

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

**Substantive Hearing
Thursday 27 June – 9 July 2024**

Virtual Hearing

Name of Registrant: Jacqueline Elizabeth Galvin

NMC PIN: 89Y0555E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – April 1992

Relevant Location: Rochdale

Type of case: Misconduct

Panel members: Caroline Jones (Chair, registrant member)
Linda Holloway (Registrant member)
David Newsham (Lay member)

Legal Assessor: Simon Walsh

Hearings Coordinator: Ruth Bass

Nursing and Midwifery Council: Represented by Jayesh Jotangia, counsel
instructed by the NMC

Mrs Galvin: Not present and unrepresented

Facts proved: Charges 1a i, 1c i, 3b i, 3b ii, 3c, 4a, 4b, 4c, 5b,
5c, 5d, 5e, 5f, 5g and 6

Facts not proved: Charges 1a ii, 1a iii, 1a iv, 1a v, 1a vi, 1a vii, 1b,
1c ii, 2i, 2ii, 3a, 5a and 5h

Fitness to practise: Impaired

Sanction: Strike - off

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 Galvin was not in attendance and that the Notice of Hearing letter had been sent to her registered email address by secure email on 13 May 2024.

Mr Jotangia, on behalf of the Nursing and Midwifery Council (NMC), submitted that adequate notice of the hearing had been given to Mrs Galvin, and that there was evidence that she knew the hearing would be starting today.

The panel accepted the advice of the legal assessor, that all necessary information required under Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules) had been met.

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

In light of all of the information available, the panel was satisfied that Mrs Galvin has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

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

Mr Jotangia made an application for parts of the hearing, relating to [PRIVATE], to be heard in private.

The legal assessor referred the panel to Rule 19 of the Rules and 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 was satisfied that matters relating to the health of individuals were justified, in the interests of those individuals, to be heard in private. It therefore determined that all matters relating to health should be heard in private so as to protect those individuals' right to privacy.

Decision and reasons on proceeding in the absence of Mrs Galvin

The panel next considered whether it should proceed in the absence of Mrs Galvin. It had regard to Rule 21 and heard the submissions of Mr Jotangia who invited the panel to continue in the absence of Mrs Galvin. He referred the panel to an email from Mrs Galvin dated 26 June 2024 which states:

'Thank you for your email, but sorry I will not be able to attend, [PRIVATE] I understand the meeting will still go ahead...'

Mr Jotangia submitted that Mrs Galvin was aware of the hearing and had stated that she would not be attending on the grounds that [PRIVATE]. He submitted that no application for an adjournment had been made by Mrs Galvin, that there was no indication as to when she would be able to attend in the future, and that the hearing could not be deferred to an indefinite period of time. Mr Jotangia further submitted that there were two witnesses who would be attending to give live evidence and adjourning the hearing would cause disruption for both witnesses.

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 Galvin. In reaching this decision, the panel has considered the submissions of Mr Jotangia, the email from Mrs

Galvin dated 26 June 2024, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision *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:

- Mrs Galvin had informed the NMC that she would not be attending the hearing [PRIVATE];
- No application for an adjournment had been made by Mrs Galvin, nor had she provided any indication as to when she would be able to attend in the future;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses will be attending to give live evidence and not proceeding may inconvenience those witnesses;
- The charges relate to alleged events dating back to December 2022 and 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, given the seriousness of the charges.

There is some disadvantage to Mrs Galvin in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Mrs Galvin, she will not be able to challenge the evidence relied upon by the NMC in person 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.

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

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Jotangia, on behalf of the NMC, to amend the wording of charges 4 and 5a.

With regard to charge 4, Mr Jotangia submitted that the insertion of the words '*and/or*' to the stem of the charge would provide clarity and better address the allegations before the panel.

With regard to charge 5a Mr Jotangia submitted that the insertion of the words '*referring to people of Chinese origin*' at the end of the charge would more accurately reflect the evidence before the panel.

The proposed amendments are set out as follows:

4. Your actions at one or more of charges 3a, 3b and 3c above caused or contributed to an environment of bullying in that your conduct was:

- a. Unwanted **and/or**
- b. Offensive, intimidating, malicious and/or insulting **and/or**
- c. Intended to undermine, humiliate, or cause harm to others.

5. Used racist and/or discriminatory behaviour towards colleagues in that you:

- a. On an unknown date whilst a news programme about the 2004 Morecambe Bay cockling disaster was being shown, said to colleagues, "oh that's where the cockle pickers got trapped", or words to that effect **referring to people of Chinese origin.**

The panel accepted the advice of the legal assessor in respect of Rule 28 of the Rules. The legal assessor advised that Rule 28 allows a panel to amend the charges unless the amendment cannot be made without injustice.

With regard to charge 4, the panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no

prejudice to Mrs Galvin and that no injustice would be caused to either party by the proposed amendment being allowed. It therefore determined to allow the amendment, as applied for, to ensure clarity and accuracy.

With regard to charge 5a, the panel was of the view that the proposed amendment significantly altered the substance and mischief of the original charge. It took into account the fact that Mrs Galvin was not present to make any representations on the proposed amendment and would not have been aware that this application would be made. The panel considered that a material change to the substance of the charge would cause injustice to Mrs Galvin and determined not to allow the application in respect of charge 5a.

Details of charge as amended

‘That you, a registered nurse:

1a. On various unknown dates used inappropriate and unprofessional language, on more than one occasion, in that you spoke to Patient E using words to the effect of;

- i. “fuck off”*
- ii. “get lost”*
- iii. “nobody / no one wants to play with you”*
- iv. “we have better things to do”*
- v. “oh I cannot stand you”*
- vi. “you stink, you stink”*
- vii. “go away”*

1b. On various unknown dates shouted at Patient E on more than one occasion.

1c. On various unknown dates spoke to one or more colleagues, referring to patient E, using words to the effect of;

- i. “I cannot stand him”*
- ii. “that boy is disgusting”*

2. On various unknown dates used inappropriate and unprofessional language in relation to patient K, using words to the effect of;

i. "fuck off"

ii. "go away"

3. Demonstrated bullying behaviour towards colleagues in that you;

a. On various unknown dates limited overtime and controlled shift patterns to control others.

b. On or around 15 December 2022 spoke to one or more colleagues in relation to a decorated Christmas tree/Christmas decorations, using words to the effect;

i. "Why have you fucking put that up, it looks like an abortion".

ii "Look at the bullshit she has done, doesn't it look disgusting".

c. Around February/March 2023 confronted colleagues who had given statements about you.

4. Your actions at one or more of charges 3a, 3b and 3c above caused or contributed to an environment of bullying in that your conduct was:

a. Unwanted **and/or**

b. Offensive, intimidating, malicious and/or insulting **and/or**

c. Intended to undermine, humiliate, or cause harm to others.

5. Used racist and/or discriminatory behaviour towards colleagues in that you:

a. On an unknown date whilst a news programme about the 2004 Morecambe Bay cockling disaster was being shown, said to colleagues, "oh that's where the cockle pickers got trapped", or words to that effect

b. On various unknown dates on one or more occasion used the term "paki shop" or words to that effect.

c. In or around June 2022 when colleague B was eating cottage pie said to them "oh, that's too westernised for you" or words to that effect.

d. On an unknown date said, "only black people were coming for jobs now," or words to that effect.

e. On an unknown date said "they are just recruiting lazy black people now," or words to that effect.

f. On an unknown date in the presence of one or more colleagues, referred to Colleague E as, "a fucking nigger" or words to that effect.

g. On an unknown date said to Colleague D, "did I say this or did I say nigger", or words to that effect.

h. In 2022 said to Colleague B "I think men of your culture that are brown are bred to rape white women" or words to that effect.

6. Your actions in one or more charges 5a, 5b, 5c, 5d, 5e, 5f, 5g and 5h, were racially abusive/motivated by an intention to be racially abusive.

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

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr Jotangia under Rule 31 to admit the written statements of Colleague B and Colleague C, and the interview notes of Patient E as hearsay evidence. He informed the panel that both Colleague B and Colleague C were unable to attend the hearing due to [PRIVATE] and provided the panel with [PRIVATE] in support.

Mr Jotangia submitted that there are a number of witnesses who can corroborate the evidence, and that the evidence was reliable. With regard to the interview notes of Patient E, Mr Jotangia informed the panel that Patient E was unable to attend the hearing due to a brain injury, and that the NMC was unable to gather any further evidence from Patient E as a result of this.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is '*fair and relevant*', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The legal assessor referred the panel to the case of *Thornycroft v NMC* [2014] EWHC 1565 (*Thornycroft*) and the principles set out therein.

The panel also took into account the NMC Guidance on Hearsay Evidence DMA-6 (1 Jul 22).

The panel first considered the hearsay applications in respect of Colleague B and Colleague C.

The panel was of the view that although Mrs Galvin had chosen not to attend this hearing, she was not aware at the time of making this decision that an application to admit Colleague B and Colleague C's statement as hearsay would be made.

The panel had regard to the statements of Colleague B and Colleague C and was satisfied that the information contained therein was relevant to the charges.

The panel then considered the principles of fairness set out in the case of *Thorneycroft*. It was satisfied that both Colleague B and Colleague C had a good reason for not attending the hearing. However, the panel was of the view that parts of these statements were the sole and decisive evidence in respect of some charges. Further the panel found that the statements were not demonstrably reliable and could not be tested in another way. The panel determined that it was a basic principle of fairness for Mrs Galvin to be given notice of the NMC's application, which she was not, and be given the opportunity to factor this into any defence she chose to present to the panel. The panel was therefore of the view that the parts of the statements that are sole and decisive should not be allowed into evidence. It therefore determined that only the parts of the statements that were supported by other evidence should be allowed to stay before the panel. Accordingly, the panel determined to redact those parts of the statements that were sole and decisive. It came to the view that it would be fair and relevant to accept into evidence a redacted version of the hearsay evidence of Colleague B and Colleague C, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

With regard to the interview notes of Patient E the panel found that the relevance was questionable, and that they were too vague to be fairly admitted. In addition, Patient E was known to have a significant brain injury and potential for impaired capacity. There

was no evidence of a capacity assessment to support the reliability of the notes. It therefore determined not to allow the hearsay application in respect of the interview notes for Patient E.

Background

The charges arose whilst Mrs Galvin was employed as a registered nurse at Ashbrook Neuro Rehabilitation (the Home). The Home is a 7-bed rehabilitation unit for adults with brain injuries, which supports the patients in helping them back into society and enabling them to live an independent life.

Concerns about Mrs Galvin came to light when Patient E reported to the Home Manager that Mrs Galvin and other members of staff were not nice to him.

A number of staff members then raised concerns during well-being supervisions on 13 December 2022. The concerns related to the manner in which the registrant treated Patient E and that Mrs Galvin had been fostering a bullying culture at the Home. The Home received whistleblowing allegations about Mrs Galvin's conduct in December 2022 which resulted in an investigation. Mrs Galvin was referred to the NMC in April 2023 and is alleged to have been repeatedly verbally abusive towards Patient E and used inappropriate language towards Patient E and Patient K as set out in the charges. It is also alleged that Mrs Galvin abused her power by putting staff members who complained or who she did not get on with on night shift and/or reducing their shifts, and fostered a culture of fear or bullying and harassment.

A disciplinary hearing was held for Mrs Galvin on 14 February 2023, and she was subsequently dismissed on the 7 of March 2023.

Decision and reasons on facts

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

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

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:

- Colleague D: [PRIVATE]
- Colleague A: [PRIVATE]

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. Mrs Galvin's initial response to the regulatory concerns was also provided to the panel in a response bundle.

Shortly before closing his case, Mr Jotangia became aware of this response bundle from Mrs Galvin in relation to the regulatory concerns. He submitted that he did not have instructions to disclose the response bundle at the beginning of the hearing and there had been no request from Mrs Galvin to say that she wanted it to be placed before

the panel for this hearing. Mr Jotangia informed the panel that he had now received instructions to place the response bundle before the panel in fairness to Mrs Galvin.

The legal assessor advised that the NMC was correct in not sending the panel the response bundle in advance of the hearing because Mrs Galvin was expected to attend. However, when the NMC was applying to proceed in Mrs Galvin's absence the bundle became relevant and should have been made available. It was unfortunate that the bundle only came to light very late in proceedings especially as the NMC witnesses had been called and released. He advised the panel that in the interest of fairness, the panel would need to look at what Mrs Galvin had stated. He asked the panel to consider the following questions: is it still fair to proceed in Mrs Galvin's absence; is the panel's mindset such that the panel feels still able at this stage to take into account what she states, especially when this concerns questions about the reliability of witnesses or reasons as to why they might be wrong or exaggerating their evidence; can the error be corrected by recalling witnesses and putting appropriate questions to them.

Mr Jotangia submitted that the panel had already made a decision to proceed in Mrs Galvin's absence. He further submitted that the witnesses are available to have questions put, it would be disproportionate for the panel to recuse itself at this stage and that the matter could be expeditiously dealt with.

The panel first considered whether it would be fair to proceed. The fact that there was now a little more detail about [PRIVATE] did not change its position on proceeding in Mrs Galvin's absence as there was still no indication as to when she would be able to attend in the future. The panel now had more pertinent information concerning the charges from Mrs Galvin's position showing that she did not agree with the accusations she faced, and it would be fair to Mrs Galvin for the panel to consider that information.

The panel next considered whether it had any bias having heard the NMC's case. It was satisfied that it could fairly reconsider the evidence based on the response bundle that had now been provided. It was therefore satisfied that it could proceed without bias.

The panel then considered whether it had further questions to put to the witnesses having now read Mrs Galvin's response bundle. It was of the view that in fairness to Mrs Galvin, questions would need to be put to Colleague D that put forward Mrs Galvin's case.

The panel therefore determined that it would be fair to proceed with the hearing even having received Mrs Galvin's response bundle so late. Any disadvantage to Mrs Galvin could be cured by recalling Colleague D.

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

Charge 1a. i.

'That you, a registered nurse:

1a. On various unknown dates used inappropriate and unprofessional language, on more than one occasion, in that you spoke to Patient E using words to the effect of;

i. "fuck off"

This charge is found proved.

In considering this charge the panel had regard to the oral and written evidence of Colleague D, and the and local investigation meeting minutes in respect of Colleague B.

The panel considered the NMC witness statement of Colleagues D, which states:

'Patient E has a brain injury and consequently has some behavioural problems. He can be verbally abusive to staff, however we are trained to handle his behaviour professionally. When Patient E is in a good mood,

he wants to engage and talk to everyone but Jacquie will tell him to go to his room. In response, Patient E tells Jacquie to 'fuck off' or 'you bitch' and Jacquie repeats the same words to Patient E.'

And

'Jacquie mostly reacted to Patient E telling her to 'fuck off' and she often said it back to him. Jacquie sometimes told Patient E 'don't use those words on me' and Patient E would respond 'who are you? I can use whatever words I want'.

The panel found that Colleague D's NMC statement was consistent with her oral evidence given to the panel and her response given in the local investigation meeting which states:

[Person 1], [Person 2], Jackie (sic) will always treat Patient E like trash. Patient E can swear and be nasty but he ha (sic) a brain injury. They swear at him saying Fuck off,... JG says "I can't stand this boy, she swears at him. Patient E swears and they swear back.'

The panel found Colleagues D's evidence, in respect of Mrs Galvin swearing at Patient E, to be balanced, noting that she acknowledged when Mrs Galvin responded more appropriately to Patient E. It also considered Colleague D's evidence to be consistent with Colleague B's evidence contained in the local investigation meeting minutes, which states:

[Person 1], Jackie and [Person 2] are verbally abusive towards Patient E. He can be demanding and impatient due to his brain injury. They will swear at him, this is not banter, it was aggressive towards him and belittling. This has happened on multiple occasions. It's that they swear during conversations with him, and it's not appropriate.'

Having found Colleague D to have given balanced evidence, and found the evidence of Colleague B to be generally in support that Mrs Galvin used abusive language towards Patient E, the panel was satisfied on the balance of probabilities that Mrs Galvin had used the words *'fuck off'* to Patient E. It therefore found this charge proved.

Charge 1a. ii. iii. and iv.

1a. On various unknown dates used inappropriate and unprofessional language, on more than one occasion, in that you spoke to Patient E using words to the effect of;

ii. "get lost"

iii. "nobody / no one wants to play with you"

iv. "we have better things to do"

These charges are found not proved.

Following the panel's decision to redact the hearsay statements, there was no longer any evidence before the panel to support these charges. Accordingly, the panel found these charges not proved.

Charge 1a. v

1a. On various unknown dates used inappropriate and unprofessional language, on more than one occasion, in that you spoke to Patient E using words to the effect of;

v. "oh I cannot stand you"

This charge is found not proved.

Following the panel's decision to redact the hearsay statements, there was no longer any evidence before the panel to support this charge. Accordingly, the panel found this charge not proved.

Charges 1a. vi and vii

vi. "you stink, you stink"

vii. "go away"

These charges are found not proved.

Following the panel's decision to redact the hearsay statements, there was no longer any evidence before the panel to support these charges. Accordingly, the panel found these charges not proved.

Charge 1b

1b. On various unknown dates shouted at Patient E on more than one occasion.

This charge is found NOT proved.

Following the panel's decision to redact the hearsay statements, there was no longer any evidence before the panel to support these charges. Accordingly, the panel found these charges not proved.

Charge 1c. i.

1c. On various unknown dates spoke to one or more colleagues, referring to patient E, using words to the effect of;

i. "I cannot stand him"

This charge is found proved.

In considering this charge the panel had regard to the written and oral evidence
Colleague D.

Colleague D stated in her witness statement to the NMC:

'I have also heard Jacquie making comments around the lunch table to her friends like 'I cannot stand this boy' and would also say 'he's pissing me off'. I heard the comments when I was sitting on the couch in the lounge but was not part of her conversation with her friends. I know that [Colleague B] and [Person3] have also heard Jacquie say it because they would pull me aside to say 'oh my god, I don't like this but what can we do'.

The panel found Colleague D's oral evidence to be consistent with her oral evidence about where she was sitting at the time she heard this comment being made.

Having accepted the evidence of Colleague D in this regard, the panel found that Mrs Galvin had used words to the effect of *"I cannot stand him"* in respect of Patient E. It therefore found this charge proved on the balance of probabilities.

Charge 1c. ii.

1c. On various unknown dates spoke to one or more colleagues, referring to patient E, using words to the effect of;

ii. "that boy is disgusting"

This charge is found NOT proved.

Following the panel's decision to redact the hearsay statements, there was no longer any evidence before the panel to support this charge. Accordingly, the panel found this charge not proved.

Charge 2. i.

2. On various unknown dates used inappropriate and unprofessional language in relation to patient K, using words to the effect of;

i. "fuck off"

This charge is found NOT proved.

Following the panel's decision to redact the hearsay statements, there was no longer any evidence before the panel to support this charge. Accordingly, the panel found this charge not proved.

Charge 2. ii.

2. On various unknown dates used inappropriate and unprofessional language in relation to patient K, using words to the effect of;

i. "go away"

This charge is found NOT proved.

Following the panel's decision to redact the hearsay statements, there was no longer any evidence before the panel to support this charge. Accordingly, the panel found this charge not proved.

Charge 3a

3. *Demonstrated bullying behaviour towards colleagues in that you;*
a. *On various unknown dates limited overtime and controlled shift patterns to control others.*

This charge is found NOT proved.

In considering this charge, the panel had regard to the written and oral evidence of Colleague D, the oral evidence of Colleague A and Mrs Galvin's response bundle.

Colleague D stated in evidence that the rota was ultimately the Home Manager's responsibility, not Mrs Galvin's. Colleague D stated that she had requested emergency leave which was rejected by Mrs Galvin, but later approved by the Home Manager. Colleague D could not remember the reason given by Mrs Galvin for saying she could not take the leave. Colleague D stated that you would ordinarily need to give 2 – 3 days notice to request leave, but her request was not made within this timeframe as it was something personal that had arisen. She further stated that there was no space on the form to request leave to set out the reasons for requesting leave.

Colleague A confirmed in her oral evidence that she had considered the rotas during the local investigation and did not find any patterns of favouritism. Colleague A also stated that she could not see a pattern of the rotas being changed, although this would have been difficult to detect in any event.

The panel had regard to Mrs Galvin's response bundle which states:

'I did not control shift patterns that was the registered managers duty. When [Person 4] was a manager she put in place a rolling rota, this rota was in place for approx. 2 years. The rota has never changed apart from occasions when employees were off or sick. When doing allocations, I always asked employees who they worked with the previous day. I tried to switch allocations so different people worked with others. Overtime was at a first come first serve basis, this is so it was all shared equally.'

Having considered the evidence before it, the panel was of the view that as the reason for Colleague D requesting leave was not known by Mrs Galvin (as there was no space to put this on the form for requesting leave) and the request was not made in line with the policy in place, there could have been a genuine reason for Mrs Galvin to reject Colleague D's request for leave.

The panel was therefore not satisfied on the balance of probabilities, that Mrs Galvin had limited overtime and controlled shift patterns to control others. It therefore found this charge not proved.

Charge 3b. i. and 3b. ii.

3. Demonstrated bullying behaviour towards colleagues in that you;

b. On or around 15 December 2022 spoke to one or more colleagues in relation to a decorated Christmas tree/Christmas decorations, using words to the effect;

i. "Why have you fucking put that up, it looks like an abortion".

ii "Look at the bullshit she has done, doesn't it look disgusting".

These charges are found proved.

In considering these charges the panel had regard to Mrs Galvin's response bundle, the oral evidence of Colleague A, the oral and written statement of Colleague D, and the hearsay statement of Colleague B.

The panel had regard to Mrs Galvin's response bundle and noted her denial stating:

'I was upset about the Christmas tree because the company has said we could have a new Christmas tree this year due to [Patient K] using it "As a javelin", this is another one of the behaviours we had to deal with during our shifts. I challenged this and discussed it as I believed that the patients deserved better

than a small, broken Christmas tree. I never told nobody to put it up, I said I did not want to put it up. [Colleague D] then asked to speak to me and I told her I was sorry that she thought this and that I was upset about the company not her individually.

The comment "why the fuck have you put that up, it looks like an abortion" is false. I would never say something like that and in my opinion, it doesn't even make sense as a statement. I have never been unprofessional in this way.'

Colleague A gave evidence that she had also queried with Colleague D whether Mrs Galvin could have said 'abomination', but that Colleague A had been clear the term 'abortion' had been used.

The panel also considered the written statement of Colleague D, which states:

'On or around 15 December 2022, I was sat with [Person 3] and Jacquie at the table. [Person 5] walked in and said this place looks nice' and in response Jacquie said 'who did this, it looks like an abortion' Jacquie then said something to the effect of, 'look at the bullshit she has done, doesn't it look disgusting.' [Person 5] stated 'oh it's beautiful, it's nice' and [Person 3] added to say that it was very beautiful and that she loved it. Jacquie then walked away.'

And the hearsay evidence of Colleague B in support, which states:

'I was with [Person 3] and Jackie said "We are not Fucking putting that up", we stayed quiet. A couple of days later, [Colleague D] put the tree up. Jackie came in and said "Who the fuck put that up"? [Person 3] said, [Colleague D]. [Colleague D] stayed quiet. In front of her, Jackie went on and on saying, "its vile, its an abortion".'

Having considered Mrs Galvin's response bundle, it was clear to the panel that she did not like Christmas tree. Further, the panel found the evidence of Colleague D to be credible, noting that it was supported by Colleague B's evidence.

It was clear to the panel from Colleague D's evidence that she felt intimidated by Mrs Galvin to the extent that she waited until Mrs Galvin was not in to put up the Christmas tree, that she was upset and tearful by the comments and felt targeted by Mrs Galvin. Furthermore, Colleague D gave evidence to the panel that the comments were made in front of other colleagues. The panel was satisfied on the balance of probabilities, that the comments were made by Mrs Galvin and demonstrated bullying behaviour. It therefore found these charges proved.

Charge 3c

3. Demonstrated bullying behaviour towards colleagues in that you;

c. Around February/March 2023 confronted colleagues who had given statements about you.

This charge is found proved.

In considering this charge the panel had regard to Mrs Galvin's response bundle, and the consistent oral and written evidence of Colleague D.

The panel had regard to the fact that Mrs Galvin denied this allegation in her response bundle stating:

'I never confronted anybody about statements that were given. I heard [Person 2] discussing it with [Colleague C] I advised her that she shouldn't have done this.'

Colleague D's statement to the NMC stated:

'23. Following this, around February/ March 2023, Jacquie came into the Home and walked up to [Colleague C] stating 'I know you reported me' and placed a piece of paper in front of him. [Colleague C] walked away. Jacquie was also telling everyone that I reported her and then no one spoke to me or worked with me. I was feeling bad because no one was talking to me or working with me apart from [Colleague B], [Person 6], and [Person 3]. I did not report anything to anyone as I have always been fearful of the repercussions from Jacquie, [Person 2], [Person 1] and [Person 7].

24. I was not happy at all so I went into work and asked Jacquie if I could speak to her privately. I asked Jacquie why she was telling everyone that I reported her. Jacquie asked why and in response I told Jacquie that I have been neglected as a result. I told Jacquie that I have been unable to carry out my work as there is a one patient to two staff policy. Jacquie then apologised and I asked if it could be how we worked previously and that she would make sure that no one looks at me badly anymore. After our conversation, Jacquie went for a cigarette outside with [Person 2] and [Person 1]. When they returned, they spoke to me friendlier...'

The panel had regard to Colleague D's evidence that she had confronted Mrs Galvin about telling other colleagues that Colleague D had reported her. It had regard to Colleague D's oral evidence in this regard which it found was consistent with her statement, and explained that it had affected her to the extent that she spoke to [PRIVATE] about how upset she was about this and what [PRIVATE] had told her to do.

The panel found Colleague's D oral evidence in how the situation had affected her to be compelling. It found her evidence to be credible, being consistent with her NMC witness statement and also noted that the actions of Mrs Galvin tied in with the bullying element found proved in charge 3b. The panel was therefore satisfied on the balance of probabilities that Mrs Galvin did confront colleagues who had given statements about her, and accordingly found charge 3c proved.

Charges 4a, 4b and 4c

4. Your actions at one or more of charges 3a, 3b and 3c above caused or contributed to an environment of bullying in that your conduct was:

a. Unwanted and/or

b. Offensive, intimidating, malicious and/or insulting and/or

c. Intended to undermine, humiliate, or cause harm to others

These charges are found proved.

In considering these charges the panel had regard to the fact that it had only found charges 3b and 3c proved. It therefore had regard to the oral and written evidence of Colleague D and the hearsay statement of Colleague B in respect of charges 3b and 3c only.

It noted that Colleague D had stated in her witness statement to the NMC that:

'In December 2022, a used Christmas tree was brought into the Home by the manager... Jacquie wanted a new Christmas tree and did not want the old one to be put up. [Person 3], [PRIVATE], said something along the lines of 'we can manage with that, it's only for Christmas time'. In response, Jacquie said something to the effect of 'no the patients deserve more of a Christmas tree than this'. I did not say anything and walked away.

I was then off for some days and on my return, I spoke to [Person 8] and asked her if I could put up the Christmas tree. [Person 8] responded something to the effect 'oh, why not. I have been waiting for someone to do it'. I put up the Christmas tree and decorated it. I was scared to put up the Christmas tree because I knew Jacquie would not be happy about it so I did it when Jacquie was not in.'

The panel noted that Colleague D was scared to put up the Christmas tree and waited until Mrs Galvin was absent to do so. It also had regard to Colleague D's oral evidence

of how Mrs Galvin's treatment of her had made her feel scared of receiving repercussions, and how she had spoken to [PRIVATE] about the issues at work as a result who had advised her to speak with Mrs Galvin to try and resolve the issues.

There was evidence before the panel that Colleague D was fearful of repercussions for putting up the Christmas tree and that she did not feel able to speak up about her treatment until she felt hopeless and was encouraged to do so by [PRIVATE]. The panel was satisfied that there was sufficient and compelling evidence before it to find that Mrs Galvin's actions in respect of charges 3b and 3c was unwanted, offensive, intimidating, malicious and insulting.

It noted that Mrs Galvin had stated in her response bundle that:

'I have never belittled staff in front of others, I have never bullied anybody.

[Colleague D] states I have bullied her for 2.5 years which is false. [Person 3] had time off during covid [PRIVATE], this means I wasn't even working with her in the time she accused me of bullying her.

During this time she claims I was bullying her, I gave her lifts to and from work on several occasions. We were in close promity (sic) multiple times including outside of working hours. I supported her though personal situations in which she had confided in me. I believe this is a good working relationship on my behalf, in addition you would not behave in this way with a person who is bullying/harassing you.'

And

'I was upset about the Christmas tree because the company has said we could have a new Christmas tree this year due to [Patient K] using it "As a javelin", this is another one of the behaviours we had to deal with during our shifts. I challenged this and discussed it as I believed that the patients deserved better than a small, broken Christmas tree. I never told nobody to put it up, I said I did not want to put it up. [Colleague D] then asked to speak to me and I told her I was sorry that she thought this and that I was upset about the company not her individually.

The comment “why the fuck have you put that up, it looks like an abortion” is false. I would never say something like that and in my opinion, it doesn’t even make sense as a statement. I have never been unprofessional in this way.’

It was clear to the panel that Mrs Galvin denied contributing to an environment of bullying with the intention to undermine, humiliate, or cause harm to others. However, in light of the panel’s findings in relation to charges 3b and 3c, Colleague D indicated in her oral evidence and written statement that Mrs Galvin’s bullying behaviour took place in front of other colleagues, could make Colleague D’s life difficult and caused Colleague D to be upset. Colleague D also indicated that she was scared of Mrs Galvin. The panel was therefore satisfied that the bullying behaviour was intended to undermine, humiliate or cause harm to others.

Considering all of the above, the panel therefore found charges 4a, 4b and 4c proved.

Charge 5a

*5. Used racist and/or discriminatory behaviour towards colleagues in that you:
a. On an unknown date whilst a news programme about the 2004 Morecambe Bay cockling disaster was being shown, said to colleagues, “oh that’s where the cockle pickers got trapped”, or words to that effect*

This charge is found NOT proved.

The panel considered the phrase “oh that’s where the cockle pickers got trapped” to be factual in nature, with no racial or discriminatory undertone. It therefore did not find that Ms Galvin had used racial or discriminatory language and accordingly found this charge not proved.

Charge 5b

5. Used racist and/or discriminatory behaviour towards colleagues in that you:

b. On various unknown dates on one or more occasion used the term "paki shop" or words to that effect.

This charge is found proved.

In considering this charge, the panel had regard to Mrs Galvin's response bundle, the local investigation meeting minutes in respect of Mrs Galvin's interview, Colleagues D's NMC witness statement and the hearsay evidence of Colleague B.

The panel had regard to Mrs Galvin's denial in her response bundle, which states:

'I have never used the term "Paki Shop". When I am on shift, I am not allowed to leave the building until my shift is over. I have never had a conversation to any staff member about going to any shop during shift. I have never left shift to go to the shop therefore I am not aware of the ethnicity of owners of the shop to begin with.'

The panel also had regard to the local investigation meeting minutes, which states:

*[Colleague A]: Do you refer to the shop as the "paki shop?"
J: I don't go to that shop.'*

The panel noted that Mrs Galvin did not deny in the more contemporaneous account given during the local investigation, that she had used the term '*paki shop*' but had simply stated that she did not '*go to that shop*'.

In considering Colleague D's NMC statement the panel noted her evidence that she had heard Mrs Galvin use the term '*the paki shop*' on at least five occasions, and heard Mrs Galvin say:

'did you get it from the paki shop?' when items such as bread or milk have been bought from the local shop. Jacquie and her friends would have a laugh about it and make a joke of it'.

The panel also noted the evidence of Colleague B that:

'Almost every day a little bit of groceries would be bought from the local shop which was a minute walk away. Whenever milk, bread or butter was required for the Home, Jacquie would say 'go to the paki shop'. The local shop was run by brown skinned people and Jacquie assumed they are Pakistani. Jacquie would use the term 'Paki shop' like it was normal. Everyone knew it was wrong but didn't say anything because she would make your life more difficult as a result.'

The panel found Colleague D's oral evidence to be clear and consistent with her written statement. It also found her evidence was supported by Colleague B and consistent in terms of the type of language used by Mrs Galvin to describe the shop, and the frequency and indifference of how the term was used.

The panel was therefore satisfied that the term '*paki shop*' had been used by Mrs Galvin, and was satisfied that using the term '*Paki*' was racist and discriminatory behaviour. It therefore found this charge proved.

Charge 5c.

5. Used racist and/or discriminatory behaviour towards colleagues in that you:

c. In or around June 2022 when colleague B was eating cottage pie said to them "oh, that's too westernised for you" or words to that effect.

This charge is found proved.

In considering this charge the panel had regard to the local investigation meeting minutes, Mrs Galvin's response bundle, the evidence of Colleague A and the hearsay statement of Colleague C.

The panel first had regard to the local investigation meeting minutes which states:

[Colleague A]: Did you say to [Colleague B] that her eating shepherd pie was a bit western?

J: Yes as you do not expect Asian people to eat that, I didn't mean anything by it.'

In Mrs Galvin's response bundle to the initial NMC allegations, Mrs Galvin stated:

'Approximately 1.5 years ago [Colleague B] was having cottage pie for lunch. I made a comment saying "That's very westernised". [Colleague B] had never had this for lunch before or any other westernised meal. I immediately apologised as I knew I offended [Colleague B]. [Person 11]. [Person 12] and [Colleague B] then took the "micky" out of me to the point I felt uncomfortable and left. After this I was under the impression was dropped until now. I presumed we moved past it. [Colleague C]. [Person 9] and [Person 3] were present.'

The panel was satisfied from Mrs Galvin's responses that she had accepted that she had used words to the effect of "oh, that's too westernised for you" when speaking to Colleague B about her meal choice. It noted that Mrs Galvin stated that she 'immediately apologised', and was of the view that she was aware that her comment was inappropriate and likely to have caused offence.

The panel also had regard to the statement of Colleague A which states:

'During the investigation meeting, Jacquie admitted that she did say something to the effect of "that cottage pie is too westernised for you" to [Colleague B] and

her justification was that she was not expecting someone Asian to be eating a shepherd's pie. She did not seem concerned (sic) or to think that what she had said may be considered offensive or racial.'

The panel noted that Mrs Galvin had accepted that she said words to effect set out in the charge to Colleague B, albeit that she did not consider it to be offensive or racial. However given the fact that Mrs Galvin stated in the response bundle that she immediately apologised, the panel was of the view that she was aware that her comment was inappropriate, made as a result of Colleague B's race, and likely to have caused offence to Colleague B.

The panel also had regard to the hearsay statement of Colleague C which states:

[Colleague B] brought in shepherd's pie for her dinner and Jacquie made a comment stating 'oh, that's too westernised for you' to [Colleague B]. [Colleague B] did not say anything in response or that I can remember. [Person 1] and [Person 10] knew the comment was inappropriate and started to mimic Jacquie as if to say that she shouldn't be saying things like that. Jacquie took offense and went outside slamming the doors on her way out.

The panel noted that both Colleague C and Mrs Galvin had mentioned that a colleague who had witnessed the incident began to mimic Mrs Galvin as a way of highlighting the inappropriateness of what had been said, and that Mrs Galvin had responded by leaving.

Having considered the evidence, the panel found that Mrs Galvin had used words to the effect of those set out in the charge. It was satisfied on the balance of probabilities that Mrs Galvin was making a point about Colleague B's race, and whether Colleague B who was from an Asian background should be eating "westernised" food. The panel determined that this was both racial and discriminatory and accordingly found charge 5c proved.

Charge 5d and 5e

5. Used racist and/or discriminatory behaviour towards colleagues in that you:

d. On an unknown date said, "only black people were coming for jobs now," or words to that effect.

e. On an unknown date said "they are just recruiting lazy black people now," or words to that effect.

These charges are found proved.

In considering this charge the panel had regard to Mrs Galvin's response bundle, the local investigation meeting minutes and the oral and written evidence of Colleague D.

In her response bundle, Mrs Galvin stated:

'I have never said "only black people are coming for jobs now". I was asked a question by [Person 2] why this was happening. I responded with that these are the only applications we were receiving at present.

I have no issues or disregard for any other person. I treat everybody with kindness and respect regardless of any differences. I would not consider myself a racist and I have worked with a vast majority of people from different ethnicities and backgrounds. I have never once had any comments or allegations of this sort made against me in my entire career.'

The panel noted that Mrs Galvin had effectively denied this charge. However, the panel had regard to the local investigation meeting minutes for Mrs Galvin and noted that Mrs Galvin accepted during the local investigation that she had said words to this effect, stating:

'No, I never said that. I said that there are only black people applying for jobs and coming for interviews, I didn't mean it derogatory.'

In considering whether the comment was used in a racist or discriminatory way, the panel had regard to the oral evidence of Colleague D who stated that she heard the comments whilst sitting in the lounge watching the television. Colleague D stated that she believed Mrs Galvin was at the table with some other colleagues, and Colleague D did not believe that Mrs Galvin knew she was there. Colleague D stated that she was black and not lazy and did not believe such comments would have been made had Mrs Galvin known she could be heard by Colleague D.

The panel found Colleague D's evidence compelling in this regard. Colleague D emphatically and firmly stated that she was black and not lazy. The panel was of the view that Colleague D had found the comments offensive. The panel found that the alleged behaviour of Mrs Galvin was consistent with other behaviours found proved. It was therefore satisfied, on the balance of probabilities, that the comments made were both racist and discriminatory and accordingly found these charges proved.

Charge 5f

5. Used racist and/or discriminatory behaviour towards colleagues in that you:

f. On an unknown date in the presence of one or more colleagues, referred to Colleague E as, "a fucking nigger" or words to that effect.

This charge is found proved.

In considering this charge the panel had regard to Mrs Galvin's response bundle and the written and oral evidence of Colleague D.

Mrs Galvin effectively denied the charge in her response bundle stating:

'I strongly deny that I called anyone a "nigger" as it is a word I would never use. I had to have a word with [Person 2] as a part of my role at Ashbrook. She was

using the term “Nigger brown as a specific colour. I told her she was not allowed to use these terms within the workplace. After we spoke, I never witnessed it further.’

The panel had regard to the NMC witness statement of Colleague D which states:

‘...Jacquie then asked 'did I say this or did I say nigger' and asked if I can be her witness. The only thing I said to Jacquie was that you know what you have done, just be careful.

In her oral evidence, Colleague D stated that she had heard Mrs Galvin use the term ‘nigger’ but she did not know who Colleague D was referring to. Colleague D stated that she was later informed by a colleague that Mrs Galvin had been referring to Colleague E.’

The panel found Colleague D’s evidence in this regard to be credible and balanced. It found Colleague D to have been honest that she did not hear at the time who Mrs Galvin was referring to, but very clear that she had heard Mrs Galvin refer to someone by the term ‘nigger’. The panel was satisfied on the balance of probabilities that Mrs Galvin had referred to Colleague E as, “a fucking nigger” or words to that effect. The panel considered this to be racist and discriminatory behaviour and accordingly found this charge proved.

Charge 5g

5. Used racist and/or discriminatory behaviour towards colleagues in that you:

g. On an unknown date said to Colleague D, “did I say this or did I say nigger”, or words to that effect.

This charge is found proved.

In considering this charge the panel had regard to Mrs Galvin's response bundle and the NMC statement of Colleague D.

It noted, as above in charge 5f, that Mrs Galvin had denied using the racial slur 'nigger'.

The panel also had regard to the NMC statement of Colleague D which states:

'...Jacquie then asked 'did I say this or did I say nigger' and asked if I can be her witness. The only thing I said to Jacquie was that you know what you have done, just be careful.'

Again, the panel was satisfied on the balance of probabilities, from the clear and consistent oral evidence provided by Colleague D, that she had heard Mrs Galvin use the term 'nigger'. The panel considered this to be racist and discriminatory behaviour and accordingly found this charge proved.

Charge 5 h

h. In 2022 said to Colleague B "I think men of your culture that are brown are bred to rape white women" or words to that effect.

This charge is found NOT proved.

Following the panel's decision to redact the hearsay statements, there was no longer any evidence before the panel to support this charge. Accordingly, the panel found this charge not proved.

Charge 6

6. Your actions in one or more charges 5a, 5b, 5c, 5d, 5e, 5f, 5g and 5h, were racially abusive/motivated by an intention to be racially abusive.

This charge is found proved.

Having found that Mrs Galvin had used racist and discriminatory behaviour towards colleagues in respect of charges 5b, 5c, 5d, 5e, 5f and 5g, the panel was satisfied that Mrs Galvin's comments in respect of these charges were racially abusive. It was satisfied that the racial slurs and racially motivated comments (namely '*paki shop*', '*oh, that's too westernised for you*', '*only black people were coming for jobs now*', '*they are just recruiting lazy black people now*', '*a fucking nigger*' and '*did I say this or did I say nigger*') did amount to racial abuse and accordingly found charge 6 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 Mrs Galvin's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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 Galvin's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

Mr Jotangia 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*', and invited the panel to take the view that the facts found proved amount to misconduct.

With regard to charges 1a. i. and 1c. i. Mr Jotangia submitted that the language used by Mrs Galvin was not language expected from a registered nurse, and that a level of compassion and understanding would be expected. He submitted that special importance should to be applied by a registered nurse to the well-being of individuals and colleagues, and even more so when caring for a vulnerable patient who has been impacted by a brain injury and who could be expected to be excitable, erratic or short tempered. He submitted that Mrs Galvin showed a complete lack of understanding than what would be expected.

With regard to charges 3 and 4, Mr Jotangia submitted that bullying behaviour was deplorable, unwarranted, and unreasonable under any circumstance.

With regard to charge 5, Mr Jotangia submitted that there was a racist or discriminatory background, and that it was not an isolated event but behaviour that kept being repeated by Mrs Galvin.

Mr Jotangia referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' ('the Code') and identified specific, standards which he submitted had been breached by Mrs Galvin.

With regard to impairment, Mr Jotangia submitted that it was unfortunate that Mrs Gavin had been unable to attend the hearing [PRIVATE], but there had been no insight or remedial activity provided for the panel to consider. He submitted that the panel needed to address whether the behaviour found proved is remediable and whether it is likely to be repeated. He submitted that Mrs Galvin's actions, in the absence of any reflection or remediation, were likely to be repeated. Mr Jotangia further submitted that there is a significant risk to the public, and that in terms of the public interest, the panel should

consider the need to protect service users, the need to maintain public professional standards, and the need to maintain public confidence in the profession. He submitted that Mrs Galvin's fitness to practise is currently impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *General Medical Council v Meadow* [2007] QB 462 (Admin), *Mallon v GMC* [2007] CSIH 17, *Holton v GMC* [2006] EWHC 2960, *Cohen v GMC* [2008] EWHC 581, *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) (*Grant*), *Professional Standards Authority for Health and Social Care v (1) HCPC and (2) Leonard Ren-Yi Yong* [2021] EWHC 52, and the Equality Act, 2010.

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 Galvin's actions did fall significantly short of the standards expected of a registered nurse, and that her 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

1.5 respect and uphold people's human rights

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

2.6 recognise when people are anxious or in distress and respond compassionately and politely

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

To achieve this, you must:

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

8 Work co-operatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered the charges found proved and made the following findings:

Charges 1a. i and 1c i.

The panel was of the view that telling a service user to *'fuck off'* and expressing to colleagues that you *'cannot stand'* a patient was conduct that fell far below the standards expected of a registered nurse. It took into account the fact that Patient E was particularly vulnerable having received a brain injury. The panel was cognisant of the fact that such patients may struggle to regulate their emotions, and the panel would expect a registered nurse to understand this and act appropriately towards the patient and in discussion with colleagues about that patient. It was of the view that patients should be treated with kindness and respect, and should not be demeaned either to their face or behind their backs.

The panel also took into account the fact that Mrs Galvin held a position of authority as the person in charge on the shifts she worked, and should not have been speaking to other colleagues about a patient in this way. Mrs Galvin, as a registered nurse and a role model for staff, also had management responsibility during her shifts. The panel noted that being in a position of trust, she should not have spoken to a patient or about a patient in a derogatory way. It was not professional, compassionate or in the interest of the patient.

Having considered all of the above, the panel was satisfied that Mrs Galvin's actions in respect of charges 1a. i. and 1c. i. amount to misconduct.

Charges 3bi, 3bii, 3c and 4

The panel found that Mrs Galvin had demonstrated bullying behaviour towards colleagues in these charges.

The panel took into consideration the fact that Mrs Galvin was in a position of authority as the person in charge on the shifts she worked, and took the view that she should have been supportive to her colleagues. It found the bullying behaviour, demonstrated by Mrs Galvin towards her colleagues, to be unacceptable noting that some members of staff were fearful and felt unable to speak up. Also Colleague D told the panel that she was reduced to tears as a result of Mrs Galvin's behaviour.

The panel found that bullying behaviour towards colleagues was behaviour which fell far below the standards expected of a registered nurse and therefore amounted to misconduct.

Charge 5 and 6

The panel found that using racist terms was deplorable and would be seen as deplorable by other registered nurses. It took into account the NMC's guidance '*how we determine seriousness*' which states that no form of discrimination should be tolerated in health care, and adopted the same view.

The panel was satisfied that racist and discriminatory language was abhorrent behaviour which fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, 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.'

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 act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *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 was of the view that limbs a, b and c are engaged.

With regard to limb a, the panel found that telling a patient to *'fuck off'* and telling colleagues that you could not stand a patient was liable to cause harm to a patient. It was satisfied that Mrs Galvin had breached fundamental tenets of the nursing profession; namely to *'Treat people as individuals and uphold their dignity'* and to *'Uphold the reputation of your profession at all times'*. With regard to limb c, the panel was satisfied that the breach of these fundamental tenets had brought the reputation of the profession into disrepute.

In considering whether Mrs Galvin has demonstrated any insight into her misconduct or any strengthening of practice, the panel acknowledged that she had not attended the hearing, would not know the outcome of its decision on facts, and had previously denied the charges. Nonetheless, the panel had no evidence of insight or strengthening of practice to consider. It was of the view that its findings of inappropriate communication with a patient and colleagues, bullying behaviour towards colleagues and use of racist and discriminatory language was evidence of a deep-seated attitudinal issue, which it deemed difficult to remediate.

The panel had regard to the three testimonials provided in Mrs Galvin's response bundle, indicating that she worked well with people from all different backgrounds, and had not witnessed any racist or bullying behaviour from her. However, the content of the

testimonials was contrary to the panel's finding on facts having considered the evidence before it. The panel also had regard to the training certificates provided in Mrs Galvin's response bundle for '*Safeguarding and Protection of Adults eLearning*' and '*Communication, Duty of Care, Dignity & Respect, Person-Centred Care*'. However, it was of the view that this would not address the serious attitudinal element identified.

The panel also took into account the fact that the misconduct identified was not an isolated incident but took place on several occasions. In light of there being no evidence of insight or strengthening of practice before the panel, it found that there was a high risk of the misconduct being repeated. It therefore found that a finding of impairment is necessary on the ground of public protection.

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

Following the guidance in the case of *Professional Standards Authority for Health and Social Care v (1) HCPC and (2) Leonard Ren-Yi Yong* [2021] EWHC 52, the panel recognised that the public sector equality duty set out in section 149 of the Equality Act, 2010 applied to its deliberations in this case.

The panel recognised that it was under this statutory duty to have due regard, in the exercise of its functions, to the need to eliminate discrimination, harassment and victimisation, particularly in regard to the protected characteristic of race (*cf* section 4 of the Act).

The panel undertook its responsibilities in determining whether Mrs Galvin's fitness to practice was currently impaired through this prism. It determined that the risk of future discriminatory conduct was sufficiently high that there was a clear need, in the public interest, to be able to place a restriction on Mrs Galvin's professional practice: this requires a finding of current impairment of fitness to practise.

The panel therefore determined that a finding of impairment is also required on public interest grounds.

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

Sanction

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

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

Submissions on sanction

Mr Jotangia informed the panel that the NMC had advised Mrs Galvin Jotangia that it would seek the imposition of a strike off order if it found her fitness to practise currently impaired. He submitted that the charges found proved were contradictory to the very essence of nursing, and that the public would be outraged if a registered nurse using the words used by Mrs Galvin, and displaying bullying, racist and discriminatory behaviour did not have restrictions on their practise.

Decision and reasons on sanction

Having found Mrs Galvin'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:

- Abuse of a position of trust
- Lack of insight into failings
- A pattern of misconduct over a period of time
- Conduct which put patients at risk of suffering harm
- Deep seated attitudinal behaviour

The panel was of the view that there were no mitigating features to be considered in this case.

As required by Article 29(3) of the Nursing and Midwifery Order, 2001, the panel first considered (pursuant to Article 29(4) whether to undertake mediation or to take no further action. It considered that neither of these outcomes would be appropriate as neither would restrict Mrs Galvin's practice. The public would therefore not be protected and the public interest would not be satisfied.

The panel then moved on to consider the four available sanctions set out in Article 29(5) of the Order. The panel first determined that a caution order would again not be appropriate as it would not restrict Mrs Galvin's practice. The panel was of the view that the public would not be protected and further, that the public interest would not be satisfied.

The panel next considered whether placing conditions of practice on Mrs Galvin's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel had regard to the fact that the misconduct identified in this case related to deep seated attitudinal issues. It was of the view these

were not issues that could be easily addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Galvin's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. 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;*
- *...;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *...'*

The panel found that there was no evidence of the above factors being present in this case. It noted that there were multiple instances of swearing at Patient E, demonstrating bullying behaviour, and using racist and discriminatory language. Mrs Galvin displayed signs of a harmful deep-seated attitudinal problem, which the panel found evident by her use of abhorrent racial slurs and bullying behaviour towards colleagues. The panel was also of the view that, in light of there being no evidence of insight or remediation, there was a significant risk of the misconduct found being repeated.

The panel found that Mrs Galvin's conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. It found that the serious breach of fundamental tenets of the profession evidenced by Mrs Galvin's actions is fundamentally incompatible with her remaining on the register. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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 was satisfied that Mrs Galvin's actions did raise fundamental questions about her professionalism. The panel was in no doubt that the behaviours exhibited by Mrs Galvin were significant departures from the standards expected of a registered nurse. The panel took into account the NMC Guidance on how to determine seriousness and noted that bullying and racial discriminatory behaviour were two of the most serious issues outlined therein. In addition to demonstrating bullying behaviour, Mrs Galvin had exhibited abhorrent displays of racism on multiple occasions. The panel was of the view that the findings in this particular case demonstrate that Mrs Galvin's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. It was of the view that such behaviours had no place in the nursing profession and that this order was needed to uphold the standards of the nursing profession.

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

The panel considered that this order was necessary to 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 Galvin in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mrs Galvin's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Jotangia. He submitted that given the panel's findings and the seriousness of the misconduct, an interim suspension order was necessary.

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 due the amount of time it may take for any appeal to conclude.

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

That concludes this determination.