

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

**Substantive Hearing
Monday 14 October 2024 – Friday 18 October 2024**

Virtual Hearing

Name of Registrant:	Kathleen Alexandra Warmington
NMC PIN	98C1242E
Part(s) of the register:	Registered Nurse – RNMH, Mental Health Nurse (March 2001)
Relevant Location:	Northamptonshire
Type of case:	Misconduct
Panel members:	Louise Guss (Chair, Lay member) Jim Blair (Registrant member) Paul Hepworth (Lay member)
Legal Assessor:	Caroline Hartley
Hearings Coordinator:	Muminah Hussain
Nursing and Midwifery Council:	Represented by Fiona Williams, Case Presenter
Mrs Warmington:	Not present and not represented
Facts proved by way of admission:	Charges 1(a), 1(c), 1(d), 1(e), 1(f), 1(g), 3(b) & 3(c)
Facts proved:	Charges 1(b), 3(a) & 4
Facts not proved:	Charge 2
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Warmington was not in attendance and that the Notice of Hearing letter had been sent to Mrs Warmington's registered email address by secure email on 3 September 2024. The Notice of Hearing was also sent to Mrs Warmington's representative at Unison on 3 September 2024.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Warmington's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Warmington has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Warmington

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

Ms Williams referred the panel to the emails from Mrs Warmington's representative dated 24 June 2024, 16 August 2024 and 19 August 2024:

'The registrant is aware of the differences [between a meeting and a hearing], she has no intention of attending a hearing.'

'I trust that you are aware that the registrant is not attending the hearing and on that basis I will not be present in her absence.'

'The registrant has made very clear that she will not be attending the forthcoming hearing and I will not be representing her in her absence.'

Ms Williams informed the panel that the Hearings Coordinator had telephoned Mrs Warmington the morning that the hearing was due to begin, and Mrs Warmington was clear that she was not attending the hearing.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mrs Warmington. In reaching this decision, the panel has considered the submissions of Ms Williams, Mrs Warmington's response to the Hearings Coordinator on the morning of the first day of the hearing, along with her representatives emails, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Warmington;

- Mrs Warmington has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses are due to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2022;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

The panel acknowledged that there is some disadvantage to Mrs Warmington in proceeding in her absence. She will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Warmington's decision to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Details of charge

That you, a registered nurse:

1) Between 26 August 2022 and 29 November 2022:

- a) Stated about an unknown service user “Take her to the vets and get her put down.” or words to that effect. **(Admitted)**
- b) Stated about an unknown service user “He overthinks, he needs to get a grip” or words to that effect.
- c) Stated to Colleague A “Kiss my white ass” or words to that effect. **(Admitted)**
- d) Stated to an unknown service user “You’re lucky you’ve been given any medication at all young lady as the GP was completely against it, you naughty girl” or words to that effect. **(Admitted)**
- e) Stated to an unknown service user “being miserable is a choice” or words to that effect. **(Admitted)**
- f) Stated to an unknown service user when discussing an Attention Deficit Hyperactivity Disorder (“ADHD”) diagnosis “I’m not a fan of all that” or words to that effect. **(Admitted)**
- g) Stated to an unknown service user who was distressed and/or experiencing psychotic symptoms “I’ve got my own organs thanks, I don’t need yours” or words to that effect. **(Admitted)**

2) Your conduct at charge 1c above was racially motivated.

3) On 2 November 2022 in respect of an unknown service user:

- a) Stated to them *“that she had two options, admission to The Warren/crisis house or inservice user admission”* when neither option was clinically appropriate.
- b) Stated about them *“If she were my daughter, I would have drowned her at birth”* or words to that effect. **(Admitted)**
- c) When advised admission to The Warren/crisis house was not appropriate for them you advised staff in the office *“that you would call the service user back and inform them there were no beds”* or words to that effect. **(Admitted)**

4) Your conduct at charge 3c above was dishonest in that you were intending to misrepresent to the unknown service user that the reason they were not going to be admitted to The Warren/crisis house was that there were no beds when you knew that was not the case.

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

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Williams under Rule 31 to allow exhibits HW/4B – HW/4G to Witness 1's statement into evidence.

In the preparation for this hearing, the NMC had indicated to Mrs Warmington in the Case Management Form (CMF), that it was the NMC's intention for Witness 1 to provide live evidence to the panel. Witness 1's statement and exhibits were provided to Mrs Warmington. Despite knowledge of the nature of the evidence to be given by Witness 1, Mrs Warmington made the decision not to attend this hearing. In her CMF response, dated 20 February 2024, Mrs Warmington stated that she agreed with the contents of Witness 1's statement. On this basis Ms Williams advanced the argument that there was no lack of fairness to Mrs Warmington in allowing Witness 1's hearsay exhibits into evidence.

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

The panel noted that Mrs Warmington had seen the bundles which included Witness 1's exhibits, and had no objection to them being seen by the panel. It referred to *Thorneycroft*

v Nursing and Midwifery Council [2014] EWHC 1565 (Admin), and determined that the exhibits were not the sole and decisive evidence for the charges.

The panel considered that as Mrs Warmington had been provided with a copy of Witness 1's exhibits and, as the panel had already determined Mrs Warmington had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross-examine this witness in any case. It also noted her indication that she did not challenge the evidence of Witness 1 in any event. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay evidence of Witness 1, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Background

Mrs Warmington was referred to the NMC on 4 December 2022 by the head of community services for Northamptonshire NHS Foundation Trust (the Trust). Between August and November 2022, Mrs Warmington was working as a Band 6 community mental health practitioner. During her employment at the Trust, it is alleged that Mrs Warmington made inappropriate comments to both service users and colleagues.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Williams, who informed the panel that Mrs Warmington made full admissions to charges 1(a), 1(c), 1(d), 1(e), 1(f), 1(g), 3(b) and 3(c), in her CMF.

The panel therefore finds charges 1(a), 1(c), 1(d), 1(e), 1(f), 1(g), 3(b) and 3(c), proved in their entirety, by way of Mrs Warmington's 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 Williams on behalf of the NMC.

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

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

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

- Witness 1: Interim Operations Manager at the Trust (at the time of the incidents)
- Witness 2: Community Support Worker (at the time of the incidents)

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

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

Charge 1(b)

“That you, a registered nurse:

- 1) *Between 26 August 2022 and 29 November 2022:*

b) *Stated about an unknown service user “He overthinks, he needs to get a grip” or words to that effect.”*

This charge is found proved.

In reaching this decision, the panel took into account Mrs Warmington’s CMF, Witness 1’s written statement and oral evidence, and the email dated 14 October 2022 from Colleague 1 to Witness 1.

The CMF in which Mrs Warmington responded to the charges stated:

“1b. relates to a member of staff not a service user.”

The panel noted that Mrs Warmington does not deny that she said the words *“He overthinks, he needs to get a grip”*, but denies that they were said about a service user.

Witness 1’s written statement reads:

“This comment was made about a service user overheard by [Colleague 1]. It isn’t appropriate to say “needs to get a grip”. This is a derogatory way to refer to a service user who is in mental distress and suffering. This isn’t a symptom. Alex is not describing a clinical symptom in a professional way.”

In her oral evidence, Witness 1 said that she was ‘not 100% sure’ of whether Mrs Warmington was referring to a service user or a colleague, but that Colleague 1 was sure it was about a service user.

The email dated 14 October 2022 from Colleague 1 to Witness 1 stated:

“When later asking me to look up a client for potential AP treatment, she stated he overthinks, he needs to get a grip”.

The panel considered the hearsay nature of the email, but determined it to be contemporaneous and consistent with other documentary evidence and live evidence. The panel gave the weight it thought appropriate when considering this piece of evidence.

The panel considered that Mrs Warmington had admitted to using the words *“He overthinks, he needs to get a grip”* about a colleague. In Witness 1’s written statement and Colleague 1’s contemporaneous email, they were sure that Mrs Warmington was talking about a service user. The panel considered the nature of the other charges in which Mrs Warmington spoke unprofessionally to/about service users, to which she admitted. The panel determined that on the balance of probabilities, Mrs Warmington did say *“He overthinks, he needs to get a grip”* about a service user and not a colleague.

The panel therefore finds charge 1(b) proved.

Charge 2

“That you, a registered nurse:

2) Your conduct at charge 1c above was racially motivated.”

This charge is found NOT proved.

In reaching this decision, the panel took into account the Trust’s final review meeting outcome letter to Mrs Warmington dated 1 December 2022, Mrs Warmington’s reflection document dated 20 February 2024, and Witness 1 and 2’s oral evidence.

The Trust’s final review meeting outcome letter dated 1 December 2022 stated:

“I then proceeded to ask you how the “kiss my white ass” comment could be perceived from your perspective. You explained that this was a joke and that you have a good rapport with the colleague who the comment was made to; I asked how it might be perceived by other people and you stated that you needed to choose your audience more carefully. I went on to say that this could be perceived as a racist comment and you explained that you never thought of it in that way, and it was not your intention, you stated that you were describing ‘my own ass’.”

Mrs Warmington’s reflection document dated 20 February 2024 reads:

“I joined a new established team and just wanted to fit in. I inappropriately used humour/banter without consideration of the impact my statements could be perceived by other, never in a million years wishing to cause offence on any level.”

The panel also had regard to Witness 1 and Witness 2’s oral evidence. Witness 2 explained that while there may have been a racist undertone in using the word “white”, she didn’t believe there was any malice, and described the comment as “*pure ignorance and not reading the room*”. Witness 2 said that there was a lack of professional conduct, rather than Mrs Warmington being hostile and aggressive. Witness 1’s oral evidence corroborated this.

The panel determined that using the phrase “*kiss my white ass*” in the workplace is unprofessional and offensive, however the NMC had not met the burden of proof that Mrs Warmington’s comment was racially motivated.

The panel referred to the NMC guidance PRE-2E ‘Particular features of misconduct charges’:

“Racially motivated misconduct could cover a broad range of behaviour or situations, for example:

- *Where somebody has said overtly racially abusive words to another person with the clear purpose of causing offence...*

When deciding whether an act is “racially motivated” it is likely to be helpful to consider the following questions:...

(b) Was the act done in a way showing hostility or a discriminatory attitude to the relevant racial group?”

The panel did not have any information of Mrs Warmington’s state of mind at the time other than the observations made by Witness 2. The panel could not find that there was any intention to cause offence, nor was there any evidence of hostility.

The panel acknowledged that both witnesses expressed that there was no malice in this comment, and that Mrs Warmington in her review meeting and reflection document stated that she did not wish to cause any offence.

The panel therefore finds charge 2 NOT proved.

Charge 3(a)

“That you, a registered nurse:

3) On 2 November 2022 in respect of an unknown service user:

a) Stated to them “that she had two options, admission to The Warren/crisis house or inservice user admission” when neither option was clinically appropriate.”

This charge is found proved.

In reaching this decision, the panel took into account Mrs Warmington's CMF, the Trust's operational policy, the email dated 7 November from Witness 1 to Witness 2, the email dated 9 November from Colleague 2 to Witness 1, Witness 2's written statement and oral evidence and the Trust's final review meeting outcome letter dated 1 December 2022.

Mrs Warmington's CMF stated:

"3c. is denied because the registrant was unaware of the policy that services users who were under the influence of alcohol couldn't be admitted to the Warren/crisis house."

The panel noted that there was an inconsistency between the charge box ticked 'yes' as admitted, and the above statement. Mrs Warmington was not present at the hearing, therefore the panel were unable to ask her about the inconsistency. The panel looked at charges 3(a) and 3(c), and determined that in the above statement, Mrs Warmington was actually referring to charge 3(a), and "3c." was a typographical error.

The panel noted that by the time the incident had taken place, Mrs Warmington had been in her role for just over two months. The panel were told by Witness 1 that Mrs Warmington had undertaken an induction period, combined with 'shadowing colleagues' prior to working without supervision.

In an email dated 7 November from Witness 1 to Witness 2 (which confirmed the details of an earlier face to face meeting), stated:

"You told me that you lead the assessment and that Alex W contributed very little. Alex W then advised the service user that she had two options, admission to the crisis house or inservice user admission."

When you got in the car you raised with Alex W that you did not feel this was appropriate to which she responded 'I thought it would save us going to Braunston every day'."

The email dated 9 November from Colleague 2 to Witness 1 stated:

"Concerns around practice have included opening an assessment with "we have two options, hospital or the warren." Both of which would have been inappropriate for this service user but also prior to having actually taken any assessment info."

The panel considered the hearsay nature of Colleague 2's email, but determined it to be contemporaneous and consistent with other documentary evidence, as well as live evidence. The panel gave the weight it thought appropriate when considering this evidence.

Witness 2, who had accompanied Mrs Warmington on the visit, said in her written statement:

"Alex said to the service user that the service user had two options: admission to the crisis house (Warren House) or inservice user admission to hospital. It was not appropriate to send that service user to hospital or to Warren House because of service user's excessive use of alcohol. I did not feel that sending the service user to the hospital or to the crisis house was warranted within the service user's presenting factors. It was appropriate and reasonable for medical care team to visit the service user in her home in Braunston for assessment and observations."

This was consistent with Witness 2's oral evidence.

The Trust's final review meeting outcome letter dated 1 December 2022 stated:

“Concerns were raised to [Witness 1] about your clinical practice specifically that you had planned for a service user to be admitted to the Warren as a suitable option to avoid driving to the service user’s house each day.”

The panel determined that as a Band 6 nurse, Mrs Warmington should have been aware of the relevant operational policy and what the role requires. It considered all of the evidence before it and determined that Mrs Warmington did say to a service user *“that she had two options, admission to The Warren/crisis house or inservice user admission”* when neither option was clinically appropriate.

The panel therefore finds charge 3(a) proved.

Charge 4

“That you, a registered nurse:

- 4) Your conduct at charge 3c above was dishonest in that you were intending to misrepresent to the unknown service user that the reason they were not going to be admitted to The Warren/crisis house was that there were no beds when you knew that was not the case.”*

This charge is found proved.

In reaching this decision, the panel took into account the email dated 9 November from Colleague 2 to Witness 1 and, Witness 2’s oral evidence. It also referred to the case of *Ivey v Genting Casinos* [2018] A.C.391, and the NMC guidance DMA-8 ‘Making decision on dishonesty charges and the professional duty of candour’.

On behalf of the NMC, Ms Williams submitted that having been made aware of her error in presenting only these two options to the service user by Witness 2 and Colleague 2, Mrs Warmington was told to telephone the service user in order to explain that admission to

either would be clinically inappropriate. Ms Williams stated that Mrs Warmington did not do this but expressed an intention to provide a different reason to the service user.

The email dated 9 November from Colleague 2 to Witness 1 stated:

“Alex W responded by saying that she would just tell the service user there wasn’t a bed. She then did not make the call.”

Witness 2’s oral evidence was consistent with this. Witness 2 informed the panel that she explained to Mrs Warmington that this would be dishonest.

The panel heard from Witness 2 that it was possible, in her opinion, that Mrs Warmington wished to ‘*avoid a difficult conversation*’ with the service user, and that this was not conducive to developing a relationship of trust which was very important in the teams work.

The panel considered that the conduct of Mrs Warmington was not in keeping with the professional duty of candour as set out in DMA-8, in that her interaction was not honest and open with the service user.

The panel considered whether Mrs Warmington’s intended conduct was dishonest. The panel determined that she would have known by saying that there was no bed available, she was telling a lie. Further, that applying that objective standard of ordinary decent people, the panel considered her statement to be dishonest. The panel determined that a person with integrity would be open and honest about the facts.

In light of the above, the panel determined that Mrs Warmington was dishonest in respect of this charge.

The panel therefore finds charge 4 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mrs Warmington's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Furthermore, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs Warmington's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Ms Williams invited the panel to take the view that the facts found proved amount to misconduct.

Ms Williams asked the panel to have regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Williams proposed a number of areas of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) where she submitted there had

been a breach. Ms Williams went on to refer the panel to relevant parts of the NMC guidance FTP-2A 'Misconduct', DMA-8 'Making decisions on dishonesty charges and the professional duty of candour', FTP-3B 'Serious concerns which could result in harm if not put right' and FTP-3C 'Serious concerns based on public confidence or professional standards'.

Ms Williams identified the specific, relevant standards where Mrs Warmington's actions amounted to misconduct. She submitted that Mrs Warmington was not honest and open with a service user and that her behaviour breached the duty of candour and was dishonest. Ms Williams further submitted that Mrs Warmington spoke unprofessionally to and about service users on a number of occasions over a period of time which indicates a potential for future risk. She added that Mrs Warmington had displayed unprofessional behaviours which suggested an underlying attitudinal issue.

Ms Williams informed the panel that Mrs Warmington (in her CMF) does not accept that her actions amounted to misconduct. Ms Williams submitted that Mrs Warmington did not treat people with kindness, respect or compassion, and the assumptions made by her prevented her from delivering the fundamentals of care. She submitted that the facts proved amount to serious misconduct.

Submissions on impairment

Ms Williams moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Williams set out the four limbs of Dame Janet Smith's 'test':

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

Ms Williams submitted that all four limbs of the Dame Janet Smith test are engaged in this case, and Mrs Warmington is currently impaired. She submitted that Mrs Warmington breached the NMC Code in multiple ways and acted dishonestly. Ms Williams submitted that a finding of current impairment can be made on the basis that there is a continuing risk of repetition, and that public confidence in the nursing profession and the NMC as a regulator would be undermined if such a finding were not made.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Decision and reasons on misconduct

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

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

“1 Treat people as individuals and uphold their dignity

1.1 treat people with kindness, respect and compassion

2 Listen to people and respond to their preferences and concerns

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

2.6 recognise when people are anxious or in distress and respond compassionately and politely

3 Make sure that people’s physical, social and psychological needs are assessed and responded to

3.3 act in partnership with those receiving care, helping them to access relevant health and social care, information and support when they need it

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

6 Always practise in line with the best available evidence

6.1 make sure that any information or advice given is evidence based, including information relating to using any healthcare products or services, and

6.2 maintain the knowledge and skills you need for safe and effective practice

7 Communicate clearly

7.4 check people's understanding from time to time to keep misunderstanding or mistakes to a minimum

8 Work cooperatively

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

8.2 maintain effective communication with colleagues

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

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

9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues

9.2 gather and reflect on feedback from a variety of sources, using it to improve your practice and performance

13 Recognise and work within the limits of your competence

13.3 ask for help from a suitably qualified and experienced healthcare professional to carry out any action or procedure that is beyond the limits of your competence

14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place

14.1 act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm

14.2 explain fully and promptly what has happened, including the likely effects, and apologise to the person affected and, where appropriate, their advocate, family or carers

20 Uphold the reputation of your profession at all times

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

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

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

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

20.7 make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way

20.8 act as a role model of professional behaviour for students and newly qualified nurses and midwives to aspire to

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times”

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mrs Warmington displayed inappropriate behaviours and attitudes to both service users and colleagues which it believes demonstrates deep attitudinal issues.

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

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the NMC guidance DMA-1 'Impairment', updated on 27 February 2024, which states:

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

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

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

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

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

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

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

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

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

The panel finds all four limbs of the Dame Janet Smith test engaged. In regard to the first limb, the panel in both its findings on facts and Mrs Warmington's admissions, determined

that Mrs Warmington was dealing with vulnerable service users who were receiving crisis mental health care, and consequently her unprofessional and disrespectful comments both to/about service users, together with her apparent lack of contact with one, put service users at unwarranted risk of harm. The panel considered that members of the public would be appalled if they heard the comments that Mrs Warmington had made about service users. The panel therefore found the second limb of the test engaged. The panel considered that Mrs Warmington had made unprofessional comments which she said was *'humour/banter'*, in an effort to fit in with her team. The panel determined this to be unprofessional and that Mrs Warmington did not prioritise service users, which is a breach of the fundamental tenets of the nursing profession. The panel concluded its consideration of the Dame Janet Smith test, noting that it had found Mrs Warmington's conduct in relation to charge 3(c) to be dishonest.

The panel determined that vulnerable service users were put at risk of harm. The panel determined that Mrs Warmington's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that Mrs Warmington had previously submitted two reflective pieces to the NMC and completed the CMF. It noted that her insight was limited, in that although she had admitted that some of her comments and actions were inappropriate, they contained no reflection whatsoever on what she would do differently in the future or how her comments/actions impacted both service users and her colleagues. The panel had regard to two character references submitted on Mrs Warmington's behalf, however noted that these were limited in that they were completed by individuals who had no recent knowledge of her in a professional environment.

The panel was satisfied that the misconduct in this case is capable of being addressed, albeit, as the panel consider that Mrs Warmington has deep seated attitudinal issues, they recognise that these issues would be far more difficult to address and would take both a

willingness and considerable effort from her to do so. As she was not present at the hearing, the panel were unable to determine if she was willing to make that commitment.

The panel carefully considered the evidence before it in determining whether or not Mrs Warmington has taken steps to strengthen her practice thereby reducing the risk of repetition. The panel took into account the training Mrs Warmington had undertaken in relation to equality and diversity, and noted that she had received a certificate for this on 2 May 2023. It had no evidence of what Mrs Warmington had learnt from this course, nor did it have any evidence before it that she had improved her practice.

The panel is of the view that the behaviour was not a one-off incident and occurred over a period of time, demonstrating a pattern on behaviour. That, together with limited insight and remediation, a lack of engagement at the hearing, as well as meaningful remorse indicates in the panel's professional opinion, a real risk of repetition in the future. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is also required. It was of the view that a member of the public, who was aware of the charges admitted and found proved, would be appalled to find a nurse practising without restriction. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Warmington's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Warmington off the register. The effect of this order is that the NMC register will show that Mrs Warmington has been struck-off the register.

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

Submissions on sanction

Ms Williams submitted that a striking-off order is the most appropriate sanction in this case. She referred the panel to NMC guidance SAN-1 'Factors to consider before deciding on sanctions'.

Ms Williams submitted that the aggravating features are:

- A lack of insight into failings
- A pattern of misconduct over a period of time
- Mrs Warmington's behaviour continued after her line manager had brought it to her attention
- The service users in question were vulnerable

Ms Williams submitted that the risk of harm Mrs Warmington posed was only mitigated by the actions of her team at the Trust, who were able to ensure the service users were protected from her inappropriate behaviour by their early reporting.

Ms Williams submitted that the mitigating features are:

- Early admission of some of the facts
- Her engagement with the Trust and the NMC
- Limited insight into her failings

However, Ms Williams added that the evidence of Mrs Warmington's mitigation is limited as she lacked a full understanding of the impact of her behaviour. In terms of personal mitigation put forward by Mrs Warmington, Ms Williams submitted that at the time of the behaviour, Mrs Warmington had 20 years' experience in mental health nursing and was well supported by her employer.

Ms Williams submitted that neither no order nor a caution order would be proportionate or appropriate given the facts that the panel found proved. She submitted that Mrs Warmington has not demonstrated any insight and little reflection, and there is no evidence that she would comply with a conditions of practice order.

In her submissions on a suspension order, Ms Williams informed the panel that the facts proved did not show a single instance of misconduct, but a pattern of behaviour, and that there is evidence of deep seated attitudinal issues for Mrs Warmington, therefore a suspension order would not be appropriate.

Ms Williams submitted that Mrs Warmington has chosen not to attend the hearing and she has continued to deny that her conduct was dishonest. She submitted that a striking-off order is the only sanction which is sufficient to protect patients, members of the public and to uphold public confidence in nurses and other professionals.

The panel heard and accepted advice from the legal assessor.

Decision and reasons on sanction

Having found Mrs Warmington's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- A limited insight into failings
- A pattern of misconduct over a period of time
- Conduct and behaviour which may pose a significant risk of harm to vulnerable service users
- Mrs Warmington's unprofessional behaviour escalated after her line manager had brought it to her attention

The panel also took into account the following mitigating features:

- Early admissions to the Trust and the NMC
- Testimonials from two former colleagues, albeit, there is no evidence that they have worked with Mrs Warmington in a professional capacity for some considerable time

The panel also noted that Mrs Warmington had moved from a private hospital to a community setting as a mental health nurse. It took into account that Mrs Warmington had explained in her reflective piece that in an attempt to fit in, she engaged in '*humour/banter*' which the panel had found to be unprofessional behaviour. It noted the effort Mrs Warmington had made in undertaking an Equality, Diversity and Inclusion (EDI) training course, but it was unclear what she had learnt from that training and whether she has been able to put it into practice.

The panel were mindful of NMC guidance SAN-2, 'Considering sanctions in more serious cases'. The guidance says:

'Honesty is of central importance to a nurse, midwife or nursing associate's practice. Therefore allegations of dishonesty will always be serious and a nurse, midwife or nursing associate who has acted dishonestly will always be at some risk of being removed from the register...'

Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to people receiving care*

The guidance also makes clear:

'Nurses, midwives and nursing associates who have behaved dishonestly can engage with the Fitness to Practise Committee to show that they feel remorse, that they realise they acted in a dishonest way, and tell the panel that it will not happen again. Where the professional denies dishonesty, it is particularly important that they make every effort to attend the hearing so that the Committee can hear at first hand their response to the allegations.'

It is clear that Mrs Warmington has not engaged in the hearing and therefore information from her regarding her remorse and any realisation that she had acted dishonestly was not available to the panel.

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

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

The panel next considered whether placing conditions of practice on Mrs Warmington's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct and dishonesty identified in this case was not something that can be addressed through simple retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Warmington's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

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

The panel, in its findings on the facts, determined that there was not only a single instance of misconduct, but that the multiple instances of misconduct took place over a period of two and a half months. The panel had no evidence before it of Mrs Warmington's behaviour since the incidents took place.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

The panel determined that Mrs Warmington's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. Mrs Warmington's apparent lack of insight suggests a real risk of repetition putting patients at future risk of harm. The panel was of the view that the findings in this particular case demonstrate that Mrs Warmington's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the only appropriate and proportionate sanction is that

of a striking-off order. Having regard to the effect of Mrs Warmington's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mrs Warmington in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Williams. She submitted that an interim suspension order for 18 months is necessary for the protection of the public and is in the wider public interest.

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

Decision and reasons on interim order

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

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

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

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

That concludes this determination.