

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

**Substantive Hearing
Tuesday, 30 July – Friday, 9 August 2024
Friday, 15 November 2024**

Virtual Hearing

Name of Registrant: Ancy Sojan

NMC PIN 03A0957O

Part(s) of the register: Registered Nurse Adult - Sub Part 1
(Level 1) January 2003

Relevant Location: Gloucester

Type of case: Misconduct

Panel members: Pamela Johal (Chair, lay member)
Jillian Rashid (Registrant member)
Anne Rice (Lay member)

Legal Assessor: Charlotte Mitchell-Dunn (30 July – 9 August 2024)
Richard Ferry-Swainson (15 November 2024)

Hearings Coordinator: Jessie Miller (30 July – 9 August 2024)
Muminah Hussain (15 November 2024)

Nursing and Midwifery Council: Represented by Raj Joshi, Case Presenter

Mrs Sojan: Present and represented by Philip Dayle
instructed by the Royal College of Nursing (RCN)

Facts proved by admission: Charges 1c, 2a

Facts proved: 1a, 1b, 2b, 4a, 4b

Facts not proved: Charges 3a i), 3a ii), 3b

Fitness to practise: Impaired

Sanction:

Striking-off order

Interim order:

Interim suspension order (18 months)

Details of charge

That you a registered nurse:

- 1) On 8 February 2022 in relation to Colleague A used the following words or gist of words:
 - a) "Didn't like black people"
 - b) That "she was always late for work"
 - c) "I don't like working with her"

- 2) In June 2022 in relation to Colleague A used the following words or gist of words:
 - a) "I don't like working with her"
 - b) "Well people like her do my washing and my cleaning at home, they do my housework, I don't have to work with them they work for me."

- 3) On 29/30 June 2022 in relation to Colleague B, on one or more occasions:
 - a) You bullied and/or intimidated Colleague B in that you:
 - i. Inappropriately questioned Colleague B's ability to undertake a clinical task;
 - ii. Were rude, and/or confrontational towards colleague B;
 - b) Used word to the effect that the cannulation of a patient should be stopped.

- 4) In charge 1 and/or 2 used words which:
 - a) Referred to race;

- b) Demonstrated a hostility and/or discriminatory attitude to a racial group.

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

Decision and reasons on application to admit written statement as hearsay evidence

The panel heard an application made by Dr Joshi, on behalf of the Nursing and Midwifery Council (NMC), under Rule 31 to allow the written statement of Witness 7 into evidence. Witness 7 was not present at this hearing and, whilst the NMC had made reasonable efforts to ensure her attendance and despite having had contact with Witness 7, on or after 1 August 2024, there was a lack of engagement, and she did not attend the hearing at the notified time.

Mr Dayle, on your behalf, submitted that Witness 7's statement should not be admitted as hearsay as the information provided by this witness is unable to be examined and tested, therefore causing prejudice to your case. He went on to state that Witness 7 is the only witness in relation to charges 3a i), 3a ii) and 3b and if this statement is not admitted into evidence as hearsay, these charges should fall away.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel was of the view that it would be unfair in the circumstances to allow the hearsay evidence. It noted that if admitted, Witness 7's statement cannot be tested or cross-examined, therefore causing prejudice to your case. It considered the hearsay evidence to be the sole and decisive evidence in respect of charges 3a i), 3a ii) and 3b.

In these circumstances the panel refused the application.

Background

On 27 September 2022, the NMC received a referral from Genesis Nursing Agency (the Agency) regarding concerns that were raised by several colleagues that you were making racist comments and expressing racist opinions on more than one occasion in 2022, whilst working on the Neonatal Unit at Gloucester Royal Hospital (the Hospital) as an agency nurse.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Dayle who informed the panel that you made admissions in relation to charges 1c and 2a.

The panel therefore determined charges 1c and 2a proved by way of your admissions.

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 Dr Joshi on behalf of the NMC and by Mr Dayle, on your behalf.

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: Neonatal staff nurse employed by the Gloucestershire Royal NHS Trust (the Trust)
- Witness 2: Neonatal staff nurse employed by the Trust
- Witness 3: Neonatal nurse employed by the Trust
- Witness 4: Clinical Support Manager at the Trust
- Witness 5: Clinical Nurse Specialist at Coyle Personnel/Greencastle Solutions involved in dealing with concerns raised by other agencies
- Witness 6: Matron of neonatal unit at the Trust
- Witness 7: Paediatric Neonatal Registrar at the Trust

The panel also heard evidence from you under oath.

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

The panel then considered each of the disputed charges and for each charge, took into account relevant witness testimony, submissions and the evidence before it. It made the following findings:

Charge 1a

- 1) On 8 February 2022 in relation to Colleague A used the following words or gist of words:
 - a) “Didn’t like black people”

This charge is found proved.

The panel conducted a careful analysis of Witness 1’s statement and oral evidence. It noted that she was the only other person able to provide a direct account of the events on 8 February 2022. The panel was of the view that this evidence was credible and reliable and accepted Witness 1’s version of events.

The panel noted that the comments relating to Colleague A were shocking enough for Witness 1 to write them down in her personal diary at the relevant time and she also reported it to her manager on shift. Witness 1 was asked to report the incident in writing via email on 4 July 2022, albeit some months later. The panel did not have sight of Witness 1’s contemporaneous personal diary note.

When asked under oath what Witness 1 had experienced, she responded by stating that *‘Ancy said she didn’t like working with black people’*. When asked further, she stated that she was standing right next to you at the time and her reaction was shock as she had never heard anything said like this before. She went on to state that she did not respond to you at the time. When asked why she did not formally report this incident sooner, Witness 1 stated that she was unsure of what to do in this situation as she had never faced this before. Witness 1 was asked a similar question several times, to which she responded with *‘she definitely said “I don’t like working with black people”*’.

When examined under oath regarding this, you stated that you were able to recall all parts of this interaction, with the exception of saying that you do not like black people. You also

stated that you completed equality and diversity training on an annual basis as part of your mandatory training requirements.

The panel noted your personal reflection, dated 28 July 2022 in which you stated:

'...Due to my frustration, I told myself I don't like this black person [sic] Now I have reflected that I should communicate with my colleague with respect and compassion. I really felt guilty myself...'

The panel noted that you stated that you were under pressure financially, alone and staying away from your home and urgently required to provide a statement to the Agency. However, the panel did not accept that this was a reason for you to make an admission to the matters if they had not occurred as alleged.

The panel determined that on the balance of probabilities, it is more likely than not that you used the following words or gist of words, *'didn't like black people'*.

Charge 1b

- 1) On 8 February 2022 in relation to Colleague A used the following words or gist of words:
 - b) That "she was always late for work"

This charge is found proved.

The panel noted Witness 1's statement in which she stated:

'...She told me she had gone through Colleague A's [sic] paperwork on the clipboards as she is always late with things...'

'She said that Colleague A [sic] was always late for work, late feeding babies and late for medications...'

The panel further noted that Witness 1 reiterated this in her oral evidence.

During cross-examination, you stated that Colleague A would often leave work behind such as IV fluids and patient care. When asked if the above statement, *'always late for work, late feeding babies and late for medications'*, was true, you responded by agreeing with the statement.

The panel determined that on the balance of probabilities, it is more likely than not that you used the following words or gist of words, *'she was always late for work'*.

Charge 2b

- 2) In June 2022 in relation to Colleague A used the following words or gist of words:
 - b) "Well people like her do my washing and my cleaning at home, they do my housework, I don't have to work with them they work for me."

This charge is found proved.

The panel conducted a careful analysis of Witness 2's statement and oral evidence. It noted that she was the only other person able to provide a direct account of the events on an unspecified date in June 2022. The panel was of the view that this evidence was credible and reliable and accepted Witness 2's version of events.

The panel heard Witness 2's oral evidence and had sight of her statement in which she stated:

'I greeted her with 'alright?' and she replied, 'I don't like working with her', referring to Colleague A. I asked why and she said, "well people like her do my washing and my cleaning at home, they do my housework, I don't have to work with them they work for me". my immediate response was to say 'and here we are all changing the same baby's nappies'.

I was shocked by her comments and told her that on this unit we don't hold prejudices of this nature and that I thought that her comments were unkind and didn't align with my own personal views or anyone else's views I know that works on our unit.'

'I said that she should think about how she would feel should someone hold these same views regarding her, since she too is from an ethnic background, she just shrugged her shoulders and changed the subject...'

In Witness 2's oral evidence, when asked about this incident, she confirmed that Colleague A was Black and her comments about Colleague A related to her race and did not relate to differences in their personalities. Witness 2 stated that you and her were on friendly terms prior to the incident, but as a result of this, she said that *'the atmosphere between Ancy and myself at the time became very awkward'*. She also stated that this started suddenly and there was a complete switch in the conversation and that she had never *'come across a comment like that'*. The panel also had sight of an email dated 1 July 2022, in which she reported this incident and her concerns to Witness 6.

When asked under oath what you recalled about this conversation, you stated that the conversation did not happen at this time and Witness 2 has confused the details with an earlier conversation and taken it out of context.

The panel noted that you referred to confusion caused by Witness 3 in this case, accusing you of saying words to the effect of *'these kinds of people back in my home country, they will be wiping my backside'*. You noted that this was clearly not correct and submitted that similar confusion could have occurred in relation to this allegation on the basis that there was clear gossiping in the unit. The panel considered that the evidence of Witness 3 was hearsay and the wording had been misrepresented through multiple discussions about this issue on the unit. However, this did not detract from the direct evidence of Witness 2 who was clear and compelling about what she had heard. Further, Witness 2 provided an explanation as to why this confusion may have occurred in that she explained that upon hearing the words, *'Well people like her do my washing and my cleaning at home, they do my housework, I don't have to work with them they work for me'*, she challenged you and made reference to everyone changing the same babies nappies. Witness 2 explained this may have been why there was reference to *'wiping backsides'*. The panel considered the possibility of confusion through gossiping, but noted the direct evidence of Witness 2 and determined that the conversation took place as alleged.

The panel was of the view that these comments took place at the material time and were significant enough for Witness 2 to report them to a Band 7 colleague. In addition, when asked about these comments, Witness 3 stated that she believed that the two people (Witness 1 and 2) were telling the truth.

The panel determined that on the balance of probabilities, it is more likely than not that you used the following words or gist of words, *'Well people like her do my washing and my cleaning at home, they do my housework, I don't have to work with them they work for me'*.

Charge 3a i), 3a ii) and 3b

- 3) On 29/30 June 2022 in relation to Colleague B, on one or more occasions:

- a) You bullied and/or intimidated Colleague B in that you:
 - i. Inappropriately questioned Colleague B's ability to undertake a clinical task;
 - ii. Were rude, and/or confrontational towards colleague B;
- b) Used word to the effect that the cannulation of a patient should be stopped.

These charges are found NOT proved.

The panel refused the application to admit Witness 6's statement into evidence as hearsay. It noted that this statement was the evidence that the NMC relied upon to substantiate these charges. In light of the refusal to admit this evidence, the panel concluded that there is no evidence to support these allegations and therefore finds these charges not proved.

Charge 4a and 4b

- 4) In charge 1 and/or 2 used words which:
 - a) Referred to race;
 - b) Demonstrated a hostility and/or discriminatory attitude to a racial group.

These charges are found proved.

The panel noted Witness 3's oral testimony and written statement, in which she stated:

'...My background is I am a black woman of Ugandan decent...'

'This upset me as that is not nice to hear, we are a very diverse unit, and we can not have people working with us when they hold that kind of view and feel that it is okay to say it openly to people.'

The panel also noted Witness 1's statement in which she noted:

'What Ancy said was racism, I had never heard anything being said like that in the past and I was shocked...'

The panel determined that given the finding of fact in charges 1a, 1b and 2b, words such as *'didn't like working with black people'* and *'Well people like her do my washing and my cleaning at home, they do my housework, I don't have to work with them they work for me'* and on the basis of your own reflective statement which states *'...Due to my frustration, I told myself I don't like this black person...'*, you have demonstrated clear hostility and discriminatory views toward a racial group. The panel determined that your language and attitude demonstrated that you have a view that there is a racial hierarchy. The panel found this to be highly discriminatory.

The panel determined that on the balance of probabilities, it is more likely than not that the language you used in charges 1 and/or 2 *'referred to race'* and *'demonstrated a hostility and/or discriminatory attitude to a racial group'*.

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

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

Dr Joshi identified the specific, relevant standards where your actions amounted to misconduct. He went on to submit that your actions suggest a deep-seated attitudinal issue and noted that misconduct of a similar nature has been repeated on several occasions. He noted that such discrimination and racism should not be tolerated, and such behaviours can have a negative impact on colleagues and public protection and confidence in healthcare. Dr Joshi stated that your actions had effects upon colleagues, some of which were in the beginning of their nursing career. He went on to note your reflection, dated 28 July 2022, in which you demonstrated a half-hearted apology.

Mr Dayle submitted that, in light of the findings on fact, that your conduct amounted to misconduct and conceded that your fitness to practice is impaired. In terms of mitigation, he directed the panel to your reflective piece, dated August 2024, as well as noting other character testimonials. He concluded by stating that there is no resistance to a finding of misconduct and impairment of practice at this stage.

Submissions on impairment

Dr Joshi moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to various NMC Guidance, including DMA-1, '*Impairment*'.

Dr Joshi submitted that, as set out in the above guidance, you are unable to practice safely and professionally as you have demonstrated repeat behaviours amounting to misconduct on multiple occasions. He submitted that, despite your annual equality and diversity training and own personal experiences of prejudice, you displayed discriminatory attitudes of racism within the workplace. He concluded by submitting that these actions should constitute a finding of impairment.

As set out above, Mr Dayle conceded that your fitness to practice is currently impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments and the test set out in The Fifth Shipman Report by Dame Janet Smith. The cases included: *Roylance v General Medical Council* (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), *Cohen v General Medical Council* [2008] EWHC 581 (Admin), *Cheatle v General Medical Council* [2009] EWHC 645 (Admin), *Zygmunt v General Medical Council* [2008] EWHC 2643 (Admin) and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Decision and reasons on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council* (No. 2) [2000] 1 AC 311 which defines misconduct as a '*word of general effect*,

involving some act or omission which falls short of what would be proper in the circumstances.'

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

1.1 treat people with kindness, respect and compassion

20 Uphold the reputation of your profession at all times

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

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

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

20.7 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 your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

The panel bore in mind the written statements and oral evidence of several witnesses, recounting their experience and distress that your actions have caused them. The panel noted that you are an experienced nurse with over 30 years of experience and as a result of this, should be a role model for colleagues in the infancy of their nursing careers. Due to your conduct, several witnesses reported that there was a shift in the atmosphere within the unit, causing distress and discomfort among colleagues. The comments that you had made were prejudicial and discriminatory, noting Witness 2's statement in which she stated:

'My own feelings were hurt, I felt we needed to show that in terms of management that we stand by our staff and that we condone that behaviour or views.'

The panel had sight of NMC Guidance, FTP-2a *'Misconduct'*. When considering this, along with the findings of fact in the above charges, the panel determined your actions did fall seriously short of the conduct and standards expected of a nurse and amount to serious 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, updated on 27 March 2023, which states:

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

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

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

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

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

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

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

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

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

The panel bore in mind the NMC Guidance, FTP-3 '*How we determine seriousness*' and DMA-1, '*Impairment*'. It noted FTP-3's guidance which states:

'When a professional on the register engages in these types of behaviours, the possible consequences are far-reaching. Members of the public may experience less favourable treatment, or they may feel reluctant to access health and care services in the first place. We know that experiences of discrimination can have a profound effect on those who experience it and that fair treatment of staff is linked to better care for people.'

When taking this guidance into consideration, the panel reflected on Witness 3's statement, in which she stated:

'I felt so angry I just left the room, I couldn't understand how she was still able to be working after causing so much upset.'

'...I considered not saying anything, but I would be more upset if I didn't say anything. It was affecting everyone, my other Indian colleagues did not hold the same views, I am friendly with everyone on the unit'

The panel also had sight of Witness 3's email, dated 24 June 2022, reporting her frustrations to her manager:

'I wanted to confront Ancy that day on the 17th June when she came on duty but I was too overwhelmed with anger, I had to go out of the room quickly and talk to someone... Honestly speaking, I would not want to work with some one with a racist view.'

The panel also note your reflective piece dated August 2024, in which you stated:

'I feel deeply sorry for my colleagues from different ethnic groups who may have heard accusations that I said such words and am deeply hurt by it. I understand that they would have been shocked and would have found it hard to trust me, impacting the quality of patient care.'

'Furthermore, if a patient heard a nurse make any discriminatory remark, they would likely feel hurt and upset, damaging their trust in the healthcare provider. They might no longer trust the provider to care for them properly, they may feel unsafe and be worried about their care, thinking that they will not be treated equally, which could affect them.'

The panel finds that colleagues were emotionally harmed as a result of your misconduct. Further, the panel noted the potential risk of harm to patients as a result of your discriminatory conduct. This misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was of the view that there is a potential impact on

patients and their families if colleagues are distressed and unable to focus on patient care. In addition, patients may be reluctant to access services if they believed that nurses held racist or discriminatory views.

The panel are of the view that your insight remains extremely limited. Whilst it acknowledges your reflection from August 2024 and recognises that you have offered an apology for your racist comments, it noted that you are yet to demonstrate a real insight and understanding of these issues and the impact of your words upon your colleagues.

The panel carefully considered the evidence before it in determining whether or not you has taken steps to strengthen your practice. It noted that in your most recent reflective statement, you stated:

‘Furthermore, I have read several articles published on the RCN website, including: "Understanding Nurses' Responsibilities in Promoting Equality and Diversity" by David Peter Stonehouse, "Managing Societies' Differences and Diversity" by Joseph Cortis, and "Working Effectively in a Culturally Diverse Team" by Mandy Day-Calder, along with reinforcing my understanding of the NMC Code of Conduct.’

‘Furthermore, the incident has taught me to improve my communication style and ensure I tailor my communication according to the needs of the patients and colleagues. I am enrolling on CPD module “Promoting effective communication skills in nursing practice” by RCNiLearning and am fully open to completing any other courses that will better my nursing practice.’

Whilst the panel acknowledged that you have sought to gain awareness of your actions and further your personal learning and development, it was concerned that you had already completed annual Equality and Diversity training and had not implemented

learning from this. It is of the view that the only way in which this serious misconduct can be in any way remedied is through a true understanding of the gravity of the implications of your actions and words. The panel were not satisfied that you had appreciated the seriousness of your actions. It was also of the view that you have not demonstrated sufficient insight into the misconduct.

As a result of the panels views in relation to insight and remediation, it determined that there remains a real risk of repetition and therefore a risk of harm to patients and colleagues. The panel therefore decided 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 determined that a finding of impairment on public interest grounds is required as a reasonable and well-informed member of the public would be alarmed should a finding not be made in light of your discriminatory words and conduct, as well as undermining the NMC as a regulator.

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

Dr Joshi submitted that the aggravating features are:

- A pattern of misconduct over a period of time
- You were in a position of Trust both to the public and your colleagues
- A lack of insight into the failings

Dr Joshi submitted that you did not appreciate nor understand the harm that was caused, nor the impact that the comments that were made were going to have on people. He submitted that there seems to have been a casual or perfunctory attitude displayed towards your colleagues.

Dr Joshi submitted that the NMC's sanction bid in this case is a strike-off order. He submitted that this is appropriate because of the behaviours and charges found proved in relation to them. Dr Joshi submitted that there is no other option.

Dr Joshi submitted that no order or a caution order would be wholly inadequate. He submitted that a conditions of practice order would not be appropriate as there are no conditions that would adequately address the conduct alleged, given that the concerns are not clinical. Dr Joshi further submitted that a suspension order would perhaps send out a particular message, but the comments relating to race within the workplace can have a detrimental impact on individuals and whole departments, and that colleagues were discussing this on the unit.

Dr Joshi concluded that the only appropriate sanction is a striking-off order, and this would be a recognition of a zero tolerance to remarks in the workplace relating to race, which are discriminatory, derogatory and amount to a racial slur.

Mr Dayle submitted that the mitigating features in this case are:

- This is your first referral to a regulatory body

Mr Dayle informed the panel of your work history as a registered nurse. He submitted that there are testimonials that you have worked and have accolades in environments that are diverse and inclusive. Mr Dayle submitted that you have worked as a nurse in three countries in the span of 20 years, and you do not have a deep-seated attitudinal problem.

Mr Dayle asked for a lesser sanction than that of a striking-off order.

The panel heard and accepted advice from the legal assessor.

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:

- A pattern of misconduct over a period of time.
- Abuse of a position of trust, in that you were an experienced neo-natal nurse working with junior nurses who looked up to you for guidance.

- Lack of insight into failings, in that you undertook annual equality, diversity and inclusion training which was not put into practice. You have also not produced a detailed reflective piece regarding your failings and have not demonstrated remorse.

The panel also took into account the following mitigating features:

- You made admissions into some of the less serious allegations.
- There have been positive testimonials sent to the NMC on your behalf.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, an order that does not restrict 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. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on 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 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;*
- *In cases where the only issue relates to the nurse or midwife's health, 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 offensive comments you made to your work colleagues suggested a long-standing and deeply ingrained attitude towards people you described as 'black people', and that this was discriminatory and deeply concerning. Such attitudes are not compatible with the profession of nursing and being a registered nurse. What was equally concerning was your almost complete lack of insight into your behaviour. You have demonstrated virtually no insight into how offensive your comments were and the impact of those comments upon your colleagues, the public and the profession as a whole. Despite having over three months since the decision on the facts, misconduct and impairment, you have provided no further reflection or insight into your conduct. Consequently, the panel considered that you pose a significant risk of repeating such behaviour. The panel was of the view that such harmful deep-seated attitudinal problems are fundamentally incompatible with your remaining on the register.

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

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

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. The panel determined that the racial discrimination in this case is not easy to address, particularly given your lack of insight, and demonstrates a deep-seated attitudinal issue.

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 herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Dr Joshi. He submitted that an 18 month interim suspension order would be appropriate to deal with any appeals should they be made.

Mr Dayle did not object to this.

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 therefore imposed an interim suspension order for a period of 18 months in order to allow sufficient time for an appeal in the event that one is made.

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

That concludes this determination.