Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Thursday 27 July 2023 - Friday 4 August 2023
Monday 12 - Friday 16 February 2024
Monday 21 - Friday 25 & Monday 28 October 2024

Virtual Hearing

Name of Registrant:	Caroline Stockley
NMC PIN	84C0409E
Part(s) of the register:	Registered Nurse – sub part 1 Learning Disabilities Nurse (level 1) - July 1987
Relevant location:	Conwy
Type of case:	Misconduct
Panel members:	Anthony Mole (Chair, lay member) Marian Robertson (Registrant member) Colin Sturgeon (Lay member)
Legal Assessor:	Karen Rea (27 July - 4 August 2023 & 12 - 16 February 2024) Jayne Salt (21 - 28 October 2024)
Hearings Coordinator:	Chantel Akintunde (27 July - 4 August 2023) Sherica Dosunmu (12 - 16 February & 21 - 28 October 2024)
Nursing and Midwifery Council:	Represented by Tom Lambert, Case Presenter (27 July - 4 August 2023 & 12 - 16 February 2024) Eilish Lindsay (21 - 28 October 2024)
Miss Stockley:	Present and represented by Lucy Chapman of counsel, instructed by the Royal College of Nursing (RCN)

	Not present but represented by Lucy Chapman on 15 – 16 February 2024)
Facts proved by admission:	Charges 1a), 1b), 1c), 1d), 2a), 2c), 2d), 4, 5, 6
Facts proved:	Charges 2b), 3a), 3b)
Facts not proved:	N/A
Fitness to practise:	**Impaired**
Sanction:	**Suspension order (12 months) – with a review**
Interim order:	**Interim suspension order (18 months)**

Details of charge as amended

That you, a registered nurse:

1) *On 10 October 2020, in relation to Patient A:*
   a) *Did not escalate concerns to a GP*
   b) *Did not obtain patient consent*
   c) *Manually evacuated Patient A's bowels that was not clinically justified*
   d) *Did not accurately record details of the manual evacuation of Patient A's bowels*

2) *On or before 13 October 2020 said to Colleague A:*
   a) *On first meeting "Hi, Filipino?", or words to that effect;*
   b) *"You don't complain because all Filipinos are submissive, all Asian are submissive, that's what you are submissive", or words to that effect;*
   c) *"You are black" or words to that effect;*
   d) *"No you are black and black lives matter" or words to that effect;*
   e) *"You are yellow then", or words to that effect.*

3) *Your conduct at paragraph 2 was:*
   a) *racially motivated*
   b) *Discriminatory*

4) *On 16 August 2020 shouted at and/or told Patient B "shut up and get out", or words to that effect.*

5) *On or before 28 August 2020 told Patient C to "shut up" or words to that effect.*

6) *On or before 22 September 2020 did not respond to an emergency bell.*

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

Decision and reasons on application to amend the charge

At the outset of the hearing, after the charges were read into record, the panel heard an application made by Mr Lambert, on behalf of the NMC, to amend the wording of charges 2e) and 4. He submitted that the proposed amendments are to correct typographical errors in the drafting of these charges.

Proposed amendments:

2) *On or before 13 October 2020 said to Colleague A:*

   …

   e) *"You are yellow then", or word**s** to that effect.*

4) *On 16 August 2020 shouted at **and/or told** Patient B "shut up and get out", or words to that effect.*

Ms Chapman submitted that she had no objections to the proposed amendments.

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.

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

Ms Chapman made an application requesting that this case be held partly in private on the basis that proper exploration of your case involves reference to [PRIVATE]. The

application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Lambert indicated that he had no objections to this application.

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

The panel determined to go into private session whenever any reference to [PRIVATE], is raised in order to maintain your own and Witness 4's privacy.

Decision and reasons on application to admit hearsay evidence of Witness 1

The panel heard an application made by Mr Lambert under Rule 31 to allow the written statements of Witness 1, along with her related exhibits, into evidence.

Mr Lambert referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin), specifically paragraphs 45 and 56 of the judgment.

Mr Lambert submitted that it is the NMC's position that the evidence of Witness 1 is both fair and relevant in this case. He explained that the evidence of Witness 1 consists of an NMC witness statement dated 2 November 2021, an NMC supplementary witness statement dated 30 January 2022, a police witness statement dated 26 November 2020, and a local statement dated 11 October 2020.

Mr Lambert submitted that the matter of relevance in respect of Witness 1's evidence is not in dispute, but rather whether or not it is fair to include in this case. He submitted that Witness 1's evidence speaks to charges 1c) and 1d) as she is the only eyewitness to the alleged manual evacuation on Patient A. However, he submitted that Witness 1's evidence

is not sole and decisive as Witness 2 and Witness 3's evidence also goes to these charges.

Mr Lambert submitted that Witness 1's allegations formed the basis of the initial referral of this case to the NMC, which stemmed from an email she sent to Witness 2 raising her concerns, which then led to the initiation of a formal investigation by Leonard Cheshire and the matter being referred to the police. He submitted that you were interviewed by the police and gave your own account of the incident concerning the alleged manual evacuation.

Mr Lambert referred the panel to the case of *El Karout v Nursing and Midwifery Council* [2020] EWHC 3079 (QB), specifically paragraph 73 of the judgment, and submitted that the panel must consider not only fairness to the registrant when deciding whether to admit evidence, but weigh this up against fairness to the NMC and the wider public.

Mr Lambert acknowledged that Witness 1's absence during these proceedings means that her evidence cannot be tested under cross-examination. However, he submitted that as you are present in this hearing, you can give your own account of the matter set out in charges 1c) and 1d), which the panel can then weigh up against Witness 1's accounts, and her reliability as a credible witness, when deciding whether the facts are proved. Mr Lambert therefore submitted that any potential unfairness can be resolved by these means.

Mr Lambert accepted that Witness 1 was reluctant to bring forward the allegations set out under charge 1 against you. He referred to Witness 1's police statement where she states it *"…saddens me deeply to have to make this statement surrounding a colleague…"*, and her supplementary statement where she states *"[Witness 2] insisted I…put my concern in writing. I did not want to do this or get involved with the police"*. Mr Lambert submitted that although Witness 1 is unwilling to engage in these proceedings, the statements made by her support the NMC's position that there is no evidence that the allegations she raised

are in any way fabricated. Rather, he submitted that it shows Witness 1 had genuine concerns that she felt the need to raise at the time.

Mr Lambert referred the panel to the email evidence which demonstrates attempts made by the NMC to contact Witness 1 and secure her engagement in these proceedings, but to no avail. He submitted that Witness 1 to date has not responded to the NMC's correspondence with regard to this hearing, but noted that in her supplementary witness statement, Witness 1 clearly stated *"I do not want to be involved with the NMC process and I am not willing to attend a hearing. I have retired from being a [registered nurse]."*

In light of this, Mr Lambert submitted that it is the NMC's position that Witness 1 has provided good reason for her non-attendance, and that reasonable attempts have been made by the NMC to secure her engagement at this hearing.

Mr Lambert submitted that, despite Witness 1's absence, Witness 1 confirmed in her signed witness statement, supplementary statement, and it is noted in her police statement, that the account she gives is true to the best of her knowledge and belief, which he states adds to her credibility.

Mr Lambert therefore submitted that it is both relevant and fair to admit the evidence of Witness 1 in this case, and invited the panel to take this view.

Ms Chapman accepted that whilst the evidence of Witness 1 is relevant to charges 1c) and 1d), it would not be fair to admit such evidence in this case.

Ms Chapman submitted that the NMC's case in respect of charges 1c) and 1d) depends on the entirety of the evidence of Witness 1, who is not in attendance at this hearing. In terms of fairness, she submitted that to admit such evidence will not enable you to have a fair trial during these proceedings as you will have no opportunity to cross-examine Witness 1 in order to test her evidence.

Ms Chapman also referred the panel to the case of *Thorneycroft* [2014], outlining the principles set out that the panel must consider when deciding whether to admit the evidence of Witness 1. She submitted that your position in respect of these principles when applied to your case is as follows:

- the evidence of Witness 1 is neither reliable, nor is there any means of testing its reliability in her absence;
- there are a number of references to Witness 1's evidence in the evidence of Witness 2 and Witness 3. Their evidence at certain points 'relies' on Witness 1's evidence and, as such, it would be unfair to allow their evidence in its entirety;
- Witness 1's evidence is the sole and decisive evidence in support of charges 1c) and 1d) (the latter of which is dependent on the former);
- Witness 1's account of the alleged incident is heavily disputed by you;
- there are reasons to believe that Witness 1 may not be telling the truth entirely in her accounts, making her an unreliable witness;
- there is no good reason for Witness 1's non-attendance at this hearing;
- the NMC has not taken all reasonable steps to secure Witness 1's attendance; and
- it appears that no notice was given that Witness 1's statements were intended to be read prior to the hearing.

Ms Chapman submitted that Witness 1 indicated in her NMC supplementary statement that she did not, and never wanted to be, involved in these proceedings (as accepted by Mr Lambert in his submissions) despite her initially being heavily involved around the time the referral was made. She submitted that you believe this is because Witness 1, after reflecting upon the situation, realised that she made have been wrong in her concerns regarding the alleged manual evacuation on Patient A. Ms Chapman submitted that it is clear Witness 1 does not want to be questioned by either you or the panel on her account. In any event, she submitted that Witness 1 has not provided good reason for her non-attendance.

Ms Chapman submitted that the NMC were clearly aware that Witness 1 had no intention on further participating in these proceedings since her supplementary statement dated 30 January 2022 where she states, *"I do not want to be involved with the NMC process and I am not willing to attend a hearing".* Whilst it is acknowledged that the NMC have sent several emails to Witness 1, she submitted there is no other evidence such as telephone records between the NMC and Witness 1 to demonstrate further efforts to contact. Ms Chapman also noted that these emails to Witness 1 were only sent by the NMC within the last month, two of which were sent within the dates this hearing has been scheduled. She submitted that, since January 2022, there is no evidence that any attempts were made to contact Witness 1 or secure her attendance prior to July 2023.

Ms Chapman submitted she, on your behalf, only received a copy of the hearsay bundle for Witness 1 the evening prior to the start of this hearing, and that she is instructed that prior to this, the RCN were not informed by the NMC that Witness 1 would not be present at this hearing. She submitted it was also unclear as to which documentary evidence the NMC intended to seek admission into evidence as part of its hearsay application.

With regard to the reliability of Witness 1's evidence, Ms Chapman went through a timeline of the documentary evidence available in this case that relates to the allegations in charges 1c) and 1d), and then proceeded to go through each piece of documentary evidence in detail, pointing out the inconsistencies in Witness 1's accounts. She also criticised the supporting evidence of Witness 2 and Witness 3, given that neither of them witnessed the alleged incident and are wholly reliant on the evidence of Witness 1.

Ms Chapman also submitted that the panel should take account of the reasons given by the police in its decision that no further action was to be taken against you in respect of these charges.

In light of her submissions, Ms Chapman submitted that Witness 1's evidence should be excluded from this case in its entirety due to its unreliability, inability to be tested and

unfairness to you, and invited the panel to take this view. However, if the panel do decide to admit any part of Witness 1's evidence, she submitted that the unreliability of Witness 1's evidence should be made clear in its consideration of the facts due to the inconsistencies in her various accounts.

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.

In reaching its decision, the panel took into account the submissions from both Mr Lambert and Ms Chapman, along with the documentary evidence made available to it.

The panel first considered whether Witness 1's evidence is the sole and decisive evidence to any of the charges. It noted that Witness 1's evidence directly speaks to charges 1c) and 1d). This is because she was the only person present in the room with you when the alleged manual evacuation of Patient A's bowels took place and therefore, as the NMC submitted, the only eyewitness to this incident. As you have denied charges 1c) and 1d), the panel will need to weigh up your account against Witness 1's in determining whether the facts are found proved. However, it bore in mind that it is for the NMC, not you, to provide cogent evidence and prove its case in respect of these two charges. The panel also noted that the evidence of Witness 2 is based on what she was told by Witness 1, and on the findings of her investigation into this matter at the local level. Furthermore, Witness 3's evidence mainly consists of her opinion on what is considered best practice when it comes to the necessity of performing manual evacuation procedures on patients. The panel therefore determined that Witness 1's evidence is in fact the sole and decisive evidence in respect of charges 1c) and 1d).

The panel then went onto consider the reliability of Witness 1's evidence and took note of the various accounts she has provided: a local statement outlining her concerns via email to Witness 2 dated 11 October 2020; the police witness statement she completed on 26

November 2020; the NMC witness statement dated 2 November 2021; and the NMC supplementary witness statement dated 30 January 2022. In its careful examination of all these accounts, and the remaining documentary evidence the NMC seeks to rely on in its case, the panel found significant inconsistencies on several occasions in respect of the detail Witness 1 provides to different people at different times concerning the incident. For example, in Witness 2's local investigation notes following an interview she conducted with Witness 1 on 9 March 2021, it states:

> *'…[Witness1] states that she then helped Caroline to roll [Patient A] which he was very upset about. Caroline then reportedly began to "dig around". [Witness 1] reports that she was not aware what had happened until she saw that Caroline had "dug" his poo out…'*

and then states later on within the notes:

> *'[Witness1] confirmed that she was unable to see what was happening as she was supporting [Patient A] from the other side of the bed and was level with his head…'*

This suggests that Witness 1 potentially may not have witnessed you performing the manual evacuation as alleged, which the panel deemed essential in determining whether or not on a balance of probabilities this charge is proved.

The panel noted other inconsistencies within Witness 1's overall account, and in particular, the significant changes she made to the NMC, highlighting alterations to her police statement.

As Witness 1 is not present at this hearing in order to attest to her evidence, the panel found that it is unable to determine the reason for this inconsistency in the documentary evidence the NMC seeks to rely on. Furthermore, Witness 1's absence means that the panel do not have the benefit of her evidence being tested under cross-examination and/or questioned. Therefore, for these reasons, in the panel's judgment, at this stage of

the proceedings and without Witness 1's evidence being able to be significantly probed by cross-examination and questions from the panel, Witness 1's evidence seems to be unreliable and inconsistent. Thus, the panel concluded that it would be unfair to admit her evidence into this case.

Moreover, the panel recognised that, whilst the evidence of Witness 2 and Witness 3 is capable of being cross-examined as the NMC have secured their attendance for the purpose of this hearing, it considered that their evidence stems significantly from the evidence of Witness 1, which has now been determined upon.

In conclusion, the panel determined that that a fair hearing would be unable to take place should the evidence of Witness 1 be admitted.

In these circumstances, for the reasons set out, the panel determined that this application shall be refused and that the evidence of Witness 1, and her related exhibits, is inadmissible and thus excluded.

Decision and reasons on application to exclude evidence of Witness 3

The panel heard an application made by Ms Chapman under Rule 31 to exclude the written statement of Witness 3, along with her related exhibits, from evidence.

Ms Chapman submitted that witnesses who are called to give evidence to the facts cannot express their opinion on a matter. The exceptions to this are: i) the witness is deemed an expert witness in the relevant field; or ii) the witness when describing the facts expresses an opinion on the matter within the competency of a lay person.

Ms Chapman submitted that it would be unfair to you should Witness 3's evidence be admitted in this case. She submitted that although Witness 3's evidence is relevant to charges 1c) and 1d) in respect of what a manual evacuation is, it is not relevant to whether or not such an alleged procedure actually occurred in this matter. Ms Chapman submitted

that Witness 3 is unable to attest to the facts of this case, and is unable to rely on the evidence of Witness 1 who has now been excluded from this case.

Ms Chapman referred the panel to the case of *Multiplex Constructions (UK) Ltd vs Cleveland Bridge Ltd* [2008] EWHC 2220 (TCC), specifically paragraph 672 of its judgment. She submitted that it is 'not admissible' for the NMC to rely on a witness with no connection to the facts or to seek their opinion on the facts. Rather, an expert witness should have been sought as per part 35 of the Civil Procedure Rules 1998.

Ms Chapman submitted that, in any event, it is your position that Witness 3's evidence does not meet the requirements under Rule 31 of relevance and fairness.

Ms Chapman submitted that during the NMC's hearsay application on Witness 1's evidence, concerns were raised regarding Witness 3's impartiality and fairness, as well as the documentation Witness 3 was provided with when writing her NMC witness statement.

Ms Chapman submitted that Witness 3 was only provided a copy of Witness 1's earliest account of the incident outlined in charges 1c) and 1d) (which was the email Witness 1 sent to Witness 2 dated 11 October 2020) but not her subsequent accounts or your own account, despite these being available at the time. Ms Chapman pointed out that:

- Witness 1 in her email dated 11 October 2020 stated that a manual evacuation took place, but in other statements says that she did not actually see anything; and
- In your interview conducted by Witness 2 on 9 February 2021, you explained that you only performed an external massage of the patient's anal area with no digital penetration.

Ms Chapman submitted that Witness 3 was not asked her opinion on the above, but rather made various assumptions in her witness statement based either only on part of Witness 1's evidence or what the NMC had asked of her.

Ms Chapman submitted that, whilst the NMC may argue that such information can be put to Witness 3 during her evidence-in-chief and under cross-examination, this would not be appropriate as the purpose of oral evidence is to clarify or elaborate on a witness's statement. She submitted that putting this to Witness 3 after she has already provided a written statement would effectively be allowing her to make a new oral statement during the hearing, which is unfair to you.

Ms Chapman then proceeded to take the panel through specific points within Witness 3's statement where:

- she admits to not having seen all the relevant documents relating to the incident;
- it appears that she is being asked questions based on information she has not seen;
- she has made reference to a document (BCUHB Bowel Care protocol) which has not been made available and exhibited in this case; and
- she has reached conclusions purely based on Witness 1's initial account.

Ms Chapman submitted that as the evidence of Witness 1 has now been excluded, upon which Witness 2 was asked to formulate her opinion, Witness 2 will have to disregard all the evidence of Witness 1 that she has been provided with which, in the circumstances, is impossible.

Ms Chapman submitted that you believe the reason why the NMC has sought Witness 3 as a witness in this case is because the NMC wanted to find someone within the workplace capable of commenting on the matter concerning manual evacuation. She submitted that you state this is because there was neither a policy in place on the matter, nor an individual with any professional expertise on the matter available. She further submitted that you believe Witness 3 may not be entirely independent, due to her connections with Leonard Cheshire and some of the other NMC witnesses in this case.

Ms Chapman referred the panel to the NMC guidance titled *'Independent experts – ref INV-5'*. She submitted that the guidance suggests that the NMC ought to have sought and instructed an independent expert in its case, particularly if it had concerns about the outcome of the local investigation/disciplinary proceedings conducted by Leonard Cheshire into this matter, or the ability of its witnesses of fact to comment on best practice in respect of manual evacuation.

In light of her submissions, Ms Chapman therefore invited the panel to exclude the evidence of Witness 3 in this case.

Mr Lambert referred the panel to the NMC guidance titled '*Evidence ref DMA-6'*, as well the NMC guidance titled '*Independent experts – ref INV-5*'.

Mr Lambert then referred the panel to the case of *LK v The Nursing and Midwifery Council* [2020] CSIH 40, specifically paragraph 85 of its judgment.

Mr Lambert submitted that the evidence of Witness 3 is plainly relevant to the matters concerned in this case. He submitted that you have made a number of admissions in your statement surrounding the incident, and the main issue that remains is whether a manual evacuation, or some other form of intimate procedure, was performed by you on Patient A.

Mr Lambert accepted that Witness 3 was not present at the time of the incident, and cannot give any evidence to the facts. However, he submitted that she can in fact give evidence to the following:

- the difference between manual evacuations and intimate procedures;
- the training required for any of these procedures;
- what the correct or expected course of conduct would have been in the circumstances of this case;
- how far from the correct or expected course of conduct your alleged behaviour was;
- what can be interpreted from Patient A's care notes; and

- the importance in practice of seeking patient consent and keeping detailed patient records.

Mr Lambert submitted that given Witness 3's expertise and experience in this matter, not only is her evidence relevant to this case, but it would be of great benefit to the panel in their fact-finding decision-making.

With regard to fairness, Mr Lambert submitted that there is no evidence of any unfairness to you should Witness 3's evidence be admitted. He submitted that should you have any concerns with any part of Witness 3's evidence, this can be explored under cross-examination. He noted that you received a copy of Witness 3's evidence well in advance of this hearing, and that the issues concerning the admissibility of Witness 3's evidence was raised by the legal assessor/panel, not you, which suggests that you had no concerns pertaining to the fairness of the admission of Witness 3's evidence.

Mr Lambert submitted that there was never a need for the NMC to instruct an independent expert in this case. He submitted that, as per the NMC guidance, it is common practice for evidence to be provided by professionals at a local level who have the experience and technical expertise to assist with these issues. With regard to this case, he submitted that specialised knowledge beyond what Witness 3 can provide is not required. Therefore, relying on the evidence of Witness 3 over the evidence of an independent expert is appropriate in the circumstances of this case.

Mr Lambert submitted that your disagreement with Witness 3's evidence does not call into question her impartiality. He submitted that there is no evidence of Witness 3 having any prior involvement with either Leonard Cheshire, you or the local investigation, nor is there any suggestion that Witness 3 has been subjected to external influences. Rather, Mr Lambert submitted that Witness 3's evidence demonstrates her objective expertise on the facts.

Mr Lambert submitted that there is no evidence that Witness 3 is partial, and that any concerns you have around this can be put to her in cross-examination.

Furthermore, Mr Lambert submitted that, as a qualified registered nurse since 1985 currently practising in the area of bladder and bowel dysfunction, Witness 3's experience makes the admissibility of her evidence fair and relevant.

Mr Lambert submitted that part 35 of the Civil Procedure Rules 1998 is not binding on the procedures the NMC must follow when adducting expert evidence. He referred the panel to the cases of *Towuaghantse v GMC* [2021] EWHC 681 (Admin) and *Bux v GMC* [2021] EWHC 762 (Admin), both of which point out the difference in procedural rules when it comes to regulatory proceedings and civil proceedings in relation to expert evidence. Based on this, he submitted that the panel ought to proceed in considering this matter according to Rules 31(1) and nothing else.

Mr Lambert then referred the panel to the case of *Kennedy v Cordia (Services) LLP (Scotland)* [2016] UKSC 6, specifically paragraph 44 of its judgment.

In light of his submissions, Mr Lambert submitted that there are no grounds to exclude the evidence of Witness 3 and invited the panel to take this view.

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.

In reaching its decision, the panel took into account the submissions from both Ms Chapman and Mr Lambert, along with the documentary evidence made available to it.

The panel considered whether the evidence of Witness 3 meets the requirements under Rule 31 as being relevant and fair.

The panel is aware that Witness 3's evidence speaks to charges 1c) and 1d), specifically on the matter of manual evacuation whereby she had given her personal opinion on this in a professional capacity. It understands that Witness 3 is not a direct witness to the alleged incident, but has provided her view on the subject of manual evacuation, within the circumstances of the alleged incident, based on information she has received from the NMC.

The panel noted the following in Witness 3's statement where she states: "*I have had sight of a redacted witness statement that provides a breakdown of what is said to have happened to the patient"*. The panel have had regard to the "redacted witness statement" Witness 3 refers to, which is actually the email Witness 1 wrote to Witness 2 dated 11 October 2020 which contains her initial account of the incident, as follows:

> *'I was on duty at Eithinog on Saturday October 10th. I was allocated side A for the afternoon shift. At approximately 4pm after completing my work up to date I went with [you] to assist with [Patient A]'s dressings. When we got to [Patient A]'s room neither [you] or myself were sure as to the correct dressings he was prescribed. I went to look in the TV file in the care office. When I returned to the room [you] was attempting to give [Patient A] his 5pm medication. [Patient A] was shouting, hitting out and getting very distressed. He eventually took the tablets from a spoon, the Laxido was in a plastic beaker with a lid. [you] was trying to get the spout into his mouth [Patient A] was getting more and more distressed so I told [you] to stop and leave it for now to try again later, she said that he must have it as his bowl was impacted with faeces. I asked how she knew, she said that no bowel movement had been documented for several days in his notes. I said that we should keep trying with the Laxido and give him more if required. She then said that he could have an enema but I said no because he wasn't written up. [you] asked me to roll [Patient A] onto is left side, so she could have a look. [Patient A] was shouting and hitting out, I was trying to comfort and reassure him. I asked [you] if there was anything there and she had started doing a manual evacuation. [Patient A] was*

shouting that [you] was hurting him so I told her to stop. He had removed a small amount of faeces, she then left the room…'

The panel is aware that Witness 1 had provided subsequent accounts of the incident, which include: a police witness statement dated 26 November 2020; an NMC witness statement dated 2 November 2021; and a NMC supplementary witness statement dated 30 January 2022. It is also aware that you have provided your own accounts of the incident which consist of a police interview note dated 7 January 2021 and your local interview conducted by Witness 2 on 12 October 2020, when you referred to a 'manual evacuation' and which your qualified the following day on 13 October 2020 by email to Witness 2. However, there is no evidence to suggest that these accounts, aside from Witness 1's initial account, were provided to Witness 3, to review when writing her NMC witness statement. Indeed, in paragraph 10 of her witness statement, Witness 3 stated that she had been given no information by the NMC from you.

On this basis, in the panel's judgment, Witness 3's opinion on the matter contained within her NMC witness statement is not, and could not reasonably be seen to be, impartial, by reason of it being based on the limited information she had received at the time. This is because Witness 3's opinion on the matter is solely reliant on Witness 1's initial account of the incident.

The panel also noted the following in Witness 3's statement where she states: *"I am aware that the focus of this statement is around the allegation of a manual evacuation procedure"*. This further supports the notion that Witness 3's evidence is purely based on Witness 1's initial account, as this is the only account of Witness 1 where she alleges that a manual evacuation took place.

The panel noted that Witness 3 makes reference to a document called 'RCN Bowel Care publication', and comments on this in her statement when giving her opinion on best practice when it comes to manual evacuation procedures. The panel have been provided with no evidence that such guidance had been adopted by Leonard Cheshire into the

workplace policy at the time of the incident. It therefore finds this part of Witness 3's evidence not to be relevant to the working environment that you were in at the time.

In addition, the panel noted that, along with Witness 1's initial account (which has now been excluded from this case), Witness 3 had sight of Patient A's clinical notes, care plan and MAR chart when writing her witness statement. It further noted the following in her statement: *"I have been asked whether faeces protruding from the anus would affect my view of what should have taken place. This would not affect my view as the patient was distressed and should not have been put on their side. Communication with patient should have taken place rather than intervention"*. The panel is aware that such information could have only come from your police interview note, which the NMC have appeared to have asked Witness 3 to comment on without her actually seeing it. In the panel's judgment, this further demonstrates that Witness 3's statement has been based on a selective and partial version of your account of the incident, which you have expanded upon since your police interview.

Overall, in the panel's judgment, it determined that it would be unfair for a witness, for whom the NMC have not provided any evidence of her relevant qualification/s, clinical competence or clinical experience in the area of manual evacuation, to speak on this.

In these circumstances, for the reasons set out, the panel determined that this application is upheld and that the evidence of Witness 3, and her related exhibits, is inadmissible and thus excluded.

Decision and reasons on application to amend charges

On 12 February 2024, the first day of the resuming hearing, Mr Lambert made a further application under Rule 28 to amend charges. The application was made to amend the wording in charges 1c), 1d) and 2d). Mr Lambert provided the panel with the drafted amended charges and indicated that the draft had been agreed between the NMC and the

RCN. He submitted that the proposed amendments would more accurately reflect the evidence.

Ms Chapman indicated that she was in favour of this application.

Proposed amendments to charges 1c), 1d) and 2d):

1) *On 10 October 2020, in relation to Patient A:*
    c) ~~*Manually evacuated Patient A's bowels that was not clinically justified*~~ ***Massaged their anal area***
    d) ~~*Did not accurately record details of the manual evacuation of Patient A's bowels*~~ ***Did not accurately record details of your conduct at 1c***

2) *On or before 13 October 2020 said to Colleague A:*
    d) *"~~No~~ You are **considered** black and black lives matter" or words to that effect;*

In addition, the panel of its own volition proposed amending the wording of charge 2b). The proposed amendment to charge 2b) was to change the wording from '*Asian*' to '*Asians*', in order to correct an apparent typographical error.

Mr Lambert and Ms Chapman both indicated that they were in support of this additional amendment.

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

The panel was of the view that such amendments were in the interests of justice as it clarified the case against you. It was satisfied that there would be no prejudice to you and no injustice to either party by the proposed amendments being allowed. The panel determined that it was therefore appropriate to allow the amendments above, to ensure clarity and accuracy.

Decision and reasons on application to require the attendance of a witness pursuant to Rule 22(5)

On 13 February 2024, Mr Lambert informed the panel that Witness 6 had been put on notice to give evidence at the hearing but has now disengaged with the NMC. He explained that Witness 6 confirmed in the week prior to the start of the hearing, that he would be available to give evidence on 13 February 2024. He stated that despite repeated attempts to contact Witness 6 since then, there has been no further response to any correspondence from the NMC.

At the end of the NMC's final witness evidence (Witness 2, Witness 4, Witness 5) on 14 February 2024, the panel heard an application made by Mr Lambert under Rule 22(5). He invited the panel to exercise its powers under Rule 22(5) to require Witness 6 to attend to give evidence. This would require Witness 6 to attend remotely, as this is a virtual hearing.

Mr Lambert referred the panel to Article 25(1) and 44(4) of the Nursing and Midwifery Order 2001 (the Order), which state:

> '*25.—(1) For the purpose of assisting the Council or any of its Practice Committees, the Registrar or any other officer of the Council in carrying out functions in respect of fitness to practise, a person authorised by the Council may require any person (other than the person concerned) who in his opinion is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document.*
> […]
>
> *44.—(4) A person who, without reasonable excuse, fails to comply with any requirement imposed by— (a) the Council, or (b) a Practice Committee under article 25(1) or (2) or rules made by virtue of article 32(2)(m) or under any corresponding rule made by virtue of article 26, 33 or 37 is guilty of an offence.*'

Mr Lambert explained that if the panel exercises its powers under Rule 22(5) and Witness 6 does not attend, Witness 6 would be in breach of Article 25(1) and without reasonable excuse, would be guilty of an offence under Article 44(4). He stated that if this application was accepted, it would be facilitated by an email and phone call to Witness 6 setting out their requirements and consequences of not complying.

Mr Lambert submitted that it is accepted that Witness 6's evidence is relevant to a minor matter of dispute relating to charge 4. He highlighted that although you have made an admission to charge 4 on the basis that you told Patient B '*shut up and get out'*, it is in dispute whether you shouted this or not. He submitted that Witness 6 was an eyewitness to the allegations in this charge and is the only witness that can assist the panel on this dispute. He stated that in its considerations the panel may want to consider the significance of the dispute to charge 4 in relation to subsequent misconduct and impairment stages to follow.

Mr Lambert stated that Witness 6 is the only remaining witness to be called by the NMC. He submitted that it is the NMC's position that it is in the interests of justice that the panel hear the live evidence of Witness 6 so that the issues of this case can be explored fully.

Ms Chapman submitted that to allow this application is to effectively afford the NMC more time to try and secure a witness. She highlighted that it has already been six months since the hearing last adjourned, these proceedings have been rescheduled for a further five days, and it is now already the third day. She submitted that out of fairness to you the ideal position is to progress the facts stage as efficiently as possible to allow you to have a decision on facts before any possible further adjournment.

Ms Chapman submitted that to allow this application would lead to unnecessary delay, given you accepted charge 4, on the basis that you told Patient B '*shut up and get out'* at the outset of the hearing. She submitted that you were not made aware that this would not

be accepted on that basis that the NMC is insisting that you '*shouted*'. She stated that it was the NMC who asked to amend charge 4 on the last occasion.

Further, Ms Chapman submitted that to email Witness 6, who is not a nurse, pointing to criminal legal action if they do not attend to give evidence does not seem in keeping with the NMC's values of kindness and fairness. She submitted that particularly when these powers would be exercised only to clarify one word in a charge.

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

In reaching its decision the panel has considered the submissions of Mr Lambert, Ms Chapman and the advice of the legal assessor. It had regard to the overall interests of justice and fairness to all parties.

The panel considered that Witness 6's evidence is relevant to charge 4, as Witness 6 was an eyewitness to the events that occurred on 16 August 2020 where this charge arose. It was of the view that Witness 6's live evidence would assist the exploration of the factual circumstances of this charge. However, the panel noted that charge 4 was partially admitted and the dispute in this matter related only to one word within the charge. The panel also took into account that it was provided with documentary evidence in support of charge 4 and determined that the compulsion of Witness 6 to give live evidence was not a necessity for the full exploration of this charge.

The panel noted that Witness 6 was a public witness to events that occurred on 16 August 2020, which is now over three years ago. It had regard to the fact that this witness is not a nurse, who in the alternative would be fully aware of their obligations to cooperate with regulatory investigations under their professional code of conduct. It made a careful assessment of the potential consequences of exercising its powers to require Witness 6 to give live evidence remotely. It considered that failure to comply with this direction, if made, may result in a criminal conviction/financial penalty for Witness 6, which it deemed disproportionate in the circumstances highlighted above.

Additionally, the panel considered fairness to you. It had regard to the fact that this case had already adjourned part heard on 4 August 2023. Given the delay you have already experienced, the panel was of the view that it was not proportionate to delay matters further in these particular circumstances, which related to the dispute of one word in a partially admitted charge.

The panel concluded that it was not in the interests of fairness to you or Witness 6 to exercise its powers under Rule (22)(5). In light of the circumstances outlined above, the panel decided to refuse this application.

Redacted evidence

On 15 February 2024, the panel was informed that Miss Stockley [PRIVATE] had given Ms Chapman instructions to carry on in her absence. There were no objections by any parties.

Mr Lambert informed the panel that there was now an agreement between the NMC and the RCN that Witness 6's witness statement could remain in evidence with redactions made to the word '*shouted*'. He stated that this is the only area of contention within Witness 6's witness statement, and with the redactions made, the statement still fits the charge as it is currently drafted.

Mr Lambert stated that the panel of its own volition may choose to amend charge 4 in relation to this matter. However, he submitted that the NMC's position is that this would not be necessary given the wording of charge 4, which includes '*shouted and/or told'*.

When asked, Mr Lambert clarified that the NMC will accept your admission to charge 4, on the basis of '*told*' rather than '*shouted*'.

Ms Chapman confirmed that the NMC and RCN had come to an agreed position that Witness 6's statement could remain in evidence with the word '*shouted*' removed.

The panel accepted the advice of the legal assessor.

The panel was satisfied that the redactions agreed between the NMC and RCN did not fundamentally change the nature of the case against you and would not cause any injustice or unfairness. The panel accepted the redactions made to the NMC's evidence and agreed it would disregard the word '*shout'* in Witness 6's statement and supporting email evidence in relation to charge 4.

In light of this agreement, Mr Lambert and Ms Chapman both agreed that a hearsay application was not necessary. The panel noted that there is public interest in the expeditious disposal of this case and determined it was appropriate to proceed on this basis.

Decision and reasons on application to amend charge 4

The panel of its own volition considered amending the wording of charge 4. The proposed amendment was to change the wording from '*shouted and/or told'* to '*told*', in order to more accurately reflect the evidence.

Proposed amendments to charge 4:

4) *On 16 August 2020 ~~shouted at and/or~~ told Patient B "shut up and get out", or words to that effect.*

Mr Lambert and Ms Chapman both indicated that they did not oppose this application.

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

The panel was of the view that such amendment was more representative of the redacted evidence. It 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, as the amendment would simply reflect the consensus position accepted by both parties. The panel determined that it was therefore appropriate to allow the amendment to ensure clarity and accuracy.

Details of charge (as amended)

That you, a registered nurse:

1) *On 10 October 2020, in relation to Patient A:*
   a) *Did not escalate concerns to a GP* **[Proved by admission]**
   b) *Did not obtain patient consent* **[Proved by admission]**
   c) *Massaged their anal area* **[Proved by admission]**
   d) *Did not accurately record details of your conduct at 1c.* **[Proved by admission]**

2) *On or before 13 October 2020 said to Colleague A:*
   a) *On first meeting "Hi, Filipino?", or words to that effect;* **[Proved by admission]**
   b) *"You don't complain because all Filipinos are submissive, all Asians are submissive, that's what you are submissive", or words to that effect;* **[Proved]**
   c) *"You are black" or words to that effect;* **[Proved by admission]**
   d) *"You are considered black and black lives matter" (or words to that effect);* **[Proved by admission]**
   e) *"You are yellow then", or words to that effect.* **[Proved by admission]**

3) *Your conduct at paragraph 2 was:*
   a) *racially motivated* **[Proved]**
   b) *Discriminatory* **[Proved]**

4) *On 16 August 2020 told Patient B "shut up and get out", or words to that effect.* **[Proved by admission]**

5) *On or before 28 August 2020 told Patient C to "shut up" or words to that effect.* **[Proved by admission]**

6) *On or before 22 September 2020 did not respond to an emergency bell.* **[Proved by admission]**

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

Decision and reasons on facts

On 16 February 2024, after the final amendment to the charges, the panel heard from Ms Chapman, who confirmed that you made admissions to charges 1a), 1b), 1c), 1d), 2a), 2c), 2d), 2e), 4, 5 and 6.

The panel therefore finds charges 1a), 1b), 1c), 1d), 2a), 2c), 2d), 2e), 4, 5 and 6 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 Ms Lindsay on behalf of the NMC and by Ms Chapman 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 2: Service Manager at the Home;
- Witness 4 (Colleague A): Registered Nurse at the Home;
- Witness 5: Deputy Manager Service Manager at the Home.

The panel also heard evidence from you.

Background

The NMC received a referral in relation to your fitness to practise on 19 October 2020 from Eithinog Care Home ('the Home'), which is part of the Leonard Cheshire group. At the time of the concerns raised in the referral you were employed as a registered nurse at the Home.

The referral alleges that on 10 October 2020 while you were on duty at the Home, Witness 1 witnessed you conduct a manual evacuation, that was not an assessed requirement, on an elderly resident without his informed consent. The manual evacuation allegedly involved you massaging the resident's anal area and using your fingers to remove faeces from the resident's anus. This reportedly caused the resident considerable distress and upset. This procedure was not in accordance with the resident's care plan.

As a result, a local investigation was initiated, and you were suspended from your duties pending the completion of the Home's investigation.

The police and safeguarding were also informed of the incident, but no substantive action was subsequently taken by either.

The Home's investigation brought to light further allegations raised by other members of

staff prior to and after the incident leading to your suspension. The other concerns raised were that you had allegedly:

- Verbally abused patients in your care;
- Failed to respond to an emergency call bell; and
- Made racially aggravated discriminatory remarks to another nurse colleague (Witness 4).

You resigned from your position on 22 March 2021 and a disciplinary hearing was held in your absence on 23 March 2021. It was decided at the disciplinary hearing that had you not resigned, you would have been summarily dismissed with immediate effect for gross misconduct.

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

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

Charge 2b)

2) On or before 13 October 2020 said to Colleague A:

b) "You don't complain because all Filipinos are submissive, all Asians are submissive, that's what you are submissive", or words to that effect;

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 4 and your evidence. The panel also had regard to documentary evidence exhibited, which included a formal complaint email from Witness 4 to her employer dated 13 October 2020.

The panel found that Witness 4's oral evidence was consistent with her witness statement, in which she explained that during the meeting with you on 1 October 2020 you made remarks about her being '*submissive*' because she is '*Filipino*' and further comments you had made regarding her race. The panel was of the view that whilst Witness 4 relied on her email sent shortly after the incident that she sent to her employer she provided a clear and consistent account of the incidents.

The panel took into account the email which was sent to her employer which it noted was shortly after the incidents and therefore considered Witness 4's evidence as reliable.

Witness 4, wrote the formal complaint on 13 October 2020, in which it is stated:

> *'We were having a conversation in the nurses' medication room when Caroline said to me that "you don't complain because all Filipinos are submissive, all Asian are submissive…'*

The panel also noted at the employers meeting, on 9 February 2021, you had initially denied some of the comments that had been put to you, however, at this hearing have now admitted a number of the comments that had been alleged. The panel further noted that, whilst you did try and recall events to the best of your ability, you at times could not remember the exact details of the conversations but you could recall the overall context. The panel determined that whilst your evidence in some areas was clear it has not been consistent in your explanations of events. It therefore considered Witness 4 to be a more reliable and consistent witness.

In your oral evidence you broadly accepted Witness 4's account of what was said, albeit with a different explanation of what you meant by the comments you made during the conversation. In your oral evidence you conceded that you did make the comment that Witness 4 was '*submissive*' because she was '*Filipino*', but you said you did not say this maliciously and it was in the context of trying to encourage her to complain about issues regarding the Home's working conditions which you had identified. You considered your

comments to be supportive and you stated you were encouraging her to stand up to management about the working practices in the Home.

The panel was of the view that Witness 4's evidence was clear, consistent and credible. It accepted Witness 4's evidence and noted you had accepted in your oral evidence that you had used those, or similar words as outlined in the charge during your conversation, albeit, you said it was not meant to offend Witness 4. Overall, the panel preferred the account of Witness 4.

The panel determined that, on the balance of probabilities, you said to Witness 4 '*You don't complain because all Filipinos are submissive, all Asians are submissive, that's what you are submissive',* or words to that effect on 1 October 2020.

Accordingly, the panel found charge 2b) proved.

Charge 3

3) Your conduct at paragraph 2 was:

a) racially motivated

b) Discriminatory

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the evidence of Witness 4 and your evidence. The panel also had regard to documentary evidence exhibited, which included a formal complaint email from Witness 4 to her employer dated 13 October 2020.

The panel assessed your actions found proved in charge 2 in respect of racially motivated and discriminatory conduct. It referred to and considered the case of *Robert Lambert-Simpson v Health and Care Professions Council* [2023] EWHC 481 (Admin), which

identified a '*helpful encapsulation'* for when an inappropriate and / or offensive communication will be '*racially motivated'*:

> *'(i) that the act in question had a purpose behind it which at least in significant part was referable to race; and (ii) that the act was done in a way showing hostility or a discriminatory attitude to the relevant racial group.'*

The panel reminded itself that in charge 2 you said the following in reference to Witness 4's racial characteristics:

> *a) 'On first meeting "Hi, Filipino?", or words to that effect;*
> *b) "You don't complain because all Filipinos are submissive, all Asians are submissive, that's what you are submissive", or words to that effect;*
> *c) "You are black" or words to that effect;*
> *d) "You are considered black and black lives matter" (or words to that effect);*
> *e) "You are yellow then", or words to that effect'*

The panel had regard to the impact your comments had on Witness 4. It noted that Witness 4 was '*insulted'* by your remarks that was perceived as being said in a denigrating manner. This resulted in an official complaint email on 13 October 2020, in which Witness 4 stated:

> *'I was shocked, she said that in her normal voice with a tone of insult, certainty and firmness. I just looked at her with unbelief, I felt like my feelings and opinion don't matter, she has made up her mind that ALL Asian in general are a certain way, I felt like she's insulting me , and that she's being prejudiced about me and every Asian in general, I was so shocked but I thought there's no need to defend myself so I stopped .'*

The panel had regard to your explanation given in your oral evidence. It accepted from your evidence that you had issues with management/the working environment and had

made some complaints yourself, this was verified by Witness 5 who stated you had made some complaints about the working practices in the Home.

Additionally, you made clear your issues with the home during your evidence in relation to a number of problems including drugs trolleys and ordering of drugs and lack of management support etc. You also told the panel [PRIVATE] and noted you needed support to fulfil your duties. It noted that you were clear that you wanted support with raising the issues to the management that you had identified and did not feel Witness 4 was supporting you or would complain to management. The panel took account that Witness 4 had told the panel in her evidence that she had told you she did not wish to make any complaint about the working practices in the home and she did not want to make a fuss.

The panel observed that on your own evidence the context of the comments made by you were intended to get Witness 4 to support you and complain about conditions in the Home, something Witness 4 had made clear she did not wish to do. The panel found the nature of your comments towards Witness 4 were directed at her race and you made clear to the panel in your evidence that you considered that Filipinos, Chinese and Asians were '*meek and submissive'* and management would take advantage of staff from these backgrounds. In the context described by you, despite your belief that you were being supportive, the panel determined that there was no justification for the inappropriate nature of your communication in highlighting to Witness 4 that she was submissive as she was '*Filipino*', '*black*' or '*yellow*' by highlighting her race as the problem as to why she would not support your remarks, you clearly showed hostility and a discriminatory attitude to Witness 4's race.

The panel was satisfied from the evidence that it could draw a clear inference that you referred to Witness 4's race in a hostile and discriminatory way in order to influence Witness 4's behaviour so that she would complain to management and support your personal agenda.

The panel concluded that your comments made in charge 2 were racially motivated and by its offensive nature was also discriminatory.

Accordingly, the panel found charge 3a) and b) proved.

Fitness to practise

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

Ms Lindsay referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311, which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'* She also referred to *Remedy UK Ltd, R (on the application of) v The General Medical Council* [2010] EWHC 1245 (Admin), in respect of serious misconduct.

Ms Lindsay invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to the terms of '*The Code: Professional standards of practice and behaviour for nurses and midwives 2015'* (the Code). She identified the specific, relevant standards where she submitted that your actions are sufficiently serious to amount to misconduct. In particular, she submitted that your actions in charges 1, 2 and 3 are serious and the consequences should be marked as such.

Ms Lindsay invited the panel to consider that the serious nature of the charges individually and cumulatively fell far below the standards of a registered nurse.

Ms Chapman referred to the cases of *Remedy* and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), in respect of serious misconduct. She submitted that it is accepted that some of your actions in the charges, taken together, are sufficiently serious to amount to misconduct.

However, Ms Chapman submitted that charges 1b) and 1c) are not misconduct. She submitted that it is not possible for your actions in charge 1b) to constitute misconduct, because even though you did not obtain the patient's informed consent, in evidence Witness 2 confirmed that this patient did not have the capacity to give consent. Further, she submitted that the procedure you performed in charge 1c) was a decision you made in a very difficult situation. She stated that Patient A was a patient that was distressed generally by any personal care and at the time the patient was in pain and would have been in prolonged pain as there were no doctors on site at that time.

Ms Chapman submitted that your actions in charges 1a) and 1d) were not sufficiently serious to amount to misconduct. She submitted that you have reflected on the circumstances of these charges and accept that you should have made a call to a doctor and should have more thoroughly recorded the matter. However, she submitted that your approach was common practice at the Home at the time due to the working conditions, and you did a verbal handover to the next shift after you had finished. She referred to your reflective piece in which you detailed the context of the Home, which involved a stressful

working environment, short staffing, procedural issues with management due to time constraints, lack of support, and [PRIVATE].

Ms Chapman submitted that in relation to charge 6, you did not fail to respond to the emergency bell as there was no obligation for you to do so. She stated that at the time the emergency bell was activated, you were on your lunch break in the communal area due to [PRIVATE]. She submitted that although, due to your location you heard the bell, there was no contractual or other requirements for you to respond to the emergency bell while on unpaid lunch as there were other staff responsible at the time and who were available to respond. She submitted that your actions in this charge do not amount to misconduct.

Ms Chapman submitted that in respect of charges 2 and 3, you accept that your actions are sufficiently serious to amount to misconduct. She submitted that in your evidence you showed remorse and cried after you realised the impact this had on Witness 4.

Ms Chapman submitted that taken together, charges 4 and 5 also amount to misconduct and you had apologised for the way you had spoken to the patients. However, she added that these occurred three weeks apart, with significant workplace and personal mitigation.

Submissions on impairment

Ms Lindsay 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. It also included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Lindsay submitted that the first three limbs of the test set out by Dame Janet Smith in the fifth Shipman report and adopted in *Grant* were engaged in this case:

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 profession into disrepute;*
c) *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession;*
d) *…*

Ms Lindsay submitted that your misconduct placed Patient A at risk of physical harm when you conducted a procedure without regard to the patient's care plan. She submitted that you also caused Patient B and Patient C emotional harm with the choice of words you used to communicate with them. She submitted that as a nurse you occupy a position of trust with patients, and your actions towards Patient A, B and C may result in a member of the public feeling reluctant to access health and care services.

Ms Lindsay submitted that you also brought the profession into disrepute, not only through the issues identified with patient safety, but through your actions towards your colleague (Witness 4). She highlighted the panel's earlier findings at facts stage and stated that there was no justification for the inappropriate nature of your communication with Witness 4.

Ms Linday outlined the professional standards that nurses must uphold as set out in the Code; prioritise people, practise effectively, preserve safety, and promote professionalism and trust. She submitted that to hold a discriminatory view towards Witness 4 and through the use of racially motivated language, you have breached fundamental tenets of the profession.

In respect of remediation, Ms Lindsay submitted that your actions demonstrated in the charges were serious and difficult to put right. She submitted that you have not remediated as you have not undertaken any relevant training courses or supervised practice.

Ms Lindsay acknowledged that there has been some acceptance of the charges from you. However, she submitted that where you have made admissions, you have provided explanations that seek to blame the working environment for your actions. She submitted that your reflective piece seeks mainly to provide excuses for your conduct and does not acknowledge the damage of your behaviour to the profession. She stated that you have said that if given the chance you would apologise to Patients B and C, but in evidence you have shown little evidence of remorse for your actions towards Witness 4.

Ms Lindsay submitted that you have demonstrated limited insight and remorse, and consequently there is a risk of repetition of the misconduct in this case. She submitted that therefore a finding of impairment is necessary to protect the public.

Ms Lindsay submitted that a finding of current impairment is also necessary in the public interest to uphold professional standards. She submitted that public confidence in the profession would be undermined if a finding of impairment were not made in these particular circumstances, given the wide-ranging nature of the charges.

Ms Chapman submitted that you have demonstrated insight and acceptance that your fitness to practise is currently impaired. She stated that you have reflected on your own explanation in your evidence to the panel and the panel's determination to date and you fully accept its findings and the issues regarding the treatment of Witness 4. She further stated you now understood you needed to develop in this area and wanted the opportunity to do so. She submitted that your insight at this stage could be described as developing.

Ms Chapman submitted that due to [PRIVATE] and stress of the role, you accept that you are no longer able to work in front line nursing. She stated that [PRIVATE] and workplace issues at the time spilled into your professional behaviour and you regret this.

Ms Chapman submitted that it is not accepted that it would be impossible for you put right the concerns raised in this case. She submitted that your misconduct can be remediated, and you are willing to do so.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

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***
> *1.1 treat people with kindness, respect and compassion*
> *1.3 avoid making assumptions and recognise diversity and individual choice*
>
> ***20 Uphold the reputation of your profession at all times***
> *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...*
> *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'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the charges amounted to misconduct, the panel considered the charges individually and cumulatively as well as the circumstances of the case as a whole.

In respect of charges 1b) and 1c), the panel considered that you performed an anal massage on Patient A's to remove a protruding hard piece of faeces without Patient A's consent after being requested for assistance by a care worker at the Home. This piece of faeces was observed to have been causing Patient A pain and distress. It had regard to the context in which your actions were undertaken. It noted that in your evidence you explained that Patient A did not have capacity to give consent, which it found was corroborated by Witness 2's evidence, and this was your understanding at the time you did the procedure. The panel also took into account that you were called upon to assist a care worker who found Patient A in a distressed position due to issues with his constipated bowel movement and you took action, namely a non-intrusive anal massage to remove the hard faeces to provide pain relief. It took the view that when considering the context whereby your actions took place, whilst this may not be best practice, charges 1b) and 1c) did not amount to misconduct.

The panel considered that in charges 1a) and 1d) you did not escalate the above concerns to a General Practitioner (GP) and did not accurately record the procedure you had undertaken. The panel accepted your evidence in which you explained that your actions took place during a very busy period throughout the Covid-19 pandemic, with issues such as staff shortages impacting the working environment. You accepted that you should have informed the GP at the time and with hindsight this would have been best practise in the circumstances. It also took into account that you did record partial details of what had occurred on the patient's records and also provided a fuller verbal handover to your colleagues. The panel took the view that these charges considered in context of an isolated incident during a busy and stressful period constituted poor practise as opposed to serious misconduct.

The panel considered that in charges 2 and 3, you made racially motivated and discriminatory comments about Witness 4. The panel noted that Witness 4 was upset regarding these comments and had subsequently made a formal complaint about your behaviour to her employers. The panel determined that the offensive nature of your comments and conversation regarding Witness 4's racial characteristics would be

considered deplorable by fellow practitioners and damaging to the trust that the public places in the profession. It determined that the wholly inappropriate communication demonstrated in these charges amounted to misconduct.

In relation to charges 4 and 5, the panel considered that you told Patient B to *'shut up and get out',* and told Patient C to '*shut up'* on another occasion. The panel found that in these charges you demonstrated an unacceptably low standard of professional practice in this area to elderly and infirm patients combined were serious enough to constitute misconduct. Further, the panel was of the view that when considered cumulatively with the comments made to Witness 4 found in charges 2 and 3, this demonstrated a pattern of inappropriate communication.

In charge 6, the panel noted that you did not respond to an emergency bell while you were on your unpaid lunch break. It found that your actions in this charge did not contradict your contractual obligations in these circumstances as there were staff on duty available to respond to the emergency bell while you were on lunch. The panel also took into account that your lunch break was incorporated into [PRIVATE]. The panel further noted that the emergency bell was not always used for emergency situations at the Home and this was an ongoing issue at the Home. Therefore, the panel took the view that your actions in charge 6 were reasonable in the circumstances and did not amount to misconduct.

The panel concluded that your actions in charges 2, 3 4, and 5 did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and

the lives of their loved ones. To justify that trust, nurses must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) ....'

The panel determined that the first three limbs in the above test were engaged in this case.

Taking into account all of the evidence adduced in this matter, the panel found that patients and colleagues were put at risk of psychological harm as a result of your misconduct. The panel concluded that your behaviour could affect the wellbeing of vulnerable patients and your colleague's performance in their nursing duties. The panel determined that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel next went on to consider the matter of insight. It noted that you initially made some admissions at the local level investigation and to the NMC regulatory concerns. It noted that you have indicated your acceptance of the panel's findings and you state that you now understand the issues regarding your behaviour towards patients and colleagues. However, the panel considered that in your oral evidence and written reflections, there were notable attempts to deflect blame and the responsibility of your actions. It found that it had not received evidence that indicates that you have demonstrated a full understanding of why and what you did wrong, how this impacted negatively on patients, your colleagues and the reputation of the nursing profession, and an in-depth explanation and action plan as to how you would handle situations differently in the future. It determined that you demonstrated limited insight and remorse.

The panel was of the view that the misconduct in this case evidenced behaviour that is inherently more difficult to put right, although capable of being addressed with appropriate training, reflection and mentoring. It carefully considered the evidence before it in determining whether or not you have taken appropriate steps to strengthen your practice. However, the panel has not received any information to suggest that you have taken steps to address the specific concerns raised about your practice, such as relevant training, in-depth reflection and mentoring.

The panel was of the view that due to the limited insight and remorse, as well as the lack of evidence of strengthened practice, there remains a risk of repetition. The panel considered that your misconduct demonstrated a pattern of behaviour that fails to acknowledge professional standards of communication in the workplace towards patients and colleagues. It took the view that racially motivated and discriminatory views are incompatible with the professional standards of nursing and can impact the standard of care provided. On the basis of all the information before it, the panel decided that there is a risk to the public, which requires a finding of current impairment on public protection grounds.

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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

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 suspension order for a period of 12 months with a review. The effect of this order is that the NMC register will show that your registration has been suspended.

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

The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Lindsay referred to the SG in relation to '*Available sanction orders'* (reference: SAN-3), and informed the panel that the NMC was seeking the imposition of a striking-off order.

Ms Lindsay identified the following aggravating features in this case:

- Conduct that was racially motivated and discriminatory in nature;
- Lack of insight;
- Pattern of poor communication with patient and colleagues.

Ms Lindsay also identified the following mitigating features:

- Partial admissions;
- Remorse towards patients;
- [PRIVATE].

Ms Lindsay submitted that making no order or imposing a caution order would not be proportionate to protect the public given the seriousness of this case and would not adequately address the public interest.

Ms Lindsay submitted that a conditions of practice order would not be appropriate or proportionate. She stated that given your use of racially motivated language towards a colleague and a course of poor communication towards vulnerable patients, the concerns in this case are indicative of attitudinal problems. She submitted that these areas of

concern cannot be addressed through retraining and there are no conditions that could be formulated that would be workable. She submitted that a conditions of practice order would not protect the public or satisfy the public interest.

Ms Lindsay highlighted that the next available sanction would be a suspension order. However, she submitted that given the serious departure from professional standards, it would not be appropriate to deal with this case by way of a suspension. She submitted that the misconduct in this case was not a single instance, but took place over a sustained period of time, from June to October 2020. She submitted that in this respect, a suspension order would not be proportionate to protect the public and address the public interest.

Ms Lindsay referred to the SG in relation to striking-off orders (reference: SAN-3e). She submitted that your conduct raises fundamental questions about your professionalism, and public confidence would not be maintained if you were not removed from the NMC register. She submitted that a striking-off order is the only appropriate sanction in the circumstances of this case as your actions, particularly relating to the discriminatory comments said to Witness 4, are incompatible with remaining on the register.

Ms Chapman referred to the SG in relation to its guidance on considering first the least restrictive sanction and then progressing onwards.

Ms Chapman informed the panel that you have been subject to an interim conditions of practice order for some years following the initial referral. She highlighted that prior to this referral, your career history involved only one other regulatory concern in 1996, which was a caution order for five years. She explained that the substantive caution order was not imposed due to any concerns raised about your clinical practice, but was the result of an occasion where you were nurse in charge and severe misconduct took place from another nurse.

Ms Chapman identified the following aggravating features in this case:

- Conduct that caused emotional harm to a colleague and put patients at risk of emotional harm;
- Repeated incidents, albeit over a short period of time;
- Undeveloped insight in relation to the discrimination charges;
- Lack of remediation;
- Evidence of attitudinal issues.

Ms Chapman also identified the following mitigating features:

- Early admissions from local investigation level to admissions to most of the charges during these regulatory proceedings;
- Only other regulatory finding was 24 years prior, where you were not directly involved in the misconduct;
- Some insight, albeit limited;
- Longstanding career as a nurse without any previous attitudinal concerns;
- Significant workplace pressures which directly impacted your conduct at the time – including issues with distractions during medication rounds, bullying behaviour towards you, lack of support, short staffing, lack of [PRIVATE].
- [PRIVATE].

Ms Chapman submitted that you accepted that no action would not be a sufficient response to the concerns in this matter. She submitted that it could be argued that a caution order would be sufficient, but it is also accepted that the discrimination in charges 2 and 3 are serious and so a caution order may not suffice.

Ms Chapman submitted that a conditions of practice order would be the most appropriate in the circumstances of this case to protect the public and address public interest. She submitted that there are identifiable areas in your practice that needs retraining and there is a willingness to respond to retraining. She submitted that there are workable conditions that could be applied, such as training, mentoring and supervision. She submitted that you

have shown great insight, and a conditions of practice order would allow you to strengthen your practice while protecting the public and meet the public interest.

Ms Chapman informed the panel that you have not been working as a nurse for the past four years, so you have not yet had the opportunity to strengthen your practice. She submitted that you have also been subject to Disclosure and Barring Service (DBS) restrictions due to charge 1, but this may now be lifted after a review by the DBS in accordance with the panel's findings. She stated that you have confirmed that once you are able to you will continue training to become a soul midwife assisting families and patients at the end of their lives. She explained that you do not require your NMC PIN for this role, but you will need it for insurance in when practising in the role.

Ms Chapman submitted that a suspension order is not proportionate with the facts of the case. She submitted that without seeking to minimise your misconduct, the discriminatory comments you made were less serious than those made in the case of *Lambert-Simpson vs Health and Care Professions Council* [2023] EWHC 481 (Admin), where the high court upheld a suspension order in a case involving a highly offensive racial slur against Chinese people in a Facebook post. She submitted that a suspension order would not allow you the opportunity to demonstrate improvement in your attitude.

Ms Chapman submitted that a striking off order would be manifestly excessive and unnecessary given the panel's findings. She submitted that at a time where there is great shortage of registered nurses, there is public interest in keeping competent nurses on the register. She highlighted that your actions in charges 1 and 6 were not found to be misconduct and a lesser sanction can address the concerns raised in this case.

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:

- Conduct that caused emotional harm to your colleague and put patients at risk of emotional harm;
- Limited of insight into discriminatory actions;
- Repeated misconduct (within a short period of time);
- Lack of strengthening of practice.

The panel also took into account the following mitigating features:

- Early admissions to the charges and admissions during the course of the hearing;
- Recent, albeit undeveloped, insight;
- Evidence of systemic issues within the Home, including difficult working conditions during the Covid-19 pandemic at the time of the incidents;
- Personal mitigation, [PRIVATE].

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.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict 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 issues identified. The panel decided that it would be neither proportionate nor address 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 mindful that any conditions imposed must be proportionate, measurable and workable. It noted that the misconduct in this case related to a failure to acknowledge professional standards of communication towards patients and colleagues. It determined that there are no practical or workable conditions that could be formulated at this time that would not be tantamount to a suspension, given the nature of the misconduct in this case. The panel concluded that the placing of conditions on your registration would not adequately protect the public and would not address the public interest.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *…*
- *…*

The panel further considered the SG in relation to '*serious cases*' and in particular:

> ***'Cases relating to discrimination***
>
> *We may need to take restrictive regulatory action against nurses, midwives or nursing associates who've been found to display discriminatory views and*

behaviours and haven't demonstrated comprehensive insight, remorse and strengthened practice, which addresses the concerns from an early stage.

If a nurse, midwife or nursing associate denies the problem or fails to engage with the fitness to practise process, it's more likely that a significant sanction, such as removal from the register, will be necessary to maintain public trust and confidence.'

The panel considered that the concerns in this case do not relate to an isolated incident. However, it found that the misconduct occurred over a relatively short period of time whilst you were experiencing difficult circumstances in the workplace [PRIVATE]. It noted that charges 2 and 3 in relation to racially motivated discriminatory remarks were confined to two conversations with the same colleague. It also noted that the two instances of inappropriate communication with two patients were confined to two separate conversations within two weeks of each other.

The panel had regard to evidence of systemic issues at the Home at the relevant time, compounded by workplace issues associated with the Covid-19 pandemic where you had remained at work despite [PRIVATE]. It bore in mind that prior to these proceedings you held a longstanding career as a nurse for around 30 years without issues concerning attitudinal problems and given this, your misconduct though serious, was such that it could not be described as a '*deep-seated personality/attitudinal*' as at the time of the incident the panel have accepted you did not consider your behaviour towards Witness 4 discriminatory as you thought you were trying to help her. However, the panel noted that during this hearing you have recognised your discriminatory behaviour and understand the impact of your communication and interactions with Witness 4 in relation to her race. It determined that you have displayed early insight into the core issues identified during the hearing and it was possible to remediate in your case and not incompatible with remaining on the register. It also took into account that there is no evidence of repetition of similar conduct since the incidents took place.

Therefore, having balanced your actions against significant workplace and personal mitigation at the time, alongside your previous longstanding career as a nurse and your evidence and understanding of your treatment of the patients and your discriminatory behaviour towards Witness 4, the panel was of the view that the misconduct in the circumstances of this case was not fundamentally incompatible with remaining on the register. It determined that with training and development you could address the concerns in this case and strengthen your practice. It decided that a suspension order would be the appropriate and proportionate sanction to protect the public and allow you an opportunity to fully reflect on your attitude towards patients, discriminatory behaviour, and further develop your insight to take action to improve your understanding of your behaviour.

The panel considered that this order is also necessary to mark the importance of maintaining public confidence in the profession, and to send a clear message about the standard of behaviour required of a registered nurse. The panel considered that whilst the profession and the public would consider your behaviour towards patients and colleagues deplorable both the public and the profession with the information and evidence of the circumstances applicable in your case available to this panel it would consider a significant suspension sufficient to acknowledge and mark the seriousness of the public interest. The panel therefore determined that a suspension order for a period of 12 months with a review, was appropriate in this case to mark the gravity and seriousness of the misconduct.

The panel did go on to seriously consider whether a striking-off order would be proportionate due to, in particular, the discriminatory behaviour you displayed to Witness 4 but, taking account of all the information before it, and of the particular features in this case and your recent emerging insight the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

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

Any future panel reviewing this case would be assisted by:

- A written reflective piece demonstrating your understanding and insight in relation to your behaviour towards patients, colleagues, the reputation of the profession and confidence of the public.
- Any formal courses with certification regarding communication skills, equality and diversity training.
- Mentoring and training reports from any paid employment or voluntary work.
- Personal and workplace references regarding your communication and attitudinal behaviour.

This will be confirmed to you in writing.

Interim order

As the suspension 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 interest until the suspension sanction takes effect.

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

Submissions on interim order

The panel took account of the submissions made by Ms Lindsay. She submitted that an interim order should be made on the grounds that it is necessary for the protection of the public and it is otherwise in the public interest. She invited the panel to impose an interim suspension order for a period of 18 months for the reasons stated in the panel's findings.

The panel also took into account the submissions of Ms Chapman who submitted that you do not oppose the application for an interim order.

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 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 consistent with its findings, for the reasons outlined in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to allow for any possible appeal.

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

That concludes this determination.