

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

**Substantive Meeting
Thursday 29 September 2022 and Monday 3 October 2022**

Nursing and Midwifery Council
Virtual Meeting

Name of registrant:	Sandra Dawn Selby
NMC PIN:	81G1425E
Part(s) of the register:	Registered Nurse Adult Nursing (Level 2) – October 1983
Relevant Location:	Coventry
Type of case:	Misconduct
Panel members:	Peter Wrench (Chair, Lay member) Sharon Peat (Registrant member) Terry Shipperley (Registrant member)
Legal Assessor:	Peter Jennings
Hearings Coordinator:	Elena Nicolaou
Consensual Panel Determination:	Accepted
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Miss Selby's email address on 17 August 2022. It noted that the Notice of Meeting was also sent to Miss Selby's representative at the Royal College of Nursing (RCN) on 17 August 2022.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, the date the meeting would take place after, and that it would be a virtual meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Selby has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse, on 14 May 2021:

1. Sent Applicant 1's CV to your Practice Manager, stating:

"I asked on the GPN WhatsApp page if anyone was looking for a position. This girl sent me her CV but she is Nigerian I think and I would not advise it, but it is up to you of course."

2. Replied to Applicant 2's CV, stating:

“Another one but again Nigerian x”.

3. Your conduct at charges 1 and 2 was discriminatory in that you intended to influence the recruitment process to the detriment of Nigerian candidates;

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

Consensual Panel Determination

At the outset of this meeting, the panel was made aware that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the NMC and Miss Selby.

The agreement, which was put before the panel, sets out Miss Selby’s full admissions to the facts alleged in the charges, that her actions amounted to misconduct, and that her fitness to practise is currently impaired by reason of her misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a striking-off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

‘The Nursing & Midwifery Council (“the NMC”) and Miss Sand[r]a Dawn Selby (“Miss Selby”), PIN 81G1425E (“the Parties”) agree as follows:

1. *Miss Selby is content for her case to be dealt with by way of a CPD meeting. Miss Selby understands that the panel has the power to refer this provisional agreement to be considered at a CPD hearing should it be deemed necessary.*

The charge

2. Miss Selby admits the following charges:

That you, a registered nurse, on 14 May 2021:

1. *Sent Applicant 1's CV to your Practice Manager, stating:*

"I asked on the GPN WhatsApp page if anyone was looking for a position. This girl sent me her CV but she is Nigerian I think and I would not advise it, but it is up to you of course."

2. *Replied to Applicant 2's*

CV, stating:

"Another one but again Nigerian x".

3. *Your conduct at charges 1 and 2 was discriminatory in that you intended to influence the recruitment process to the detriment of Nigerian candidates;*

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

Agreed facts

3. *Miss Selby appears on the register of nurses, midwives and nursing associates maintained by the NMC as an Adult Nurse and has been a Registered Nurse since October 1983.*

4. *This case represents the first time Miss Selby's practice has come to the attention of the NMC.*
5. *In May 2021, the NMC opened a fitness to practise referral about Miss Selby. It concerned a discriminatory email she had written that was published by a member of the public on a social media platform. At around the same time, the NMC received a referral about the same incident from Coventry and Warwickshire Clinical Commissioning Group ("the CCG"). Also, during the course of the NMC investigation, several anonymous referrals were received in respect of the discriminatory email.*
6. *At the relevant time, Miss Selby was working as a Locum Practice Nurse at the Edgwick Medical Centre ("Edgwick"). Edgwick hired Miss Selby as a Locum Nurse after she resigned from her permanent position as a Practice Nurse in February 2021.*
7. *In May 2021, Edgwick began a recruitment campaign for new Practice Nurses. Miss Selby became involved in this process by triaging the applications sent directly to her, despite Edgwick saying she was not formally involved in the recruitment process.*
8. *Miss Selby sent two email communications that were racially prejudiced. She advised against applicants she identified as being Nigerian being considered for the role of a Practice Nurse.*
9. *On 14 May 2021, Miss Selby contributed to a General Practice Nurses' WhatsApp Group by advising the group members of an Edgwick vacancy. The WhatsApp Group was set up by Person 1 in 2019 as a professional chat group used mainly to discuss clinical issues, enable nurses to ask any questions, and*

inform each other of meetings that were going on. Sometimes the group would be used to joke around but it was mainly used as a support group.

- 10. Following Miss Selby's message to the group, Applicant 1 submitted their CV to Miss Selby. Miss Selby then emailed Edgwick's Practice Manager stating "I asked on the GPN WhatsApp page if anyone was looking for a position. This girl sent me her CV but she is Nigerian I think and I would not advise it, but it is up to you of course."*
- 11. Later on the same day, Applicant 2 expressed an interest in the Edgwick position by emailing Miss Selby directly. Within 4 minutes (at 15:45) of Applicant 2 sending her email, she received a response from Miss Selby who inadvertently replied to the applicant as opposed to Edgwick's Practice Manager which was her intention. The email read as follows "Another one but again Nigerian x". Miss Selby sent a further email to Applicant 2 at 15:46 saying "Thank you I will pass your CV on to our Practice Manager on Monday, thank you and have a nice weekend".*
- 12. Applicant 2 read both emails and was startled. [PRIVATE]. Applicant 2 told [PRIVATE] about what had happened and [PRIVATE] posted a partially-redacted copy of Miss Selby's email on a social media platform. This post was shared widely across the social media platform, with mention of Miss Selby's name, her position as "Practice Nurse" and a reference to the CCG.*
- 13. Applicant 2, in her NMC witness statement, states "in my CV, my ethnicity or nationally is not highlighted and the only thing that gives away my ethnicity is my name".*
- 14. On 17 May 2021, Miss Selby participated in a telephone meeting with Dr 1 and Colleague 1 in relation to her emails concerning both Applicants. During this conversation, [PRIVATE]. On the same day, a meeting was held with the CCG.*

15. *Edgwick has an Equality and Diversity Policy in place with which Miss Selby had to comply. All staff have access to online learning and staff are required to complete their training annually. The Equality and Diversity training addresses issues of race, ethnicity, nationality, gender, age and an understanding of the value of an inclusive workforce. Miss Selby had completed the necessary Equality and Diversity training on 6 April 2021, approximately a month prior to the relevant events.*

16. *Witness statements have been obtained from:*

16.1 *Person 1, Practice Nurse at Woodside Medical Centre*

16.2 *Applicant 2, Bank Nurse at University Hospitals of Leicester NHS Trust*

16.3 *Colleague 1, Practice Manager at Edgwick*

16.4 *Colleague 2, Receptionist/Administrator at Edgwick*

Misconduct

17. *Miss Selby admits that the conduct as particularised in the admitted charges amounts to misconduct.*

18. *Although there is no universally accepted definition of misconduct, the comments of Lord Clyde in **Roylance v General Medical Council** [1999] UKPC 16 may provide some assistance when considering what could amount to misconduct:*

“[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of

propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances”.

19. Further assistance may be found in the comments of Jackson J in **Calhaem v GMC** [2007] EWHC 2606 (Admin) and Collins J in **Nandi v General Medical Council** [2004] EWHC 2317 (Admin):

“[Misconduct] connotes a serious breach which indicates that the [nurse’s] fitness to practise is impaired”

and

“The adjective “serious” must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners”.

20. The Parties agree that Miss Selby’s misconduct is serious and falls far short of what is expected of a registered nurse. The misconduct is a serious departure from expected standards and risks causing harm to the public and bringing the nursing profession into disrepute. Nurses occupy a position of privilege and trust in society and are expected at all times to be professional.

21. At the relevant time, Miss Selby was subject to the provisions of **The Code: Professional standards of practice and behaviour for nurses and midwives (2015)** (“the Code”). The Parties agree that the following provisions of the Code have been breached in this case;

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.3 avoid making assumptions and recognise diversity and individual choice

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

22. The discriminatory behaviour of Miss Selby amounts to a serious departure from the NMC's professional standards.

23. Whilst not every breach of the Code will amount to serious professional misconduct Miss Selby admits that the breaches identified above do in fact amount to such.

Impairment

24. The Parties agree that Miss Selby's fitness to practise is currently impaired by reason of her misconduct.

25. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. It is therefore imperative that nurses make sure that their conduct at all times justifies both their patients' and the public's trust in them and in their profession.

26. In addressing impairment, the Parties have considered the factors outlined by

Dame Janet Smith in the Fifth Shipman Report and approved by Cox J in the case of **CHRE v Grant & NMC** [2011] EWHC 927 (Admin) (“Grant”). A summary is set out in the case at paragraph 76 in the following terms:

“Do our findings of fact in respect of the [nurse’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 [nursing] 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 [nursing] profession; and/or*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.”*

27. The panel should also consider the comments of Cox J in Grant at paragraph 101:

“The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.”

28. The Parties agree that limbs a, b and c as identified in the above case, are engaged. Dealing with each limb in turn:

Public Protection

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

29. Behaving in a discriminatory way presents a risk of harm to the public. Miss Selby's conduct relates to serious misconduct namely expressing discriminatory views towards Nigerian applicants. The fact that Miss Selby expressed discriminatory views suggests that patients under her care could be put at unwarranted risk of harm in the future and that Nigerian patients may be at risk of receiving inferior care.

Public Interest

Has in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute

30. Because of the distribution of Miss Selby's email, with identifiers, via a social media platform, the Parties have formed the view that Miss Selby's behaviour has, in fact, damaged the public's trust of the nursing profession.

31. Registered professionals occupy a position of trust in society. Ms Selby's actions have impaired confidence in the nursing profession. The public, quite rightly, expects nurses to provide safe and effective care, and conduct themselves in a way that promotes trust. It is agreed that Miss Selby's conduct has brought the profession into disrepute and that she has breached the trust placed in her, as a nurse. Going forwards, Miss Selby's actions could cause patients and members of the public to be concerned that they would be treated unfairly and cause them to feel anxious about getting treatment. The Parties agree that this could result in deterring members of the public from seeking medical assistance as necessary.

Has in the past breached and/or is liable in the future to breach one of the

fundamental tenets of the [nursing] profession

32. *The Code divides its guidance for nurses into four categories which can be considered as being representative of the fundamental principles of nursing care. These are:*

- *Prioritise people;*
- *Practice effectively;*
- *Preserve safety and*
- *Promote professionalism and trust*

33. *The Parties have set out above the agreed breaches of the Code in this case. As such the Parties agree that Miss Selby has breached the fundamental tenets of the nursing profession by acting in a discriminatory way.*

Remorse, reflection, insight, training and remediation (or strengthening of practice)

34. *In **Cohen v GMC** [2007] EWHC 581 (Admin), the court set out three matters which it described as being ‘highly relevant’ to the determination of the question 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.”*

35. *The Parties have considered the **NMC’s Fitness to Practise** guidance (Reference: FTP-13a) in regard to whether to Miss Selby’s conduct is easily remediable. The guidance states:*

“Sometimes, the conduct of a particular nurse, midwife or nursing associate can

fall so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions could be undermined. In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice.

Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include

- incidents of harassment, discrimination or victimisation that have taken place either inside or outside the workplace”*

36. The Parties accept that discrimination is more difficult to put right because it is not directly linked to clinical practice and is attitudinal in nature.

37. The Parties acknowledge that Miss Selby has demonstrated some regret and some level of insight as evidenced by admissions to the charges.

38. In an email to the NMC dated 24 May 2021, Miss Selby's legal representative says:

“Ms Selby accepts that the language used within this email would appear to be discriminatory in nature.”

39. Further, in submission dated 6 January 2022, Miss Selby's legal representative says:

Ms Selby will say that she accepts that she sent the emails as alleged. She will

also say that she acknowledges that they appear to be discriminatory in nature.”

40. Additionally, Miss Selby undertook training in ‘Equality and Diversity and Human Rights’ on 6 April 2021.

41. In all the circumstances as outlined, the Parties agree Miss Selby has not sufficiently remediated the concerns, and as such, a right-minded and fully informed member of the public would expect a finding of impairment to be made in order to protect the public and maintain confidence in the profession.

42. The Parties agree that Miss Selby’s misconduct has not been remedied and the risk of repetition remains. Miss Selby admits that her fitness to practice is impaired on the grounds of both public protection and public interest.

Sanction

43. In accordance with Article 3(4) of the Nursing and Midwifery Order the overarching objective of the NMC is the protection of the public.

44. Article 3(4A) of The Nursing and Midwifery Order 2001 states:-

“The pursuit by the Council of its over-arching objective involves the pursuit of the following objectives-

(a) to protect, promote and maintain the health, safety and well-being of the public;

(b) to promote and maintain public confidence in the professions regulated under this Order; and

(c) to promote and maintain proper professional standards and conduct for members of those professions.”

45. Whilst sanction is a matter for the panel's independent and professional judgement, the Parties agree that the appropriate and proportionate sanction in this case is a striking-off order. The misconduct demonstrated by Miss Selby in this case, namely expressing discriminatory views of a racist nature, is fundamentally incompatible with remaining on the NMC register. Any lesser sanction would not properly reflect the seriousness of the misconduct.

46. In reaching this agreement, the Parties considered the **NMC's Sanctions Guidance** ("the Guidance"), bearing in mind that it provides guidance and not firm rules. The panel will be aware that the purpose of sanctions is not to be punitive but to protect the public and satisfy public interest considerations.

47. The Guidance (Reference: FTP-3) links to the Equality Act 2010 and states:

"The NMC takes concerns about harassment, discrimination and victimisation very seriously, regardless of whether they occur in or out of the workplace.....Where a professional on our register displays discriminatory views and behaviours, including harassment or victimisation, this usually amounts to a serious departure from the NMC's professional standards".

48. The aggravating features in this case have been identified as follows:

47.1 Evidence of harmful deep-seated attitudinal issues

47.2 A lack of insight into failings

48 The mitigating features of this case have been identified as follows:

48.1 A level of regret and insight has been demonstrated by admissions to the charges and engagement with the NMC proceedings.

48.2 *The misconduct took place over a limited period of time*

48.3 *Engagement/cooperation in the NMC process*

49. *In order to reach the appropriate and proportionate sanction in this case the Parties have considered the sanctions in ascending order starting with the least restrictive:*

49.1 **No further action** - *It is submitted that taking no action would not be appropriate in this case. NMC guidance states that taking no action will be rare at the sanction stage and this would not be suitable where the nurse presents a continuing risk to patients. In this case, the seriousness of the misconduct and the ongoing risk means that taking no further action would not protect the public and is therefore inappropriate.*

49.2 **Caution order** - *A caution order is the least restrictive sanction which will only be suitable where the nurse presents no risk to the public. Again, given the concerns highlighted in this agreement, a caution order would not be an appropriate outcome.*

49.3 **Conditions of practice order** – *The concerns are of a particularly serious and sensitive nature, relating to racial discrimination. The imposition of a conditions of practice order would not be appropriate in this case as there are no identifiable clinical concerns that could be addressed with conditions. In addition this sanction would not neither reflect the seriousness of the misconduct nor address the concerns raised.*

49.4 **Suspension order** – *Racial discrimination discloses harmful, deep-seated attitudinal issues relating to Miss Selby's practice and professionalism which indicates that a suspension order is not an appropriate sanction. While a suspension order would protect the public during the period it is in*

place, it would not reflect the seriousness of the conduct and public confidence in the profession would not be maintained.

49.5 Striking-off order – *Miss Selby has demonstrated racial prejudice and advised against the consideration of candidates she assumed to be of Nigerian origin being considered for the position of practice nurse at Edgwick. Although Miss Selby admitted the charges, in the absence of an expression of genuine remorse together with reflection, full insight and full remediation/strengthening of practice, Miss Selby remains a risk to the health, safety and wellbeing of the public. A fully informed right-minded member of the public would be appalled by Miss Selby's actions and therefore public confidence would be drastically undermined by allowing continued registration. In summary and in consideration of the guidance (Reference: SAN-3e) it is agreed that Miss Selby's actions raise fundamental questions about her professionalism; that public confidence in the nursing profession could not be maintained should Miss Selby not be removed from the register; that a striking-off order is the only sanction which would be sufficient to protect patients and members of the public or maintain professional standards; and that what Miss Selby has done is fundamentally incompatible with being a registered professional.*

50 The NMC contacted the referrer, the CCG, setting out the nature of this consensual panel determination, and that the parties were in agreement that a striking-off order was the appropriate and proportionate sanction in this case. The CCG has indicated that it agrees with this sanction but has chosen not to make further comment despite being given the opportunity to do so.

Interim order

51 An interim order is required in this case. The interim order is necessary for

the protection of the public and is otherwise in the public interest. The interim order should be for a period of 18 months in the event Miss Selby seeks to appeal against the panel's decision. The interim order in the circumstances of this case, where a striking-off order is being imposed, should take the form of an interim suspension order.

The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings, misconduct, impairment and sanction is a matter for the panel. The parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts as set out above, may be placed, for consideration, before a differently constituted panel, provided that it would be relevant and fair to do so.'

Here ends the provisional CPD agreement between the NMC and Miss Selby. The provisional CPD agreement was signed by Miss Selby on 7 April 2022, and by the NMC on 14 July 2022.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice. He referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Miss Selby. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Miss Selby admitted the facts of the charges, and there is nothing in the material before the panel to lead it to question those admissions. Accordingly, the panel was satisfied that the charges are found proved by way of Miss Selby's admissions as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

The panel then went on to consider whether Miss Selby's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Miss Selby, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel first considered whether Miss Selby's actions amounted to misconduct. It noted that Miss Selby admits that the conduct as particularised in the admitted charges amounts to misconduct. The panel considered that Miss Selby's behaviour was wholly unacceptable, inappropriate and discriminatory. In the panel's view, it was wrong to seek to influence the recruitment process, even if the motive were not racial. It considered that in this case, Miss Selby's behaviour was particularly concerning in that it meant that she was influencing job applications based on an individual's name and therefore their apparent race, which demonstrated racial discrimination. The panel agreed with the NMC that Miss Selby's misconduct was a serious departure from the standards expected of a registered nurse. In this respect, the panel endorsed paragraphs 17 to 23 of the provisional CPD agreement in respect of misconduct.

The panel then considered whether Miss Selby's fitness to practise is currently impaired by reason of her misconduct. The panel noted that Miss Selby has admitted all of the charges against her and accepts that her fitness to practise is impaired. It considered that it had no real evidence that Miss Selby has made any substantial effort to demonstrate remorse, reflection or insight into her actions and the impact they could have had on patients, colleagues, the applicants for employment and the wider profession. It noted that

Miss Selby has had ample time and opportunity to do so. The panel considered that Miss Selby's actions were wholly unacceptable and demonstrated clear racial bias against people of a particular ethnicity.

The panel considered that, in relation to public protection, patients and others such as potential employees are at potential risk of being discriminated against if Miss Selby were to show such bias in her practice. The panel noted that Miss Selby had undergone diversity training not long before, but that her discriminatory misconduct occurred in spite of this. The panel does not have any testimonials, evidence of further training, or information about Miss Selby's usual practice to indicate otherwise. The panel considered that this posed a risk of harm as, for example, patients may hesitate to seek clinical help if they believe they are likely to be discriminated against by healthcare professionals.

However, whilst recognising that there is an underlying risk to patients as her actions and attitude may reflect on her practice in the future, the panel places more emphasis on the public interest considerations. The panel considered that a well-informed member of the public would be greatly concerned to learn of Miss Selby's actions. It considered that Miss Selby's actions have brought the nursing profession into disrepute, and breached the fundamental professional principle of fair treatment. In the panel's judgement, public confidence in the nursing profession and its regulator would be seriously undermined if a finding of impairment were not made in this case.

The panel was satisfied that a finding of impairment on public protection and public interest grounds was justified. In this respect the panel endorsed paragraphs 24 to 42 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Miss Selby'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:

- Evidence of harmful attitudinal issues
- Limited insight into failings and an absence of any indication of steps to remediate them

The panel also took into account the following mitigating features:

- The level of regret and insight demonstrated by admissions to the charges and engagement with the NMC proceedings
- The misconduct took place over a limited period of time

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 action.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case and the public protection issues identified, an order that does not restrict Miss Selby'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 Miss Selby's misconduct was not at the lower end of the spectrum and that a caution order would therefore be inappropriate. 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 Miss Selby's registration would be a sufficient and appropriate response. The panel concluded that the placing of conditions on Miss Selby's registration would not adequately address the seriousness of this case and would not protect the public or meet the public interest.

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

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

Whilst this was a single episode and there has been no evidence of repetition since the events, the panel bore in mind that it does not know whether Miss Selby has been working. The panel was of the view that Miss Selby does have a harmful attitudinal problem and has only limited insight, which she is apparently making no effort to develop, and that there is a significant risk that her behaviour may be repeated.

The panel noted that Miss Selby had attended Equality and Diversity training a month before the incidents occurred, but despite this reminder of the impact of discriminatory behaviour there is no evidence that Miss Selby had applied that training to her practice. The panel considered that there is no evidence before it that Miss Selby has made any significant efforts to demonstrate remorse, reflection or insight into her actions and the impact that they could have had on patients, colleagues, the applicants and the wider profession, or the public. The panel considered that Miss Selby's acceptance of the draft CPD shows that she accepts the gravity of her misconduct and the fact that her fitness to

practise has been impaired. In the panel's consideration, racial discrimination of this sort can be remedied but remediation will not be straightforward. The panel concluded that it had no evidence that Miss Selby was seeking to demonstrate progress towards that goal.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel was of the view that the serious breach of the fundamental tenets of the profession evidenced by Miss Selby's actions is fundamentally incompatible with Miss Selby remaining on the register.

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?*

Miss Selby's actions were significant departures from the standards expected of a registered nurse, and in the panel's judgement they are, in the circumstances of this case fundamentally incompatible with her remaining on the register. The panel was of the view that to allow her to continue as a registered nurse would undermine public confidence in the profession and in the NMC as a regulatory body.

For the reasons above, balancing all of these factors and after taking into account all the evidence before it during this case, the panel agreed with the CPD that the appropriate

and proportionate sanction is a striking-off order. Having regard to the matters it identified, in particular the effect of Miss Selby's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse conducts 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 maintain public confidence in the profession, and to declare to the public and the profession the standard of behaviour required of a registered nurse, and the seriousness with which the profession and the regulator regard this misconduct.

Decision and reasons on interim order

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 is in Miss Selby's own interest. The panel heard and accepted the advice of the legal assessor.

In reaching the decision to impose an 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.

The panel agreed with the CPD 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 for the same reasons as set out in the determination, to cover the 28-day appeal period and any further period needed for an appeal to be heard.

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

That concludes this determination.