

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

**Substantive Hearing
Monday 4 December 2023 – Friday 8 December 2023
Monday 11 December 2023 – Wednesday 13 December 2023
Monday 24 June 2024 – Thursday 27 June 2024**

Virtual Hearing

Name of Registrant: **Saul Richard Tait**

NMC PIN 9610072S

Part(s) of the register: Registered Nurse – Sub Part 1
RNLD: Learning Disabilities Nurse L1 - August 1999

Relevant Location: Inverness

Type of case: Misconduct

Panel members: Richard Youds (Chair, lay member)
Linda Pascall (Registrant member)
Alison Lyon (Lay member)

Legal Assessor: Michael Hosford-Tanner (4 – 8 December 2023;
11 – 13 December 2023)
Charles Apthorp (24 – 26 June 2024)
Goan Hart – (27 June 2024)

Hearings Coordinator: Shela Begum (4 – 8 December 2023; 11 – 13
December 2023)
Ruth Bass (24 June 2024)
Taymika Brandy (25 June 2024)
Petra Bernard (26 June 2024)
Margia Patwary (27 June 2024)

Nursing and Midwifery Council: Represented by James Wilson, Case Presenter

Mr Tait: Present and represented by Lauren Doherty,
instructed by the Royal College of Nursing

Facts proved by admission:	Charges 3a, 3b, 10c, 11a and 11g
Facts proved:	Charges 8, 9a, 9b, 9c, 9d, 10a, 11b, 11c, 11d, 12 and 13
Facts not proved:	Charges 1, 2, 4a, 4b, 4bc, 4d, 5a, 5b, 5c, 6, 7, 10b, 11e and 11f
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

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

At the outset of the hearing, Ms Doherty, on behalf of you, made an application that the entirety of this case, or parts of the hearing relating to allegations 3, 5, 8, 10 and 11 be held in private. She submitted that the application is made in part as a consequence of the threat of violence, or the perceived threat of violence in respect of the evidence that will be heard in relation to these allegations. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Doherty submitted that the perceived threat of violence arose out of Colleague A's statement where he stated as a consequence of the comments made to him, he wanted to lay his hands on you and similarly a further reference by Colleague A in which he stated in response to the comments made that he 'literally could have killed Mr Tait'.

[PRIVATE]

[PRIVATE]

Mr Wilson submitted that it cannot be forgotten that the charges to which the applications refer are specifically in relation to race and religion, and there is no suggestion, that hearing the matter in private would protect the registrant from any issues in relation to Colleague A himself. Further, he submitted that there has been no suggestion or evidence that there have been any threats or concerns arising from Colleague A himself.

Mr Wilson submitted that there has been no suggestion of any real or perceived continuing threat from Colleague A, so the application must be in relation to perceived threats coming from outside and based on the fact that you have a perceived fear of retribution from Muslims.

Mr Wilson submitted that it must be justified to hold a hearing in private, and there is no justification other than an assertion from you that something might happen, and on that basis alone the application should be refused. [PRIVATE]

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 considered the application made by Ms Doherty together with the submissions of Mr Wilson. It noted that there has been no evidence put before the panel of any potential threat that might arise in consequence of adverse reporting of these matters which relate largely to race and religion. The panel was not satisfied that sufficient reasons have been put before it to justify holding this hearing in private, either in its entirety or in part, and therefore concluded that this hearing would be held in public, [PRIVATE] which will be heard in private for those parts only. The panel determined that your request for the hearing to be held in private, is outweighed by the public interest in this case.

Decision and reasons on application to amend the charges 12 and 13

The panel heard an application made by Mr Wilson, on behalf of the NMC, to make an amendment to charges 12 and 13.

The proposed amendment was to amend the charge numbers referred to in charges 12 and 13. It was submitted by Mr Wilson that the proposed amendment would provide clarity and more accurately reflect the numbering of the other charges and that there had been a typographical error. The proposed amendment was as follows:

“That you, a registered nurse:

[...]

12) Your conduct in charges 3 and ~~10~~ **11** amounted to harassment in that you:

- a) engaged in unwanted conduct related to race; and
- b) that conduct had the effect of:
 - i) violating Colleague A’s dignity; or
 - ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

13) Your conduct in charges ~~6, 9, and 12~~ **5, 8 and 11** amounted to harassment in that you:

- a) engaged in unwanted conduct related to religion; and
- b) that conduct had the effect of:
 - i) violating Colleague A’s dignity; or
 - ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for colleague A.”

The panel heard from submissions from Ms Doherty who did not oppose the application.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Decision and reasons on application to further amend charges 12 and 13

Mr Wilson referred the panel to the current wording of the stem of charges 12 and 13. Charge 12 sets out that your conduct in charges 3 and 10 amounted to harassment and Charge 13 sets out that your conduct in charges 5, 8 and 11 amounted to harassment. He invited the panel to consider whether the NMC would need to prove that all the charges named within the stems would need to be proven, in order for charge 12 or charge 13 to be found proved.

Mr Wilson submitted that his primary position is that the NMC does not need to prove each of the charges set out in order to prove the allegations of harassment that arise in the subparagraphs of charges 12 and 13.

Mr Wilson referred to section 26 of the Equality Act 2010 where it sets out the definition of harassment. He drew the panel's attention to the wording of charges 12 and 13 which mirrors the position set out in the Act. Mr Wilson adopted what is set out in the Equality Act, and his submissions relating to the fact that charge 12 has two constituent parts and charge 13 has three. Mr Wilson referred the panel to the case of *Gangar v The General Medical Council*. He submitted that he adopted the rationale set out in the case of *Gangar* which is as follows:

“Their Lordships are unable to accede to the submissions advanced on behalf of the appellant. The PCC was fully entitled to find some facts proved and others not (even facts within the same head of charge), provided the appellant was not deprived of a proper opportunity to present his defence on all the alleged facts. The PCC concluded, on head 4e, that the appellant had threatened adversely to influence Dr Tipples' career. But it was not satisfied (to the criminal standard) that this had been done in order to put pressure on Dr Tipples to change her record in the medical notes. There is no inconsistency between these two conclusions. Each was quite capable of standing separately from the other. The practical effect of the PCC's division of the head was to find fewer facts than were alleged — a benefit, not a detriment to the appellant. The Committee acquitted the appellant of the more serious allegation of pressurising a colleague to change her medical notes in order to deflect criticism from himself. In doing so the PCC did not step into the role of the prosecutor or in any way compromise its independence. Their Lordships are not persuaded that the defence would have been presented differently if it had been thought that the PCC might make a different factual finding in relation to each of the two component parts. There was no breach of Article 6.”

Mr Wilson invited the panel to consider whether those constituent parts can be dealt with separately within charges 12 and 13. However, he submitted that, in case the panel determined it necessary, he would be making an application to amend the wording of charges 12 and 13. He proceeded to make that application to amend.

The panel heard that application made by Mr Wilson, on behalf of the NMC, to make an amendment to the wording of charges 12 and 13. He submitted that there is no injustice caused as a result of any amendment to the wording of the charges as proposed. He stated that even if the case had solely been prepared on the basis that each of the constituent parts of charges 12 and 13 need to be proved, the defence still needed to prepare to tell the panel why each individual charge did not contravene the Act in the manner alleged in charges 12 and 13.

Mr Wilson invited the panel to consider whether it could deal with the constituent parts of charges 12 and 13 separately. In the alternative, if the panel was not satisfied that it could deal with them separately, he proposed the following amendments:

“That you, a registered nurse:

[...]

12) Your conduct in charges 3 and/or 11 amounted to harassment in that you:

- a) engaged in unwanted conduct related to race; and
- b) that conduct had the effect of:
 - i) violating Colleague A’s dignity; or
 - ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

13) Your conduct in charges 5, **and/or** 8 and/or 11 amounted to harassment in that you:

- a) engaged in unwanted conduct related to religion; and
- b) that conduct had the effect of:
 - i) violating Colleague A’s dignity; or
 - ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for colleague A.”

Ms Doherty submitted that it is for the NMC to draft the charges. She submitted that these charges might have been drafted with an act in mind, but that they need to be read and taken in plain understanding and in the plain terms of the way that that have been drafted.

Ms Doherty submitted that she opposed the application to amend the charges. She stated that the charges have been drafted as cumulative behaviour from the outset, and these charges are what was circulated to you, to the panel and to the parties. She submitted that the proposed amendment extends and changes the scope of the mischief alleged. She

stated that, at this late stage, this would go against the principle of fairness, which you are entitled to.

Ms Doherty submitted that the NMC had plenty of time to draft the charges appropriately and an amendment to the wording of the charges with the rationale of a potential unavailability of a witness at this stage of proceedings would not be considered appropriate.

Ms Doherty therefore opposed the application.

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

The panel considered the application and the submissions from both Mr Wilson and Ms Doherty.

The panel considered whether there is any injustice caused to you as a result of the amendment to the wording of the charges. It noted that this is a delayed application to amend the charges in relation to the stage of proceedings which the hearing is currently at. However, it was of the view that there would be no real prejudice to you as a defence to all the named charges in charges 12 and 13 would be prepared in circumstances where the amendment was allowed or not allowed. It determined that no injustice would be caused to either party by the proposed amendment being allowed as the decision-making framework for the panel is not altered by this change to the charges.

The panel took the view that charges 12 and 13 could potentially be dealt with separately and it was open to the panel to find parts of the charge proved and others not proved. However, it determined that such an amendment, as applied for, would ensure clarity and accuracy in relation to the panel's findings, which could be made without injustice to you because you would have prepared your defence for each of the constituent parts of charges 12 and 13 in any event.

Details of charge (as amended)

That you, a registered nurse:

- 1) On a date unknown said to an unknown female colleague “don’t worry if you are fat in the UK, if you go to Kazakhstan, they love fat women” or words to that effect.
- 2) In May 2017 said to Patient C “Oh it is you, you remind me of the Somalian Al-Qaeda” or words to that effect.
- 3) On a date around September 2019 said to Colleague A:
 - a. “Oh, Persian man” or words to that effect.
 - b. “I know you guys sometimes sit on rocks back home” or words to that effect.
- 4) On a date unknown in December 2019 to Patient B:
 - a. Said “darling, that does not hurt, if you really want to hurt yourself there is a window ledge right next to you” or words to that effect.
 - b. In response to Patient B said “I am doing my job correctly if you tell me I am an asshole” or words to that effect.
 - c. Said “you fucking thug, keep your gob shut” or words to that effect.
 - d. Further in response to Patient B said “oh who is your dad, that short midget guy, is he your hero” or words to that effect.
- 5) On a date unknown in 2020 said to Colleague A:
 - a. “I don’t believe in heaven or afterlife, but in your religion can anyone from any religion meet your God?” or words to that effect
 - b. “Well if I meet him, can I fight him?” or words to that effect
 - c. “Well I will have a sword and I would like him to have a sword and we can have a fight” or words to that effect.

- 6) On a day in April 2020 said to Colleague E “If you were a man I would break all of the teeth in your mouth, you can go home now lady” or words to that effect.
- 7) On a date unknown in the summer of 2020 said to a group of colleagues “I believe women need to wash their vaginas properly, as it is quite stinky” or words to that effect.
- 8) Between March and April 2021 whilst in Colleague A’s car, said to Colleague A “Do you know West Bromwich? There is a gate there that you can go through, that gate will take you to where you can meet your God, that gate can take you to heaven.” or words to that effect.
- 9) Between 5 and 6 May 2021:
 - a. While standing over Patient A twisted their arm.
 - b. Pointed a finger in Patient A’s face.
 - c. Said to Patient A “don’t fucking speak to me like that, don’t fucking speak to me like that my friend” or words to that effect.
 - d. Said to colleague A “sometimes I shake a finger at Patient A it works to get him to calm down” or words to that effect.
- 10) Between 6 May 2021 whilst on the Willows Ward and between approximately 9-10pm:
 - a. Approached Colleague A.
 - b. Pointed your finger at Colleague A.
 - c. Said to Colleague A “are you enjoying your citizenship? I hope you do” or words to that effect.
- 11) Between 6 and 7 May 2021 whilst on the Willows Ward or in the garden:
 - a. Said to Colleague A “Do you have Mohammad’s phone number” or words to that effect.

- b. "You know the one, the one you worship, do you have his phone number?" or words to that effect.
- c. "phone him to see if you can vote for him in the election, if he is in the election, or at least to give you advice about who to vote for." or words to that effect.
- d. Came towards Colleague A
- e. Stood on your toes looking down at Colleague A
- f. Pointed your finger in Colleague A's face
- g. Said to Colleague A "I am just joking with you my friend." or words to that effect.

12) Your conduct in charges 3 and/or 11 amounted to harassment in that you:

- a. engaged in unwanted conduct related to race; and
- b. that conduct had the effect of:
 - i. violating Colleague A's dignity; or
 - ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

13) Your conduct in charges 5, and/or 8 and/or 11 amounted to harassment in that you:

- a. engaged in unwanted conduct related to religion; and
- b. that conduct had the effect of:
 - i. violating Colleague A's dignity; or
 - ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for colleague A.

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

Background

The charges arose whilst you were employed at a registered band 5 nurse at NHS Highland (the Trust), New Craig's Hospital (the Hospital).

You were employed on a small ward which usually accommodated 6 patients suffering from mental health and learning difficulties.

It is alleged that on several occasions, you made comments to Colleague A relating to his race and religion. It is alleged that these comments related to his ethnic background referring to him as a 'Persian man', inappropriate or offensive reference to the Islamic Prophet Mohammed, Colleague A's citizenship and further comments about Colleague A's religion.

It is also alleged that you made a comment of an inappropriate nature to an unknown colleague relating to their weight. A further comment is alleged to have been made to Colleague E by you that you would have broken her teeth if she was a man and instructed her to leave her shift and go home.

In relation to your conduct with patients, it is alleged that your conduct with Patient's A, B and C was manifestly inappropriate on three separate occasions between 2017 and 2021. It is alleged that you made an inappropriate comment in relation to Patient C's appearance. It is alleged that you mistreated a patient in that you spoke to Patient B, who suffers from learning difficulties and schizophrenic mood disorder, in a manifestly inappropriate way. It is further alleged that whilst caring for Patient A, who suffers from learning difficulties and psychosis, you stood over him, twisted his arm and pointed a finger at him and stated "don't fucking speak to me like that, don't fucking speak to me like that my friend".

Witnesses 5 and 6

On day four of the hearing, Mr Wilson informed the panel that the written statement of Witness 5 has been agreed as redacted along with Exhibit [Witness 5/01]. He further informed the panel that the written statement of Witness 6 has been agreed in its entirety as drafted. Mr Wilson invited the panel to adopt those agreed written statements and relevant exhibits as the witnesses' evidence.

Ms Doherty accepted that Witness 5 written statement is agreed as redacted and Witness 6's statement is agreed in its entirety.

The panel adopted the written statements of the witnesses alongside the relevant exhibits as their evidence. The witnesses were therefore released from attending the hearing.

Registrant's documents adduced into the hearing on day 5

On day 5 of the hearing, whilst you were giving your evidence and as Mr Wilson proposed to begin his cross examination of your evidence, it became apparent that there were documents being referred to which were not before the panel or the legal assessor. These documents were referred to as the 'registrant's bundle' and included your Curriculum Vitae, a reflective account by you and three testimonials.

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

The panel did not have regard to these documents until day 5 of the hearing and following review of these documents it noted that there is an assertion by you in the reflective statement that the allegations against you were part of a 'ganging up' against you. The panel noted that this is a matter which had not been put to the witnesses that had already given evidence to the panel. The panel invited Mr Wilson and Ms Doherty to make representations as to whether some of the matters contained within the reflective statement are relevant to the charges being considered in this case and further, if Ms Doherty deemed them to be relevant to the charges being considered, how she proposes to deal with this given that she did not put the matters to the NMC's witnesses.

Submissions from Mr Wilson

Mr Wilson accepted that the NMC had received these documents before the start of this hearing and so he was not taken by surprise. He submitted that the position at this stage is dependent on whether or not you maintain the matters contained within the reflective statement. He submitted that it is not for the NMC to put to witnesses' allegations made by you. He submitted that it is not uncommon for people to alter the manner in which they put their case, especially in the circumstances where there's no requirement for a formal witness statement from a party like the registrant in this case.

Mr Wilson submitted that he intended to deal with these matters in cross examination and suggest that as these matters were not put to the relevant witnesses during their evidence, the matters arising out of the reflective statement are clearly not maintained. However, Mr Wilson acknowledged that there might be questions from the panel that it might have put to the relevant witnesses in circumstances where those questions were not dealt with by Mr Wilson or by Ms Doherty.

Ms Doherty's application to seek instructions from you whilst under affirmation

Ms Doherty addressed the difficulties arising from the panel not having seen the documents until this stage. She reminded the panel of the difficulty in her making any submissions as you are currently under affirmation and in order to address the panel on this matter, she would need to seek instructions from you.

Mr Wilson submitted that he did not have any issues with Ms Doherty taking an opportunity to discuss this matter with you whilst you remain under affirmation.

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

The panel considered the circumstances of this case. It decided to allow Ms Doherty to speak to you whilst under affirmation in limited terms only in relation to the matter that has been raised by the panel.

Submissions from Ms Doherty

After seeking instructions from you, Ms Doherty submitted that you do not maintain the position as set out in your reflective statement. She submitted that the claim that the allegations against you were part of a conspiracy was your perception and would not be pursued as a fact. You are content to move forward with the hearing and proceed with your cross examination without recalling any witnesses. She submitted that there is not an alternate position to put to any witnesses.

Panel's decision

The panel was informed that the reflective account within the documents was written around 9 October 2023, and that this along with the attached documents was sent to the NMC on 1 December 2023.

The panel noted that the documents were sent to the NMC before the hearing began and therefore the NMC would have been appraised of the matters set out in the reflective statement. It noted that neither the NMC nor you questioned any of the witnesses about the presence of any conspiracies.

The panel carefully considered whether, in light of receiving these documents, it would be required to recall witnesses for the purposes of questioning them on the matters arising out of the reflective statement. The panel noted that you no longer maintain this perception that the allegations arise out of a conspiracy.

The panel took into account the submissions of Mr Wilson and those of Ms Doherty and determined that it would not be necessary to recall any witnesses and could proceed with the hearing.

Admissions to the charges

At the outset of the hearing, the panel heard from Ms Doherty, who informed the panel that you made admissions to charges 3a, 3b, 10c, 11a, 11b, 11c and 11g.

The panel therefore finds charges 3a, 3b, 10c, 11a, 11b, 11c and 11g proved, by way of your admissions.

Application to withdraw admissions to 11b and 11c

On day 5 of the hearing, prior to you giving your evidence, Ms Doherty made an application to withdraw admissions made to 11b and 11c. She submitted that these admissions were made by her in error and upon seeking further instructions from you, it has become apparent that you do not admit these charges on the basis that you have no recollection of making the comments as set out in the charges.

Mr Wilson informed the panel that he had no objection to these admissions being withdrawn. He accepted that the witnesses who speak to charges 11b and 11c have given evidence and have been cross-examined by Ms Doherty on your behalf.

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

The panel took into account the submissions made by both Ms Doherty and Mr Wilson. It considered whether there would be any injustice caused in withdrawing admissions at a stage when the NMC has already closed its case. The panel noted that the witnesses who speak to charges 11b and 11c have given evidence in relation to what they believe was said and that they have also been cross examined in relation to this. Further, the panel noted that you had not yet given your evidence at the stage when the application to withdraw the admissions had been made and therefore your evidence in relation to this can still be tested. The panel carefully considered this and decided to accept the application to withdraw admissions and that charges 11b and 11c would be put to you

again, with Ms Doherty now clarifying that the charges are not admitted. The panel determined that it would consider in due course whether the facts alleged in charges 11b and 11c have been proved.

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 Wilson on behalf of the NMC and by Ms Doherty on behalf of you.

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: Bank Rehabilitation Assistant,
New Craigs Hospital
- Witness 2: Head of Service for Quality
Assurance; Adult Social Care
NHS Highland
- Witness 3: Learning Disabilities
Rehabilitation Assistant, New
Craigs Hospital
- Witness 4/Colleague A: Healthcare Support Worker,
New Craigs Hospital

The panel also heard evidence from you under affirmation.

The panel has also received the agreed statements of Witness 5 and Witness 6 which it has taken into account.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the documentary evidence provided by both the NMC and by you and the submissions of Mr Wilson and Ms Doherty.

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

Charge 1

- 1) On a date unknown said to an unknown female colleague “don’t worry if you are fat in the UK, if you go to Kazakhstan, they love fat women” or words to that effect.

This charge is found NOT proved.

In reaching this decision, the panel took into account the documentary evidence and the live evidence it has heard.

The panel noted that during your evidence you denied having made the comment as set out in the charge.

The panel had regard to the written statement of Witness 4 which stated:

“Saul has said towards a female colleague, 'don't worry if you are fat in the UK, if you go to Kazakhstan, they love fat women'. I cannot recall who Saul directed this comment at or when this comment was made, but I recall the female colleague being upset in the garden about this comment.”

It heard from Witness 4 who maintained that he heard the comment being made by you to another female colleague. During his evidence, he stated that he did not feel it was his place to identify who the female colleague was.

The panel noted that Witness 4’s evidence was not corroborated by any other evidence, and it also noted that his evidence was inconsistent in that in his written statement he

stated he cannot recall who the comment was directed at but in his live evidence he stated that he did know who it was but suggested he was not comfortable revealing their identity.

Further it noted that there was not any contemporaneous record of this incident and that it was not reported locally and was raised as a concern at a later stage, in January 2023 during the NMC's investigation.

The panel considered that both the charge and the supporting evidence lacked specificity in that the date was not identified nor was the person who the comment was allegedly made to. Therefore, the panel has received no evidence from the alleged person concerned, nor the identity of the person, nor the date given for the incident and so it considered that there is a complete lack of detail for the panel and for you to consider.

On the basis of the evidence before it, the panel was not satisfied that the NMC has discharged its burden of proof and has not provided sufficient evidence to prove this charge. It therefore finds this charge not proved.

Charge 2

- 2) In May 2017 said to Patient C "Oh it is you, you remind me of the Somalian Al-Qaeda" or words to that effect.

This charge is found NOT proved.

In reaching this decision, the panel took into account the documentary and live evidence before it.

The panel took into account that you denied having made the comments as set out in the charge.

The panel noted that the alleged comment is said to have been made in May 2017 but that no specific date has been identified. The panel noted that there was no contemporaneous report of this incident and the first written record of this incident before the panel, or given to you, is Witness 4's NMC statement dated January 2023 which is a significant time later.

The panel took into account that Witness 4 explained that he did not report the comment via the appropriate channels and explained that this was due to him being relatively new in post and 'not knowing any better'. Witness 4 informed the panel that commenced employment as a bank staff member in 2014 and was substantive in post by 2017.

The panel considered that it was provided with some context in relation to this comment and was given a description of Patient C's physical appearance.

However, the panel was not satisfied that the NMC has provided sufficient evidence to determine that it is more likely than not that this comment was made by you on the balance of probabilities. It therefore finds this charge not proved.

Charges 4a, 4b, 4c and 4d

- 4) On a date unknown in December 2019 to Patient B:
 - a. Said "darling, that does not hurt, if you really want to hurt yourself there is a window ledge right next to you" or words to that effect.
 - b. In response to Patient B said "I am doing my job correctly if you tell me I am an asshole" or words to that effect.
 - c. Said "you fucking thug, keep your gob shut" or words to that effect.
 - d. Further in response to Patient B said "oh who is your dad, that short midget guy, is he your hero" or words to that effect.

These charges are found NOT proved.

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

The panel noted that you deny charge 4 in its entirety. You denied ever having made any comments to the effect of the words set out in charges 4a, 4b, 4c and 4d and stated that 'this never happened'.

The panel considered each of the charges at 4a – 4d separately but considered that the evidence related to one alleged incident and that the NMC evidence was effectively the same in relation to each charge, namely the uncorroborated evidence of Witness 4.

The panel had regard to an email from Witness 4 to Person 1 dated 8 May 2021 in which he stated:

“When [Patient B] was not well [...] – she kept on banging her head off wall. Saul said to her ‘you are fucking thug, keep your fucking gob shut, next time bang your head on that window frame, you will feel that better’”

This gave no date.

The panel also had regard to the NHS Scotland Workforce Policies Investigation Process meeting notes dated 18 June 2021 in which it stated:

“[Witness 4] advised that when he had entered Patient A’s room he heard Saul saying “Darling if you’re[sic] really want to hurt yourself, you can use the window frame and then you will feel it”. Patient A responded calling Saul shouting “arsehole” and that she would tell her father about him. Saul responded saying “is that the midgie man you are talking about, this is your hero?”

The panel noted that Witness 4’s written NMC statement dated January 2023 stated:

“On another occasion, I cannot recall what date, Patient B was banging her head on the wall, crying and screaming to try and get attention. Saul was the nurse in charge. He said to her, ‘darling, that does not hurt, if you really want to hurt

yourself, there is a window ledge right next to you'. Patient B replied, 'oh you are a fucking asshole' and Saul said, 'I am doing my job correctly if you tell me I am an asshole'. Patient B said, 'I will tell my Dad on you' and Saul replied, 'oh who is your dad, that short midget guy, is he your hero'. I reported this to [Person 1], Team Leader. From review of the internal documentation, I understand that this was in December 2019."

The panel noted that the email dated 8 May 2021, meeting notes dated 21 June 2021 and Witness 4's written statement of dated 24 January 2023 were not consistent in that reflected variations of the words used. The panel took into account that Witness 4 also produced an addendum statement in August 2023 and that was the occasion when he said he could confirm the date of the incident. During his evidence, Witness 4 stated that the wording that was used by you was the wording which is set out in his written statement of January 2023. The panel considered that this is a document which was created furthest way in time from the date that the incident is said to have occurred, when Witness 4's recollection was less likely to be accurate.

The panel heard evidence from Witness 4 who said that he had heard the comments being made by you. The panel considered that there was no suggestion by Witness 4 that he considered that intervention was necessary despite having heard comments of this nature being made. Further, the panel considered that there is no evidence before it that this was reported at the time that the comments were allegedly made, and Witness 4 also suggested during his evidence that he did not have any concerns in relation to your conduct with patients or clinical practice. This was supported by Witness 1 and Witness 3's evidence who also attested to your conduct with patients.

The panel considered all of the evidence before it and found that the evidence in support of these charges was both inconsistent and contradictory. It was therefore not satisfied that there is sufficient evidence before it to determine that, on the balance of probabilities, it is more likely than not that you said the words as set out in charges 4a – 4d. The panel therefore finds these charges not proved.

Charge 5

- 5) On a date unknown in 2020 said to Colleague A:
- a. “I don’t believe in heaven or afterlife, but in your religion can anyone from any religion meet your God?” or words to that effect
 - b. “Well if I meet him, can I fight him?” or words to that effect
 - c. “Well I will have a sword and I would like him to have a sword and we can have a fight” or words to that effect.

These charges are found NOT proved.

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

The panel had regard to Witness 4’s written statement which stated:

*“In winter 2020, I was in the office and Saul said to me, 'I don't believe in heaven or afterlife, but in your religion can anyone from any religion meet your God?'. I said, 'I am sure you can' and Saul said, 'well if I meet him, can I fight him?'. I said, 'I don't know about that'. Saul said, 'well I will have a sword and I would like him to have a sword and we can have a fight'. I responded, 'I don't know. You will find out when you are there'.
I never talk about my religion. These comments from Saul are an insult.”*

The panel noted that this was the only documentary evidence which supported this charge and the only other evidence in support of this was the live testimony of Witness 4. It took into account that this statement, which is dated January 2023, is the first mention of this incident which is said to have occurred sometime in 2020. It noted that there was a lack of specificity in that the date on which this is said to have occurred was not identifiable by Witness 4 or by any other evidence before it.

During his evidence, Witness 4 stated that these comments arose during a time which you were taking a break and were playing an electronic game on your phone which involved playing with a sword. There was no corroborating evidence about your alleged use of your mobile phone to play electronic games on the ward. He stated during his evidence that you said the game was your god and proceeded to make the comments as set out in the charge. Witness 4 accepted that he did not report these comments at the time that they were made but he justified that he worked in such a manner that he tried not cause colleagues any hardship and preferred to get along with colleagues to get the work done. During his evidence, Witness 4 also stated that he would answer questions about his religion when asked.

During your evidence, you denied playing any electronic games at work, either on your break or otherwise. You further denied having made the comments as set out in the charge.

The panel noted that the first time that this incident was raised was during the NMC's investigation and there is no contemporaneous report of this incident. The panel noted that this was not corroborated by any other evidence and further that the context that was provided by Witness 4 during his evidence is not supported by his documentary evidence or any other evidence. Further, the panel noted there is some inconsistency in Witness 4's evidence in that his documentary evidence suggested he did not speak about his religion but during his oral evidence he stated that when he was asked questions about his religion, he would answer them.

The panel found that there is not sufficient evidence to determine that, on the balance of probabilities, it is more likely that not that this did occur as alleged. The panel therefore finds this charge not proved.

Charge 6

- 6) On a day in April 2020 said to Colleague E “If you were a man I would break all of the teeth in your mouth, you can go home now lady” or words to that effect.

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 4’s evidence and your evidence.

Witness 4’s written statement stated:

“In April 2020, I was working on a night shift with Saul and [Colleague E], who used to work as a Healthcare Support Worker on night shifts with Saul and I. Saul said, ‘oh my God, Boris Johnson has Covid’. [Colleague E] said, ‘who cares’. She was 22 years old at the time. Students this age don’t give a damn about anything like this. Saul said, ‘if you were a man, I would break all of the teeth in your mouth, you can go now lady’ and sent her home at 18:45. Saul is not authorised to send staff members home before their shift is over at 20:30. [Colleague E] went home in tears.”

The panel noted that in relation to this comment, Witness 4 identified the person that the alleged comment was directed to. However, it did not have any evidence, documentary or live, from Colleague E directly. It noted that it did not have any evidence in relation to any attempts made by the NMC to obtain a statement from Colleague E as to their account of the incident.

The panel noted that there was no specific date identified in relation to when this occurred, nor did it have any context in relation to how this had arisen. It did not have any documentary evidence which showed that Colleague E was in fact sent home 1 hour and 15 minutes before her shift had ended. If that had happened, the panel would have expected that a note would have been made on the ward records and in any event, it was accepted by Witness 4 that you did not have the authority to send a member of staff home before the end of a shift.

The panel noted that there is no contemporaneous report of this incident having occurred and further it does not have any evidence to show that this incident was reported or dealt with locally.

During your evidence, you denied having made this comment. You explained that in your position as a band 5 nurse, you would not have had the authority to send Colleague E home and therefore would not have made such a comment in any case.

The panel concluded that there is not sufficient evidence before it to prove that, on the balance of probabilities, it is more likely than not that you made the comments as set out in charge 6. The panel therefore finds this charge not proved.

Charge 7

- 7) On a date unknown in the summer of 2020 said to a group of colleagues “I believe women need to wash their vaginas properly, as it is quite stinky” or words to that effect.

This charge is found NOT proved.

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

Witness 4’s written statement stated:

“On one shift around summer 2020, I was in the dining room for a handover with [Witness 1] and [Person 2], Nurse. Other staff members were present, but I cannot recall who. People were coming in and out of the dining room. Saul walked into the handover where everybody was sitting and said, 'I believe women need to wash their vaginas properly, as it is quite stinky'. Nobody responded.”

The panel noted that in this statement Witness 4 stated that Witness 1 was present. However, during his evidence, when asked about whether this statement was true and accurate to the best of his knowledge and belief, Witness 4 stated that neither Witness 1 nor Person 2 were present. He explained that the statement was taken over the phone and suggested that this was the reason for the inaccuracy. If Witness 4 had persisted in his assertion that Witness 1 was present, the panel would have had an opportunity to ask Witness 1 about this incident when she gave evidence.

The panel noted that there is not any contemporaneous report of this incident, and no other members of staff reported this comment having been made despite other members allegedly being present. Further, the panel noted that the charge lacked specificity in that the date was not identified.

You denied having made this comment.

The panel determined that there was insufficient evidence in support of this charge and was not satisfied that on the balance of probabilities, it was more likely that not that the comments as set out in charge 7 were made by you. It therefore finds this charge not proved.

Charge 8

- 8) Between March and April 2021 whilst in Colleague A's car, said to Colleague A "Do you know West Bromwich? There is a gate there that you can go through, that gate will take you to where you can meet your God, that gate can take you to heaven." or words to that effect.

This charge is found proved.

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

The panel had regard to the email from Witness 4 to Person 1 dated 8 May 2021 in which he stated:

“Previously Saul had spoken to me and asked me if i have ever been to West Bromwich? I said 'no' and he said that is where you will meet your God and the gate for heaven is there.”

This was supported by Witness 4’s written statement in which he stated:

“Roughly five or six weeks prior to the incident on 06 May 2021, approximately around the end of March 2021 or early April 2021, I dropped Saul home after a night shift. We had been talking about annual leave and I said that I wanted to go to Spain, so I hoped that Covid-19 would be over soon. Saul was admiring my van, which we discussed I have driven many miles, for example, to Spain and to France. Saul asked how much I had paid for the van and I told him. I had my eyes on the road but I could see out of the corner of my eye that Saul was looking at me with strong eye contact. When I stopped near Saul's house, he said, 'thank you very much for the lift, I hope that someday life goes back to normal'. Out of nowhere, Saul said, 'do you know West Bromwich?'. I said, 'yes...'. Saul said, 'there is a gate there that you can go through, that gate will take you to where you can meet your God, that gate can take you to heaven.' Saul got out of the van, shut the door and walked away. I did not respond.”

The panel noted that there is a near contemporaneous record of this incident and there is confirmation from Witness 5 that Witness 4 raised the matter with her very promptly, although he did not wish to proceed with a written complaint at the time. In addition, this is supported by Witness 4’s written statement and live testimony.

Witness 4’s account of the incident provided detail in relation to what was happening before, during and after the comments. Witness 4 also provided information as to the impact of the comments on him and how these comments made him feel afterwards.

During your evidence, you denied having made this comment. You suggested that you were not aware that West Bromwich was an area in the midlands which has a significant Muslim population. You stated, “*I wouldn’t know [...] I’ve never been to Birmingham.*”

The panel considered this remark indicated you knew where West Bromwich is situated.

You accepted during your evidence that on some occasions, if the weather conditions were poor, Witness 4 would give you a lift home from work. You stated the car journey was only about 40 seconds but the panel considered that there was still time to make this comment.

Based on all the evidence before it, the panel was satisfied that there is sufficient evidence before it to determine that, on the balance of probabilities, it is more likely than not that you did make the comments as set out in charge 8. It therefore finds this charge proved.

Charge 9a, 9b and 9c

9) Between 5 and 6 May 2021:

- a. While standing over Patient A twisted their arm.
- b. Pointed a finger in Patient A’s face.
- c. Said to Patient A “don’t fucking speak to me like that, don’t fucking speak to me like that my friend” or words to that effect.

These charges are found proved.

In reaching this decision, the panel took into account Colleague A’s/Witness 4’s evidence and your evidence.

Whilst the panel considered each of the charges at 9a-9c individually, the evidence relied upon was the same for each charge and the rationale for its decisions in relation to the charges was the same.

In the email from Colleague A/Witness 4 to Person 1 dated 8 May 2021, he stated:

“On this Thursday morning at approx. 5am [...] I answered the phone – Saul was on observations with [Patient A] in the end living room. When I went to get Saul [...] [Patient A] was sat by the window – [...] was shouting ‘fucking jean, fucking jean’. I witnessed Saul standing over whilst twisting [Patient A’s arm unnaturally[sic], pointing a finger into his face saying ‘don’t fucking speak to me like that, don’t fucking speak to me like that my friend’.

The panel noted that Colleague A’s written statement stated:

“During the 05 – 06 May 2021 night shift, at approximately 05:00 on 06 May 2021, Saul was on observations with Patient A in the living room. When I went to get Saul to speak to somebody who phoned the ward, Patient A was sat by the window shouting, ‘fucking Jean, fucking Jean’. Saul was standing over Patient A while twisting their arm unnaturally, pointing a finger into their face, saying, ‘don’t fucking speak to me like that, don’t fucking speak to me like that my friend’.”

Colleague A/Witness 4 informed the panel that he had a view into the room via the porthole in the room door which was a fire door. He explained that he had to look through the porthole before entering the room to make sure it was safe to do so. He suggested during his evidence that he did not think that your restraint of the patient was improper. He stated that sometimes patients become violent, and restraint is required to be used.

During his evidence, Colleague A/Witness 4 stated that he had heard the comment set out in charge 9c even though the door to the room was closed, he gave evidence that he could still hear what was said. He stated the room had an echo and therefore he was able to hear the comment, which he said was made loudly.

During your evidence, you stated that ‘this never happened’. You stated: *“Well, if you wanted your finger broken, that’s you. I suppose you could do that, but that would be the*

end result.” and later went onto state “Why would I offer my finger to someone who could break it”.

In your evidence, you stated that when Colleague A/Witness 4 entered the room, he had taken over and you stated, *“there is a telephone call or something like that, bearing in mind this is 2 1/2 years ago, so I'm assuming I went and took whatever the call was”.*

When cross-examined you stated, *“so he took over [observations] and I went to answer a telephone call”.* Despite recalling this, you denied remembering the event. When asked to clarify whether you remember going to take a call when Colleague A/Witness 4 entered the room you stated that you did not remember. The panel considered that you could recollect the incident.

You went onto state during your evidence that Colleague A would not have been able to observe anything from outside the room. He accepted that the door had a porthole but stated *“due to Patient A's adverse reaction to any form of stimulus the porthole was covered up by a sheet of paper”.* The panel did not accept that there was no view through the porthole which would be a safety feature. It accepted Witness 4's evidence that he had a view into the room even if you thought that it was not a clear view. The panel considered that you made the comments alleged to Witness 4 and those indicated that you knew that he had been able to see at least some of the incident.

The panel found that your evidence in relation to this incident was inconsistent.

The panel found that Witness 4/Colleague A's contemporaneous report of the incident was consistent with his written statement to the NMC as well as his evidence during the hearing.

On the basis of the evidence before it, the panel found that, on the balance of probabilities, it is more likely than not that you did twist Patient A's arm and did point a finger in Patient A's face. It therefore finds these charges proved.

Charge 9d

9) Between 5 and 6 May 2021:

- d. Said to colleague A “sometimes I shake a finger at Patient A it works to get him to calm down” or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account Colleague A’s/Witness 4’s evidence and your evidence.

In the email from Colleague A/Witness 4 to Person 1 dated 8 May 2021, he stated:

“Saul then turned quickly as I walked in and went off to take the phone call. After Saul took the call, Saul seemed to try and justify himself saying sometimes I shake a finger at [Patient A] it works and get him to calm down”

In his written statement, Colleague A stated:

“Saul turned quickly when I walked in and went off to take the phone call. Saul tried to justify himself saying, 'sometimes I shake a finger at Patient A, it works to get him to calm down'.”

The panel found that Witness 4/Colleague A’s evidence in relation to this was consistent within the documentary evidence and also that it was consistent with the sequence of events which followed. The panel accepted the evidence of Witness 4/Colleague A.

The panel determined that, on the balance of probabilities, it is more likely than not that you did make the comment as set out in charge 9d. It therefore found this charge proved.

Charge 10a

- 10) Between 6 May 2021 whilst on the Willows Ward and between approximately 9-10pm:
- a. Approached Colleague A.

This charge is found proved.

In reaching this decision, the panel took into account the documentary evidence as well as the live evidence before it.

The panel noted that during your evidence, you accepted having approached Colleague A/Witness 4. You stated:

“I may have gone into the same room as him, so if that's approaching, then yes.”

Colleague A/Witness 4's written statement stated:

“Saul said to us from the treatment room (where he was with the patient), 'I hope you two voted?' [...] Saul just said, 'ok, how about you' towards myself. I responded that I had not voted. Absolute red came over Saul. He took five or six steps towards me, leaving the patient in the treatment room.”

The panel had regard to the written statement of Witness 1 who stated:

“A few minutes later Saul came back into the office smiling and in a joking manner said to [Colleague A] “do u enjoy your British citizenship”. [Colleague A] replied “yes, I enjoy it very much, what has that got to do with anything”.”

The panel concluded, based on the evidence before it that, it is more likely that not that you did approach Colleague A, as you wish to make the statement about citizenship but not in itself as a hostile movement. It therefore finds this charge proved.

Charge 10b

10) Between 6 May 2021 whilst on the Willows Ward and between approximately 9-

10pm:

- a. [...]
- b. Pointed your finger at Colleague A.

This charge is found NOT proved.

In reaching this decision, the panel considered the evidence of Witness 4/Colleague A and your evidence.

During your evidence, you stated that you did not gesticulate.

The panel had regard to Witness 4's email to Person 1 dated 8 May 2021 which stated:

"Saul ran out of the treatment room into the office and said 'are you enjoying your citizenship' 'i hope you do' he was very angry, pointed a finger in my face and very red in the face."

Witness 4/Colleague A's written statement stated:

"Saul just said, 'ok, how about you' towards myself. I responded that I had not voted. Absolute red came over Saul [...] I was sitting in the office chair, Saul pointed his finger at me, and said, 'are you enjoying your citizenship? I hope you do'."

The panel had regard to the written statement of Witness 1 who stated:

"A few minutes later Saul came back into the office smiling and in a joking manner said to [Witness 4/Colleague A] "do u enjoy your British citizenship". [Witness

4/Colleague A] replied “yes, I enjoy it very much, what has that got to do with anything”.

During her evidence, Witness 1 suggested that the interaction between Colleague A and you was not aggressive on your part and that it was ‘banter’. Witness 1 also stated during her evidence that you were not angry.

Based on the evidence before it, it was not satisfied that there is sufficient evidence to conclude that you pointed your finger at Colleague 4. It therefore finds this charge not proved.

Charge 11b

11) Between 6 and 7 May 2021 whilst on the Willows Ward or in the garden:

- b. “You know the one, the one you worship, do you have his phone number?”
or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 1 and Colleague A and your evidence and that you admitted asking for Mohammed’s phone number which you accepted was inappropriate.

The panel had regard to the email from Colleague A to Person 1 dated 8 May 2021 in which he stated:

“Shortly later he said ‘do you have Mohammeds phone number’ i asked who he meant and he repled[sic] ‘you know the one, you are worshipping him’.”

The panel noted Colleague A’s written statement which stated:

“Saul knew I was behind him but he did not look around. He very arrogantly turned to look at me while slipping his hands into his jacket sleeves and said, 'do you have Mohammad's phone number?'. I thought Saul might have been talking about a taxi driver, as he was upset with me and perhaps did not want me to drive him home. I asked, 'what Mohammed?' and Saul pointed his left thumb over his shoulder and said, 'you know the one, the one you worship, do you have his phone number?'.”

The panel had regard to Witness 1’s written statement in which she stated:

“Shortly afterwards, [Colleague A] and I returned to the office and Saul came to the office. Saul said to [Colleague A] 'do you have Mohammad's phone number". [Colleague A] asked 'Mohammad who?' and Saul said 'your God that you worship'. [Colleague A] asked Saul what he meant and why did he want to know that.”

In relation to this conversation, you stated during your evidence that you cannot remember the dialogue. You also stated: *“I didn’t say that, “you know the individual you worship” because you don’t worship a prophet.”*

The panel noted that Colleague A’s account of this incident is corroborated by Witness 1’s evidence.

The panel determined that, on the balance of probabilities, it is more likely than not that you did make the comment as set out in charge 11b. It therefore finds this charge proved.

Charge 11c

11) Between 6 and 7 May 2021 whilst on the Willows Ward or in the garden:

- c. “phone him to see if you can vote for him in the election, if he is in the election, or at least to give you advice about who to vote for.” or words to that effect.

This charge is found proved.

The panel had regard to the email from Colleague A to Person 1 dated 8 May 2021 in which he stated:

“While he said this he was pointing with his thumb behind his shoulder, Saul then said 'phone him to see if you can vote for him, if he is in the election'.”

The panel noted Colleague A’s written statement which stated:

“Saul said, 'phone him to see if you can vote for him in the election, if he is in the election, or at least to give you advice about who to vote for'.”

The panel had regard to Witness 1’s written statement in which she stated:

“[Colleague A] asked Saul what he meant and why did he want to know that. I cannot recall exactly Saul's response, but I think it was something to the effect of, 'so I can tell him how much of an arsehole you are'. I am not certain that these were the words Saul used, but he did say something cheeky”

The panel also had regard to Witness 3’s written statement which stated:

“I asked [Colleague A] if he was okay when we were in the office alone at approximately 02:20. [...] [Colleague A] informed me that Saul had asked for Mohammed’s number so that he could let him know that [Colleague A] was a ‘fuckwit’. I am not aware of any other comments made by Saul.”

The panel noted that there are some inconsistencies between Witnesses 1 and 3 evidence compared to Colleague A’s evidence. The panel noted that Witness 1 states that she cannot recall the exact words which were used but that her wording is similar to the wording as reported by Witness 3.

Whilst the panel noted that wording reported by Colleague A varied from what was reported by Witnesses 1 and 2, it considered that his evidence was consistent with his contemporaneous reporting of the incident.

Further, the panel noted that during evidence, you suggested that you intended to make a further remark to Colleague A about whether he had Mohammed's phone number and that he should ask him whether voting is important. You suggested that Colleague A has fabricated this allegation but that it was similar in wording to what you had intended on saying. However, you also stated that this was '*probably the most unfiltered thing I have ever said*'. You stated that you could not recall the exact dialogue but accepted that it was wrong to bring up the Prophet Mohammed in a conversation about voting as it was not relevant.

Based on all the evidence before it, the panel determined that, on the balance of probabilities, it is more likely than not that, you did say the words as set out in the charge, or words to the effect of them. It therefore finds this charge proved.

Charge 11d

- 11) Between 6 and 7 May 2021 whilst on the Willows Ward or in the garden:
- d. Came towards Colleague A

This charge is found proved.

In reaching this decision, the panel noted Colleague A's written statement which stated:

"As Saul and [Witness 1] were walking away, I said, 'what you said has nothing to do with politics'. Saul came towards me [...]"

In his email to Person 1 dated 8 May 2021, Colleague A stated:

"Saul came back to me and i asked him what voting was to do with religion. Saul walked quickly towards me"

The panel noted that you did not deny walking towards Colleague A and it took the view that there is no alternative but to expect that you did inevitably go towards Colleague A, although not necessarily in a hostile manner.

The panel therefore finds this charge proved.

Charge 11e and 11f

11) Between 6 and 7 May 2021 whilst on the Willows Ward or in the garden:

- e. Stood on your toes looking down at Colleague A
- f. Pointed your finger in Colleague A's face

These charges are found NOT proved.

In reaching this decision, the panel took into account Colleague 4's evidence and your evidence.

Whilst the panel considered each of the charges 11e and 11f individually, the evidence relied upon for both charges was the same and it applied the same rationale for its reasoning.

The panel noted Colleague A's written statement which stated:

As Saul and [Witness 1] were walking away, I said, 'what you said has nothing to do with politics'. Saul came towards me and stood on his toes looking down at me. Saul's voice was breaking with anger and his hand was shaking as he pointed his finger in my face and said, 'I am just joking with you my friend'.

In his email to Person 1 dated 8 May 2021, Colleague A stated:

“Saul [...] acted very aggressively[sic] shaking a pointed finger in my face, his face was right up to mine and said angrily 'you know my friend i am only joking'. But there was no way he was joking, his voice was breaking with anger.”

The panel noted that Witness 1 was present during this incident and during the hearing she did not describe you as having been aggressive during that interaction. In her written statement to the NMC, she also stated:

“I would not say that Saul was angry. He was more sarcastic. I originally thought that this was all a joke.”

The panel did not find that there was any corroborative evidence in support of this charge and noted that the witness who was present gave evidence to the contrary.

The panel was not satisfied that there is sufficient evidence before it to determine that, on the balance of probabilities, it is more likely than not, that you stood on your toes looking down at Colleague A or pointed your finger in Colleague A’s face. It therefore finds these charges not proved.

Charge 12

12) Your conduct in charges 3 and/or 10 amounted to harassment in that you:

- a. engaged in unwanted conduct related to race; and
- b. that conduct had the effect of:
 - i. violating Colleague A’s dignity; or
 - ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

This charge is found proved in relation to charges 3b and 10c.

In relation to charge 3a, the panel noted that Colleague A informed the panel that he did not take offence to being described as a Persian man. Based on the evidence given by Colleague A, it concluded that your actions as set out in charge 3a, was not unwanted conduct relating to race and did not have the effect of violating Colleague A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

In relation to charge 3b, the panel noted from Colleague A's evidence that your comments caused offence to his race and his cultural background. The panel did not find that your explanation that your comments, that your comments were not dissimilar to you saying that your family sits on rocks whilst fishing, to be reasonable. The panel determined that this comment had negative connotations about the race and cultural background of Colleague A. The panel concluded that your conduct in charge 3b did amount to harassment in that you did engage in unwanted conduct relating to race and the conduct had the effect of creating a humiliating, degrading and offensive environment for Colleague A.

In relation to charge 10a, the panel did not find that this amounted to harassment. There is no inference within the charge as to the manner of any approach. The panel found 10a proved based on the action that you approached Colleague A but has not drawn any inference as to the manner in which you did this.

In respect of charge 10c, the panel took into account that during his evidence, Colleague A stated that he was upset by the comments made and, in his written statement, he stated: "*I was lost for words. I pushed away my paperwork and said that citizenship has nothing to do with politics.*" The panel found that your conduct in 10c did amount to harassment in that you engaged in unwanted conduct in relation to Colleague A's race and was not a comment addressed to the person in the room of British origin, namely Witness 1. The panel determined that your comments were violating Colleague A's dignity and created an intimidating, degrading, humiliating and offensive environment.

Charge 13

- 13) Your conduct in charges 5, and/or 8 and/or 11 amounted to harassment in that you:
- a. engaged in unwanted conduct related to religion; and
 - b. that conduct had the effect of:
 - i. violating Colleague A's dignity; or
 - ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for colleague A.

This charge is found proved in relation to charges 8, 11a, 11b, and 11c

The panel did not consider charge 13 in respect of charge 5 as the entirety of charge 5 was found not proved.

In relation to charge 8, the panel noted the impact that these comments had on Colleague A. In his written statement he stated:

"I was hurt by this comment. It was very inappropriate. I thought to myself that Saul has no filter. Normally after a night shift, I sleep like a baby, but following this comment, I could not sleep."

The panel noted that following this, Colleague A also went on to report it to two members of staff.

The panel determined that your conduct in charge 8 did amount to harassment in that you engaged in unwanted comments which related to religion. Further, it determined that your conduct had the effect of violating Colleague A's dignity and created a hostile, humiliating and offensive environment for Colleague A.

In relation to charges 11a, 11b, 11c, the panel noted that in Colleague A's written statement he stated following these comments he felt *"I am physically fit, mentally I am destroyed"*.

In relation to charge 11a, during your evidence you accepted that “*it is when good intent goes absolutely horribly wrong*”. You also accepted that it was wholly inappropriate when you commented that it was the most nonfiltered thing you have ever said.

The panel concluded that, your conduct in 11a, 11b and 11c did amount to harassment in that you engaged in unwanted conduct, namely comments which related to religion. Further, it determined that your conduct had the effect of violating Colleague A’s dignity and created a humiliating and offensive environment for Colleague A.

In relation to 11d, the panel did not find that this amounted to harassment. There is no inference within the charge as to the manner of any approach. The panel found 11d proved based on the action that you approached Colleague A but has not drawn any inference as to the manner in which you did this.

In relation to 11g, whilst it noted the comment did make Colleague A uncomfortable, the panel was not satisfied that it could conclude that your comments amounted to harassment in that the comment in and of itself did not relate to religion.

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 your 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, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Wilson invited the panel to take the view that the facts found proved amount to misconduct. He referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and identified specific standards which he submitted were the relevant standards where your actions amounted to misconduct. Mr Wilson further submitted that the charges found proved amounted to a serious shortfall in the standards expected of a practising nurse.

With regard to impairment, Mr Wilson submitted that the comments made to Colleague A were attitudinal and adversely affected Colleague A. He submitted there was strong evidence that the comments made by you highlighted your thinking and that you were not concerned at the time in expressing your opinions. At the time you had an issue with Islam and people from the Middle East in general, and this could be seen from your comments about 'sitting on rocks'. Mr Wilson submitted that this was an attitudinal issue which is potentially remediable. However, the panel would need to consider how deep-seated the attitudinal issue was. He submitted that you had breached a fundamental tenet of the Code and that a finding of impairment would be required to mark the profound unacceptability of your behaviour and emphasise the importance of the fundamental tenet breached. Mr Wilson further submitted that you would need to demonstrate more understanding than you had shown, and as such there was a risk of repetition.

With regard to charge 9, Mr Wilson submitted that there was a breach of the fundamental tenets, especially in light of the vulnerability of Patient A who, although challenging at times, was completely dependent on staff to meet his basic needs. Mr Wilson submitted

that there was no evidence of strengthening of practice in these circumstances and as such there was a risk of repetition.

Mr Wilson submitted that there is a public interest in upholding professional standards and upholding and maintaining confidence in the profession and that a finding of impairment was required to mark the profound seriousness of the conduct which had taken place in respect of charges 12 and 13. He submitted that there were both public protection and public interest issues in this case.

Ms Doherty, on your behalf referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 (*Roylance*) 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.*' She submitted that the assessment of misconduct was a matter for the panel.

With regard to impairment, Ms Doherty asked three questions were it to find your actions amounted to misconduct: Is the misconduct easily remediable, had it been remediated, and is it likely to be repeated.

Ms Doherty submitted that you had been open during your evidence about your lack of Equality Diversity and Inclusion (EDI) training, understanding of protected characteristics and their importance, and acceptable language in the workplace. She submitted that you had apologised for your behaviour, the upset and hurt caused, and that you accepted that your behaviour fell short. You have now had exposure to EDI principles and now recognised the importance of these issues and would endeavour to have training in this area if required when you were in a position to.

With regard to patient care and restraint training, she submitted that this was an isolated incident which should be considered against your career of good patient care.

[PRIVATE]. She submitted that your evidence given with regard to good practice and restraint evidenced that your practice as of today is not currently impaired.

Ms Doherty submitted that you had set out what you would do differently and now understood and recognised that although the intention behind your comments towards Colleague A was a joke, you now recognised that it is the perception of how such behaviour is received by those around you. She further submitted that you had worked towards improving your knowledge in respect of protected characteristics. You have expressed remorse and shame for your behaviour and have accepted responsibility for the comments made and have moved a step forward from when you first engaged with the disciplinary proceedings carried out by your employer. You now realise how offensive your comments were and recognise not only the affect these had on Colleague A, but also on others that might hear such comments and how it effects the profession in general. Ms Doherty submitted that you would never put yourself in that position again.

Ms Doherty referred the panel to the case of *Blakely v The General Medical Council* [2019] EWHC 905 (Admin), 2019 WL 01641057 with regard to how a panel should approach a case where there has been a denial. She submitted that you are unlikely to repeat this conduct. You have been nursing for 22 years, have vast experience and have contributed much to the nursing profession. Ms Doherty referred the panel to the testimonials provided.

Ms Doherty submitted that should the panel find there is misconduct, it can make a finding of no current impairment. [PRIVATE].

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *General Medical Council v Meadow* [2007] QB 462 (Admin), *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) (*Grant*), and the Race Equality Act 2010.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.3 avoid making assumptions and recognise diversity and individual choice

1.5 respect and uphold people's human rights

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

20.7 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'

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 breaches were fundamental and were sufficient to amount to misconduct as set out below.

Charge 3a

In considering whether your actions in regard to charge 3a amounted to misconduct, the panel took into consideration the fact that Colleague A had stated that he was not offended by the comment *"Oh, Persian man"*, and further the fact that it did not find that this comment had amounted to harassment in respect of charge 12. Although the panel had found this comment to have been made by you as a matter of fact, it did not find that it was so serious so as to amount to misconduct in the context it was heard and used. It therefore found your actions in this regard did not amount to misconduct.

Charge 3b

In considering whether your actions in regard to charge 3b amounted to misconduct, the panel found that the language used was not acceptable and fell far below the standards expected of a registered nurse. It took into consideration how the comment *"I know you guys sometimes sit on rocks back home"* or words to that effect, had negatively impacted upon Colleague A and caused him to suffer humiliation and its finding that this comment did amount to harassment. The panel was satisfied that such action did fall far below the standard of a registered nurse. It therefore found that your actions in relation to charge 3b did amount to misconduct.

Charge 8

In considering whether your actions in regard to charge 8 amounted to misconduct, the panel took into account its finding of harassment in respect of charge 13 and the negative impact this had upon Colleague A. It found that the comment *"Do you know West Bromwich? There is a gate there that you can go through, that gate will take you to where*

you can meet your God, that gate can take you to heaven.” or words to that effect, did amount to amount to harassment in relation to religion and had caused offence to Colleague A that was sufficient for him to contact his line manager and report what had occurred. The panel found that this was conduct which fell far below the standard expected of a registered nurse and amounted to misconduct.

Charge 9a

With regard to charge 9a, the panel had regard to the specific conduct set out in the charge, namely the twisting of a patient’s arm. It acknowledged the evidence of Colleague A during his oral evidence, that the restraint used by you was not improper. However, it had not been provided with any explanation as to whether the twisting of the patient’s arm was anything other than unreasonable, nor any justification as to why this was done. The panel therefore found that the description given, of the twisting of the arm of a patient, was not acceptable and clearly amounted to misconduct.

Charges 9b and 9c

The panel was of the view that the act of pointing a finger in a patient’s face, and swearing aggressively at a patient are aggressive acts. It took into account the fact that Patient A was a vulnerable patient who required a high level of care and dependency on the medical staff, and that such actions were likely to aggravate the patient. The panel found that Patient A was not treated with dignity and respect by doing this. It accordingly found that your actions in respect of charges 9b and 9c did fall far below the standards of a registered nurse and accordingly amounted to misconduct.

Charge 9d

The panel determined that saying to a colleague *“sometimes I shake a finger at Patient A it works to get him to calm down”* or words to that effect, was not sufficiently serious on its own to amount to misconduct.

Charge 10a

The panel had regard to charge 10a which states '*Approached Colleague A*'. It noted that this was a factual statement which had been found proved, as you had indeed approached Colleague A. However, the panel found that approaching a colleague did not in and of itself amount to misconduct, as this would be an ordinary expectation of a registered nurse. It therefore did not find that your actions in relation to charge 10a amounted to misconduct.

Charge 10c

In considering whether your actions in regard to charge 10c amounted to misconduct, the panel had regard to its finding that your comments concerning Colleague A citizenship had amounted to harassment in respect of his race, and had caused Colleague A offence. Accordingly, the panel was satisfied that your conduct did fall far below the standards expected of a registered nurse and amounted to misconduct.

Charges 11a, 11b and 11c

In considering whether your actions with regard to charges 11a, b and c amounted to misconduct, the panel had regard to its finding that your comments concerning Colleague A's religion did amount to harassment and had caused Colleague A offence. The panel was satisfied that your conduct did fall far below the standards expected of a registered nurse and accordingly amounted to misconduct.

Charge 11d

The panel had regard to charge 11d which states '*Came towards Colleague A*'. It noted that this was a factual statement which had been found proved, as you had indeed gone towards Colleague A. However, the panel found that there was nothing inherently wrong with coming towards a colleague and therefore did not find that your actions in relation to charge 11d amounted to misconduct.

Charge 11g

The panel had regard to charge 11g which states *'Said to Colleague A "I am just joking with you my friend." or words to that effect.'* The panel was of the view that this was a factual statement which it had found proved. It took into account that this was an explanation given by you at the time in response to an allegation, and did not find that this amounted to misconduct.

Charge 12

The panel was satisfied that your actions in respect of charges 3b and 10c did amount to harassment. It heard from colleague A how your actions had impacted upon him. Your actions in this regard were unwanted and unnecessary and the panel found accordingly that they did amount to harassment in relation to race. The panel was satisfied that a finding of harassment in and of itself was sufficiently serious so as to amount to misconduct and accordingly made a finding of misconduct in respect of charge 12.

Charge 13

The panel was satisfied that your actions in respect of charges 8, 11a, 11b and 11c did amount to harassment on the grounds of religion. It heard from colleague A how your actions had impacted upon him. Your actions in this regard were unwanted and unnecessary and the panel found accordingly that they did amount to harassment in relation to your religion. The panel was satisfied that a finding of harassment in and of itself was sufficiently serious so as to amount to misconduct and accordingly made a finding of misconduct.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, which states:

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

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and 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 act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or

determination show that his/her/ fitness to practise is impaired in the sense that S/He:

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

The panel found that limbs a, b and c of the test were engaged. It found that Patient A was put at risk and potentially caused physical and emotional harm as a result of your misconduct by twisting his harm, pointing your finger in Patient A's face and being verbally abusive towards him (it is not known whether Patient A was caused actual harm as he was unable to express this). Further, your misconduct had breached the fundamental tenets of the nursing profession by potentially causing harm to Patient A and harassing Colleague A on the basis of their protected characteristics, and therefore had brought the reputation of the nursing profession into disrepute.

Regarding insight, the panel considered that you had demonstrated some remorse for your actions, noting that you had apologised to Colleague A. However, it found your reflection to be very limited, addressing solely the impact of your actions on Colleague A and yourself and demonstrating some understanding of the potential impact of such discriminatory behaviour. However, the panel did not find the level of your reflection to be adequate. [PRIVATE]. Further there was no evidence before the panel to demonstrate a sufficient understanding of EDI issues to address what the panel found to be deep-seated attitudinal issues. Further, the panel had no evidence of insight or strengthening of

practice with regard to the restraint of Patient A. The panel noted that there was no evidence of insight regarding how your actions impacted upon the reputation of the nursing profession, or how the practice of a nurse, who held such racial and religious views, could impact upon patient care. The panel determined that, in the absence of adequate insight and strengthening of practice, there is a risk of repetition. It therefore determined that a finding of impairment is 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 was of the view that given the serious nature of the allegations in this case, and the fact there is no evidence of remediation of your misconduct, it would cause serious damage to the reputation of the nursing profession and its regulator, if you were permitted to practise without restriction at this stage. Accordingly, the panel determined that a finding of impairment on public interest grounds is also required.

Having regard to all of the above, the panel was satisfied that your 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 you off the register. The effect of this order is that the NMC register will show that you have 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

The panel was aware that in the Notice of Hearing, dated 4 December 2023, the NMC had advised you that it would seek the imposition of a strike off order, if it found your fitness to practise currently impaired. Mr Wilson submitted that a strike off sanction is the appropriate sanction in order to protect patient's members of the public, and to maintain confidence within the profession.

He submitted that your misconduct raises fundamental questions about your professionalism in both categories of concern, firstly, that of harassment in relation to race and religion, which goes against one of the most fundamental tenets of the Code, that is, to treat people as individuals and treat them with kindness, respect and compassion amongst others.

Secondly, Mr Wilson submitted that it goes without saying that patient care is fundamental to the nursing profession and that vulnerable patients, regardless of their difficulties, will be treated with respect and in accordance with their human rights. He submitted that public confidence in the profession would be significantly dented were you to be allowed to continue to practise, as previously identified to the panel in his submissions in relation to misconduct and impairment.

Mr Wilson referred the panel to SG SAN-3e in relation to striking off and FTP-3 on seriousness. He submitted that a strike off order is the only sanction in view of the seriousness of the facts found proved.

Mr Wilson submitted that the risk to Patient A is obvious and can easily be extrapolated to other patients as well as to colleagues in terms of the harassment. He submitted that safeguarding and protecting of people from harm, abuse or neglect is an integral part of the Code and it is identified in numerous different aspects of the guidance for very obvious and palpable reasons because it is a key principle embedded in the Code.

He submitted that the SG sets out some behaviours which are particularly serious as they suggest there may be a risk to people receiving care. He submitted that examples which are relevant in this case are 1) conduct or poor practise which indicates a dangerous attitude to the safety of people receiving care and 2) Discrimination and harassment. He submitted that in the circumstances of this case, two of the four categories that have been identified. He submitted that, considering sanctions in serious cases such as this, the guidance highlights the seriousness of abuse or neglect and discrimination.

Mr Wilson submitted that a significant relevant factor is your reflection on the concerns and your insight into them. He referred the panel to your reflective piece of December 2023 and submitted that it was a very insular reflection. He submitted that there is no reflection in relation to charge 9 and you have had time to add any further learning into your reflective piece.

Mr Wilson submitted that you displayed a pattern of misconduct over a period of time which puts patients at risk of suffering harm. He submitted that it is evident that you are unwilling to accept your obvious attitudinal failings.

In relation to mitigating features, Mr Wilson submitted that you have not had the opportunity to show any strengthening of practice in a clinical setting, however, he submitted that, at the very least, one might have expected to see equality training undertaken by you.

In relation to personal mitigation, he reminded the panel that the purpose of imposing a sanction is not to punish you, but it is for the purposes of protecting the public from any risk of harm, to maintain confidence within the profession and the NMC as its regulator, and to declare and uphold proper standards of conduct and behaviour.

He submitted that the appropriate sanction in this case is a strike off order.

Ms Doherty's submissions

Ms Doherty invited the panel to consider the imposition of a conditions of practice order. She submitted that a striking off order would be harsh and disproportionate at this stage and in these circumstances.

She reminded the panel of the general principle that the public interest must be at the forefront of any decision on sanction, but importantly, sanction must not go further than is necessary. Proportionality should be considered and this means striking a fair balance between your rights and the protection of the public.

Ms Doherty took the panel through all the available sanctions in ascending order and made submissions on whether they were appropriate and proportionate in your case. Ms Doherty submitted that a conditions of practice order would serve to ensure that you are accountable and undertake further development, thus maintaining public protection. It would also serve the public interest by maintaining confidence in the profession as the NMC will be seen to uphold and promote proper standards of practice.

In relation to mitigating features, Ms Doherty submitted that you made early admissions to some charges; you have shown insight and remorse in your reflective statement and that prior to your dismissal, you had 22 years of experience as a nurse. [PRIVATE].

Ms Doherty submitted that the issues identified could be dealt with by the following suggested conditions of practice, to include: undertaking Equality, Diversity and Inclusion (EDI) training; retraining in violence and aggression management; restraint of patients; supervision of a line manager in relation to the concerns identified and them being kept under review; and ...[PRIVATE].

Ms Doherty submitted that if the above suggested conditions could be put in place, it would address any concerns or risks identified in terms of public protection, protection of patients and the maintenance of confidence in the profession.

Ms Doherty submitted that you are currently not employed, but with these suggested conditions in place, it would be proportionate in the circumstances to allow you return to practice but in a way that would address any concerns regarding public protection.

In relation to your reflections, she submitted that you have made some efforts to reflect and whilst you acknowledge the pain you have caused yourself, you do acknowledge that your actions affected Colleague A and other colleagues that may have been party to the comments you made.

She submitted that you have engaged with this process throughout and offered an apology to Colleague A at the at the first point at which you were aware that you had upset them. She submitted that this paints a picture of someone that is willing to engage in further reflection and remorse, such as a conditions of practice order would allow you to do.

In relation to patient harm, she submitted that the charges as proved represent an isolated incident in terms of your 22 years of nursing practice. She submitted that it does not necessarily point to a deep-seated personality or attitudinal issue. She submitted that it is an aspect that can be subject to retraining.

Ms Doherty submitted that public confidence can be maintained and patient protection can be ensured through the imposition of a less severe sanction, namely, a conditions of practice order and invited the panel to consider imposing such an order.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the

SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Abuse of a position of trust in relation to a particularly vulnerable patient, as well as toward Colleague A who was junior to you
- Limited insight into your failings
- Patient A was put at risk of harm from your actions
- A pattern of misconduct over a period of time from September 2019 to May 2021 involving two distinct types: patient safety and harassment and discrimination
- Insufficient remorse and reflection
- A deep-seated attitudinal issue

The panel has borne in mind that you are entitled to defend yourself in relation to these charges and did not consider your lack of admission to some of them as an aggravating factor. The panel also considered the case of *Blakely v General Medical Council* [2019] EWHC 905 (Admin) in its approach to the issue of sanction, and that you need to understand the gravity of your misconduct and whether you are unlikely to repeat it.

The panel also took into account the following mitigating features:

- Your reflective piece produced in December 2023
- Some early admissions to some of the facts at the outset
- Your apology to Colleague A at an early stage
- No other regulatory proceedings or findings against you
- Some positive testimonials

The panel bore in mind that you have practised as a nurse for 22 years and engaged with the NMC and these proceedings.

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 involving two categories of seriousness, abuse and neglect of vulnerable patients; harassment on the basis of two protected characteristics race and religion on more than one occasion and the public protection issues identified, an order that does not restrict your 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 your 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 your 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 found proved. The misconduct identified, including the deep-seated attitudinal issue reflected in findings on race and religious grounds over a period of time in this case was not something that can be addressed with such an order, taking into account some of the harassment took place outside of your employment. The panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *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;*
- *...*
- *there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

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 your actions is fundamentally incompatible with you remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction. The harassment in relation to race and religion were not single instances and evidenced a deep-seated attitudinal problem. The limited amount of insight shown by you means that there remains a significant risk of the behaviour being repeated.

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?*

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you 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 your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves the panel has concluded that nothing short of this would be sufficient in this case.

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

That concludes this determination.

Submissions on interim order

The panel took account of the submissions made by Mr Wilson. He submitted that an interim suspension order is necessary for a period of 18 months.

Ms Doherty made no objection to the application.

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

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel specifically considered the impact on you of imposing a substantive order as weighed against the nexus between available evidence, the seriousness of the concerns and the resulting risk of repetition. The panel therefore imposed an interim suspension order. The panel also determined to not impose an interim suspension order would be inconsistent with its earlier findings.

The panel concluded, having considered the seriousness of the concerns and the necessity for an interim suspension order along with proportionate impact on you, that a period of 18 months was necessary, proportionate and appropriate.

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

This decision will be confirmed to you in writing.

That concludes this determination.