

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

**Substantive Hearing  
Wednesday 20 April - Thursday 28 April 2022**

**Virtual Hearing**

**Name of registrant:** **Ebenezer Nana Nyantekyi**

**NMC PIN:** 98Y0463E

**Part(s) of the register:** Registered Nurse - Mental Health Nursing (June 2002)

**Area of registered address:** London

**Type of case:** Misconduct

**Panel members:** Anthony Griffin (Chair, Lay member)  
Mark Gibson (Registrant member)  
Lorraine Wilkinson (Lay member)

**Legal Assessor:** Robin Hay

**Hearings Coordinator:** Jasmin Sandhu

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

**Mr Nyantekyi:** Not present and not represented

**Facts proved:** 1a, 1c, 1d, 1e, 2, 3, 4a, 4b, 4c, 4d, 5, 6, 7, 8a, 8c, 9a, 9b, 10a, 10b, 10c, 10d, 11ai, 11aii, 11b, 12a, 12b, 12c, 12d, 13, 15a, 15b, 16a, 16b, 16c, 16d, 17, 18b, 18c, 19a and 19b

**Facts not proved:** 1b, 8b, 14, and 18a

**Fitness to practise:** Impaired

**Sanction:** Striking-off order

**Interim order:** Interim suspension order (18 months)

## **Details of charge (as amended)**

*That you, whilst acting as a Charge Nurse at the Priory Hospital Hayes Grove, Keston Unit  
(a hospital for the mentally and psychiatrically ill)*

*1. Failed to accord colleagues due respect and dignity in that:*

- (a) You were rude and dismissive to Colleague 2*
- (b) On one occasion, when patient allocations were being dealt with, you were again rude and dismissive to Colleague 2.*
- (c) You called Colleague 2 “lady”, “woman”, “her”, “she”, “it” and did not use her name.*
- (d) You called Colleague 4 “you girl”.*
- (e) You would raise your hands to Colleague 2 to shoo her away.*

*2. On the 30th December 2019, whilst Colleague 2 was fully occupied in providing 2:1 care for patient A, she asked you to obtain some Fojuice [sic], a task you refused to do.*

*3. On the 30th December 2019, when Colleague 2 was left alone in the care of Patient B, whose care required a 2:1 ratio, she asked you as the allocated assistant to help, but you refused.*

*4. In declining to help, you stated the matters at (a)–(c) to the first request for help and to a second later request for help, you reacted to Colleague 2 in the way set out at (d)*

- (a) She should not worry.*
- (b) She should relax*
- (c) You would take the patient off 2:1 care.*
- (d) You ignored the request, laughed and walked off.*

*5. On the 31st December 2019, you were acting as the floating nurse and were called to assist Colleague 3 in the care of Patient B, whose care required a 2:1 ratio, but you did not attend.*

6. On the 31st December 2019, Colleague 3 requested you to help with Patient C, a patient requiring a 2:1 ratio of care, who was calling for help to go to the toilet, but you refused.

7. On the 4<sup>th</sup> January 2020, having elected to care for Patient C, you then left the patient without care and returned to your office.

8. On the 4<sup>th</sup> January 2020, following Patient D making an allegation of rape, you disobeyed a report and/or instruction emanating from your Ward Manager and Lead in Safeguarding, Colleague 1 that a pregnancy test be taken of Patient D in that you told:

- a) Colleague 2 "this is ridiculous. She has her period"
- b) Colleague 3 not to do the test
- c) Colleague 3 "This is a waste of time...nonsense..that you were busy...and not going to waste your time on a pregnancy test"

9. On the 4<sup>th</sup> January 2020, you disobeyed Colleague 1's instruction to you on the phone in relation to Patient D

- a) To report Patient D's allegation of rape to the police
- b) To arrange for Patient D to be taken to the Haven Clinic for a medical examination

10. In the course of refusing to follow the instruction at 9, you

- a) stated to Colleague 1 that she was "making a big deal out of nothing"
- b) said that Patient D was a fantasist and delusional.
- c) claimed that Patient D needed a section 17 permission to leave the hospital.
- d) Ignored and/or failed to assimilate Colleague 1's instruction that a Consultant would be contacted.

11. On the same day, the 4th January 2020, you disobeyed the instructions of Colleague 5, the Consultant Psychiatrist, in whose care Patient D was placed.

- a) You ignored and/or failed to assimilate

- i) that he provided you with verbal authority to take Patient D to the Haven Clinic under section 17 of the Mental Health Act 1983.
- ii) That he advised you to take her for a medical examination and record this in the notes
- b) You failed to follow Colleague 5's advice and did not take Patient D to the Haven Clinic.

12. Your conduct at 8-11 included

- a) Actions and/or statements outside and beyond your authority as a Charge Nurse.
- b) Clear insubordination and/or overruling of the instructions of your superiors, the Lead in Safeguarding and a Consultant psychiatrist.
- c) Actions outside and beyond your expertise as a Charge Nurse.
- d) Actions outside your knowledge of Patient D's condition. .

13. On the 5th January 2020, you did not attend for work or thereafter.

14. You did not inform your employer of your intention to cease working that day or thereafter.

15. On the 27th December 2019, Colleague 4 was explaining to you that the Consultant wanted blood samples taken before medications when

- (a) You interrupted Colleague 4
- (b) You said that you would report her to the Clinical Director and her agency. .

16. On the 4th January 2020,

- (a) You stated to Colleague 4 that a checklist from the 3rd January 2020 remained unsigned.
- (b) Colleague 4 had not been on duty on the morning shift of the 3rd January 2020
- (c) Despite (b) you threatened to report her to her Clinical Director and her agency.
- (d) In the same exchange, you stated to Colleague 4 "I am not talking to you" and walked away.

17. On the 4th January 2020, following the issue concerning the check list, you cancelled a week of Colleague 4's agency shift work. .

18. Your conduct at 17 was

- a) Designed to cause Colleague 4 financial detriment.
- b) Designed to cause Colleague 4 emotional upset.
- c) was unjustified and/or malicious.

19. Your conduct at 15, 16, 17 and 18

- a) was conduct outside and beyond the terms of your authority as a Charge Nurse.
- b) constituted harassment, intimidation and/or bullying.

*And in the light of the above, your fitness to practise is impaired by virtue of your misconduct.*

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

The panel was informed at the start of this hearing that Mr Nyantekyi was not in attendance and that the Notice of Hearing letter had been sent to his registered address by recorded delivery and by first class post on 21 March 2022.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing (before it was moved to a virtual hearing) and, amongst other things, information about Mr Nyantekyi's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Mr Joshi, 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.

In the light of all the information available, the panel was satisfied that Mr Nyantekyi has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

### **Decision and reasons on proceeding in the absence of Mr Nyantekyi**

The panel next considered whether it should proceed in the absence of Mr Nyantekyi. It had regard to Rule 21 and heard the submissions of Mr Joshi.

Mr Joshi referred the panel to an email from Mr Nyantekyi dated 15 March 2022 which states:

*'My preference is to proceed with the hearing in my absence.'*

Also, in an email dated 18 March 2022 Mr Nyantekyi states:

*'I refer to the substantive hearing on the 20th to the 29th of April 2022.  
I do not have any more responses to submit than the ones i have already written  
to you.'*

Mr Joshi submitted that Mr Nyantekyi has voluntarily absented himself from this hearing and adjourning today would not secure his attendance at a later date. Mr Joshi submitted that the panel should proceed in the absence of Mr Nyantekyi.

The panel accepted the advice of the legal assessor who reminded it that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*'.

The panel has decided to proceed in the absence of Mr Nyantekyi. In reaching this decision, the panel has considered the submissions of Mr Joshi, the emails from Mr

Nyantekyi to the NMC, and the advice of the legal assessor. It has had regard to the overall interests of justice and fairness to all parties and that:

- Mr Nyantekyi has informed the NMC that he would like the hearing to proceed in his absence;
- No application for an adjournment has been made by Mr Nyantekyi;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Five witnesses are due to attend this hearing to give live evidence and not proceeding may inconvenience those 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 2019-2020 and a 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 bore in mind that there is some disadvantage to Mr Nyantekyi in proceeding in his absence. Although he will not be able to challenge the evidence, relied upon by the NMC in person and will not be able to give oral evidence. However, 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 Mr Nyantekyi's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

## **Decision and reasons on application to amend the charge**

Mr Joshi applied to amend the wording of charges 10(c) and 11(a)(i). The proposed amendment was to change the reference to 's' in both charges to 'section'.

### Original charges:

10.In the course of refusing to follow the instruction at 9, you

- a) ...
- b) ...
- c) claimed that Patient D needed a s17 permission to leave the hospital.
- d) ...

11.On the same day, the 4th January 2020, you disobeyed the instructions of Colleague 5, the Consultant Psychiatrist, in whose care Patient D was placed.

- a) ...
- i) that he provided you with verbal authority to take Patient D to the Haven Clinic under s 17 of the Mental Health Act 1983.

...

### Proposed amendments:

10.In the course of refusing to follow the instruction at 9, you

- a) ...
- b) ...
- c) claimed that Patient D needed a **section 17** permission to leave the hospital.
- d) ...

11.On the same day, the 4th January 2020, you disobeyed the instructions of Colleague 5, the Consultant Psychiatrist, in whose care Patient D was placed.

- a) ...

i) that he provided you with verbal authority to take Patient D to the Haven Clinic under **section 17** of the Mental Health Act 1983.

...

Mr Joshi also proposed to remove the subheading of '*bullying*' as charge 19 refers to harassment, intimidation and/or bullying.

Original charge:

14....

***Bullying***

15....

Proposed amendment:

14....

***Bullying***

15....

Mr Joshi submitted that the above amendments would provide clarity and more accurately reflect the evidence.

The panel accepted the advice of the legal assessor who referred it to Rule 28.

The panel decided that these amendments, as applied for, were for the purposes of clarity and accuracy. It was satisfied that there would be no prejudice to Mr Nyanterkyi and no

injustice to either party by allowing the proposed amendments. The panel therefore allowed this application to amend the charges.

## **Background**

The NMC received a referral regarding Mr Nyantekyi's fitness to practise on 6 January 2020. The referral came from the Compliance Manager at Positive Healthcare ('the Agency') who employed Mr Nyantekyi. At the time of the concerns raised, Mr Nyantekyi was working as a Registered Charge Nurse at Priory Hospital ('the Hospital').

On 30 December 2019, it is said that Colleague 2 asked Mr Nyantekyi to get some Fortijuce for a patient they were providing 2:1 care for (Patient A). It is alleged that Mr Nyantekyi refused to do so, stating that he was too busy. It is also alleged that on that same shift, Mr Nyantekyi left Colleague 2 alone caring for a different patient (Patient B) for an hour who also required 2:1 care. Mr Nyantekyi had been allocated to care for Patient B that shift alongside Colleague 2. Allegedly, when Colleague 2 asked Mr Nyantekyi to help, he told them to relax and that they shouldn't worry as he was going to take Patient B off 2:1 care. Mr Nyantekyi did not have the authority to do this.

On 31 December 2019 Mr Nyantekyi was acting as the '*floating*' member of staff. Patient C needed assistance with personal care which required two members of staff. At the time, there was a sole member of staff attending to the patient. It is alleged that Mr Nyantekyi did not assist, stating that he was too busy completing a Datix form.

On 31 December 2019, Colleague 3 requested Mr Nyantekyi to help with Patient C, a patient requiring 2:1 care, who was calling for help to go to the toilet. It is alleged that Mr Nyantekyi refused to help.

On 4 January 2020 Mr Nyantekyi was asked to assist Colleague 3 in personal care for Patient C. At the time, there was a sole member of staff attending to the patient. It is

alleged that Mr Nyantekyi left Patient C in their room without care and returned to his office.

Also, on 4 January 2020 it is said that Patient D disclosed to Colleague 2 that they had been '*touched down below*' by another member of staff and were concerned they might be pregnant. It is alleged that Colleague 2 reported this to Mr Nyantekyi who laughed, said the patient was delusional, and did not take the complaint seriously. It is said that Colleague 2 then asked Mr Nyantekyi to arrange a pregnancy test in line with Patient D's wishes however, he allegedly declined to do so.

Colleague 1 had been informed of the situation and contacted the ward by telephone for an update regarding Patient D's pregnancy test. At this point, Colleague 2 informed Colleague 1 that Mr Nyantekyi had not carried out the test and had instructed Colleague 3 not to do so either. It is said that Colleague 1 instructed Colleague 2 to ensure that a pregnancy test was carried out.

It is said that Colleague 1 spoke with Mr Nyantekyi on the telephone, instructing him to report the concern to the Police and arrange to have Patient D taken to the Haven Clinic for a medical examination. It is alleged that Mr Nyantekyi told Colleague 1 that they were '*making a big deal out of nothing*' and Patient D was a '*fantasist*' and '*delusional*'. It is further alleged that Mr Nyantekyi refused to take Patient D as they were detained under Section 3 of the Mental Health Act and did not have Section 17 leave authorised. Colleague 1 spoke with the Director of Clinical Services who arranged for a consultant psychiatrist, Colleague 5, to contact Mr Nyantekyi with verbal authorisation in granting a Section 17 leave for Patient D to be escorted away from the ward for examination. Mr Nyantekyi allegedly refused to do so.

Earlier on 4 January 2022, Mr Nyantekyi asked Colleague 4 (Nurse) to sign a checklist that had not been signed from a previous shift. It is said that Colleague 4 declined as they had not been on duty at the time and therefore could not sign it. It is alleged that Mr

Nyantekyi threatened to report Colleague 4 to the Clinical Director and cancelled their agency shifts.

It is alleged that Mr Nyantekyi did not attend his next scheduled shift on 5 January 2020 and did not explain why.

Mr Nyantekyi has not worked on the ward since 4 January 2020.

### **Witness evidence**

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

- Colleague 1 - Ward Manager at the Hospital
- Colleague 2 - Senior Health Care Assistant at the Hospital
- Colleague 3 - Senior Staff Nurse at the Hospital
- Colleague 4 - Agency (Registered) Nurse at the Hospital
- Colleague 5 - Visiting Consultant Psychiatrist at the Hospital

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

During the course of Colleague 2's witness evidence, Mr Joshi made an application that parts of this hearing should be heard in private on the basis that patients' private health would be referred to.

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.

Having heard that there would be reference to patients' health, the panel determined to hold parts of this hearing in private in order to maintain their privacy and confidentiality. The panel will go into private sessions as and when those issues arise.

### **Decision and reasons on facts**

In reaching its decisions on the facts, the panel considered all the oral and documentary evidence together with the submissions made by Mr Joshi. It has accepted the advice of the legal assessor.

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 made the following findings:

#### **Charge 1a**

- 1. Failed to accord colleagues due respect and dignity in that:*
  - (a) You were rude and dismissive to Colleague 2*

#### **This charge is found proved.**

In reaching this decision, the panel took into account Colleague 2's oral evidence which was consistent with her written statement. She explained that she had been made to feel 'embarrassed' and 'vulnerable' by Mr Nyantekyi as he was rude and dismissive to her. In oral evidence, Colleague 2 explained how Mr Nyantekyi 'shushed' and 'shooed' her away with his hands.

On this basis the panel determined that this charge was found proved.

### **Charge 1b**

- 1. Failed to accord colleagues due respect and dignity in that:*  
*(b) On one occasion, when patient allocations were being dealt with, you were you were again rude and dismissive to Colleague 2.*

**This charge is found NOT proved.**

The panel noted that it was not given information about the possible link of the patient allocations and Mr Nyantekyi being rude and dismissive. It determined that it has not been provided any real supporting evidence for this charge and therefore this charge is not found proved.

### **Charge 1c**

- 1. Failed to accord colleagues due respect and dignity in that:*  
*(c) You called Colleague 2 “lady”, “woman”, “her”, “she”, “it” and did not use her name.*

**This charge is found proved.**

In reaching this decision, the panel determined that there was sufficient evidence in regard to this charge. The panel noted that the evidence from Colleague 2 in her statement on 16 January 2020 to the Hospital, her NMC witness statement and her oral evidence were consistent in that Mr Nyantekyi had called her ‘lady’, ‘woman’, ‘her’, ‘she’, ‘it’ and did not use her name.

The panel therefore found charge 1c proved.

### **Charge 1d**

1. *Failed to accord colleagues due respect and dignity in that:*  
(d) *You called Colleague 4 “you girl”.*

**This charge is found proved.**

The panel noted that Colleague 4’s witness statement and her local statement dated 17 January 2020 soon after the events took place stated that Mr Nyantekyi said to her ‘*You this girl you are not listening...*’. The panel noted the oral evidence from Colleague 4 that this was not professional.

It determined that this charge was found proved.

### **Charge 1e**

1. *Failed to accord colleagues due respect and dignity in that:*  
(e) *You would raise your hands to Colleague 2 to shoo her away.*

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague 2’s evidence in her witness statement and her oral evidence which she explained that Mr Nyantekyi would raise his hands to ‘shoo’ her away and would also do the same to other colleagues.

The panel determined that the evidence was sufficient to find this charge proved.

## **Charge 2**

*2. On the 30th December 2019, whilst Colleague 2 was fully occupied in providing 2:1 care for patient A, she asked you to obtain some Fojuice [sic], a task you refused to do.*

### **This charge is found proved.**

In reaching this decision, the panel took into account Colleague 2's witness statement and oral evidence in which she explained that Mr Nyantekyi said he was too busy to assist with the provision of this although he was the designated floating nurse.

The panel noted that the evidence shows that Mr Nyantekyi refused to assist with providing care for Patient A. It determined that this charge is found proved.

## **Charge 3**

*3. On the 30th December 2019, when Colleague 2 was left alone in the care of Patient B, whose care required a 2:1 ratio, she asked you as the allocated assistant to help, but you refused.*

### **This charge is found proved.**

In reaching this decision, the panel took into account Colleague 2's evidence that she felt 'embarrassed' and 'vulnerable' when Mr Nyantekyi refused to assist her with the care of Patient B. The panel noted that Colleague 2 was consistent with her evidence and determined that this charge was found proved.

### **Charge 4a**

- 4. In declining to help, you stated the matters at (a)–(c) to the first request for help and to a second later request for help, you reacted to Colleague 2 in the way set out at (d)*
- (a) She should not worry.*

### **This charge is found proved.**

In reaching this decision, the panel took into account Colleague 2's consistency within her witness statement and in her oral evidence. It determined that there was sufficient evidence that Mr Nyantekyi had stated Colleague 2 '*should not worry*'.

The panel therefore found charge 4a proved.

### **Charge 4b**

- 4. In declining to help, you stated the matters at (a)–(c) to the first request for help and to a second later request for help, you reacted to Colleague 2 in the way set out at (d)*
- (b) She should relax*

### **This charge is found proved.**

The panel noted Colleague 2's consistency within her witness statement and in her oral evidence. It determined that there was sufficient evidence that Mr Nyantekyi had stated Colleague 2 '*should relax*'.

Therefore, the panel found charge 4b proved.

#### **Charge 4c**

- 4. In declining to help, you stated the matters at (a)–(c) to the first request for help and to a second later request for help, you reacted to Colleague 2 in the way set out at (d)*
- (c) You would take the patient off 2:1 care.*

#### **This charge is found proved.**

In reaching this decision, the panel took into account Colleague 2's consistency within her witness statement and in her oral evidence. It also noted the Hospital policy that stated, '*Observation levels could only be reduced by a doctor*'. The panel determined Mr Nyantekyi in any event was not able to take the patient off 2:1 care and that the evidence from Colleague 2 was sufficient to find this charge proved.

Therefore, the panel found charge 4c proved.

#### **Charge 4d**

- 4. In declining to help, you stated the matters at (a)–(c) to the first request for help and to a second later request for help, you reacted to Colleague 2 in the way set out at (d)*
- (d) You ignored the request, laughed and walked off.*

#### **This charge is found proved.**

The panel noted Colleague 2's consistency within her witness statement and in her oral evidence. It noted that Colleague 2 had explained she had felt '*embarrassed*' and '*vulnerable*' as she was not given support by Mr Nyantekyi. The panel determined that there was sufficient evidence that Mr Nyantekyi had ignored Colleague 2's '*request, laughed and walked off*'.

Therefore, the panel found charge 4d proved.

### **Charge 5**

5. *On the 31st December 2019, you were acting as the floating nurse and were called to assist Colleague 3 in the care of Patient B, whose care required a 2:1 ratio, but you did not attend.*

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague 2's evidence in which she explained that Mr Nyantekyi did not attend to help with Patient B. The panel determined that there is sufficient written and oral evidence that Mr Nyantekyi did not attend although he was the floating nurse and there was a 2:1 (staff ratio) care plan in place for this patient.

Therefore, the panel found charge 5 proved.

### **Charge 6**

6. *On the 31st December 2019, Colleague 3 requested you to help with Patient C, a patient requiring a 2:1 ratio of care, who was calling for help to go to the toilet, but you refused.*

**This charge is found proved.**

In reaching this decision, the panel had regard to the written statement from Colleague 3 who sets out that Patient C, a patient on 2:1 care, was calling out for help to go to the toilet. Colleague 3 states that they told Mr Nyantekyi he needed to attend but '*he refused*'. It is further stated that Mr Nyantekyi asked a carer to clean the patient after they had

soiled themselves. The panel also noted that Colleague 3's oral evidence was consistent with this written statement.

In addition to this, the panel had regard to Patient C's care plan which sets out that '*Nurses will ensure that [Patient C] is supported by two staff during all moving and handling interventions*'. The panel was therefore satisfied that Patient C would have required 2.1 care when moved to the toilet.

On the basis of the above, the panel concluded that Mr Nyantekyi did refuse to help with Patient C when requested by Colleague 3. This charge is therefore found proved.

### **Charge 7**

7. *On the 4<sup>th</sup> January 2020, having elected to care for Patient C, you then left the patient without care and returned to your office.*

#### **This charge is found proved.**

The panel had regard to the written statement from Colleague 3 who confirms that Mr Nyantekyi elected to care for Patient C '*I thought that by giving Ebenezer the choice, it would help to get him more involved with the patients and provide assistance. He said he would assist with the personal care for [Patient C]*'.

Further in Colleague C's statement, it is set out that Mr Nyantekyi then left the patient without care and returned to the office '*Whilst I was dealing with the other patient and her parents, I could hear [Patient C] calling out for help. Ebenezer didn't go to help and he was in the office and typing on the computer. When a patient is shouting for help, whoever is free should attend. If you are doing paperwork, you should prioritise the patient first*'.

The panel noted that this written statement was consistent with Colleague 3's oral evidence.

On the basis of all of the above, the panel was satisfied that Mr Nyantekyi left Patient C without care and returned to his office, after having elected to care for them. This charge is therefore found proved.

### **Charge 8a**

*8. On the 4<sup>th</sup> January 2020, following Patient D making an allegation of rape, you disobeyed a report and/or instruction emanating from your Ward Manager and Lead in Safeguarding, Colleague 1 that a pregnancy test be taken of Patient D in that you told:*

*a) Colleague 2 “this is ridiculous. She has her period”*

### **This charge is found proved.**

In reaching this decision, the panel took into account the local statement from Colleague 2 dated 16 January 2020. Colleague 2 explains that upon taking instruction from Colleague 1, she told Colleague 3 that the pregnancy test had to be done. At this point, she states that Mr Nyantekyi laughed and said '*this is ridiculous. She has her period*'.

In addition, the panel had regard to the written statement from Colleague 1 who confirms that the situation had to be treated seriously '*In regards to any allegation of assault/abuse ie. allegations that fall into the category of safeguarding and/or a crime, all allegations must be taken seriously and appropriate action taken*'.

Taking into account the above, the panel was satisfied that this sub-charge is found proved.

### **Charge 8b**

*8. On the 4<sup>th</sup> January 2020, following Patient D making an allegation of rape, you disobeyed a report and/or instruction emanating from your Ward Manager and Lead in Safeguarding, Colleague 1 that a pregnancy test be taken of Patient D in that you told:*

*b) Colleague 3 not to do the test*

**This charge is found NOT proved.**

The panel noted its previous finding that Mr Nyantekyi did not take the pregnancy test seriously, having stated that it was '*ridiculous*' and that the patient had her period. The panel also took into account that Colleague 3, in his written statement, sets out that Mr Nyantekyi said, '*it was nonsense, that he was busy and that he was not going to waste his time in doing a pregnancy test.*'

Whilst the panel was satisfied that Mr Nyantekyi had told Colleague 3 that '*he*' was not going to arrange a pregnancy test for Patient D, it had not seen any evidence suggesting that Mr Nyantekyi told Colleague 3 not to do a test. The panel bore in mind that in his oral evidence, Colleague 3 set out that he did organise a pregnancy test for the patient. Colleague 1 also confirmed this in her written statement '*I contacted the ward later on and [Colleague 2] told me that [Colleague 3] carried out the pregnancy test...*'

In this regard, the panel concluded that this charge is not proved.

### **Charge 8c**

*8. On the 4<sup>th</sup> January 2020, following Patient D making an allegation of rape, you disobeyed a report and/or instruction emanating from your Ward Manager and Lead in Safeguarding, Colleague 1 that a pregnancy test be taken of Patient D in that you told:*

c) Colleague 3 “*This is a waste of time...nonsense..that you were busy...and not going to waste your time on a pregnancy test*”

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague 3’s written statement, who states that upon asking about the pregnancy test, Mr Nyantekyi said, ‘*it was nonsense, that he was busy and that he was not going to waste his time in doing a pregnancy test...He repeated that the matter was silly and was a waste of this time*’.

The panel also had regard to Colleague 2’s written statement which is consistent with Colleague 3’s account: ‘*I spoke later to [Colleague 1], the unit manager, and she asked me to facilitate a pregnancy test. I also spoke to [Colleague 1] again later in the shift and she said she wanted to speak to Ebenezer but he wouldn’t speak to her... I felt extremely uneasy around Ebenezer as he was refusing to do what he was told*’.

In the light of this evidence, the panel was satisfied that there is sufficient evidence to find this sub-charge proved.

**Charge 9**

9. *On the 4<sup>th</sup> January 2020, you disobeyed Colleague 1’s instruction to you on the phone in relation to Patient D*
  - a) *To report Patient D’s allegation of rape to the police*
  - b) *To arrange for Patient D to be taken to the Haven Clinic for a medical examination*

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague 1’s written statement setting out that ‘*I informed him that he must report the concern, which was an alleged*

*rape, to the Police and that he must arrange to have the patient taken to the Haven Clinical for a medical examination.’ Colleague 1 goes on to state that ‘Ebenezer told me that he didn’t agree with my decision and that I was making a big deal out of nothing.’*

The panel noted that Colleague 1’s written account was consistent with her oral evidence. In addition, it considered that she was clear in her answers and had a good recall of events. As such, the panel found Colleague 1 to be a very credible witness.

On the basis of all of the above, the panel was satisfied that this charge is proved.

### **Charge 10a**

- 10. In the course of refusing to follow the instruction at 9, you*
- a) stated to Colleague 1 that she was “making a big deal out of nothing”*

**This charge is found proved.**

In reaching this decision, the panel took into account the written statement from Colleague 1 who states that ‘*Ebenezer told me that he didn’t agree with my decision and that I was making a big deal out of nothing.*’ This was also confirmed by Colleague 1 during her oral evidence.

On the basis of the above and taking into account that Colleague 1 was a credible witness, the panel determined that there was sufficient evidence to find this charge proved.

### **Charge 10b**

- 10. In the course of refusing to follow the instruction at 9, you*
- b) said that Patient D was a fantasist and delusional.*

**This charge is found proved.**

The panel took into account Colleague 1's written statement which sets out that Mr Nyantekyi said that '*the patient was a fantasist and was delusional*'. Colleague 1 also confirmed this during her oral evidence.

On the basis that Colleague 1 was considered a credible witness and in the absence of any contradictory evidence, the panel finds this charge proved.

### **Charge 10c**

- 10. In the course of refusing to follow the instruction at 9, you*  
*c) claimed that Patient D needed a section 17 permission to leave the hospital.*

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague 1's written statement '*I also had to inform him that it was also a safeguarding matter and I am the hospital lead in safeguarding matters. Ebenezer went on to say that the patient, who was detained under Section 3 of the Mental Health Act, did not have Section 17 leave and so couldn't leave the hospital.*'

The panel also had regard to the written statement of Colleague 5 which states '*I can recall giving my verbal authorisation for Section 17 leave under the Mental Health Act for her to attend for that medical examination...I was perfectly clear in my mind that this was the appropriate thing to do*'.

Taking into account the above, the panel concluded that there is sufficient evidence to find this sub-charge proved.

### **Charge 10d**

- 10. In the course of refusing to follow the instruction at 9, you*
- d) Ignored and/or failed to assimilate Colleague 1's instruction that a Consultant would be contacted.*

### **This charge is found proved.**

On the basis of its findings in charge 9 and taking into account the oral evidence from Colleague 1, the panel was satisfied that Mr Nyantekyi ignored Colleague 1's instruction that a consultant would be contacted. This charge is therefore proved.

### **Charge 11a(i)**

- 11. On the same day, the 4th January 2020, you disobeyed the instructions of Colleague 5, the Consultant Psychiatrist, in whose care Patient D was placed.*
- a) You ignored and/or failed to assimilate*
- i) that he provided you with verbal authority to take Patient D to the Haven Clinic under section 17 of the Mental Health Act 1983.*

### **This charge is found proved.**

In reaching this decision, the panel had regard to the written statement of Colleague 5 who stated '*I can recall giving my verbal authorisation for Section 17 leave under the Mental Health Act for her to attend for that medical examination*'. The panel also bore in mind Colleague 5's oral evidence who set out that he was 80% sure that it was Mr Nyantekyi he spoke to.

The panel found Colleague 5 to be a credible witness who had been treating Patient D for six years (at the time of events) on a weekly basis.

On the basis of the above, the panel determined that this charge is proved insofar as that Mr Nyantekyi failed to assimilate that Colleague 5 provided him with the verbal authority for a leave of absence to be granted under Section 17 of the Mental Health Act 1983.

### **Charge 11a(ii)**

*11. On the same day, the 4th January 2020, you disobeyed the instructions of Colleague 5, the Consultant Psychiatrist, in whose care Patient D was placed.*

*a) You ignored and/or failed to assimilate*

*ii) That he advised you to take her for a medical examination and record this in the notes*

### **This charge is found proved.**

In reaching this decision, the panel had regard to the witness statement from Colleague 5. In his statement, Colleague 5 explains that he gave his verbal authorisation for a leave of absence under Section 17 of the Mental Health Act for Patient D to attend a medical examination. He goes on to state '*I also asked that this instruction be recorded in her patient record. I was perfectly clear in my mind that this was the appropriate thing to do. My understanding is that Ebenezer refused to comply with my request. He did not know the patient or what was going on with her care. It was not his position to question my instruction*'.

The panel also took into account Colleague 5's oral evidence in which he confirmed the above.

On the basis of the above, the panel was satisfied that there is sufficient evidence to find this sub-charge proved.

### **Charge 11b**

*11. On the same day, the 4th January 2020, you disobeyed the instructions of Colleague 5, the Consultant Psychiatrist, in whose care Patient D was placed.*

*b) You failed to follow Colleague 5's advice and did not take Patient D to the Haven Clinic.*

#### **This charge is found proved.**

As found proved in charge 11a, Colleague 5 advised Mr Nyantekyi to take Patient D to the Haven Clinic for a medical examination '*I can recall giving my verbal authorisation for Section 17 leave under the Mental Health Act for her to attend for that medical examination*'. This is also confirmed in Patient D's care notes '*Keston Ward should facilitate a section 17 leave for Patient D to attend the GUM clinic [sic]*'.

The panel had regard to the evidence provided by Colleague 1. In her written statement, and reaffirmed in her oral evidence, Colleague 1 sets out that she told Mr Nyantekyi to report the alleged rape to the police and that he must arrange to have the patient taken to the Haven Clinic for a medical examination. She goes on to explain that after Mr Nyantekyi was given verbal authorisation by Colleague 5 that Patient D could be taken to be examined, he '*still refused to have the test done and did not even contact the Haven*'. Colleague 1 further states '*...he did not take the patient to the Haven for examination. It was only about 5 days later that staff from the Haven came to the Keston Unit to see the patient*'.

On the basis of all the above, the panel concluded that Mr Nyantekyi did not take Patient D to Haven Clinic when advised to do so by Colleague 5. This sub-charge is therefore found proved.

## **Charge 12a**

*12. Your conduct at 8-11 included*

- a) *Actions and/or statements outside and beyond your authority as a Charge Nurse.*

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence from Colleague 1. In her written statement, Colleague 1 explains that when Mr Nyantekyi refused to listen to her instruction to arrange a pregnancy test for Patient D, '*A bit of an argument ensued and I informed Ebenezer that he was not qualified to make that decision. I also had to inform him that it was also a safeguarding matter and I am the hospital lead in safeguarding matters.*' In her oral evidence, Colleague 1 stated that Mr Nyantekyi did not have authority to make this decision as it was a clinical one.

In addition, with regard to arranging Patient D to go to Haven Clinic, Colleague 1 states '*He refused my instruction as his manager and also as the safeguarding officer and also the instruction of the consultant psychiatrist.*'

This is supported by the written statement from Colleague 5 who states, '*My understanding is that Ebenezer refused to comply with my request. He did not know the patient or what was going on with her care. It was not his position to question my instruction... I don't think that was reasonable and he should have followed my and my senior nurses' instructions.*'

The panel also took into account the supplementary witness statement from Colleague 1 which states '*Although Ebenezer was contracted as the Charge nurse for the unit, this does not give them the autonomy to ignore instructions from their seniors in regards to a patient's credibility based on their own view... As a nurse, or health care/medical professionals as a whole, we do not have the authority to decide whether or not an*

*allegation is true or false by independent judgment. It is our responsibility to report all allegations to the local safeguarding authority, to take immediate action to preserve any potential evidence and to ensure that the patient is safe'.*

In the light of all the evidence, the panel was satisfied that this sub-charge is proved.

### **Charge 12b**

*12. Your conduct at 8-11 included*

*b) Clear insubordination and/or overruling of the instructions of your superiors, the Lead in Safeguarding and a Consultant psychiatrist.*

**This charge is found proved.**

The panel finds this charge proved to the extent that Mr Nyantekyi's conduct at charges 8-11 includes both insubordination and overruling of the instructions of his superiors. In reaching this decision, the panel took into account the same evidence as it did for the above charge.

In his written statement, Colleague 5 states '*My understanding is that Ebenezer refused to comply with my request. He did not know the patient or what was going on with her care. It was not his position to question my instruction... I don't think that was reasonable and he should have followed my and my senior nurses' instructions.'*

In her written statement, Colleague 1 states '*A bit of an argument ensued and I informed Ebenezer that he was not qualified to make that decision. I also had to inform him that it was also a safeguarding matter and I am the hospital lead in safeguarding matters.*' In addition, Colleague 1 explains: '*He refused my instruction as his manager and also as the safeguarding officer and also the instruction of the consultant psychiatrist*'.

The panel concluded that by acting outside his scope of authority as a charge nurse, Mr Nyantekyi demonstrated clear insubordination and overruling of the instructions of Colleague 1 and Colleague 5, his superiors.

### **Charge 12c**

*12. Your conduct at 8-11 included*

*c) Actions outside and beyond your expertise as a Charge Nurse.*

#### **This charge is found proved.**

Given the panel's findings in charges 12a and 12b, this charge is also proved. The panel again had regard to the written statements from Colleague 1 and Colleague 5 who both confirm that Mr Nyantekyi's conduct in charges 8 - 11 was outside his expertise as a charge nurse.

Colleague 1 states '*Although Ebenezer was contracted as the Charge nurse for the unit, this does not give them the autonomy to ignore instructions from their seniors in regards to a patient's credibility based on their own view... As a nurse, or health care/medical professionals as a whole, we do not have the authority to decide whether or not an allegation is true or false by independent judgment. It is our responsibility to report all allegations to the local safeguarding authority, to take immediate action to preserve any potential evidence and to ensure that the patient is safe*'.

In his written statement, Colleague 5 states that '*It was not his position to question my instruction... I don't think that was reasonable and he should have followed me and my senior nurses' instructions.*'

In the light of the evidence, the panel finds this charge proved.

## **Charge 12d**

12. Your conduct at 8-11 included
- d) Actions outside your knowledge of Patient D's condition.

### **This charge is found proved.**

In reaching this decision, the panel had regard to the evidence from Colleague 5. In his written statement, Colleague 5 stated '*He did not know the patient or what was going on with her care. It was not his position to question my instruction.*' This was confirmed by Colleague 5 in his oral evidence.

In addition, the panel took into account the written statement from Colleague 1 '*Although Ebenezer was contracted as the Charge nurse for the unit, this does not give them the autonomy to ignore instructions from their seniors in regards to a patient's credibility based on their own view.*'

Furthermore, in his written statement Colleague 3 states '*This was a safeguarding matter and I know that Ebenezer didn't manage matters correctly.*'

The panel determined that on the basis of all of three accounts above, which were consistent with each other, there is sufficient evidence to find this charge proved.

## **Charge 13**

13. On the 5th January 2020, you did not attend for work or thereafter.

### **This charge is found proved.**

In reaching this decision, the panel took into account Colleague 3's written statement. Colleague 3 states '*On 05 January 2020, Ebenezer failed to turn up for work.*'

The panel noted that this account is consistent with the written statement of Colleague 1 who states '*On 05 January 2020, I received a phone call from [Colleague 3] and he told me that Ebenezer did not come in for his shift...*'

In the light of the above, the panel concluded that Mr Nyantekyi did not attend work on 5 January 2020. This charge is therefore proved.

#### **Charge 14**

*14. You did not inform your employer of your intention to cease working that day or thereafter.*

**This charge is found NOT proved.**

The panel was of the view that there was not sufficient evidence to support this charge. It had regard to Mr Nyantekyi's bundle in which he states that he sent emails to say that he would not be working. Although the panel did not have sight of these emails, it also did not have sight of any emails from staff members to follow up on his non-attendance.

This charge is found not proved.

#### **Charge 15a**

*15. On the 27th December 2019, Colleague 4 was explaining to you that the Consultant wanted blood samples taken before medications when*  
*(a) You interrupted Colleague 4*

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague 4's written statement who confirms that Mr Nyantekyi interrupted her '*I began to explain this to Ebenezer but he just interrupted me. He was extremely rude and was just referring to me as girl.*'

This is consistent with Colleague 4's local statement dated 17 January 2020 in which it is outlined '*Ebenezer interrupted me and said "You this girl, you are not listening..."*'

On the basis of the above, the panel concluded that this charge is proved.

### **Charge 15b**

*15. On the 27th December 2019, Colleague 4 was explaining to you that the Consultant wanted blood samples taken before medications when*  
*(b) You said that you would report her to the Clinical Director and her agency.*

#### **This charge is found proved.**

In reaching this decision, the panel had regard to the written statement from Colleague 4 in which she stated, '*He also threatened to report me to my agency and to the Clinical Director.*'

This is consistent with Colleague 4's local statement '*Ebenezer interrupted me and said "You this girl, you are not listening... if this happens again I will report you to the clinical director and your agency."*'

In addition, the panel took into account an email from the Director of Clinical Services to Mr Nyantekyi dated 4 January 2020 which sets out that any issues with agency staff should be addressed to her and that decisions regarding the termination or suspension of staff lie with her.

In the light of all of the above, the panel was satisfied that there is sufficient evidence to find this charge proved.

### **Charge 16a**

*16. On the 4th January 2020,*

- (a) *You stated to Colleague 4 that a checklist from the 3rd January 2020 remained unsigned*
- (b) *Colleague 4 had not been on duty on the morning shift of the 3rd January 2020*

**This charge is found proved.**

The panel took into account the local statement from Colleague 4 in which she states that '*After the handover, he reported that one paper was not signed on Friday Day shift and he was going to take it up by sending an email to the clinical director*'. This is consistent with her written statement where she confirms that after the handover, Mr Nyantekyi said that a checklist from the Friday morning had not been signed. Colleague 4 further states that she had not been on duty and therefore could not sign the checklist.

Colleague 4's written statements were confirmed by her oral evidence.

On the basis of the above and in the absence of any contradictory evidence, the panel concluded that sub-charges 16a and b are proved.

### **Charge 16c**

*16. On the 4th January 2020,*

- (c) *Despite (b) you threatened to report her to her Clinical Director and her agency.*

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague 4's written statement where she sets out that Mr Nyantekyi threatened to report her to the Clinical Director and her agency '*He said that he would report me to the Clinical Director and the agency and would cancel all my shifts. I tried to explain myself to him but he refused to speak to me.*'

This is consistent with her local statement '*... he was going to take it up by sending an email to the clinical director and to our entire agency, and that he would cancel all my shifts until the investigation is over.*'

In the light of the above, the panel finds this charge proved.

**Charge 16d**

*16. On the 4th January 2020,*

*(d) In the same exchange, you stated to Colleague 4 "I am not talking to you"*  
*and walked away.*

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague 4's local statement in which she states that when she tried explaining herself to Mr Nyantekyi, he said '*Please I am not talking to you*' and walked out of the office. Furthermore, in her written statement, Colleague 4 states '*I tried to explain myself to him but he refused to speak to me.*'

The panel bore in mind that Colleague 4 reaffirmed the above during her oral evidence.

On the basis of the above, the panel was satisfied that there is sufficient evidence to find this charge proved.

## **Charge 17**

*17. On the 4th January 2020, following the issue concerning the check list, you cancelled a week of Colleague 4's agency shift work.*

**This charge is found proved.**

In reaching this decision, the panel took into account Colleague 1's written statement '*... he also cancelled all her shifts for the following week, which he was not authorised to do so.*' Further in her statement, Colleague 1 sets out '*[Colleague 3] also said that Ebenezer had amended the shift rotas to take all of [Colleague 4]'s shifts for himself...*'

This is confirmed in Colleague 3's written statement '*Ebenezer crossed out shifts that had been allocated to [Colleague 4], another agency staff member... I think he definitely went too far in cancelling these shifts.*'

In Colleague 4's written statement and local statement, she sets out that Mr Nyantekyi threatened to cancel her shifts.

In the light of this evidence, the panel concluded that this charge is proved.

## **Charge 18a**

*18. Your conduct at 17 was*

*a) Designed to cause Colleague 4 financial detriment.*

**This charge is found NOT proved.**

Although the panel had found that Mr Nyantekyi had cancelled a week of Colleague 4's agency shift work, there was no evidence before it to suggest that he did this to cause Colleague 4 financial detriment. This charge is therefore not proved.

### **Charge 18b**

- 18. Your conduct at 17 was*
- b) Designed to cause Colleague 4 emotional upset.*

#### **This charge is found proved.**

In reaching this decision, the panel took into account the witness statement from Colleague 4 who explained the impact on her of the cancelled shifts '*I was so upset that I was crying like a baby. I phoned [Colleague 1], who was on call, to report this unacceptable, bullying behaviour.*'

On this basis, the panel concluded that Mr Nyantekyi's conduct was designed to cause emotional upset to Colleague 4.

### **Charge 18c**

- 18. Your conduct at 17 was*
- c) was unjustified and/or malicious.*

#### **This charge is found proved.**

The panel concluded that Mr Nyantekyi's conduct at charge 17 was both unjustified and malicious. In reaching this decision, the panel took into account the written statement from Colleague 3 who states, '*I told him that he couldn't do this but he said he was going to do it anyway and would tell the agency.*'

The panel therefore concluded that this charge is proved.

### **Charge 19a**

*19. Your conduct at 15, 16, 17 and 18*

- a) *was conduct outside and beyond the terms of your authority as a Charge Nurse.*

#### **This charge is found proved.**

In reaching this decision, the panel took into account the evidence from Colleague 1 and Colleague 3 who both confirmed that Mr Nyantekyi's conduct was outside and beyond his authority as a charge nurse. In her written statement Colleague 1 states '*he also cancelled all her shifts for the following week, which he was not authorised to do so.*' She also confirmed this in her oral evidence. In his written statement, Colleague 3 states '*He did not have authority to do this.*'

On the basis of all the above, the panel concluded that this charge is proved.

### **Charge 19b**

*19. Your conduct at 15, 16, 17 and 18*

- b) *constituted harassment, intimidation and/or bullying.*

#### **This charge is found proved.**

The panel concluded that this charge is proved to the extent that Mr Nyantekyi's conduct constituted intimidation and bullying. It was not satisfied that his conduct constituted harassment.

In reaching this decision, the panel took into account the written statement from Colleague 4 '*I was very upset by the way he was bullying me and speaking to me. I was so upset that I was crying like a baby. I phoned [Colleague 1], who was on call, to report this*

*unacceptable, bullying behaviour.'* On this basis, the panel was satisfied that there was sufficient evidence to conclude that Mr Nyantekyi's conduct constituted bullying.

Furthermore, the panel concluded that as Mr Nyantekyi used his position of a charge nurse against Colleague 4, his conduct also amounts to intimidation.

This charge is therefore proved regarding intimidation and bullying.

### **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 Mr Nyantekyi'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 suitability to remain on the register unrestricted.

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, whether Mr Nyantekyi's fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct and impairment**

Mr Joshi submitted that the facts found proved can be divided into three categories:

the neglect of patients, a failure to safeguard patients, and a failure to work cooperatively with colleagues. He stated that the Ward had six patients at the time, most of whom required special attention on a 2:1 staff ratio. Mr Joshi submitted that by failing to provide assistance to extremely vulnerable patients, Mr Nyantekyi put them at risk of significant harm.

Mr Joshi further submitted that as Mr Nyantekyi has denied the regulatory allegations, there is no evidence of insight or remediation. He submitted that a finding of current impairment is necessary.

The panel accepted the advice of the legal assessor.

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

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

The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision. It decided that Mr Nyantekyi's actions and omissions did amount to breaches of the Code, including:

**'1    Treat people as individuals and uphold their dignity**

*To achieve this, you must:*

*1.1 treat people with kindness, respect and compassion*

*1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay*

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

*To achieve this, you must:*

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

**4     *Act in the best interests of people at all times***

**8     *Work co-operatively***

*To achieve this, you must:*

*8.1 make sure you deliver the fundamentals of care effectively*

*8.2 maintain effective communication with colleagues*

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

*8.6 share information to identify and reduce risk*

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

*To achieve this, you must:*

*9.3 deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times*

**15    *Always offer help if an emergency arises in your practice setting or anywhere else***

*To achieve this, you must:*

*15.2 arrange, wherever possible, for emergency care to be accessed and provided promptly*

**16    *Act without delay if you believe that there is a risk to patient safety or public protection***

*To achieve this, you must:*

*16.5 not obstruct, intimidate, victimise or in any way hinder a colleague, member of staff, person you care for or member of the public who wants to raise a concern*

**19 *Be aware of, and reduce as far as possible, any potential for harm associated with your practice***

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

*To achieve this, you must, as appropriate:*

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

**25 *Provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care system'***

Whilst the panel appreciated that breaches of the Code do not automatically result in a finding of misconduct, it considered that Mr Nyantekyi's actions and omissions did fall significantly short of the standards expected of a registered nurse. The panel decided that Mr Nyantekyi's failings were sufficiently serious to amount to misconduct.

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

The panel next went on to decide if as a result of the misconduct, Mr Nyantekyi's 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. 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 *Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin)* in reaching its decision. In paragraph 74, she said:

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

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

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

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

The panel found that limbs a - c were engaged in this case. The panel noted that patients in this ward were vulnerable, requiring a high level of care (2:1 staff ratio). By failing to safeguard and neglecting these patients, Mr Nyantekyi put them at risk of serious physical and emotional harm. The panel further determined that Mr Nyantekyi's misconduct breached the fundamental tenets of the nursing profession and brought its reputation into disrepute.

The panel next had regard to the case of *Cohen v General Medical Council* [2007] in which the Court set out three factors which are determinative of current impairment:

- (a) *Whether the conduct that led to the charge(s) is easily remediable?*
- (b) *Whether it has been remedied?*
- (c) *Whether it is highly unlikely to be repeated?*

The panel considered that Mr Nyantekyi's actions and omissions constituted a pattern of misconduct over a short period of time, relating to a lack of care toward both staff members and patients. The panel also determined that Mr Nyantekyi's behaviour towards colleagues was indicative of a deep-seated attitudinal problem. As such, it determined that Mr Nyantekyi's conduct that led to the charges is not easily remediable.

The panel decided that Mr Nyantekyi has not remedied the misconduct. There has been no evidence of any steps taken by Mr Nyantekyi to strengthen his practice or demonstrate insight. The panel noted that Mr Nyantekyi has disputed all the facts and has not provided it with a reflective statement. The panel was therefore not satisfied that Mr Nyantekyi has demonstrated an understanding of the wrongfulness of his misconduct, how his actions put patients at a risk of harm, and how this impacted negatively on the reputation of the nursing profession. In addition, Mr Nyantekyi has not apologised to patients or colleagues for his actions or demonstrated how he would act differently if faced with a similar situation in the future. The panel therefore concluded that there is a risk of repetition and 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 are 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 declaring 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 and therefore also finds Mr Nyantekyi's fitness to practise impaired on the grounds of public interest.

### **Sanction**

The panel has considered this case and has decided to make a striking-off order. It directs the registrar to strike Mr Nyantekyi off the register. The effect of this order is that the NMC register will show that Mr Nyantekyi 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.

### **Submissions on sanction**

Mr Joshi submitted that any order the panel impose must be proportionate, in that it must strike a balance between the rights of Mr Nyantekyi and the need to protect the public.

Mr Joshi outlined the aggravating features which he submitted were relevant. He submitted that there were no mitigating features engaged in this case.

Mr Joshi submitted that Mr Nyantekyi has not remedied his misconduct and there is a high risk of repetition. He submitted that the most appropriate and proportionate order is a striking off order.

The panel accepted the advice of the legal assessor.

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

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

The panel took into account the following aggravating features:

- Abuse of a position of trust as the senior nurse in charge
- Lack of insight into failings
- Although the misconduct occurred over a relatively short period of time, it was pattern of misconduct towards both patients and colleagues
- Conduct put vulnerable patients at risk of serious harm
- Attempt to deflect blame onto others
- Failure to act on a serious safeguarding issue
- Discriminatory language used towards colleagues.

The panel considered whether there were mitigating features engaged but could not identify any.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the need to protect the public. 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 determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Nyantekyi's practice would not be appropriate in the circumstances or sufficient to protect the public and address the public interest.

The panel next considered imposing a conditions of practice order however it decided that there were no practical or workable conditions that could be formulated which would adequately address the seriousness of this case and sufficiently protect the public or address the public interest concerns. The panel regarded that the misconduct identified was not something that could be easily addressed through retraining, there is no potential or willingness from Mr Nyantekyi to respond positively to any relevant retraining since the incidents, and there is evidence of harmful deep-seated personality or attitudinal problems. As such, the panel could not be satisfied that the placing of conditions on Mr Nyantekyi's registration would be appropriate or proportionate.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel had regard to the SG which outlines the circumstances where a suspension order may be appropriate and found that these were not present. It noted that this was a pattern of misconduct toward colleagues and patients rather than a single case of misconduct, there is evidence of harmful deep-seated personality or attitudinal problems, and the panel is not satisfied that Mr Nyantekyi has insight into the concerns. Furthermore, whilst there is no evidence of repetition of this behaviour, there has been no suggestion that Mr Nyantekyi has been practising since these incidents took place.

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

Finally, in considering 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 found Mr Nyanteyki's actions and omissions constituted a significant departure from the standards expected of a registered nurse and is fundamentally incompatible with him remaining on the register. The panel determined that Mr Nyanteyki's actions were extremely serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order.

The panel determined 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 conduct and behaviour required of a registered nurse.

This will be confirmed to Mr Nyanteyki 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 Mr Nyanteky's own interests until the striking-off order takes effect.

## **Submissions on interim order**

The panel took account of the submissions made by Mr Joshi, who submitted that an interim order is necessary to protect the public and is otherwise in the public interest. Mr Joshi submitted that an interim suspension order is necessary to cover any possible appeal period. He submitted that an interim suspension order would be appropriate as it would be consistent with the panel's decision to impose the substantive striking-off order.

The panel accepted the advice of the legal assessor.

## **Decision and reasons on the interim order**

The panel was satisfied that an interim order is necessary for the protection of the public and that it is otherwise in the public interest. The panel had regard to 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, due to the reasons already identified in its decision for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to allow sufficient time for an appeal to be made by Mr Nyantekyi.

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

That concludes this determination.