

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

**Substantive Hearing**  
Monday, 17 June 2024, - Friday, 21 June 2024

Virtual Hearing

<b>Name of Registrant:</b>	<b>Sascha Nikolaus Bruno Auweiler</b>
<b>NMC PIN</b>	98J0090C
<b>Part(s) of the register:</b>	Nurses part of the register Sub part 1 RN1: Adult nurse, level 1 (19 October 1998) V300: Nurse independent / supplementary prescriber (8 July 2009)
<b>Relevant Location:</b>	North Middlesex
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Simon Banton (Chair, Lay member) Anne Considine (Registrant member) James Kellock (Lay member)
<b>Legal Assessor:</b>	Robin Hay
<b>Hearings Coordinator:</b>	Eleanor Wills
<b>Nursing and Midwifery Council:</b>	Represented by Sam Lubner of counsel
<b>Mr Auweiler:</b>	Not Present and not represented at this hearing
<b>Facts proved:</b>	Charges 1a, 1b, 1c, 2, 3a, 3b, 4, 5a, 6, 7, 8
<b>Facts not proved:</b>	Charge 5b
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Striking-off</b>

**Interim order:**

**Interim suspension order (18 months)**

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

At the outset of the hearing, Mr Lubner, on behalf of the Nursing and Midwifery Council (NMC), made an application that this case be held partly in private on the basis that proper exploration of Mr Auweiler's case involves reference to [PRIVATE] during the NMC's application to proceed in absence. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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

The panel determined to rule to go into private session in connection with [PRIVATE] as and when such issues are raised in order to protect his privacy.

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

The panel was informed at the start of this hearing that Mr Auweiler was not in attendance and that the Notice of Hearing letter had been sent to his registered email on 17 May 2024.

Further, the Notice of Hearing was also sent to Mr Auweiler's representative at the Royal College of Nursing (RCN) on 17 May 2024.

Mr Lubner submitted that the NMC had complied with the requirements of Rules 11 and 34.

The panel accepted the advice of the legal assessor.

The Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Auweiler's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

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

The panel next considered whether it should proceed in the absence of Mr Auweiler. It had regard to Rule 21 and to the submissions of Mr Lubner that the panel should continue in the absence of Mr Auweiler.

Mr Lubner said that the NMC on 12 June 2024 emailed Mr Auweiler's representative from the RCN to enquire whether they would be seeking a postponement, pending obtaining the information requested for their application under Rule 33. Mr Lubner said that the NMC never received the further information requested from the RCN.

Mr Lubner referred the panel to an email from the RCN to the NMC, dated 12 June 2024.

*'... [PRIVATE].*

*...*

*In the circumstances, please confirm whether you are able to consider making the rule 33 application on the basis of what you already have, if not, he has instructed that he will be disengaging with the proceedings.'*

Mr Lubner said that the RCN's application on Mr Auweiler's behalf, under Rule 33, has already been considered by the NMC and it was not accepted.

Mr Lubner referred to an email from the RCN to the NMC dated 17 June 2024.

*'RCN Member: Sascha Auweiler*

*Please note that we are no longer acting for Sascha Auweiler. Please ensure that our name is removed from the record and that all future correspondence is sent direct to the registrant.'*

In light of the fact that the RCN is no longer representing Mr Auweiler, and he is no longer engaging with the NMC. Mr Lubner submitted that Mr Auweiler has voluntarily absented himself.

Mr Lubner said that the allegations before the panel are very serious, relating to racial discrimination. Further that there is evidence to support the allegations and highlighted the overarching objective of the NMC is to protect the public.

Mr Lubner said that there is a public interest in the expeditious disposal of the case. Further that any delay to proceedings would cause inconvenience to the witnesses who are scheduled to give evidence. He said that there has been no application for an adjournment and also even if the hearing were adjourned, there is no evidence to suggest that Mr Auweiler would attend at a future date. He said that Mr Auweiler has previously provided a response to the allegations, during the internal investigation undertaken by the Trust, and he submitted that if the panel were to proceed in Mr Auweiler's absence that it can assess the veracity of his accounts and determine how much weight to place on them.

The panel accepted the advice of the legal assessor.

The panel was aware that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and should be exercised *'with the utmost care and caution'*.

The panel has decided to proceed in the absence of Mr Auweiler. In reaching this decision, the panel has considered the submissions of Mr Lubner and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones (Anthony William) (No.2)* [2002] UKHL 5 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 had in mind that:

- No application for an adjournment has been made by Mr Auweiler;
- The email from the Mr Auweiler's RCN representative, at the time, to the NMC, dated 12 June 2024, in which it is stated that Mr Auweiler [PRIVATE].
- The NMC did not allow the Rule 33 application, and Mr Auweiler has since disengaged with the NMC, as indicated in an email from the RCN to the NMC dated 12 June 2024;
- The RCN is no longer representing Mr Auweiler;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2020 and further delay may have an adverse effect on the ability of witnesses to accurately recall events;
- The allegations are very serious in nature relating to racial abuse/harassment; and
- There is a strong public interest in the expeditious disposal of the case.

Although there is some disadvantage to Mr Auweiler in proceeding in his absence. The evidence upon which the NMC relies will have been sent to him at his registered address, and he has made no response to the allegations brought by the NMC. However, Mr Auweiler has previously provided a response to the allegations during the internal

investigation undertaken by the Trust in 2020. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Auweiler's decision to absent himself from the hearing, waive his right to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

### **Details of charges**

That you, a registered nurse

1. On dates unknown made monkey noises towards Colleague A:
  - (a) when Colleague A was in the clinical nurse specialist room
  - (b) when you walked towards Colleague A's room
  - (c) when you walked past Colleague A's room
2. On 20 March 2020 sent a Whatsapp message to Colleague A stating "Who? Who?"
3. Sent Whats App messages to Colleague A:
  - (a) on 13 March 2020 referring to another colleague as "Dribble Ona"
  - (b) on 2 occasions on dates unknown referring to Colleague A as "Choice Mahudu"
4. On 26 March 2020 sent an email to Colleague A addressing Colleague A as "High Choice".

5. On dates unknown mocked:

- (a) Colleague B by asking them to repeat themselves
- (b) Colleague C by mimicking their accent and shaking your head

6. On dates unknown played a portable speaker that made animal noises when Colleague A was working

7. Your actions at Charges 1 to 5 were racially motivated.

8. Your actions at Charges 1 to 6 created an intimidating and / or hostile and / or degrading and / or humiliating environment for one or more of your colleagues.

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

### **Decision and reasons on first application to amend the charges**

Mr Lubner made an application to amend the wording of charges 7 and 8.

The proposed amendment was to insert the following words '*Any of*' and '*singularly or cumulatively*' into charges 7 and 8 as follows:

7. **Any of** your actions at Charges 1 to 5, **singularly or cumulatively**, were racially motivated.

8. **Any of** your actions at Charges 1 to 6, **singularly or cumulatively**, created an intimidating and / or hostile and / or degrading and / or humiliating environment for one or more of your colleagues.

Mr Lubner submitted that the proposed amendments would provide clarity as the charges as currently drafted may be unclear. He submitted that it is unclear as to whether the



panel must first find all of charges 1 to 5 proved, in order to then determine whether charge 7 is proved. Additionally, it is unclear whether the panel must find all charges 1 to 6 proved, in order to then determine whether charge 8 is proved.

Mr Lubner said that Mr Auweiler has not been made aware of the proposed amended charges, but he submitted that there is no prejudice to him, as the substance of the charges remains the same. Further that the panel has before it evidence in relation to Mr Auweiler's position regarding charge 7 and charge 8, in that he denies both charges.

Mr Lubner said that the NMC has not changed the substance of the charges. As currently drafted, if any of charges 1 to 5 were found proved then the panel could determine whether charge 7 is found proved. Moreover, if any of charges 1 to 6 were found proved then the panel could determine whether charge 8 is found proved. He said that the proposed amendments are simply to provide clarity for interpreting the charges.

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

The panel was satisfied that the proposed amendment was in the interest of justice. No prejudice would arise to Mr Auweiler and no injustice would be caused to either party by the proposed amendment being allowed in that there is no material change to the substance of the charges. It was therefore appropriate to allow the amendment to ensure clarity in the interpretation of the charges.

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

The panel was provided with written submissions by Mr Lubner regarding an application to admit hearsay evidence under Rule 31 as follows.

#### ***'INTRODUCTION***

- 1. The NMC invite the Panel to admit the evidence of:*

- i. *[Colleague A] (insofar as the emails sent to [Witness 1] and her responses to questions asked of her in the investigation hearing – Appendices 3 and 5)*
- ii. *[Colleague B], [Colleague D] (as reported by [Witness 2] to [Witness 1] in the investigation hearing – Appendix 8)*  
*under Rule 31 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules').*

2. *The NMC submit that the evidence is relevant and fair.*

...

***[Colleague A]***

- i. *This evidence is not the sole or decisive evidence in support of the charge. There is the evidence from whatsapp messages and emails showing the registrant's communications with [Colleague A]. [Witness 1] can also be asked questions about the investigation and disciplinary hearing.*
- ii. *It has not been clearly articulated that there is a suggestion that [Colleague A] has a reason to fabricate their allegations. From the investigation transcript, the registrant largely accepts that he behaved in the manner alleged by [Colleague A]. Rather, he disputes his motivation at the time.*
- iii. *The charges are serious as they relate to racially motivated behaviour and/or behaviour which created an intimidating/ hostile/ degrading/ humiliating environment for colleagues.*
- iv. *As the Panel will see from the hearsay bundle (attached) there have been frequent attempts to engage with [Colleague A], who was declined to attend on the basis of, in her words, not wanting to relive*

*the trauma of what happened and fears of a backlash from former colleagues. She has continued to stand by her original allegations.*

***[Colleague B]***

- v. Her evidence is not sole or decisive. Mr. Auweiler's behaviour towards [Colleague B] was witnessed by [Witness 2], who has written a witness statement and will attend to give live evidence. The allegations relating to [Colleague B] were also investigated by [Witness 1], who has written a witness statement and will attend to give live evidence.*
- vi. The charges are serious for the reasons given above.*
- vii. The NMC have made reasonable attempts to secure her attendance.*

***[Colleague D]***

- viii. Her evidence is not sole or decisive. The allegations relating to [Colleague C] were investigated by [Witness 1], who has written a witness statement and will attend to give live evidence.*
- ix. The charges are serious for the reasons given above,*
- x. The NMC have made reasonable attempts to secure her attendance.*

**CONCLUSION**

- 3. In light of the above submissions the NMC submit that the evidence is relevant and fair.'*

In response to panel questions Mr Lubner said that Mr Auweiler and his RCN representative at the time, were first given an indication that a hearsay application would be made in August 2022. Further that the final hearsay bundle was emailed to Mr Auweiler and his RCN representative at the time, on 10 June 2024.

The panel 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.

In reaching its decision on the hearsay application, regarding the evidence of Colleague A, the panel determined that it is relevant to the charges, specifically charges 1 – 4 and charge 6, and the accompanying parts of charges 7 and 8. They are serious in nature. Further that there is corroborating contemporaneous documentary evidence:

- The email to the Human Resources (HR) department of the Trust dated 3 April 2020, in which Colleague A outlined her complaint regarding Mr Auweiler's behaviour.
- The screenshots of the messages sent by Mr Auweiler to Colleague A on WhatsApp as referred to in charges 2 and 3.
- The email from Mr Auweiler to Colleague A dated 26 March 2020, as referred to in charge 4.

Additionally Witness 2 provided evidence in relation charges 1 and 6. The panel also took into account that Mr Auweiler gave several responses in writing to the allegations, in emails to the Trust dated 25 April 2020 and 12 May 2020, and orally, during the internal investigation in an interview dated 27 April 2020. The panel therefore determined that the evidence of Colleague A is not the sole or decisive evidence in relation to charges 1-4 and charge 6, and the accompanying parts of charges 7 and 8.

The panel also determined that it is fair to admit the evidence of Colleague A, in the light of the fact the NMC has made reasonable attempts to contact Colleague A and she has provided the NMC with reasons for her non-attendance, as she did not want to revisit the incidents which caused [PRIVATE]. Further Colleague A in 2022 emphatically stated she was no longer engaging with the NMC with regard to this hearing and in 2024 she did not provide any response to the NMC. The panel determined that the evidence was

sufficiently detailed and there was nothing significant to be gained from seeking a summons to require her to give evidence.

There was also public interest in, the expeditious disposal of this case, and the issues being explored fully, which supported the admission of this evidence.

In these circumstances, the panel determined that it would be fair and relevant to admit the evidence of Colleague A, but would give it appropriate weight after it had heard and evaluated all the evidence.

In regard to the evidence relating to Colleague B. Witness 2 witnessed the alleged incident and has provided a written statement and will be attending to give evidence. The panel therefore determined that the evidence relating to her is not the sole or decisive evidence in relation to charge 5a.

The panel also determined that it is fair to admit the evidence relating to Colleague B, in the light of the fact the NMC has provided evidence that it has made reasonable attempts to contact Colleague B and there has been no response from her. Colleague B is not a Registrant and therefore her details could not be obtained from the Register. Therefore she has no duty to engage and cooperate with the NMC. The NMC did however contact her previous employer in its attempts to contact Colleague B but to no avail.

There was also a public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, the panel concluded that it would be fair and relevant to admit the evidence relating to Colleague B, but would give appropriate weight to this evidence once it has heard and evaluated all the evidence before it.

In regard to the evidence relating to Colleague D, the panel determined that it would be unfair to admit the evidence. It was unclear whether Colleague D directly witnessed the

alleged incident contained in charge 5b. Colleague C in fact spoke to Colleague D who then reported it to Witness 2. The panel therefore concluded that this in effect double hearsay. Further there is no evidence from Colleague C, as she did not want to proceed with a complaint and there is no further detailed examination of this incident by Witness 1 during the Trust's investigation. The panel concluded that the evidence relating to Colleague D was the sole and decisive evidence in relation to charge 5b.

The panel also determined that it would be unfair to admit the evidence relating to Colleague D, in the light of the fact the NMC has not provided sufficient evidence that it has made reasonable attempts to contact her.

In these circumstances the panel refused the application.

## **Background**

Mr Auweiler was employed by North Middlesex Hospital NHS Trust (the Trust) since 21 May 2018 as a Registered Nurse. On 1 April 2020, Colleague A first raised concerns with the Trust regarding Mr Auweiler's alleged offensive and insulting behaviour. On 16 April 2020 Mr Auweiler was suspended by the Trust pending the outcome of an internal investigation. On 4 May 2020 further allegations emerged against Mr Auweiler.

The Trust held a disciplinary hearing on 23 June 2020 where they considered the following allegations:

1. It is alleged that Mr Auweiler made monkey noises towards Colleague A on at least two occasions during March 2020.
2. It is alleged that on 20 March 2020, Mr Auweiler sent a WhatsApp message to Colleague A, insinuating monkey noises in that it said "Who? Who?"

3. It is alleged that Mr Auweiler deliberately changed the spelling of Colleague A's name.

4. It is alleged that Mr Auweiler:

- Mimicked Colleague B's accent
- Laughed at her whilst she was speaking
- Mimicked Colleague C's accent

5. It is alleged that Mr Auweiler has not conducted himself professionally in the department. In that Mr Auweiler has played practical jokes on Colleague A by controlling his own portable speaker in the clinic room which made noises during a clinical conversation between Colleague A and a patient.

The Trust investigation found all allegations upheld and on 2 July 2020 Mr Auweiler was dismissed from his role at the Trust on the grounds of gross misconduct.

The Trust confirmed that there were no concerns with Mr Auweiler's clinical competence.

On 15 July 2020, the NMC received a referral from the Trust regarding Mr Auweiler alleging racism, harassment, and bullying conduct towards colleagues.

### **Decision and reasons on second application to amend the charges**

Mr Lubner made an application to amend the wording of charge 3b.

The proposed amendment to charge 3b was, to replace the word '2' with the word 'one', to remove the 's' from the word 'occasions' and the word 'dates', and to insert an 'a' before the word 'date'.

3. Sent Whats App messages to Colleague A:

(b) on ~~2~~ **one** occasions on ~~a~~ ~~dates~~-unknown referring to Colleague A as “Choice Mahudu”.

Mr Lubner said that this amendment is required due to an administrative oversight by the NMC, in that the evidence relates only to one occasion not two.

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

The panel determined that the proposed amendment was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Auweiler and no injustice would be caused to either party by the proposed amendment being allowed in that there is no material change to the substance of the charge and the error is merely an administrative oversight. It was therefore appropriate to allow the proposed amendment to ensure accuracy of the charges.

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

In reaching its decisions on the disputed facts, the panel considered all the oral and documentary evidence together with the submissions made by Mr Lubner. It considered also the written explanations by Mr Auweiler in the course of the Trust’s investigation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

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.





In reaching this decision, the panel took into account Colleague A's email to the HR department at the Trust dated 3 April 2020. In this she outlined her complaint regarding Mr Auweiler's 'offensive and insulting' behaviour and referred to the "monkey noises... that my colleague made to me on at least two occasions verbally". The panel considered the transcript of the interview of Colleague A undertaken by Witness 1 during the internal investigation by the Trust in which she described the alleged incidents as contained in charges 1a, 1b and 1c. The panel had specific regard to the following excerpts of the transcript:

Colleague A:

*'The first time it happened, I was in the clinical nurse specialist room ...Sacha was opposite me.... All I remember was hearing Sacha make these sounds... Me and him were just looking at each other.'*

...

Witness 1:

*'...It was specifically monkey noises?'*

Colleague A:

*'Yes'*

...

Colleague A:

*'I was sat at my desk and I had the door open. He came from his room and I could hear the monkey noises as he was walking towards my room...He was making the*

*monkey noises and he walked past and he looked at me, and then he just carried on.'*

...

Colleague A:

*'Then the last time that I heard it was once again I was in my room...'*

*'... Sacha came behind him and he was making monkey noises.'*

The panel took into account Mr Auweiler's email to the Trust dated 25 April 2020, in which he admitted to having made '*monkey noises*' but stated that they were not directed at Colleague A. Further the panel had regard to his interview dated 27 April 2020, in which he admitted to having made '*monkey noises*' in the workplace but stated he had no recollection of the alleged incidents regarding Colleague A.

The panel found that Colleague A's account of the alleged incidents was detailed and consistent. Further it was corroborated by her contemporaneous complaint to the HR department at the Trust, dated 3 April 2020.

The panel therefore determined, on the balance of probabilities, that charge 1, in its entirety is found proved.

## **Charge 2**

"That you, a registered nurse, on 20 March 2020 sent a Whatsapp message to Colleague A stating "Who? Who?"."

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague A's email to the HR department at the Trust dated 3 April 2020, in which she outlined her complaint regarding Mr Auweiler's '*offensive and insulting*' behaviour and stated that Mr Auweiler made '*monkey noises...once via whatSapp (sic)*'. The panel took into account the transcript of the interview of Colleague A undertaken by Witness 1 during the internal investigation by the Trust. Colleague A described having received a Whatsapp message from Mr Auweiler stating "*Who? Who?*". Additionally, there was before the panel the actual screenshot of a text message on Colleague A's phone from Mr Auweiler on 20 March 2020 which stated "*Who? Who?*". In Mr Auweiler's interview dated 27 April 2020, he admitted to having sent a text message to Colleague A stating "*Who?*" but he stated that this was in reference to seeking to clarify which patient Colleague A was referring to.

The panel therefore determined that on the balance of probabilities charge 2 is found proved.

### **Charge 3a**

"That you, a registered nurse, sent Whats App messages to Colleague A:

(a) on 13 March 2020 referring to another colleague as "*Dribble Ona*"."

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

In reaching this decision, the panel considered the transcript of the interview of Colleague A undertaken by Witness 1 during the internal investigation by the Trust. In which she described having received a Whatsapp message from Mr Auweiler where he deliberately misreferred to a colleague as "*Dribble Ona*". There was before the panel the actual screenshot of a text message on Colleague A's phone from Mr Auweiler on 13 March 2020 which stated, "*Dribble Ona will check*". The panel took into consideration the transcript of Mr Auweiler's interview dated 27 April 2020, in which he admitted to having

deliberately misspelt a colleague's name but that his intention in doing so was for it to be a joke.

The panel therefore determined that on the balance of probabilities charge 3a is found proved.

### **Charge 3b**

“That you, a registered nurse, sent Whats App messages to Colleague A:

(b) on one occasion on a date unknown referring to Colleague A as “Choice Mahudu”.”

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

In reaching this decision, the panel considered the transcript of the interview of Colleague A undertaken by Witness 1 during the Trust's investigation. In which she described having received a Whatsapp message from Mr Auweiler referring to her as “*Choice Mahudu*”. There was before the panel the actual screenshot of a text message on Colleague A's phone from Mr Auweiler which stated, “*Choice Mahudu*”. The panel took into account Mr Auweiler's partial admission contained in an email from Mr Auweiler to the Trust dated 12 May 2020, in which he admitted to having referred to Colleague A as “*Choice*” and “*Maduhu*”. Further in Mr Auweiler's interviews dated 27 April 2020 and 13 May 2020, he admitted to having deliberately misspelt Colleague A's name but that his intention in doing so was for it to be a joke/teasing.

The panel therefore determined that on the balance of probabilities charge 3b is found proved.

#### **Charge 4**

“That you, a registered nurse, on 26 March 2020 sent an email to Colleague A addressing Colleague A as “High Choice”.”

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

In reaching this decision, the panel considered the transcript of the interview of Colleague A undertaken by Witness 1 on 6 May 2020, during the Trust’s investigation. In which she described having received an email from Mr Auweiler, addressing her as “*Choice*”. There was before the panel the email from Mr Auweiler to Colleague A dated 26 March 2020, in which he stated, “*High Choice*”. In an email from Mr Auweiler to the Trust dated 12 May 2020, he admitted to having referred to Colleague A as “*Choice*”.

The panel therefore determined that on the balance of probabilities charge 4 is found proved.

#### **Charge 5a**

“That you, a registered nurse, on dates unknown mocked:

(a) Colleague B by asking them to repeat themselves.”

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

In reaching this decision, the panel considered the transcript of the interview of Witness 2 undertaken by Witness 1 on 29 April 2020, during the Trust’s investigation. The panel had specific regard to the following excerpts.

*'She's of African descent and accented, but very understandable. She speaks proper English, and I could understand her.... she was speaking to Sasha (sic), and she had to keep repeating herself.'*

*'She kept repeating herself, and Sasha (sic) couldn't understand her, but we could all understand her.'*

*'He was very mocking.'*

The panel found Witness 2's evidence to be clear and detailed. In the course of her evidence she stated that she had no previous knowledge of anyone having had any difficulty understanding Colleague B. Witness 2's evidence was that Colleague B had been employed at the Trust for 3-4 years and she would not have employed Colleague B as the department's receptionist if she believed she had difficulties communicating with colleagues and patients.

The panel accepted Witness 2's interview and evidence and determined that it was consistent and detailed. Mr Auweiler did not provide an explanation relating to this charge. The panel therefore determined that on the balance of probabilities charge 5a is found proved.

### **Charge 5b**

"That you, a registered nurse, on dates unknown mocked:

(b) Colleague C by mimicking their accent and shaking your head."

**This charge is found NOT proved.**

The only evidence on which the NMC sought to rely was that of Witness 2 relating to Colleague D's account regarding Colleague C. The double hearsay evidence was not admitted. There is no other supporting evidence for this specific charge.

The panel determined that this charge is found NOT proved.

### **Charge 6**

“That you, a registered nurse, on dates unknown played a portable speaker that made animal noises when Colleague A was working.”

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

In reaching this decision, the panel considered the transcript of the interview of Colleague A undertaken by Witness 1 during the Trust's investigation. In this she stated that Mr Auweiler played noises on a portable speaker whilst Colleague A was with a patient. The panel also considered the interview of Witness 2 undertaken by Witness 1 on 29 April 2020, in which Witness 2 describes Mr Auweiler as having played animal noises on a speaker whilst colleagues were working. Further the panel took into account Mr Auweiler's partial admission contained in an email from Mr Auweiler to the Trust dated 12 May 2020, in which he admitted to having played music on a portable speaker when he entered the building, on one occasion, but he stated that this was accidental as the *'Bluetooth connection jumps from his earphones to the speaker'*. Further the transcript of Mr Auweiler's interview dated 13 May 2020, in which he admitted to having played music over a portable speaker and that this was just an unfortunate accident which occurred once.

The panel found Colleague A's account of the alleged incident to be detailed and clear and was corroborated by Witness 2.

The panel therefore on the balance of probabilities, found charge 6 proved.



## Charge 7

“Any of your actions at Charges 1 to 5, singularly or cumulatively, were racially motivated.”

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

In reaching this decision, the panel bore in mind the legal definition of racial motivation provided in the case of *Lambart-Simpson v Health and Care Professions Council* [2023] EWHC 481 (Admin), in which it is stated that an act is racially motivated where “*the act in question had a purpose behind it which, at least significant in part, was referable to race; and that the act was done in a way showing hostility or a discriminatory attitude to the relevant racial group.*”

The panel when considering whether charge 1 was racially motivated took into account the transcript of the interview of Colleague A undertaken by Witness 1 during the Trust’s investigation in which she stated she was ‘*Black African*’. Mr Auweiler stated that it was not his intent to be discriminatory or racist as he was simply making a joke which was not directed to Colleague A. However, the panel has found charge 1, in its entirety proved and had regard to the fact that Colleague A had stated that she felt that his behaviour was ‘*offensive and insulting*’. Further in Mr Auweiler’s interview dated 27 April 2020, he stated that he understood that the making of ‘*monkey noises*’ may be derogatory towards black, minority ethnicities.

The panel therefore determined on the balance of probabilities that Mr Auweiler’s actions at charge 1, in its entirety, were racially motivated.

The panel considered whether charges 2, 3a, 3b, and 4 were racially motivated. However, the panel determined that, given the precise language and the lack of contextual information provided to it regarding any of Mr Auweiler’s actions contained in these

charges, there was not sufficient evidence to prove that his actions were racially motivated.

The panel therefore determined on the balance of probabilities that Mr Auweiler's actions at charges 2, 3a, 3b and 4 were NOT racially motivated.

The panel when considering whether charge 5a was racially motivated took into account Witness 2's interview undertaken by Witness 1 on 29 April 2020 and her evidence. Witness 2 stated that Colleague B did have a Nigerian accent but that she personally had no difficulties in understanding her and neither could she recall any other colleagues having difficulties understanding Colleague B. Further Witness 2 said she felt uncomfortable and angry having witnessed this incident and considered it unusual enough that having overhead the start of the incident, she went to intervene. Witness 2 felt that Mr Auweiler was '*mocking*' Colleague B by asking her to repeat herself.

The panel therefore determined on the balance of probabilities that that Mr Auweiler's actions at charge 5a were racially motivated.

The panel did not consider charge 5b as it had previously found it NOT proved.

The panel, given that it had determined that Mr Auweiler's actions at charge 1 and charge 5a were racially motivated, concluded that charge 7 is found proved on the balance of probabilities.

### **Charge 8**

"Any of your actions at Charges 1 to 6, singularly or cumulatively, created an intimidating and / or hostile and / or degrading and / or humiliating environment for one or more of your colleagues."

**This charge is found proved.**

The panel bore in mind the legal definition for racial motivation and, having found that charge 1 and charge 5a were proved and that Mr Auweiler's actions at charge 1 and 5a were racially motivated, it determined that Mr Auweiler's actions at charge 1 and charge 5a it created a hostile environment for one of more of his colleagues.

Further Witness 2 in her evidence stated that she felt that Mr Auweiler was '*mocking*' Colleague B in his actions at charge 5a and therefore the panel determined that, on the balance of probabilities, that Mr Auweiler's actions at charge 5a, created a hostile and degrading and humiliating environment for Colleague B.

Panel also had in mind that Colleague A stated that she felt that Mr Auweiler's actions contained in charge 1 were '*offensive and insulting*' as well as humiliating. Further the panel took into account Colleague A's email to the HR department at the Trust dated 3 April 2020, in which she stated that she had read the Trust's Bullying and Harassment policy and Mr Auweiler's behaviour is described in the listed definitions for both bullying and harassment. The panel therefore determined, on the balance of probabilities, that Mr Auweiler's actions at charge 1, in its entirety, created an intimidating and hostile and degrading and humiliating environment for Colleague A.

The panel also determined that Mr Auweiler's actions at charge 3a created a degrading environment for one or more of his colleagues in that he deliberately and insultingly misspelt a colleague's name and called her '*Dribble Ona*'. Further the panel concluded that Mr Auweiler's actions at charge 6 created a humiliating environment for Colleague A in that the event took place in the workplace and whilst Colleague A was working with a patient.

The panel therefore found charge 8 proved in relation to Mr Auweiler's actions at charge 1, in its entirety and charges 3a, 5a and 6.

The panel had considered whether charge 8 is found proved in relation to Mr Auweiler's actions at charge 2, 3b and 4 but determined that given the panel concluded that there was not enough contextual information regarding these events that it was not able to determine on the balance of probabilities whether Mr Auweiler's actions created an intimidating and / or hostile and / or degrading and / or humiliating environment for one or more of his colleagues.

The panel therefore did NOT find charge 8 proved in relation to Mr Auweiler's actions at charges 2, 3b and 4.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Auweiler'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.

### **Submissions on misconduct**

Mr Lubner 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 the panel to the cases of *Calhaem v GMC* [2007] EWHC 2006 (Admin) and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Mr Lubner submitted 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).

Mr Lubner provided the following written submissions in relation to misconduct:

1. *'The NMC submit that the following facts found proven amount to misconduct:*

*a. Charges 1a-c and 5a in connection with charge 7*

- i. Firstly, the Registrant committed 4 separate incidents of racially motivated behaviour towards two separate colleagues. By its nature, this behaviour displayed hostility or discriminatory attitude towards a racial group.*
- ii. Secondly, it caused great upset. [Colleague A] described the behaviour as "extremely offensive and insulting". [Witness 2] described in her evidence how she found his behaviour towards [Colleague B] so objectionable that she felt compelled to intervene.*
- iii. Thirdly, such behaviour, "acts of discrimination, harassment, or victimisation against an employee of the Trust ... on the grounds of their race" is classed as "gross misconduct" in the North Middlesex University Hospital Trust ('NEMUHT') Disciplinary Policy and Procedure document (p45). It also runs contrary to the core messaging of the NEMUHT's Equality Diversity & Inclusion ('EDI') Policy (p193).*

*b. Charges 1a-c, 3a, and 6 in connection with charge 8 – the NMC submit this is a serious breach for the following reasons:*

- i. Firstly, the conduct involved separate and repeated incidents towards the same colleague, Colleague A. The 'portable speaker' incident (charge 6) took place where a patient was present (pp70-71).*
- ii. The incident towards [Colleague A] which was witnessed by [Witness 2] who also noted in her evidence that others were present as well.*

*She estimated in her live evidence that the incident lasted 5 – 10 minutes.*

*iii. Secondly, given the effect that his actions had on the working environment and to his colleagues, there was an ensuing potential risk of harm to patients as well.*

- 2. The NMC further submits that the Registrant's actions as proven fall far short of what would be expected of a Registered Nurse. Colleagues would expect to be able to come to work and focus on helping the public without being subjected to racially motivated behaviour and/or behaviour that created a hostile /intimidating/ degrading/ intimidating environment.*
- 3. The public would expect that the profession would not display behaviour as cited in the paragraph above. They would expect nurses to uphold a professional reputation.*
- 4. The NMC say that the following parts of The Code have been breached, but of course the Panel is able to consider any other parts as it sees fit:*
  - 1: Treat people as individuals and uphold their dignity, and in particular:*
    - o 1.1: treat people with kindness (sic), respect and compassion*
  - 20: Uphold the reputation of your profession at all times, and in particular,*
    - o 20.1: keep to and uphold the standards and values set out in The Code*
    - o 20.2: act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*
    - o 20.3: be aware at all times 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.**

5. *The NMC invite the Panel to find misconduct.'*

### **Submissions on impairment**

Mr Lubner moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v General Medical Council* [2008] EWHC 581

Mr Lubner provided the following written submissions in relation to impairment.

1. *'Applying Cohen, the NMC submits:*
  - a. *The conduct is attitudinal, and therefore more difficult to remediate. It is of note that in his interview with [Witness 1], he confirmed that he had completed e-learning training, which would have included EDI training, at some point in the 12 months before the alleged misconduct (p101).*
  - b. *The conduct has not been remedied:*
    - i. *Throughout the investigation process, the Registrant acknowledged he had caused upset and apologised for it but failed to recognise the racially motivated nature of his behaviour. He initially portrayed his conduct as 'jokes' and suggested that his actions like the monkey noises had been misinterpreted (p103), showing a lack of insight.*





5. *The NMC submit that there is no evidence upon which the Panel could conclude that there has been full insight, acceptance or remorse.*

...

6. *The NMC submit that there is no other evidence that could convince the Panel that the Registrant would not be at risk of repeating this behaviour were he to continue to practise.*

7. *As such the NMC invite the Panel to find that the Registrant is currently impaired.'*

The panel accepted the advice of the legal assessor.

### **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 found that Mr Auweiler's actions did fall significantly short of the standards expected of a registered nurse, and amounted to breaches 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*

*1.3 avoid making assumptions and recognise diversity and individual choice*

***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 ... integrity at all times, treating people fairly and without discrimination, bullying or harassment*

*20.3: be aware at all times 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.'*

The panel acknowledged that breaches of the Code do not automatically result in a finding of misconduct. The charges are serious in nature involving four incidents which were racially motivated and six incidents which created an intimidating and/or hostile and/or degrading and/or humiliating environment for one or more of Mr Auweiler's colleagues. The panel had regard to the fact that two of the incidents took place in the presence of patients. The panel concluded that given Mr Auweiler's conduct impacted negatively on the working environment and colleagues, there was a potential risk of harm to patients and colleagues.

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

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

The panel next considered whether if as a result of the misconduct, Mr Auweiler's fitness to practise is currently impaired.

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

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

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

The panel determined that the Grant test was engaged on limbs a, b and c.

The panel concluded that patients were put at risk as a result of Mr Auweiler's misconduct as his actions upset his colleagues greatly, and therefore had the potential to impact the standard of care being provided to patients. The panel determined that Mr Auweiler's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, although the panel considered that Mr Auweiler made partial admissions, in that he accepted the factual elements of some of the charges, but he stated that his actions were intended as jokes or pranks. The panel had regard to his responses to the allegations put to him during the Trust's investigation. The panel took into account Mr Auweiler's apology provided in an email from him to the Trust's HR department dated 12 May 2020.

*'Overall, I am very sorry if I have caused any offence. I have thought about my actions a lot and can see that I have not always acted to the standard that can be expected of me. I'd appreciate if mediation or facilitated conversation with*

*[Colleague A] (and any other offended party) can be considered so I can express my apologies and reassure her/them that it will not happen again.'*

The panel was not satisfied that Mr Auweiler has demonstrated an understanding of how his actions were wrong and how this impacted negatively on the reputation of the nursing profession. Nor has he demonstrated an understanding of how his actions impacted his colleagues and could have put patients at risk of harm. Further he has not demonstrated how and why he would act differently in the future. The panel therefore determined that Mr Auweiler lacks any insight into his actions.

The panel found that Mr Auweiler's misconduct is inherently difficult to remedy given that the charges show a pattern of discriminatory behaviour which is indicative of an attitudinal issue. There is no evidence before the panel demonstrating that Mr Auweiler has undertaken any relevant training or strengthening of practice to remedy his actions. Although Mr Auweiler had previously undertaken Equality, Diversity and Inclusion training, he still behaved in a discriminatory manner and has demonstrated no real understanding of the impact of his actions.

The panel therefore determined that, in the light of Mr Auweiler's lack of insight and remediation, there remains a risk of repetition. The panel decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required. The panel concluded that a well-informed member of the public would be concerned to find that Mr Auweiler has been allowed to practise without restriction. Further, it concluded

that the public would lose confidence in the profession and the NMC as the regulator if he were allowed to practise without restriction, particularly given that on two occasions his actions occurred in the presence of patients.

The panel determined that, in the light of the matters found proved, Mr Auweiler cannot currently practise '*kindly, safely and professionally*'.

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

### **Sanction**

Mr Auweiler was informed in the Notice of Hearing, dated 17 May 2024, that the NMC would seek the imposition of a striking-off order if the panel found his fitness to practise currently impaired.

The panel has decided to make a striking-off order. It directs the Registrar to strike Mr Auweiler off the register. The effect of this order is that the NMC register will show that Mr Auweiler has been struck off the register.

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

### **Submissions on sanction**

Mr Lubner submitted that the following aggravating features are present in Mr Auweiler's misconduct.

- Lack of insight into failings
- Conduct which put patients at risk

- A pattern of misconduct over a period of time

Mr Lubner submitted that the charges found proved are very serious in nature involving attitudinal issues. Mr Auweiler's misconduct negatively impacted colleagues and was likely to undermine the wider public's confidence in the profession. He informed the panel that there are no clinical issues with Mr Auweiler's practice but submitted that there is a repeated pattern of racial discrimination towards the same individual.

Mr Lubner submitted that the charges found proved raise fundamental questions about Mr Auweiler's professionalism. Further his actions are fundamentally incompatible with remaining on the register. Mr Lubner therefore submitted that, given Mr Auweiler's lack of insight and remediation, strike off is the appropriate and proportionate sanction.

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

In reaching the decision, the panel bore in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such a consequence. The panel had careful regard to the SG, specifically the section '*Cases relating to discrimination*' contained in the guidance on '*Considering sanctions for serious cases*', reference '*SAN-2*', last updated 27 February 2024. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel identified the following aggravating features:

- Conduct involved racial discrimination
- Lack of insight into failings
- A pattern of misconduct
- Conduct which put patients at risk of harm

The panel considered whether there are any mitigating features and determined that there are none.

The panel did acknowledge that Mr Auweiler had had a long unblemished career.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case an order that does not restrict Mr Auweiler's practice would not be appropriate. 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.'* Mr Auweiler's misconduct was not at the lower end of the spectrum and 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 Mr Auweiler's registration would be a sufficient and appropriate response. The panel determined that there are no practical or workable conditions that could be formulated, given the nature of the charges in that attitudinal issues have been identified. Furthermore, the panel concluded that the placing of conditions on Mr Auweiler's registration would not sufficiently protect the public nor adequately address the public interest concerns identified.

The panel then considered a suspension order. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*



- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel took into account that there is more than one instance of misconduct. This indicates a pattern of discriminatory behaviour and therefore evidence of harmful deep-seated attitudinal problems. Further in the absence of any insight or remediation it concluded that there is a risk of repetition.

The facts found proved, were a very significant departure from the standards expected of a registered nurse. Further the serious breaches of the fundamental tenets of the profession evidenced by Mr Auweiler's actions are fundamentally incompatible with him remaining on the register. The panel had specific regard to the fact that the Mr Auweiler's actions involved racial discrimination.

The panel determined that a suspension order would not be a sufficient, appropriate, or proportionate sanction.

When considering 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 determined that Mr Auweiler's actions were very serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel took into account the possible impact of a strike off order on Mr Auweiler's ability to earn a living. However balancing all these factors and after taking into account all the evidence before it, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Auweiler's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient.

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

This will be confirmed to Mr Auweiler 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 this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Auweiler'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 into account the submissions made by Mr Lubner. He submitted that the panel should impose an interim suspension order, in light of the fact Mr Auweiler's conduct is fundamentally incompatible with remaining on the Register. Mr Lubner submitted that the panel should impose this order for a period of 18 months in order to cover any appeal period.

## **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 in order to cover the period of any appeal.

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

That concludes this determination.