

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

**Substantive Hearing  
Thursday, 13 June 2024 – Wednesday, 26 June 2024**

Virtual Hearing

**Name of Registrant:** Marie Louise Boot

**NMC PIN** 80K1554E

**Part(s) of the register:** Registered Nurse – sub part 2  
RN2: Adult nurse (level 2) – 25 March 1983

**Relevant Location:** Plymouth

**Type of case:** Misconduct

**Panel members:** John Penhale (Chair, lay member)  
Jenny Childs (Registrant member)  
Kiran Bali (Lay member)

**Legal Assessor:** Nigel Mitchell

**Hearings Coordinator:** Catherine Blake

**Nursing and Midwifery Council:** Represented by Ben Edwards, Case Presenter

**Mrs Boot:** Not present and not represented at the hearing

**Facts proved:** **All charges**

**Fitness to practise:** **Impaired**

**Sanction:** **Striking-off order**

**Interim order:** **Interim suspension order (18 months)**

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

The panel was informed at the start of this hearing that Mrs Boot was not in attendance and that the Notice of Hearing letter had been sent to Mrs Boot's registered email address by secure email on 13 May 2024.

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

The panel accepted the advice of the legal assessor.

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 Boot's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

At the outset of the hearing, Mr Edwards made a request that this case be held partly in private [PRIVATE]. 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 go into private session as and when such issues [PRIVATE] are raised in order to protect her privacy.

### **Decision and reasons on proceeding in the absence of Mrs Boot**

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

Mr Edwards referred the panel to an email dated 21 December 2023 in which Mrs Boot indicated that she did not want to engage with NMC proceedings. He also referred to the note of a phone call with Mrs Boot in which she appeared upset and said that she did not want to be a nurse anymore and that she did not wish to continue engaging with the NMC nor the care line, and did not want to receive any further calls. This is the last documented communication between Mrs Boot and the NMC.

Mr Edwards submitted that it was clear from the most recent communication that Mrs Boot does not wish to engage with the proceedings. He submitted that Mrs Boot had voluntarily absented herself from this hearing. He submitted that while there is nothing in the documentation to suggest that Mrs Boot consents to the panel proceeding in her absence, there is also no information to suggest that she would like an adjournment or that an adjournment would secure her attendance at a later date.

Mr Edwards submitted there was strong public interest in proceeding in the absence of Mrs Boot, given the seriousness of the allegations. He also submitted that there are a number of witnesses scheduled to give evidence over the next few days of the hearing who have taken time out of their work schedules in order to be available for this hearing. Mr Edwards submitted that an adjournment would greatly inconvenience the witnesses. In all the circumstances, Mr Edwards invited the panel to continue in the absence of Mrs Boot.

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*'.

The panel has decided to proceed in the absence of Mrs Boot. In reaching this decision, the panel has considered the submissions of Mr Edwards, 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 noted that:

- No application for an adjournment has been made by Mrs Boot;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- A witness is attending today to give live evidence, and others are due to attend;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred two years ago, further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Boot in proceeding in her absence. The evidence upon which the NMC relies will have been sent to her at her registered email address, and her only response to the allegations is '*what they have said is mostly lies i[sic] am not a racist and i[sic] do what I am paid to do ... no longer*'. Mrs Boot 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. Furthermore, the limited disadvantage is the consequence of Mrs Boot's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

### **Details of charge**

That you, a registered nurse:

1. Treated Colleague A less favourably than other members of staff in that you:
  - a. On 4 March 2022;
    - i. Shouted at them to remove their coat.
    - ii. Pointed your finger at them.
    - iii. Shouted at them "It's not 8:00am yet, if the bell rings you are supposed to answer" or words to that effect.
    - iv. Stated to them;
      1. "Take your coat back in the staff room not to hang on the couch" or words to that effect.
      2. "I was not in charge yesterday, so don't tell me how you did things yesterday" or words to that effect.
  - b. On 20 March 2022;
    - i. Repeatedly asked them to answer call/personal bells.
    - ii. Stated to them "you should drink coffee".
    - iii. Stated to them "To stand up and have a coffee" or words to that effect.

- iv. Did not allow them/did not allocate them to take a break.
2. On 2 June 2022 in respect of Colleague B:
    - a. On 2 June 2022 and/or 4 June 2022 and/or 22 June 2022 you did not allocate another member of staff to 1 to 1 care during a 12-hour shift.
    - b. On 4 June 2022 stated to them that “[they] were not to wave at you anymore” or words to that effect.
  3. On an unknown date stated to Colleague C “you look nice your tan makes [Colleague D] look white” or words to that effect.
  4. On an unknown date in respect of Colleague C stated “Oh my God, she makes [Colleague D] look white. She’ll need a passport to stay in the country” or words to that effect.
  5. Treated Colleague D less favourably than other members of staff in that you:
    - a. On an unknown date/s on one or more occasion spoke to them in a disrespectful tone.
    - b. Shouted at them to answer the call bell.
    - c. Allocated them the middle shift.
    - d. When allocating jobs would allocate taking the bins out.
  6. On unknown dates stated to unknown agency workers/staff members “well, if you moved your arse and did a bit of work, you wouldn’t get cold” or words to that effect.
  7. On an unknown date stated to Colleague F “Don’t fucking sit down on a chair you are paid to work” or words to that effect.
  8. On an unknown date in relation to an unknown agency staff member shouted “You are going to [Resident E], if I see you close your eyes, you will be banned from

working here again, you don't ring the bell, if he needs changing do it yourself" or words to that effect.

9. On unknown dates in respect of working with Colleague G:
  - a. Referred to them as your "white boy" or words to that effect.
  - b. Messaged and/or telephoned Nurse 1 stating:
    - i. that you did not want to work with anyone other than them.
    - ii. "don't forget, I only work with [Colleague G] on nights" or words to that effect.
10. On unknown dates on one or more occasion stated to Colleague K and/or Colleague L "I'm the nurse, I'm writing notes" or words to that effect.
11. On an unknown date denied a chair to an unknown staff member.
12. On an unknown date shouted at an unknown agency carer "What makes you think you can do like us?" or words to that effect.
13. On unknown dates on one or more occasion stated to staff "I am the nurse in charge. You do as you are told." or words to that effect.
14. On an unknown date in relation to Colleague H referred to them as "that piece of shit downstairs" or words to that effect.
15. On unknown dates on one or more occasion in respect of Colleague E would state to other staff members;
  - a. "do you see how [Colleague E] is following [the carer he was paired up with]" or words to that effect.
  - b. That they are a "sex pest" or words to that effect.
  - c. That they are "after" another member of staff or words to that effect.

- d. That they “are probably having an illicit affair with another member of staff” or words to that effect.
16. Your conduct at all or part of charges 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 and/or 8 and/or 9 and/or 10 and/or 11 and/or 12 and/or 14 and/or 15 above was;
- a. Racially motivated.
  - b. Discriminatory in that you treated one or more colleagues and/or unknown members of staff and/or agency workers less favourably because of their actual or your perception of their protected characteristic(s).
17. Your conduct at all or part of charges 1 and/or 2 and/or 3 and/or 5 and/or 6 and/or 8 and/or 10 and/or 11 and/or 12 and/or 13 and/or 14 and/or 15 above amounted to bullying in that your unwanted behaviour towards one or more colleagues and/or unknown member of staff and/or agency workers was offensive and/or intimidating and/or malicious and/or insulting that undermined, humiliated, or caused physical or emotional harm to them.
18. Between 3 October 2021 and 4 July 2022 on one or more occasion slept whilst on duty.
19. On unknown dates on more than one occasion instructed Resident A and/or Resident B to go to their bedroom/s.
20. On unknown dates in respect of Resident C:
- a. Stated to them “if you don’t shut up and sit down, I am going to get the doctors to section you” or words to that effect.
  - b. Stated to them “if you don’t shut up and sit down, I’m going to ring the doctors and they’re going to section you to Glen” or words to that effect.
  - c. Pretended to telephone a doctor to get them sectioned.



d. Shouted at them.

21. On unknown date shouted at Resident B.

22. On an unknown date in respect of Resident D;

- a. Shouted at them to “shut up” or words to that effect.
- b. Shouted at them to “get inside” or words to that effect.
- c. Shouted at them to “what do you think you are doing” or words to that effect.
- d. Left them seated in a wheelchair all night.
- e. Said their bedroom was no longer theirs.

23. On an unknown date stated to Colleague E “do you mind going to [Resident E], she’s your bitch tonight” or words to that effect.

24. On an unknown date directed staff not to give Resident F their call/personal bell at night.

25. On unknown date/s on one or more occasion directed staff not to ring call/personal bells for assistance.

26. On an unknown date in respect of Resident G:

- a. stated to Colleague J “do you mind turning the fucking bell off because now you are going to wake up every other fucking resident!” or words to that effect.
- b. Stated to in relation to Colleague J that “she is doing my head in” or words to that effect.

27. On unknown date/s told staff not to turn and/or reposition Resident H.

28. On an unknown date in relation to Resident H slammed their bedroom door shut and stated “no, the doors stay shut at night” or words to that effect.

29. On an unknown date in respect of Resident I:

- a. Stated to Colleague J “if you continue listening to [Resident I] and answering [Resident I], we won’t call you by your name. We’ll call you [Resident I]’s bitch” or words to that effect.
- b. Directed to Colleague J “you just gotta leave [Resident I]” or words to that effect.

30. On an unknown date referred to Resident J as a “big girl” or words to that effect.

31. On unknown date/s did not assist with PEG feeds and/or stated “I don’t do that” or words to that effect.

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

## **Background**

The charges arose when Mrs Boot was employed as a registered nurse for night shifts by Waters Park House.

On 23 June 2022 Mrs Boot was referred anonymously to the NMC. The Referrer had raised allegations about the way she treated ‘foreign carers especially black’ with ‘no respect’ and/or bullied/ intimidated or harassed staff.

The referral alleges that Mrs Boot treated some black/foreign staff less favourably than others and this was indicated to be racially motivated.

The referral also alleges that Mrs Boot made racially discriminatory remarks about and/or in the presence of colleagues about such staff. For example, on unknown date(s) she shouted at black carers/picked on them, telling them to 'stand up' and/or 'have a coffee' and said she will send them home if they close their eyes, while she allowed other white/English staff to sleep on the shift.

The Home was not aware of the allegations until the NMC contacted them on 28 June 2022.

The Care Home Manager, Witness 1 says she spoke with various members of staff and agency workers and obtained statements detailing several different instances of alleged racist behaviour towards non-white or foreign staff. She raised further allegations including:

- Mrs Boot verbally abusing and/or referring to the Home's clients receiving care in a derogatory/abusive way (calling them 'bitch' for example)
- Mrs Boot failing to ensure adequate care to residents in that she did not check on residents during the night in not answering call bells and/or told staff not to ring the bell for assistance when they were doing personal care for Resident E (for example) and not to reposition Resident H during the night so as not to disturb the resident
- Mrs Boot sleeping on duty and/or not carrying out adequate checks on residents
- Mrs Boot failing to assist colleagues in the delivery of care to residents
- Mrs Boot failing to make clear and accurate records concerning patients in her care in recording residents slept well when this may not have been the case

The Home suspended Mrs Boot on 28 June 2022 and dismissed her on 6 July 2022 for gross misconduct.

## **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 Edwards on behalf of the NMC.

The panel treated all charges as disputed by reason of the correspondence from Mrs Boot on 13 July 2022 in which she says she does not wish to be involved in the NMC process any longer and in which she states that the witness' testimony is not true.

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

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

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

- Witness 1: Manager at the Home at the time of the allegations
- Witness 2: Nurse 1/Night nurse at the Home at the time of the incident
- Witness 3: Colleague I, Rehabilitation Assistant at the Home at the time of the allegations
- Witness 4: Colleague B, Support Worker at the Home at the time of the allegations

- Witness 5: Colleague J, Rehabilitation Assistant at the Home at the time of the allegations
  
- Witness 6: Colleague A, Support Worker at the Home at the time of the allegations
  
- Witness 7: Colleague E, Rehabilitation Assistant at the Home at the time of the allegations

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

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

### **Charge 1**

‘That you, a registered nurse:

1. Treated Colleague A less favourably than other members of staff in that you:
  - a. On 4 March 2022;
    - i. Shouted at them to remove their coat.
    - ii. Pointed your finger at them.
    - iii. Shouted at them “It’s not 8:00am yet, if the bell rings you are supposed to answer” or words to that effect.
    - iv. Stated to them;
      1. “Take your coat back in the staff room not to hang on the couch” or words to that effect.

2. "I was not in charge yesterday, so don't tell me how you did things yesterday" or words to that effect.
- b. On 20 March 2022;
    - i. Repeatedly asked them to answer call/personal bells.
    - ii. Stated to them "you should drink coffee".
    - iii. Stated to them "To stand up and have a coffee" or words to that effect.
    - iv. Did not allow them/did not allocate them to take a break.'

**This charge is found proved.**

The panel noted that the evidence for all a sub-charges in charge 1 is from the same sources, and while it determined each sub-charge separately, it has presented its findings collectively.

In reaching this decision, the panel took into account the live evidence and documentary evidence of Witness 6, Witness 3, and Witness 7 and the local statements of Witness 6.

Witness 6 gave oral evidence to the panel, which was consistent with her witness statement and local statements:

*'Marie Boot, shouted at me, pointing with fingers that I should remove my coat when staff were seated. It was around ten minutes to 8.00AM. I did so but I explained to her - it was 10 minutes before I'm off shift and the lounge was very cold with no heating on; other staff members had their coats on why me?; I had done what was expected of me for the shift; the previous day I had work there with a different nurse in charge and everybody else had the same routine that at the same time they collect their stuff and wore their coats; and I politely told her that there was no need to be rude and harass me in front of other staff -because I felt like a doormat, and her response was:*

- 1) "it's not 8:00 AM yet. If the bell rings, you are supposed to answer";
- 2) "Take your coat back in the staff room" not to hang it on the couch

- 3) "I was not in charge yesterday, so don't tell me how you did things yesterday".
- (4) *She asked other staff members if she was being rude and nobody answered - because her acting towards me was not fair while everybody else was treated like a human.'*

The panel also considered that Witness 6's evidence was corroborated by the statement of Witness 3:

*'[Witness 6] was leaving the night shift. [Witness 6] sat beside me putting her coat on ready to go at the end of her shift in the morning at 7:50 but Marie told he [sic] to take their coat off. Whereas with myself I would be able to have my coat on, and others with their bags and coats on who were also finishing were able to have their coat on, she would say to [Witness 6] whose [sic] black, "it's 10 to 8, go down and f'ing get changed you don't get changed yet till it's time to go". She would make a point of saying that to her.'*

The panel also considered that Witness 6's evidence was corroborated by Witness 7's statement:

*'She would pick on a member of staff e.g. black who was sleeping when she sleeps herself. You should speak to [Witness 6] about this. I was there when she said this – "have a coffee" – to [Witness 6].'*

The panel also noted that Witness 6's local statements were contemporaneous accounts of the incidents. It concluded that Witness 6 gave evidence that was cogent and reliable and accordingly the panel found charge 1 proved in its entirety.

### **Charge 2a)**

- 'That you, a registered nurse on 2 June 2022 in respect of Colleague B:
- a. On 2 June 2022 and/or 4 June 2022 and/or 22 June 2022 you did not allocate another member of staff to 1 to 1 care during a 12-hour shift.'

**This charge is found proved.**

In reaching this decision, the panel took into account the live evidence and documentary evidence of Witness 4, and Witness 2.

The panel noted the following from Witness 4's witness statement:

*'I felt discrimination in terms of hours worked and not being relieved off duty. On 2 June 2022 I was working 12 hours straight doing 1:1 observations for a resident/client at the Home) and no one came to replace me /relieve me off duty after 4 hours as promised to me by Marie. I ended up staying Resident E client at the Home for 12 hours with only 30 minute break as [Witness 7] came to provide break for the 30 minutes.*

*On 4 June 2022 I did another 12-hour shift and was made to do 1:1 for the entire night again with no relief. No one came to ask me if I needed anything. I was not told I would be staying the whole night doing the 1:1 without any break.'*

The panel also considered that Witness 4's evidence was corroborated by the evidence of Witness 2. In particular,

*'I note I mention Marie made a Newcross agency worker do a 12 hour one-to-one without offering a break.'*

In light of this, and that Witness 4's oral evidence to the panel was consistent with his witness statement, the panel concluded that Witness 4 was a cogent and reliable witness. The panel accepted Witness 4's evidence and found this charge proved.

### **Charge 2b)**

'That you, a registered nurse on 2 June 2022 in respect of Colleague B:

- b. On 4 June 2022 stated to them that "[they] were not to wave at you anymore" or words to that effect.'



**This charge is found proved.**

In reaching this decision, the panel took into account the live evidence and documentary evidence of Witness 4.

As above, the panel considered Witness 4's evidence to be cogent and credible. It noted the following from his witness statement:

*'Marie was rude. I remember I waved at her to leave, but she questioned why I was waving at her and then told me not to wave at her again.'*

The panel accepted Witness 4's evidence and found this charge proved.

**Charge 3**

'That you, a registered nurse on an unknown date stated to Colleague C "you look nice your tan makes [Colleague D] look white" or words to that effect.

**This charge is found proved.**

In reaching this decision, the panel took into account the documentary evidence of Witness 7, and the live evidence of Witness 3.

In particular, the panel had regard to the notes of the interview with Witness 7 dated 20 June 2022:

*"Marie Boot is racist – she has made several racist comments that I have been witness to one being she said to one of the night staff "[Colleague C] you look nice your tan makes [Colleague D] look white""*

This was corroborated by the live evidence of Witness 3 in which she said she believed that Mrs Boot did say words to the effect of those in the charge to Colleague C about Colleague D.

Noting that the interview notes are a contemporaneous account, the panel considered it was more likely than not that Mrs Boot did say words to the effect of those in the charge. Accordingly, the panel found this charge proved.

#### **Charge 4**

‘That you, a registered nurse on an unknown date in respect of Colleague C stated “Oh my God, she makes [Colleague D] look white. She’ll need a passport to stay in the country” or words to that effect.’

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

In reaching this decision, the panel took into account the live and documentary evidence of Witness 2, as well as the statement of Witness 3.

In particular, the panel had regard to Witness 2’s statement:

*‘Marie got up, found the picture on Facebook, showed all of the staff in handover and said, “Oh my God, she makes [Colleague D] look white. She’ll need a passport just to stay in the country”.*

This is consistent with Witness 2’s local statement, drafted contemporaneously:

*‘Marie got up and showed on her phone a picture of [Witness 3’s] daughter on FB of her wearing a small bikini and said, “oh my god you make [Colleague D] look white” and that she would need a passport.’*

Witness 2’s account is corroborated in the statement of Witness 3, in which she describes the incident in detail in which Mrs Boot showed a photo of Colleague D to colleagues and agency workers and said “*if she got any darker, she would need a passport*’. Witness 3 went on to say:

*'I can confirm I was in the room when Marie made reference to my daughter being so dark she'd need a passport. It was right in front of me. She walked around with her phone showing everybody in the room.'*

Having seen live evidence from both witnesses, and noting the consistency of their accounts, the panel was satisfied that Witness 2 and Witness 3 were reliable witnesses and that their evidence is cogent. The panel accepted their evidence and found this charge proved.

### **Charge 5**

'That you, a registered nurse treated Colleague D less favourably than other members of staff in that you:

- a. On an unknown date/s on one or more occasion spoke to them in a disrespectful tone.
- b. Shouted at them to answer the call bell.
- c. Allocated them the middle shift.
- d. When allocating jobs would allocate taking the bins out.'

**This charge is found proved.**

The panel noted that the evidence for all sub-charges in charge 5 is the same, and concerns the same person, so decided to determine charge 5 holistically.

In reaching its decision, the panel took into account the statements of Witness 2 and Witness 7, as well as their local statements.

In particular the panel had regard to the following from Witness 2's statement:

*'She picked on foreign staff who nodded off like [Colleague D]. She would shout at [Colleague D] telling her to answer a call bell when there are three other carers on who could answer. [Colleague D] was Nigerian doing her nurse training- and*

*[Colleague D] used to work all day, come to work at night ... Marie used to pick on her in that she would put [Colleague D] on the middle shift'*

Which was supported by the following from Witness 7's statement:

*'I note I have said at Exhibit SF/1, "She mostly picks on the Newcross staff, but also ours too. [Colleague D] she is so disrespectful to (Black member of staff)". It's just that Marie was not using the right tone, she uses a disrespectful tone. That's why I said she was "she is so disrespectful" to [Colleague D].'*

Both accounts were consistent with Witness 2 and Witness 7's contemporaneous local statements and oral evidence, the panel were therefore satisfied Witness 7 was a reliable witness. The panel considered the evidence to be cogent and credible and found this charge proved in its entirety.

### **Charge 6**

*'That you, a registered nurse on unknown dates stated to unknown agency workers/staff members "well, if you moved your arse and did a bit of work, you wouldn't get cold" or words to that effect.'*

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

In reaching this decision, the panel took into account the statement of Witness 2 and Witness 6.

In particular the panel noted the following extract from Witness 2's statement:

*'It used to get cold at night and she would allow English staff to put their coats on English ones not a problem ... she would say, "yeah, if you are cold put your coats on". However there was one incident where there was a black Newcross agency carer - I can't remember where she came from - I do not remember their name or the date of the incident - but she was really cold and she put a coat on and there*

*was a big argument where Marie said "what the hell do you think you're doing? Take your coat off." When the Newcross carer members of staff said " I'm cold and I want my coat on" she said "well, if you moved your arse and did a bit of work, you wouldn't get cold. "*

The panel noted that the statement of Witness 6 corroborates that it used to get cold overnight: *'the lounge was very cold with no heating on'.*

As above, the panel considered Witness 2's evidence to be cogent and credible. The panel accepted the evidence of the witnesses and found this charge proved.

### **Charge 7**

*'That you, a registered nurse on an unknown date stated to Colleague F "Don't fucking sit down on a chair you are paid to work" or words to that effect.'*

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

In reaching this decision, the panel took into account the statement of Witness 2, as well as her local statement.

In her witness statement, Witness 2 reiterates her account of the incident, as consistent with her contemporaneous local statement dated 28 June 2022:

*'I can confirm she also said to [Colleague F] as I state in my statement once "Don't fucking sit down on a chair you are paid to work" I cannot recall the date or details. He was a carer.'*

Having determined Witness 2 to be a credible witness, the panel was satisfied that it is more likely than not that Mrs Boot did say words to the effect of those in the charge to Colleague F. Accordingly, this charge is found proved.

## Charge 8

'That you, a registered nurse on an unknown date in relation to an unknown agency staff member shouted "You are going to [Resident E], if I see you close your eyes, you will be banned from working here again, you don't ring the bell, if he needs changing do it yourself" or words to that effect.'

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

In reaching this decision, the panel took into account the statement of Witness 7, and the interview notes of 20 June 2022.

Witness 7's statement is consistent with the contemporaneous interview notes, and states:

*'I note I have said ... Marie shouted at [unknown agency member] as soon as he stepped foot into handover "You are going to [Resident E], if I see you close your eyes, you will be banned from working here again, you do ring the bell, if he needs changing do it yourself.' I do not remember the name of the staff member or the date but I am a direct witness to her shouting at the Newcross member of staff.'*

As above, the panel considered Witness 7's evidence to be cogent and credible and found this charge proved.

## Charge 9

'That you, a registered nurse on unknown dates in respect of working with Colleague G:

- a. Referred to them as your "white boy" or words to that effect.
- b. Messaged and/or telephoned Nurse 1 stating:
  - i. that you did not want to work with anyone other than them.'
  - ii. 'don't forget, I only work with [Colleague G] on nights" or words to that effect.'

**This charge is found proved.**

The panel noted that the evidence for all a sub-charges in charge 9 is from the same sources, and while it determined each sub-charge separately, it has presented its findings collectively.

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 2, which includes her witness statement and local statement, as well as the local interview notes of Witness 7.

The panel had particular regard to the following from Witness 2's statement, which is consistent with her local statement:

*'Marie used to contact me and say "don't forget I only work with [Colleague G]". She used to call him her "white boy". As I state in my statement "She doesn't wanna work with anyone other than [Colleague G]"...She would ring me up or message me saying, "don't forget, I only work with [Colleague G] on nights"*

Witness 2 corroborated this account in live evidence, adding *'I knew the internationals would have a rough night if she worked with them'*.

Witness 2's account was also corroborated by Witness 7's interview notes:

*'[Colleague G] (team leader) is her favourite on nights. Marie messages [Witness 2] saying ... she only wants to work with [Colleague G] that's cause he's English.'*

As determined above, the panel were satisfied Witness 2 and Witness 7 were reliable witnesses and found this charge proved in its entirety.

**Charge 10**

‘That you, a registered nurse on unknown dates on one or more occasion stated to Colleague K and/or Colleague L “I’m the nurse, I’m writing notes” or words to that effect.’

**This charge is found proved.**

In reaching this decision, the panel took into account the statement of Witness 2:

*‘[Marie] wouldn’t let them write notes. he [sic] would say "I'm the nurse, I'm writing notes." in resident records and she would be belittling them in that she would be contradicting them.’*

As determined above, the panel were satisfied Witness 2 was a reliable witness and accordingly found this charge proved.

**Charge 11**

‘That you, a registered nurse on an unknown date denied a chair to an unknown staff member.’

**This charge is found proved.**

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 5.

In particular the panel noted the following from Witness 5’s written statement:

*‘I heard Marie deny a chair for a black person who was doing one to one. I do not remember the name of the agency worker involved. He was a black gentleman.’*

This was supported in Witness 5’s oral evidence in which she said that the person in question ‘asked for a chair Marie said no you don’t need a chair can’t you sit on the floor like you’re used to. Like he was nothing’.



The panel considered Witness 5 was consistent across all of her evidence, which it accepted and therefore found this charge proved.

### **Charge 12**

'That you, a registered nurse on an unknown date shouted at an unknown agency carer "What makes you think you can do like us?" or words to that effect.'

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

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 5.

In particular the panel noted the following from Witness 5's written statement:

*I witnessed Marie tell an agency carer who was black who had got his laptop out shouting at him to put it back. Marie had her laptop out however. She shouted at him "What makes you think you can do that like us?".*

This was supported in Witness 5's oral evidence in which she provided context for the incident in this charge:

*'Marie would often have her tablet out to watch films, this agency worker would often used his laptop to do work he was doing a nursing degree.'*

The panel accepted Witness 5's evidence and found this charge proved.

### **Charge 13**

'That you, a registered nurse on unknown dates on one or more occasion stated to staff "I am the nurse in charge. You do as you are told." or words to that effect.'

**This charge is found proved.**

In reaching this decision, the panel took into account the statement of Witness 2, as well as the oral evidence of Witness 7.

Witness 2 describes the incident in her written statement when Mrs Boot said *"I'm the nurse in charge. You do as you told"*.

This was corroborated by the oral evidence of Witness 7.

As determined above, the panel accepted the witnesses' evidence and accordingly, found this charge proved.

**Charge 14**

'That you, a registered nurse on an unknown date in relation to Colleague H referred to them as "that piece of shit downstairs" or words to that effect.'

**This charge is found proved.**

In reaching this decision, the panel took into account the documentary evidence of Witness 3, including her witness statement and local investigation statement.

The panel noted the following from Witness 3's witness statement:

*'I note in the statement it states, "Marie's horrible, she's horrible to staff" . I said this as I remember an incident where she referred to me saying I'm a lot better than "that piece of shit downstairs" – referencing a Newcross carer. I was upstairs dealing with a client when she [Marie] come into the room and said to me, "are you on all night? As you're better than that piece of shit downstairs". I believe Marie was referring to a black carer'*

Having determined Witness 3's evidence to be cogent and credible, the panel accepted her statement and found this charge proved.

### **Charge 15**

'That you, a registered nurse on unknown dates on one or more occasion in respect of Colleague E would state to other staff members;

- a. "do you see how [Colleague E] is following [the carer he was paired up with]" or words to that effect.
- b. That they are a "sex pest" or words to that effect.
- c. That they are "after" another member of staff or words to that effect.
- d. That they "are probably having an illicit affair with another member of staff" or words to that effect.'

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

The panel noted that the evidence for all a sub-charges in charge 15 is from the same sources, and while it determined each sub-charge separately, it has presented its findings collectively.

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 2, which includes her witness statement and local statement.

The panel noted the following from Witness 2's statement in which she refers to her local statement and incidents involving Colleague E, who is also Witness 7:

*'I can confirm as I state in the statement she was "gunning for [Colleague E]". He is Polish and married to [another colleague]. I say shhe [sic] was gunning for him as we had very few male care assistants and there were times when Marie would put two English carers to work together and [Colleague E] with a foreign carer and talk to and whisper to the English carers "do you see how [Colleague E] is following [the foreign carer he was paired up with]" and say he's a sex pest or he is after her or*

*that he was probably having an illciit affair with her when he is married to [another colleague] who actually worked there as well.'*

The panel accepted Witness 2's evidence and found this charge proved.

### **Charge 16a**

'That your conduct at all or part of charges 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 and/or 8 and/or 9 and/or 10 and/or 11 and/or 12 and/or 14 and/or 15 above was:

- a. Racially motivated.
- b. Discriminatory in that you treated one or more colleagues and/or unknown members of staff and/or agency workers less favourably because of their actual or your perception of their protected characteristic(s).'

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

In reaching this decision, the panel took into account all relevant evidence for each charge as set out above.

In particular, the panel took into account the following witness evidence:

- Witness 2's statement:
  - *I have been asked whether I witnessed incidents of the registrant "treating staff differently if they are not English". In response to this I would say: Definitely'*
  - *I note I state in the statement I said she is "globally racist". I have been asked to explain this? It didn't matter if you were black, if you weren't English. if you were African, Chinese, Indian, Polish, Romanian, French, Spanish, it did not matter what country you came from. If it was in England, she didn't like you.'*

- Witness 3's statement:
  - *'I just think she's a very racist person'*
- Witness 6's statement:
  - *'Waters Park staff. People were going in in people's rooms wearing their coats because it was cold while I had to leave mine in the staff room. But she never said anything to them. I think this is maybe because I'm black'*
- Witness 7's statement:
  - *'I note at Exhibit SF/1 says, "Marie Boot is racist...'*
  - *'She would pick only on black staff sleeping'*
- Witness 5, in oral evidence:
  - *'She's especially rude to agency staff and especially Black agency staff'*

The panel also had the benefit of hearing from the witnesses in oral evidence, and were able to see the enduring impact of Mrs Boot's conduct on them.

Having previously determined that these witnesses are reliable, the panel accepted their evidence.

The panel determined that Mrs Boot's conduct was racially motivated where it demonstrated hostility towards people of colour and/or non-English nationality and/or non-white ethnicity, and whether on the balance her conduct would have been different if they were white English.

The panel considered each of the charges separately. The panel was of the view that this charge will be found proved if it is satisfied 'that the act in question had a purpose, which at least in significant part is referable to race and is done in a way showing a hostility or discriminatory attitude to the relevant racial group.'

The panel concluded that the following charges were racially motivated:

- Charge 1

- The panel determined that Mrs Boot's conduct towards Colleague A in all the charges found proved was racially motivated. Mrs Boot only acted in this manner because Colleague A was a person of colour and not English.
- Charge 2a
  - The panel heard evidence that Mrs Boot specifically targeted Colleague B and non-English people of colour on staff by ordering them to do a 12-hour shift without relief.
- Charge 2b
  - The panel determined, based on the evidence, that Mrs Boot's intention in telling Witness 4 not to wave at her was to show hostility to Witness 4 and that this was because of his race.
- Charge 3
  - The panel determined Mrs Boot's conduct in this charge was racially motivated as it drew comparison between two colleagues on the basis of their ethnicities and skin colour.
- Charge 4
  - The panel determined Mrs Boot's conduct in this charge was racially motivated as it implied that people of colour are not UK citizens.
- Charge 5
  - Mrs Boot's behaviour targeted Colleague D, who was Nigerian. The panel determined Mrs Boot's conduct was racially motivated as she knew of Colleague D's personal circumstances and denied her sleeping on shift while allowing other staff to do so.
- Charge 6
  - Having heard evidence that the Home was cold, and other white English members of staff were allowed to wear their coats, the panel considered that Mrs Boot's behaviour was racially motivated as the targets of her comments were Black or not English.
- Charge 8

- The panel has heard evidence that the nurse targeted in this charge was Portuguese and not English and considered Mrs Boot's conduct was racially motivated on this basis.
- Charge 9
  - The panel heard evidence that Mrs Boot gave preferential treatment to Colleague G on the basis of him being white English. The panel considered her intention was racially motivated discrimination towards the rest of the team.
- Charge 10
  - The panel saw evidence from Witness 2 that Mrs Boot did not want to work with Colleague K and Colleague L (who are white non-English) and would create a hostile environment for them if on the same shift. The panel considered this to be racially motivated conduct.
- Charge 11
  - The panel determined Mrs Boot's conduct in this charge was racially motivated as she denied a chair to a Black person when other white colleagues were sitting. Mrs Boot also made comments about this with racial and negative implications.
- Charge 12
  - The panel determined Mrs Boot's conduct in this charge was racially motivated towards a Black colleague.
- Charge 14
  - The panel determined Mrs Boot's conduct in this charge was racially motivated towards a Black colleague by using derogatory language and criticising her competence.
- Charge 15
  - The panel determined Mrs Boot's conduct in this charge was a clearly racially motivated in that she made derogatory comments about Witness 7's character on the basis of his nationality.

The panel concluded that Mrs Boot's purpose in behaving this way was to show hostility towards people who were not white English. Accordingly, charge 16a is found proved in respect of charges 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 14 and 15.

The panel was unable to conclude that the following charge was racially motivated:

- Charge 7
  - The panel had no evidence about Colleague F's ethnicity and was therefore unable to conclude that Mrs Boot's conduct in this charge was racially motivated.

### **Charge 16b**

'That your conduct at all or part of charges 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 and/or 8 and/or 9 and/or 10 and/or 11 and/or 12 and/or 14 and/or 15 above was:

- b. Discriminatory in that you treated one or more colleagues and/or unknown members of staff and/or agency workers less favourably because of their actual or your perception of their protected characteristic(s).'

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

The panel having determined that Mrs Boot's conduct in charges 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 14 and 15 was racially motivated. By virtue of the behaviour outlined and the evidence presented the panel also concluded that Mrs Boot's behaviour in these charges also amounted to discrimination in that she treated the people mentioned in these charges less favourably by reason of their race.

Accordingly, charge 16b is found proved in all cases save for charge 7.

### **Charge 17**



‘That your conduct at all or part of charges 1 and/or 2 and/or 3 and/or 5 and/or 6 and/or 8 and/or 10 and/or 11 and/or 12 and/or 13 and/or 14 and/or 15 above amounted to bullying in that your unwanted behaviour towards one or more colleagues and/or unknown member of staff and/or agency workers was offensive and/or intimidating and/or malicious and/or insulting that undermined, humiliated, or caused physical or emotional harm to them.’

**This charge is found proved.**

In reaching this decision, the panel took into account all relevant evidence for each charge as set out above.

The panel considered each of the charges separately, but will present its conclusions collectively.

Having had the benefit of hearing from all witnesses in oral evidence, the panel was able to see the enduring impact of Mrs Boot’s conduct on those witnesses who were targeted by her behaviour, and those who witnessed it.

The panel determined that Mrs Boot’s conduct in charges 1, 2, 3, 5, 6, 8, 10, 11, 12, 13, 14, and 15 did amount to bullying in that it was offensive, intimidating, malicious, and insulting and undermined and humiliated staff members and on occasions caused them emotional harm. Accordingly, this charge is found proved.

### **Charge 18**

‘That you, a registered nurse between 3 October 2021 and 4 July 2022 on one or more occasion slept whilst on duty.’

**This charge is found proved.**

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 1 and Witness 7 as well as the notes from a telephone call with Witness 2 dated 2 July 2022, and the local statement of Witness 6 dated 29 June 2022.

The panel had regard of the following from Witness 7's statement, which he reiterated in oral evidence, where he provides direct evidence of Mrs Boot sleeping on shift:

*'I have witnessed Marie sleeping and snoring on duty on more than one occasion on shift. I do not remember what days. I have been asked if she is allowed? She is supposed to be a role model for us. You can check the cameras how many times'*

This is corroborated in the telephone conversation notes of Witness 2:

*"Yes, Marie does sleep, she sleeps for about an hour at a time, every night, it's a deep sleep, she wakes herself by snoring loudly. She sits in an armchair in the lounge, it's the chair facing up the corridor.*

And the local statement of Witness 6:

*'She told me I should drink coffee because i [sic] was sleeping yet other staff were sleeping and snoring that everyone could hear including herself.'*

The panel also had regard of the following from Witness 1's statement:

*'I cannot confirm from the CCTV angle whether the registrant is ever sleeping on the footage of nights I viewed but "there were periods of inactivity, no movement".*

The panel concluded that while the reported CCTV footage is not conclusive, taken with the evidence of Witness 2, Witness 6 and Witness 7, it supports that Mrs Boot was asleep on shift.

As determined above, the panel were satisfied Witness 7 was a reliable witness and, in light of his direct evidence and it being consistent with the local statements of Witness 2 and Witness 6, this charge is found proved.

## **Charge 19**

'That you, a registered nurse on unknown dates on more than one occasion instructed Resident A and/or Resident B to go to their bedroom/s.'

**This charge is found proved.**

In reaching this decision, the panel took into account the documentary and oral evidence of Witness 2.

The panel had particular regard to the following from Witness 2's statement:

*'[Resident B] can be rude. And she dislikes him because of that, even though he is English. Because would tell her to "shut up" she would send him to his room like a naughty child.'*

...

*'[Marie] used to send [Resident A] to her room, who had suicidal thoughts and tendencies.'*

The panel accepted Witness 2's evidence and found this charge proved.

**Charge 20**

'That you, a registered nurse on unknown dates in respect of Resident C:

- a. Stated to them "if you don't shut up and sit down, I am going to get the doctors to section you" or words to that effect.
- b. Stated to them "if you don't shut up and sit down, I'm going to ring the doctors and they're going to section you to Glen" or words to that effect.
- c. Pretended to telephone a doctor to get them sectioned.
- d. Shouted at them'

**This charge is found proved.**

The panel noted that the evidence for all a sub-charges in charge 20 is from the same sources, and while it determined each sub-charge separately, it has presented its findings collectively.

In reaching this decision, the panel took into account the documentary and oral evidence of Witness 2, including her witness statement and local statement of 28 June 2022.

The panel had particular regard to the following from Witness 2's statement:

*'But I would witness Marie, if [Resident C] started kicking off and shouting, shout back at and say "if you don't shut up and sit down, I'm gonna ring the doctors and they're gonna section you to Glen". This would heighten her anxiety and she would get even worse. And then I also witnessed on an unknown date Marie take out her mobile phone and pretend to phone the doctors to get her sectioned.'*

...

*[Marie] would shout at Resident C ... shouting at her to "shut up" "get inside" "what do you think you're doing".*

This was consistent with Witness 2's local statement.

The panel accepted Witness 2's evidence and found this charge proved.

### **Charge 21**

*'That you, a registered nurse on unknown date shouted at Resident B.'*

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

In reaching this decision, the panel took into account the evidence of Witness 2, especially her witness statement.

In particular, the panel had regard to the following from Witness 2's witness statement:

*'She would shout at Resident C, and Resident B as I mentioned and Resident D shouting at her to "shut up" "get inside" "what do you think you're doing".'*

The panel accepted Witness 2's evidence and found this charge proved.

## **Charge 22**

*'That you, a registered nurse on unknown date in respect of Resident D;*

- a. Shouted at them to "shut up" or words to that effect.
- b. Shouted at them to "get inside" or words to that effect.
- c. Shouted at them to "what do you think you are doing" or words to that effect
- d. Left them seated in a wheelchair all night
- e. Said their bedroom was no longer theirs.'

**This charge is found proved.**

In reaching this decision, the panel took into account the documentary and oral evidence of Witness 2, including her witness statement and local statement of 28 June 2022.

In particular, the panel had regard to the following from Witness 2's witness statement:

*'She would shout at Resident C, and Resident B as I mentioned and Resident D shouting at her to "shut up" "get inside" "what do you think you're doing".'*

...

*'We had a resident called [Resident D] was a client with spinal injury in her mid-20s from Azerbaijan whose behaviour was incredibly challenging. She had a habit of wandering around and going missing, coming back in the evening, sort of about midnight, but I was concerned Marie decided to leave her sat in her wheelchair once all night and said her bedroom should no longer be hers and told me [Witness 1] said, under no circumstances do you make her comfortable which I don't believe*

*to justify making sit all night in her wheelchair and Marie would not let her sit on a comfy chair. I had to go get pillows and blanket for that night. I cannot remember the date of this incident.'*

Witness 2's account of these incidents was consistent across her local statement and oral evidence.

The panel accepted Witness 2's evidence and found this charge proved.

### **Charge 23**

'That you, a registered nurse on unknown date stated to Colleague E "do you mind going to [Resident E], she's your bitch tonight" or words to that effect.'

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 7. In particular, his witness statement which quotes his contemporaneous local statement of 30 June 2022:

*'In relation to a client, I note I have written, "After one handover Marie said to me "do you mind going to [Resident E], she's your bitch tonight" - she was calling [Resident E] a bitch.'*

This account was corroborated in oral evidence when Witness 7 reiterated that Mrs Boot used words to the effect of the charge, and that it was not acceptable.

The panel accepted Witness 7's evidence and found this charge proved.

### **Charge 24**

'That you, a registered nurse on an unknown date directed staff not to give Resident F their call/personal bell at night.'

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 7. In particular, his witness statement which quotes his contemporaneous local statement of 30 June 2022:

*'I note I have written, "Marie tells staff not to give [Resident F] her bell at night."... I remember she was speaking to everyone in handover when she said this, including to myself. She was addressing us collectively. She told us not to give the resident the bell.'*

This account was corroborated in oral evidence when Witness 7 reiterated that Mrs Boot directed staff not to give Resident F their call/personal bell, and confirmed that it was a dangerous direction to give as Resident F was vulnerable.

The panel accepted Witness 7's evidence and found this charge proved.

**Charge 25**

*'That you, a registered nurse on an unknown date/s on one or more occasion directed staff not to ring call/personal bells for assistance.'*

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 7. In particular, his witness statement which quotes his contemporaneous local statement of 30 June 2022:

*'I note I have written, "She tells all Newcross staff when in with [Resident E] doing the 1:1 don't ring the bell for assistance, if he needs changing do it yourself." She would tell the staff not to ring the bell as otherwise the bell would ring in the Home calling for her to attend and it would disrupt her watching her movies.'*

This account was corroborated in Witness 7's oral evidence.

The panel accepted Witness 7's evidence and found this charge proved.

**Charge 26a)**

'That you, a registered nurse on an unknown date in respect of Resident G:

- a. stated to Colleague J "do you mind turning the fucking bell off because now you are going to wake up every other fucking resident!" or words to that effect. '

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 5. In particular, her witness statement:

*'I can confirm that there was an incident with a client called Resident G who Marie told me to "turn the "fucking" bell off". The client was on one to one at nighttime.. [Resident G] is a client who is non-weightbearing and he suffers with seizures. I was a new staff member at this point. We would sit in his bedroom while he was in bed asleep It was my first time after being DBS checked that I was doing oneto-one [sic] with at the Home and I just pressed his call bell for assistance because was acting up in the bed. He wasn't being himself and I believed him to be having a seizure and he was incontinent. I called the assistance bell. Marie answered but she came to the room with another staff member and opened the door, and marched herself in the room telling me "do you mind turning the fucking bell off [ringing in the Home] because now you are going to wake up every other fucking resident!".'*

This account was consistent across Witness 5's oral evidence and also her contemporaneous local statement dated 11 June 2022.



The panel accepted Witness 5's evidence and found this charge proved.

**Charge 26b)**

'That you, a registered nurse on an unknown date in respect of Resident G:

- b. Stated to in relation to Colleague J that "she is doing my head in" or words to that effect.'

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 5. In particular, her witness statement:

*'She didn't care. When I said back to her, "I've called the bell because that's what a bell was for" she ignored me and walked out of the room and said to another staff member, "go and help her" - referring to me - as "she's doing my head in"'*

The panel also had regard to Witness 5's oral evidence, which provided context for the statement:

*'I believe the real reason Marie was annoyed was because I had probably woken her up or she was probably watching a DVD.'*

The panel accepted Witness 5's evidence and found this charge proved.

**Charge 27**

'That you, a registered nurse on unknown date/s told staff not to turn and/or reposition Resident H.'

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 7. In particular, his witness statement which quotes his contemporaneous local statement of 30 June 2022:

*'I note it says as Exhibit SF/1 "She has told us not to turn one of our clients who is on a repositioning chart due to poor skin condition and that their skin breaks down, with the other nurses we turn and repositioning them every 2-3hrs. She doesn't want him turned as she doesn't want him to wake up and start shouting. She wants a quiet time, so her Netflix and games aren't disturbed." This was a client – name I cannot remember - who was lovely who, in order to prevent pressure sores, we have to turn him every 2-3 hours. He was very impaired, shouting a lot, not recognising the environment, and Marie did not like that so she had once told me not to turn the client.'*

This account was corroborated in oral evidence when Witness 7 reiterated the need to turn patients to prevent pressure sores.

The panel accepted Witness 7's evidence and found this charge proved.

### **Charge 28**

*'That you, a registered nurse on an unknown date in relation to Resident H slammed their bedroom door shut and stated "no, the doors stay shut at night" or words to that effect.'*

**This charge is found proved.**

In reaching this decision, the panel took into account the statement of Witness 3:

*'She would be verbally abusive to residents e.g., Resident H, slamming the door on this resident. ... there was one incident where I stayed till 10PM, we'd already got this client into bed and we left his door open a little bit. He doesn't like it closed. he*

*gets restless. I saw it closed after I had moved away. I opened it again and told Marie he likes it open but Marie said "no, the doors stay shut at night".'*

The panel accepted Witness 3's evidence and found this charge proved.

### **Charge 29**

'That you, a registered nurse on an unknown date in respect of Resident I:

- a. Stated to Colleague J "if you continue listening to [Resident I] and answering [Resident I], we won't call you by your name. We'll call you [Resident I]'s bitch" or words to that effect.
- b. Directed to Colleague J "you just gotta leave [Resident I]" or words to that effect.'

**This charge is found proved.**

The panel noted that the evidence for all a sub-charges in charge 29 is from the same sources, and while it determined each sub-charge separately, it has presented its findings collectively.

In reaching its decision, the panel took into account the evidence of Witness 5. In particular, her witness statement:

*'There was one incident I wish to raise regarding a client called [Resident I] is a client who has a severe brain injury. She is very needy... on a particular evening (date unknown to me – I cannot remember) had me running riots. I was doing everything- getting her cup of tea, coffee, toast, you name it I was doing it. I was very busy but Marie decided to ask me what I was doing and when I told her what I was doing she asked me what I was doing again and then said to me, "if you continue listening to and answering , we won't call you by your name. We'll call you bitch".*

This account was consistent across Witness 5's oral evidence and also her contemporaneous local statement dated 11 June 2022.

The panel accepted Witness 5's evidence and found this charge proved.

### **Charge 30**

'That you, a registered nurse on an unknown date referred to Resident J as a "big girl" or words to that effect.'

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 2, in particular her witness statement which quotes her contemporaneous local statement of 30 June 2022:

*'I note I state Marie referred to Resident J " as a big girl" when they were screaming. I have been asked for the Resident name - I cannot remember.'*

This account was consistent with Witness 2's her contemporaneous local statement dated 11 June 2022.

The panel accepted Witness 2's evidence and found this charge proved.

### **Charge 31**

'That you, a registered nurse on an unknown date/s did not assist with PEG feeds and/or stated "I don't do that" or words to that effect.'

**This charge is found proved.**

In reaching its decision, the panel took into account the evidence of Witness 2, including her witness statement and contemporaneous local statement dated 28 June 2022, and the oral evidence of Witness 5.

In particular, the panel had regard to Witness 2's statement:

*'In terms of PEG feeding, Marie would not do PEG feeds. She would not do PEG feeds herself but let Team Leaders do them. Team Leaders can give meds and do PEG feeds. I have been asked if she told me why? No, she just said "I don't do that". But as a nurse that's what we do. They're the more difficult patients or they were the more demanding. I think she wanted an easy life.'*

This was supported in Witness 2's local statement: *'Won't do PEGs – Team leader do these when on shift'*.

This was also corroborated by Witness 5 who said in oral evidence: *'PEG feeds – someone would come and assist but not [Mrs Boot], she'd be sat watching tv'*.

The panel accepted Witness 2's evidence and found this charge 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 Boot'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 Boot's fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct**

In coming to its decision, the panel had regard 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.*'

Mr Edwards invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) in making its decision.

Mr Edwards identified the specific, relevant standards where Mrs Boot's actions amounted to misconduct, and that paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, 2.1, 2.6, 3.1, 3.4, 4.3, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.7, 17.1, 20.1, 20.3, 20.7, and 20.8 of the Code are engaged.

### **Submissions on impairment**

Mr Edwards 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 GMC* [2008] EWHC 581 (Admin).

Mr Edwards addressed the panel regarding the test in *Grant*. He submitted that the first three limbs are engaged in this case.

Mr Edwards then addressed the panel on the questions in *Cohen*, and whether the misconduct is remediable. He submitted that the evidence before the panel indicates deep-seated attitudinal issues which continue to this day given the lack of engagement by Mrs Boot. Her only communication with the NMC with regard to the allegations is to say that they were false. Mr Edwards submitted that while the misconduct in this case is not easily remediable, it is possible. However, he submitted that Mrs Boot has not taken any steps to remediate her behaviour.

Mr Edwards submitted that the charges show repeated behaviour that occurred during a number of shifts over a long period of time. He submitted that, as Mrs Boot has failed to show any insight or understanding into her behaviour and continues to deny the charges, there is a real risk that such behaviour could be repeated in future. Accordingly, he invited the panel to make a finding of impairment on the ground of public protection.

Mr Edwards submitted that the need to uphold proper professional standards and public confidence in the profession would be undermined if that panel did not make a finding of impairment in this case. Mr Edwards invited the panel to make a finding of impairment on the ground of public interest.

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 was of the view that Mrs Boot's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Boot's actions amounted to a breach of the Code. Specifically:

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

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

***1.2*** *make sure you deliver the fundamentals of care effectively*

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

***1.4*** *make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay*

***1.5*** *respect and uphold people's human rights*

***2. Listen to people and respond to their preferences and concerns***

***2.1*** *work in partnership with people to make sure you deliver care effectively*

***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***

***3.1*** *pay special attention to promoting wellbeing, preventing ill health and meeting the changing health and care needs of people during all life stages*

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

***4. Act in the best interests of people at all times***

***4.3*** *keep to all relevant laws about mental capacity that apply in the country in which you are practising, and make sure that the rights and best interests of those who lack capacity are still at the centre of the decision-making process*

***7. Communicate clearly***



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

**8. Work cooperatively**

*8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*

*8.2 maintain effective communication with colleagues*

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

*8.4 work with colleagues to evaluate the quality of your work and that of the team*

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

*8.7 be supportive of colleagues who are encountering health or performance problems. However, this support must never compromise or be at the expense of patient or public safety*

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

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

**17. Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection**

*17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse*

**20. Uphold the reputation of your profession at all times**

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

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

- 20.3** *be aware at all times of how your behaviour can affect and influence the behaviour of other people*
- 20.5** *treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*
- 20.7** *make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way*
- 20.8** *act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*
- 20.10** *use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

In relation to charges 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 14, 15, and 16 the panel found these charges to individually amount to misconduct. The panel determined that Mrs Boot's conduct was racially motivated and discriminatory, and that her conduct was a significant breach of the Code. The panel determined that Mrs Boot's conduct singled out patients and staff to make them feel different, and noted the lasting impact this had on the witnesses who gave live evidence. The panel took note of its findings at charge 16 and the NMC Guidance and determined Mrs Boot's behaviour at each charge is serious and amounted to misconduct.

In relation to charges 7, 10, 11, 12, 13, 14, 15, 17, 23 and 26 the panel found these charges to individually amount to misconduct. The panel considered that Mrs Boot's behaviour created a culture of intimidation in contravention of the Code. The panel considered Mrs Boot caused emotional and mental harm to colleagues through bullying, and that this also affected the care they were able to give to residents. Accordingly, the panel determined Mrs Boot's behaviour at each charge to be serious and amounted to misconduct.

In relation to charges 8, 18, 24, 26, 27, 28, 29 and 31, the panel found these charges to individually amount to misconduct. The panel determined that Mrs Boot's conduct put patient safety at risk. It noted its findings and that Mrs Boot engaged in unsafe practice while on duty, including withholding the call bell from residents, sleeping while being the only nurse on shift, failing to provide pressure-area care to patients, encouraging poor care of patients and improperly delegating PEG feeds to other staff members that she should have carried out herself. The panel determined that this behaviour contravened the Code, and that Mrs Boot's behaviour at each charge was serious and amounted to misconduct.

In relation to charges 2, 5, 9, 10, 11, 13, 25, 26, 29, the panel found these charges to individually amount to misconduct. The panel determined that Mrs Boot showed evident prejudice towards staff who were non-white or foreign, and was not co-operative in contravention of the Code. Furthermore, the panel concluded that patient safety was compromised as a result of this lack of co-operation and support as colleagues were left without resources to provide adequate care to residents. The panel determined that Mrs Boot failed to put patients at the heart of her practice. The panel concluded that Mrs Boot's behaviour in these charges individually was serious and amounted to misconduct.

In relation to charges 19, 20, 21, 22 and 28, the panel found these charges to individually amount to misconduct. The panel determined that Mrs Boot did not treat vulnerable residents in her care with kindness and compassion. In particular the panel noted she left a resident in their wheelchair overnight, and engaged in cruel behaviour towards residents that caused emotional harm in contravention of the Code. The panel determined that Mrs Boot's behaviour at each charge was serious and amounted to misconduct.

With regard to charge 30 that Mrs Boot referred to Resident J as a 'big girl', the panel noted that this contravenes the Code, particularly paragraph 1 and the requirement to treat people with dignity and respect. While the panel acknowledged that this behaviour was unprofessional, it did not consider that it amounted to misconduct.

The panel found that Mrs Boot'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 went on to decide if as a result of the misconduct, Mrs Boot'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. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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 finds that patient were put at risk of physical harm and were caused emotional harm as a result of Mrs Boot's misconduct. Mrs Boot's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find these charges extremely serious.

The panel was satisfied that, although extremely difficult, the misconduct in this case may be capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Boot has taken steps to strengthen her

practice. To date the panel has seen no evidence of remorse or remediable action taken by Mrs Boot, nor any evidence of insight or reflection into her behaviour. Accordingly, the panel were not satisfied that the misconduct in this case has been addressed.

The panel is of the view that there is a risk of repetition given that the charges depict a pattern of behaviour over a significant period of time. It noted that there has been a lack of engagement in NMC proceedings by Mrs Boot. The panel had regard to her email to the NMC dated 7 July 2022:

*'I have applied to remove my PIN...I don't want to be a nurse anymore...I no longer want to be a nurse after 40 years so please remove me immediately'*

The panel concluded that Mrs Boot's conduct in the charges put patients at risk of physical harm by creating an unsafe work environment. The panel was of the view that this impacted patient care, and caused emotional harm to staff and patients. It noted the following from the statement of Witness 2: *'Marie is everything a nurse should not be.'*

The panel therefore decided 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.

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

Having regard to all of the above, the panel was satisfied that Mrs Boot'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 Boot off the register. The effect of this order is that the NMC register will show that Mrs Boot 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 Edwards informed the panel that in the Notice of Hearing, dated 13 May 2024, the NMC had advised Mrs Boot that it would seek the imposition of a striking off order if it found Mrs Boot's fitness to practise currently impaired.

Mr Edwards submitted that this case concerns the following aggravating factors:

- Lack of insight by Mrs Boot
- Lack of engagement in NMC proceedings by Mrs Boot
- That Mrs Boot's behaviour was a clear abuse of power
- That Mrs Boot repeated the misconduct over a significant period of time
- That Mrs Boot's misconduct caused harm to vulnerable residents
- That Mrs Boot's misconduct caused emotional harm to staff

Mr Edwards submitted there were no mitigating factors to explain the actions of Mrs Boot.

Mr Edwards submitted that, given the seriousness of this case, to take no action or to impose a mere caution would not protect the public or meet the public interest. Similarly, he submitted that a conditions of practice order would be inappropriate in light of the seriousness of the charges and the lack of engagement by Mrs Boot. He submitted that

Mrs Boot's misconduct was too serious to warrant only a temporary suspension from the register

Mr Edwards submitted that a striking-off order is appropriate in this case. He submitted that Mrs Boot's misconduct was so serious as to be fundamentally incompatible with being a registered nurse. Mr Edwards submitted that a striking-off order was the only sanction that would protect the public and maintain professional standards in this case. He submitted that such an order would maintain public confidence in the nursing profession.

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

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

Having found Mrs Boot'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:

- That Mrs Boot has not shown any insight
- That Mrs Boot's behaviour was a clear abuse of a position of trust and power
- That Mrs Boot behaviour was a pattern of misconduct over a significant period of time that involved a number of residents and staff
- That Mrs Boot's misconduct put residents at potential risk of physical harm, and caused actual emotional harm to staff and residents

The panel did not consider there were any mitigating features.



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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Boot's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Boot's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Boot'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 misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Boot'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 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; and

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

The panel considered that none of these factors are relevant in this case.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Boot's actions is fundamentally incompatible with Mrs Boot 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?*

Mrs Boot's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Boot'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.

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 Boot's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mrs Boot 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 Boot'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 Edwards. He invited the panel to impose an interim suspension order for a period of 18 months in order to protect the public and meet the public interest during the appeal period if an appeal application is made.

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

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the

facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

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

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

That concludes this determination.