported she had heard Mrs Price say. The panel found that Witness 1 had no reason to fabricate her evidence which was consistent in all material respects nor did Witness 3 have any such reason. The panel found that Witness 1's evidence was clear and she had been sufficiently aggrieved by the comments she heard to make an immediate complaint. For these reasons the panel accepted Witness 1's

evidence and it also accepted the evidence of Witness 3 as the Trust's investigating officer, which it found to be clear and consistent.

The panel also took into account Mrs Price's response in a formal interview at the Trust's investigation on 3 September 2019, in which she admitted to repeating Person A's words '*breakfast ready*' to correct her grammar:

'No, I wasn't mimicking the accent. I was making sure her words were pronounced properly.'

Again, the panel was of the view that Mrs Price by that time was trying to minimise what she had said earlier and that her responses were influenced by a desire to mitigate the consequences of what she had said. For these reasons the panel did not accept the accounts provided by Mrs Price and preferred the evidence of Witness 1.

The panel had regard to its previous findings in charge 1a, and considered that it is plausible that an element of mockery or mimicking took place when Mrs Price admittedly corrected Person A, given the inappropriate comment she made about her prior ('*that bloody Chinese woman or whatever she is needs to learn to speak English properly, no one can understand what she is saying*').

The panel was therefore satisfied that, on the balance of probabilities, Mrs Price said words to the effect of '*breakfast ready*' in a tone meant to mimic or mock Person A's accent during a shift on 11 August 2019. It was also satisfied that such words were inappropriate.

Accordingly, the panel found charge 1b proved.

Charge 2

2. Your conduct at Charge 1a and/or Charge 1b above was racially abusive.

This charge is found proved.

In reaching this decision, the panel assessed Mrs Price's actions found proved in charge 1a and charge 1b separately in respect of racially abusive conduct.

The panel reminded itself that in charge 1a, Mrs Price stated '*that bloody Chinese woman or whatever she is needs to learn to speak English properly, no one can understand what she is saying*'. It considered that in charge 1a Mrs Price mentioned Person A's physical characteristics in a denigrating manner, which was linked to her race.

The panel also reminded itself that in charge 1b, Mrs Price said '*breakfast ready*' in a tone meant to mimic or mock Person A's accent. It considered that in charge 1b, Mrs Price demonstrated hostility towards a racial group/perceived racial group by mimicking/mock Person A's accent in an insulting and offensive manner.

The panel determined that on both occasions Mrs Price demonstrated hostility connected to a race, in conduct which was racially abusive towards Person A.

Accordingly, the panel found charge 2 proved.

Charge 3

3. Your conduct at Charge 1a and/or Charge 1b above was intended to be racially abusive.

This charge is found proved in relation 1b only.

In reaching this decision, the panel assessed Mrs Price's actions found proved in charge 1a and charge 1b separately in respect of her intent. The panel also had regard to the documentary evidence exhibited, which included information pertaining to Mrs Price's

completion of Equality, Diversity and Inclusion (EDI) training in 2018 whilst employed by the Trust.

The panel found Mrs Price's words in charge 1a to be racially abusive and inappropriate. Mrs Price denied throughout the Trust's investigation that she intended to cause any offence. The panel was of the view that the words in charge 1a were more likely to have been an inappropriate and spontaneous outburst. It was not satisfied from the evidence before it that it could draw an inference that Mrs Price intended to be racially abusive when she said these words. It therefore found charge 3 not proved in relation to charge 1a.

However, the panel found that in charge 1b Mrs Price said the words in a tone which was meant to mimic/mock Person A. This (meant to) is, by definition, is an intentional act.

The panel bore in mind the documentary evidence, which indicated that Mrs Price successfully completed the Trust's EDI training on 19 February 2018 prior to the conduct found proved. It was of the view that Mrs Price ought to have been aware of racially abusive behaviour when she deliberately mimicked/mock Person A's accent.

The panel noted that Mrs Price refuted any intention to cause offence to Person A at the Trust's investigation. However, given the panels findings that Mrs Price spoke about Person A in a tone which was meant to mimic/mock her, and given that mimicry is a deliberate act it was a logical conclusion that her conduct in charge 1b was intended to be racially abusive.

Accordingly, the panel found charge 3 proved in relation to charge 1b.

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 Mrs

Price's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has produced guidance on impairment (reference: DMA-1, updated 27 March 2023) which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

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, Mrs Price's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Cassells referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311, which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'* He also referred to the case of *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Mr Cassells invited the panel to take the view that the facts found proved amount to misconduct. He referred the panel to the terms of *'The Code: Professional standards of*

practice and behaviour for nurses and midwives 2015' (the Code). He identified the specific, relevant standards where Mrs Price's actions amounted to misconduct.

Mr Cassells highlighted that Mrs Price's actions found proved involved intentionally behaving in a way that was racially abusive towards a colleague. He referred to an open statement to healthcare providers from the NHS Race and Health Observatory, in which Andrea Sutcliffe, the NMC's Chief Executive and Registrar, stated:

'The impact that racist and other discriminatory attitudes and behaviours has on people is devastating...'

Mr Cassells stated that General Medical Council (GMC) and the Care Quality Commission (CQC) combined in this open statement reinforcing the unacceptability of racial/racist conduct in the workplace. He submitted that there is no place for racism in the workplace as this is corrosive to colleague relationships, creates an unhappy workplace and potentially puts patients at risk of harm.

Mr Cassells submitted that Mrs Price's actions found proved reflect an underlying attitudinal problem. He submitted that to mockingly mimic another colleague's accent as in this case, demonstrates behaviour which suggests having a low opinion of someone's race.

Mr Cassells invited the panel to consider the position of the individuals impacted by Mrs Price's conduct. In particular, he submitted that Witness 1 should not have been confronted with this behaviour whilst she was doing the best she could to care for patients on the Ward. Further, he submitted that Person A would have been upset to know that a colleague was disrespectfully speaking about her and doing impressions of her behind her back.

Mr Cassells also invited the panel to consider the impact on patients. He submitted that a patient of Chinese and/or Asian origin should receive the same standard of care from Mrs Price as any other patient.

Mr Cassells concluded that there is no question that Mrs Price's actions amounted to misconduct, misconduct of a high level of seriousness.

Submissions on impairment

Mr Cassells 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. It also included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2), Grant* [2011] EWHC 927 (Admin) and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Mr Cassells submitted that the first three limbs of the test set out by Dame Janet Smith in the fifth Shipman report and adopted in *Grant* were engaged in this case:

- 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 profession into disrepute;*
- c) *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession;*
- d) ...

Mr Cassells submitted that it is not easy to remediate abusive conduct, as this behaviour calls into question an individual's fundamental character. He submitted that even if a practitioner is able to demonstrate that the conduct is not representative of their character, it would require substantial reflection, training and potentially an explanation. He submitted

even if Mrs Price was able to convincingly say this was a one-off error and was not demonstrative of an underlying attitude, this is still unlikely to displace the need for a finding of impairment in the public interest, given the damage that acting in a racially abusive way can do to public confidence. He indicated that, nonetheless, Mrs Price has not remediated and has not been able to convincingly say it was one-off error that was not indicative of underlying attitude.

Mr Cassells referred to Mrs Price's apology given at the time of the incident. He stated that sometimes an apology is demonstrative of some level of remorse and the first tentative step towards remediation. He submitted that this is not the case in this instance, as Mrs Prices apology followed immediately to Witness 1 and Person A because she knew she done something wrong and followed with attempts to minimise what she had said to mitigate the consequences. He submitted that it was essentially a disingenuous apology because she was caught out, not for understanding the significance of her actions.

Mr Cassells submitted that a finding of impairment is necessary on public protection and public interest grounds. He submitted that a finding of impairment is necessary on the basis of public protection as Mrs Price's actions were deplorable and could impact on the team working in a care setting. He submitted that with racial abuse, public interest is undoubtably engaged.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

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 Mrs Price's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Price's actions amounted to

serious breaches of the Code, particularly sections 1 and 20. Specifically, the panel found breaches to the following sections of the Code:

‘1 Treat people as individuals and uphold their dignity

1.1 treat people with kindness, respect and compassion

7 Communicate clearly

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

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.’

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the charges amounted to misconduct, the panel considered the circumstances of the case as a whole. It took account of all the evidence before it.

The panel found that in charges 1a to 3, Mrs Price’s conduct was racially abusive and in mimicking Person A, her conduct was intentionally so. Such conduct is unacceptable under any circumstance. It referred to Andrea Sutcliffe’s comment in the NHS Race and Health Observatory’s open statement: *‘The impact that racist and other discriminatory*

attitudes and behaviours has on people is devastating...' It found that Mrs Price's actions had a negative impact on Witness 1, resulting in her distress.

The panel noted that it was not presented with any evidence of impact on patients or patient care. However, the panel was of the view that Mrs Price's behaviour had the potential to impact the level of patient care colleagues were able to provide through the hostility she demonstrated connected to a person's race. The panel found that Mrs Price's actions were indicative of deep-seated attitudinal problems and would be considered deplorable by fellow practitioners.

The panel therefore concluded that Mrs Price's actions did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mrs Price'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 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 heard that Mrs Price's actions had a negative impact on Witness 1. It noted that Witness 1 stated in her oral evidence that she felt distressed after hearing Mrs Price's comments. The panel acknowledged that the type of behaviour demonstrated by Mrs Price had the potential to impact on the level of patient care that her colleagues were able to provide. It also acknowledged that this could impact on the team dynamic and/or could impact on the care Mrs Price herself may provide to patients from races other than her own.

The panel was satisfied that Mrs Price's misconduct engaged limbs 'a', 'b' and 'c' of the 'test'. Having found that Mrs Price behaved in a racially abusive manner towards her colleague, the panel determined that Mrs Price's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel next went on to consider the matter of insight. It took into account Mrs Price's responses given during the Trust's investigation. In particular, it noted the following from Mrs Price's reflective statement, dated 1 November 2019, which was written during the Trust's disciplinary proceedings:

*'I do not feel that I acted any differently than I would do normally in correcting
[Person A] ...'*

The panel found that Mrs Price's responses during the Trusts investigation did not address all the concerns about her misconduct. It also found that where Mrs Price did reflect on the concerns raised, there were notable attempts to deflect blame and responsibility, for example, where she did acknowledge that there was some harm caused this was caveated with phrases such as '*could have been considered offensive*' and '*if offence was taken*'. The panel took into account that Mrs Price has not engaged with the NMC proceedings, and it was not presented with any information regarding her current level of insight or remorse. The panel had not received any evidence to suggest that Mrs Price has demonstrated an understanding of why what she did was wrong, how this impacted negatively on the reputation of the nursing profession and how she would handle the situation differently in the future. It therefore determined that Mrs Price demonstrated very limited insight and it was not presented with any significant evidence of remorse.

The panel was of the view that the misconduct in this case evidenced behaviour that is inherently more difficult to put right due to the associated attitudinal issues. The panel bore in mind that the facts found proved did not concern issues with Mrs Price's clinical practice. The panel considered the evidence before it and concluded that it has not

received any information to suggest that Mrs Price has taken any steps to address the specific concerns raised in this case, such as relevant training or reflection on the consequences of her misconduct.

The panel was of the view that due to the lack of insight, remorse and evidence of strengthened practice, there remains a high risk of repetition. The panel noted that Mrs Price's actions set out in the charges found proved demonstrated racially abusive behaviour towards her colleague, which is indicative of deep-seated attitudinal problems. The panel was of the view that by demonstrating hostility connected to a colleague's ethnic origin, Mrs Price's actions had the potential to impact on the type of care her colleagues are able to provide to patients. On the basis of all the information before it, the panel decided that there is a risk to the public if Mrs Price was allowed to practise without restriction. The panel therefore determined that a finding of current impairment on public protection grounds is necessary.

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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case. The panel therefore also finds Mrs Price's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Price was unable to practise kindly, safely and/or professionally and therefore her 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 Mrs Price off the register. The effect of this order is that the NMC register will show that Mrs Price 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.

Submissions on sanction

Mr Cassells informed the panel that in the Notice of Hearing, dated 7 September 2023, the NMC had advised Mrs Price that it would seek the imposition of a striking-off order if it found Mrs Price's fitness to practise currently impaired.

Mr Cassells invited the panel to consider whether the least restrictive sanction would be proportionate, and if it was not, the panel should then consider escalation until it arrives at a sanction with the most appropriate outcome. He also referred the panel to the SG, specifically, SAN-2 '*considering sanctions for serious cases*', which explains that there are certain concerns that are more difficult to put right and often mean that the nurse's right to practise needs to be restricted. He highlighted that within this section of the SG, cases relating to discrimination are included, and where nurses are found to display discriminatory views and behaviour without demonstrating comprehensive insight, remorse and strengthened practice, a more significant sanction such as removal from the register is more likely to maintain public trust and confidence.

Mr Cassells reminded the panel of its previous findings, in which it was found that Mrs Price has not demonstrated comprehensive insight, remorse or strengthened her practice. He submitted that in these circumstances, a significant sanction such as removal from the register will be appropriate in this case.

Mr Cassells submitted that the panel may find itself deciding between a suspension and a strike-off order. He referred to the SG in respect of a suspension order, in which it stated that such an order might be appropriate where there is a single instance of misconduct, but where a lesser sanction is not sufficient. He submitted that although there was only one incident in this case, it is one that exposed a seriously concerning attitude. He submitted that in every other respect, the features listed in the SG for a suspension order do not apply to this case as:

- Mrs Price has demonstrated behaviour indicative of an attitudinal problem;
- There is no evidence relating what has changed with her practice since the incident as she has not engaged with the NMC;
- There is no evidence of insight demonstrating that she does not pose a significant risk of repeating her behaviour.

Mr Cassells submitted that Mrs Price racially abused a colleague when speaking to another colleague, which calls in to question her professionalism. He submitted that a striking-off order was the only appropriate sanction to protect patients, and to maintain public confidence and professional standards.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Mrs Price'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:

- Lack of insight into failings. The panel bore in mind that where Mrs Price did acknowledge that there was some harm caused by her actions, she repeatedly attempted to deflect blame and responsibility during the Trust's investigation.
- Conduct which put patients at risk of suffering harm and impacted on the wider team. The panel had regard to the fact that it was not presented with evidence of direct patient harm, but found that Mrs Price's behaviour demonstrated racial hostility which could have an impact on patients from races other than her own.
- Racially abusive behaviour, which is unacceptable under any circumstance.

The panel also took into account the following mitigating features:

- The panel acknowledged that Mrs Price endeavoured to apologise at the time of the incident, but in reaching the view that this was a disingenuous apology which was only made because she was confronted, it determined to place little weight on these apologies as a mitigating feature.
- The panel had regard to factors of a personal nature mentioned by Mrs Price in the Trust's interview. However, it determined to place little weight on this as a mitigating feature, particularly noting the following stated by Mrs Price during the Trust's investigation interview: *'From my point of view I wasn't stressed unduly'*.

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 not protect the public or satisfy the public interest if no further action is taken.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Price'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 Mrs Price's

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

The panel next considered whether placing conditions of practice on Mrs Price's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. It had regard to the fact that the concerns in this case did not relate to Mrs Price's clinical practice, but to Mrs Price behaving in a racially abusive way towards her colleague. In this respect the panel decided that the misconduct reflected deep-seated attitudinal problems. In these circumstances, the panel concluded that conditions of practice would not be appropriate. In any event, the panel was presented with very limited evidence of insight and remorse, and it was not confident that Mrs Price would be willing to comply with conditions as she has not engaged with the NMC proceedings.

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

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

The panel noted that although the concerns in this case relate to a single incident and there had been no evidence of repetition since, it was of the view that incident was of a serious nature and reflected deep-seated attitudinal issues. The panel also took into

account that it was presented with very limited evidence of insight and remorse, and therefore found a consequent high risk of repetition.

The panel also had regard to the following NMC guidance (reference: SAN-2) '*considering sanctions for serious cases*':

'Cases involving discrimination

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

The panel determined that although there were some factors which could support a sanction of suspension, the misconduct in this case was of a sufficiently serious nature to warrant a more significant sanction than a suspension order. It also took into account that Mrs Price has not engaged with the NMC proceedings and therefore there is no evidence that a suspension order would serve a useful purpose. It concluded that in this particular case, a suspension order would not be a sufficient, appropriate or proportionate sanction to protect the public or meet 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?*

The panel found that Mrs Price racially abused a colleague behind that colleague's back and deliberately mimicked her accent. It found that this was an act of hostility based on the race, or perceived race, of that colleague. Discriminatory behaviour of this nature in the workplace can give rise to public protection concerns and is likely to significantly erode public confidence in the profession.

The panel had regard to the fact that Mrs Price has subsequently failed to engage with the regulatory process in its entirety. It also took into account that there was no evidence of any meaningful reflection or proper apology, and no evidence of any steps taken to persuade the panel that she has learnt from her misconduct and changed, or even attempted to change her attitude so that she will not behave in a similar way in the future. The panel was therefore satisfied that the findings in this case do raise fundamental questions about her professionalism and constitute a serious departure from the standards expected of a registered nurse.

The panel also had regard to the following NMC guidance (reference: FTP-3):

'Where a professional on our register displays discriminatory views and behaviours, this usually amounts to a serious departure from the NMC's professional standards.'

The panel was mindful that this was a single instance of misconduct and there is no evidence of repetition. In such circumstances, the panel might have been persuaded to impose a suspension order if Mrs Price had engaged with the process and presented compelling evidence of insight, apology, remorse and remediation. However, in the absence of such evidence, the panel concluded that the mitigation in this case was very limited. Having balanced the aggravating factors with the mitigation, the panel reached the conclusion that Mrs Price's misconduct was fundamentally incompatible with continued registration. It was satisfied that public confidence in the profession would not be maintained if she remained on the register and that any sanction less than a striking-off order would be insufficient to uphold the NMC's overarching objective.

The panel considered that this order was necessary to protect the public, 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 Mrs Price in writing.

Submissions on interim order

The panel took account of the submissions made by Mr Cassells. He submitted that an interim order should be made on the grounds that it is necessary for the protection of the public and it is otherwise in the public interest. He invited the panel to impose an interim suspension order for a period of 18 months for the reasons stated in the panel's findings.

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 Mrs Price's own interest until the striking-off order takes effect.

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

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary 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 any possible appeal.

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

That concludes this determination.