

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

**Substantive Hearing  
Tuesday, 25 June 2024 – Thursday, 27 June 2024**

Nursing and Midwifery Council  
2 Stratford Place, Montfichet Road, London, E20 1EJ

<b>Name of Registrant:</b>	<b>Nicola Stamper</b>
<b>NMC PIN</b>	14E0655E
<b>Part(s) of the register:</b>	Nurses part of the register Sub part 1 RNA: Adult nurse, level 1 (8 October 2014)
<b>Relevant Location:</b>	Durham
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	John Vellacott (Chair, Lay member) Janet Fitzpatrick (Registrant member) Christine Moody (Lay member)
<b>Legal Assessor:</b>	Charlotte Mitchell-Dunn
<b>Hearings Coordinator:</b>	Monowara Begum
<b>Nursing and Midwifery Council:</b>	Represented by Mary Kyriacou, Case Presenter
<b>Ms Stamper:</b>	Not present and not represented at the hearing
<b>Facts proved:</b>	All
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Suspension order (12 months) with review</b>

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

The panel was informed at the start of this hearing that Ms Stamper was not in attendance and that the Notice of Hearing letter had been sent to Ms Stamper's registered email address on 15 May 2024.

Ms Kyriacou, 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 allegations, the time, dates and venue of the hearing and, amongst other things, information about Ms Stamper'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 Ms Stamper 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 Ms Stamper**

The panel next considered whether it should proceed in the absence of Ms Stamper. It had regard to Rule 21 and heard the submissions of Ms Kyriacou who invited the panel to continue in the absence of Ms Stamper. She submitted that Ms Stamper had voluntarily absented herself.

Ms Kyriacou informed the panel that a provisional Consensual Panel Determination (CPD) agreement had been reached and signed by Ms Stamper on 18 January 2024.

Ms Stamper in her response to the NMC's notice of hearing dated 4 June 2024:

- confirmed that she has received the notice of hearing;
- stated that she is happy for the hearing to proceed in her absence; and
- confirmed that she will not be seeking an adjournment.

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 were provided with advice by the legal assessor in respects of the authorities of *R v Jones* [2002] UKHL 5, *General Medical Council v Adeogba* [2016] EWCA Civ 162 and *Sanusi v GMC* [2019] EWCA Civ 1172.

The panel has decided to proceed in the absence of Ms Stamper. In reaching this decision, the panel has considered the submissions of Ms Kyriacou, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Ms Stamper has engaged with the NMC and has responded to the Notice of Hearing form indicating that she would not be attending, she wished for the hearing to go ahead in her absence, and she accepted the regulatory concerns;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There is a strong public interest in the expeditious disposal of the case; and
- Ms Stamper has explained why she did not feel it would be in her best interest to attend this hearing.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Ms Stamper.

### **Details of charge**

- 1) On 14 March 2021 referred to Colleague A as a 'black bastard'.
- 2) Your conduct at charge 1 was racially abusive.

### **Background**

The charges arose whilst Ms Stamper was employed as a registered nurse in the role of deputy manager by employer Victoria House (HC-One) care home (the Home). On 19 July 2021 Ms Stamper was referred to the NMC by HC-One Limited.

The allegations involved discriminatory language and/or behaviour on the grounds of race and a failure to take action in relation to a deteriorating resident.

It is alleged that Ms Stamper, having become frustrated at a staff member's lack of action in relation to a resident with low blood pressure, referred to the staff member as a 'Black Bastard'. There were several witnesses present at the time, who heard this.

The incident was not reported to management until 30 March 2021 and Ms Stamper was suspended on 1 April 2021. Ms Stamper fully admitted what she had said and apologised for her actions. The matter was investigated by the Home which led to a disciplinary hearing meeting.

### **Admissions**

At the outset of the hearing, the panel noted the response to the Notice of Hearing provided by Ms Stamper which was signed and dated 4 June 2024. Within that response Ms Stamper admitted the facts of the charges in full.

The panel therefore finds charges 1 and 2 proved in their entirety, by way of Ms Stamper's written admissions. On the basis that all of the charges are admitted and have been found proved the panel then moved on to consider misconduct.

### **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 Ms Stamper'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, Ms Stamper'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.*'

Ms Kyriacou 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.

Ms Kyriacou identified the specific, relevant standards where Ms Stamper's actions amounted to misconduct. She submitted that the conduct was in breach of the following codes:

***'8 Work cooperatively***

*To achieve this, you must:*

*8.2 maintain effective communication with colleagues*

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

*To achieve this, you must:*

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

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

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

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

Ms Kyriacou submitted that the conduct was serious and had the potential to impact on colleagues and patient care. She noted that the conduct had an impact on Ms Stamper's more junior colleagues as they had repeated other discriminatory language following the witnessing of Ms Stamper's conduct. She referred the panel to the NMC guidance 'how we determine seriousness' and referred specifically to the section in respect to discrimination and that such misconduct can be more difficult to address.

## **Submissions on impairment**

Ms Kyriacou 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 *Professional Standards Authority for Health and Social Care v Health and Care Professions Council, Roberts* [2020] EWHC 1906 (Admin).

Ms Kyriacou submitted that Ms Stamper's actions related to a single albeit very serious incident. She further submitted Ms Stamper had shown insight through her reflections and as such she was no longer a current risk to the public. She submitted however that the conduct was so serious that Ms Stamper should be found impaired on the grounds of public interest to maintain standards and uphold public confidence. Ms Kyriacou submitted that the actions of Ms Stamper did not demonstrate a deep-seated attitudinal issue.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin), *Cohen v General Medical Council* [2008] EWHC 581 (Admin), *Cheatle v General Medical Council* [2009] EWHC 645 (Admin), *Zygmunt v General Medical Council* [2008] EWHC 2643 (Admin), *CHRE v NMC and Grant*, *Yeong v General Medical Council* [2009] EWHC 1923 (Admin) and *PSA v Roberts*.

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

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

***'8 Work cooperatively***

*To achieve this, you must:*

*8.2 maintain effective communication with colleagues*

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

*To achieve this, you must:*

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the conduct was significantly serious to amount to misconduct. The panel noted the NMC guidance 'how we determine seriousness' and considered that the conduct of Ms Stamper was discriminatory in relation to the protected characteristic of race as defined in the Equality Act 2010. The panel noted discriminatory behaviours of any kind can negatively impact public protection and the trust and confidence the public places in nurses, midwives, and nursing associates. The panel therefore considered the conduct to be serious in nature.

The panel determined that Ms Stamper was in a position of authority as she was a deputy manager at the time talking to her junior colleagues using highly inappropriate and offensive language. It determined that this is serious racial discrimination against another colleague and goes against the NMC values in respect to equality and diversity.



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

The panel next went on to decide if as a result of the misconduct, Ms Stamper'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 her fitness to practise is impaired in the sense that she:*

- 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel determined that Ms Stamper's misconduct brought the nursing profession into disrepute and breached fundamental tenets of the nursing profession as set out in limbs b and c above. Moreover, it also determined that not finding her fitness to practice currently impaired will undermine the public's confidence in the nursing profession and the NMC as a regulator.

With regard to insight, the panel noted that Ms Stamper had provided a reflective piece demonstrating her remorse and insight into her conduct and the steps she has taken to address the misconduct. The panel noted that Ms Stamper had made early admissions to

her actions and apologised to junior colleagues. However, the panel was of the view that Ms Stamper could have provided the NMC with more evidence to demonstrate steps she has taken to remediate her behaviour such as up to date references.

The panel was satisfied that the misconduct in this case was capable of being remediated but was not easily remediable due to it being discriminatory in nature. The panel noted through Ms Stamper's reflections she has taken steps to address her behaviour and has engaged in therapy in order to reduce the risk of repetition of such conduct in the future by employing coping strategies. The panel noted the NMCs submissions that the conduct of Ms Stamper did not represent a deep-seated attitudinal issue.

The panel was therefore of the view that there was a low risk of repetition of Ms Stamper's conduct based on her reflections and the lack of deep-seated attitudinal concerns. The panel therefore decided that a finding of impairment is not necessary on the grounds 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.

The panel determined that a finding of impairment on public interest grounds is required in this case due to the seriousness of Ms Stamper's conduct. The panel noted that Ms Stamper's conduct demonstrated that she failed to treat colleagues with respect. Following the incident, a junior colleague used other discriminatory language demonstrating the impact of Ms Stamper's conduct. The panel noted the conduct of Ms Stamper was discriminatory in nature, it reminded itself of the NMC guidance which indicates that no form of discrimination including racism should be tolerated. The panel therefore considered given the severity of the misconduct that a finding of impairment was required to uphold professional standards and conduct.

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

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

## **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that Ms Stamper's registration has been suspended.

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

## **Submissions on sanction**

Ms Kyriacou submitted that due to the seriousness of the charges found proved, the appropriate sanction in this case would be a suspension order for a period of six months with a review.

Ms Kyriacou submitted that the aggravating features of this case are:

- The language used by Ms Stamper towards a colleague was discriminatory and racially abusive.
- Ms Stamper was in a position of authority when the comment was made, and this was made in the presence of junior colleagues.

Ms Kyriacou submitted that the mitigating features of the case are:

- The misconduct represents an isolated incident.
- The comment made appeared to have been borne out of frustration, rather than deep-seated attitudinal issues.
- Ms Stamper has fully admitted her misconduct, acknowledged its impact and shown remorse for her actions.

Ms Kyriacou drew the panel's attention to the sanctions available to it and reminded it to start off with the least restrictive sanction and work its way up.

Ms Kyriacou submitted that the most appropriate sanction in this case was a suspension for a period of six months to mark the seriousness of the allegations and adequately protect the public.

Upon questions from the panel, Ms Kyriacou confirmed that there was no interim order imposed against Ms Stamper's registration and no previous regulatory concerns.

The panel heard the advice of the legal assessor.

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

Having found Ms Stamper'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. The panel noted that although sanctions are not intended to be punitive in their effect, they may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- The comment demonstrated a form of discriminatory conduct.

- Ms Stamper was in a position of authority and the comment was made in front of junior colleagues. This made some of those colleagues believe that it was acceptable to make similar comments.

The panel also took into account the following mitigating features:

- It is a single incident of misconduct.
- Ms Stamper made early admissions.
- Ms Stamper has shown remorse through her reflections and has accepted the impact her conduct has had.
- Ms Stamper has apologised to her junior colleagues.
- The comment was seemingly made out of frustration and there is no evidence of a deep-seated attitudinal issue.

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, an order that does not restrict Ms Stamper'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 Ms Stamper's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 Ms Stamper's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into

account the SG, in relation to when conditions of practice may be appropriate, in particular:

- *Identifiable areas of the nurses practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel borne in mind that there was no evidence before it of any concerns relating to Ms Stamper's clinical practice and the panel has determined there is no risk to the public. Instead, the misconduct identified in this case involved Ms Stamper's discriminatory language.

Ms Stamper is not currently practising as a nurse and the panel has no information before it which indicates her intention to return to practice. The panel were not therefore satisfied that a conditions of practice order would be complied with or be appropriate in this case.

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

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

- *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 was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel went on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Ms Stamper's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Ms Stamper. However, this is outweighed by the public interest in this case.

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

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct and provide Ms Stamper with sufficient time to further reflect on her misconduct and address the deficiencies present in her remediation.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:



- An updated reflective piece including evidence to demonstrate the steps Ms Stamper has taken to address her misconduct;
- Evidence of further Equality, Diversity and Inclusion training;
- Up to date references from Ms Stamper's paid or unpaid employment;
- Up to date testimonials from colleagues who are aware of the facts found proved.

The panel borne in mind that it determined there were no public protection concerns arising in this case. In this respect it found Ms Stamper's fitness to practise impaired on the grounds of public interest.

The panel made the substantive order having found Ms Stamper's fitness to practise currently impaired in the public interest. The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the profession as well as the NMC as the regulator. Furthermore, the substantive order will declare and uphold proper professional standards. The panel considered it appropriate to include a review in this case, as although there are not current concerns about risks to patients, there are deficiencies present in Ms Stamper's remediation which should be addressed. Accordingly, the panel concluded that the current substantive order should be reviewed before its expiry.

### **Interim order**

The panel noted that Ms Kyriacou submitted that an interim order was not required in the present case. Ms Kyriacou submitted that there was no risk to the public and the panel had found a low risk of repetition, and as such an interim order covering the appeal period was not required.

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel considered of its own volition whether an interim order was required in the specific circumstances of this case. The panel noted 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 Ms Stamper's own interests until the suspension order takes effect.

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

The panel was not satisfied that an interim order is necessary for the protection of the public, otherwise in the public interest or in Ms Stamper's interest in this case. The panel had regard to its conclusions that there was no risk to the public and a low risk of repetition. The panel borne in mind the NMCs guidance on interim orders and noted the high bar for imposing an interim order on the grounds of public interest alone.

The panel concluded that an interim order would not be appropriate or proportionate in this case, due to the reasons identified above. The panel therefore decided not to impose an interim order.

This decision will be confirmed to Ms Stamper in writing.

That concludes this determination.