

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

**Substantive Hearing
Wednesday, 28 June 2023 – Thursday, 6 July 2023
07-11 August 2023**

Virtual Hearing

Name of Registrant: David Glenn Secada

NMC PIN 98Y0296E

Part(s) of the register: Registered Nurse – (Sub part 1)
Adult – Level 1 17 September 2001

Relevant Location: Derby

Type of case: Misconduct

Panel members: Peter Wrench (Chair, Lay member)
Linda Pascall (Registrant member)
Richard Weydert-Jacquard (Registrant member)

Legal Assessor: Charles Conway

Hearings Coordinator: Opeyemi Lawal (28 June 2023-6 July 2023)
Roshani Wanigasinghe (07-11 August 2023)

Nursing and Midwifery Council: Represented by Amy Hazlewood, Case
Presenter

Mr Secada: Present and represented by Thomas Buxton,
instructed by Royal College of Nursing (RCN)

Facts proved by admission: Charge 2a

Facts proved: Charge 1 in its entirety, 3a, 3b and 5

Facts not proved: Charges 2b, 2c, 2d, 2e, 3c, 4 in its entirety and 6

Fitness to practise: Impaired

Sanction:

Striking-off order

Interim order:

Interim suspension order- 18 months

Details of charge (as amended)

That you, a Registered Nurse:

1. On or around 28 May 2019, made rude and/or inappropriate comments, with words to the effect of:
 - a. That a carer was a “stony faced bitch”;
 - b. That Colleague B was "getting nasty with me, who does that jumped up little shit think he is, he is not in charge of us, I am going to speak to Ms 4 about this, it's not fair, everyone is so sick of it, I'm fucking sick of it, no one has any regard for us but they all try and tell us what to do";
 - c. That Colleague B was a "little cunt that needs to learn";
 - d. You “hated old people because they were all demanding”;
 - e. That one day you might “get struck off for placing a pillow over an old person’s head”;
 - f. After throwing the work phone shouted “fuck off, you fucking bastard”.
 - g. That a patient visit was a "waste of time visit" and you wished the patient was dead.
 - h. “I don’t fucking care”.

2. On or around 28 May 2019, behaved in an inappropriate manner towards patients and colleagues:
 - a. Initially refused to undertake a visit as instructed by Colleague B;
 - b. Became stressed and/or frustrated with a patient;
 - c. Would not help a patient get dressed as you were too busy;
 - d. Ignored a patient’s instructions to leave their front door unlocked;

- e. Told a patient off for calling the nurses.
3. Between 28 May 2019 and 26 May 2020, during your employer's investigation and/or disciplinary proceedings, produced and/or relied upon a false:
- a. voice recording of Colleague A;
 - b. timestamp of the voice recording in Charge 3a;
 - c. character statement.
4. Between 12 November 2019 and 25 March 2021, provided:
- a. false information that you had been born in Western Cape, South Africa;
 - b. false minutes of investigatory meetings;
 - c. a false claim for financial losses.
5. Your actions at Charge 3 were dishonest in that you sought to mislead your employer.
6. Your actions at Charge 4 were dishonest in that you sought to mislead the employment tribunal.

AND in light of the above your fitness to practice is impaired by reason of your Misconduct.

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Hazelwood, on behalf of the NMC, to amend the wording of charge 1d and add a new charge to the stem of charge 1.

The proposed amendment was to correct a typographical error. It was submitted by Ms Hazlewood that the proposed amendment would provide clarity and the addition of the new charge (1h) will accurately reflect the evidence.

1. “On or around 28 May 2019, made rude and/or inappropriate comments, with words to the effect of:

...

- a. You “hated hold people because they were all demanding”;

...

- h. **“I don’t fucking care”.**

...”

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

The panel heard submissions from Mr Buxton, on your behalf, in which he stated that he did not oppose the amendments to the charge.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules).

The panel was of the view that such amendments, as applied for, were in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendments being allowed. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

Decision and reasons on application to remove hearsay evidence

The panel heard an application made by Mr Buxton under Rule 31 to exclude paragraph 49 from Mr 1's witness statement as it contains second hand information from a colleague that has not been asked by the NMC to give live evidence or write a witness statement.

Mr Buxton submitted that paragraph 49 was inadmissible as it is hearsay and there was no evidence from the colleague to confirm the truth of what he was alleged to have said to Mr 1. He therefore invited the panel to remove it from Mr 1's witness statement as it would not be fair to admit the evidence.

Ms Hazlewood opposed the application. She submitted that paragraph 49 should not be removed from Mr 1's witness statement, as Mr 1 will be giving live evidence and Mr Buxton can ask questions about the information mentioned.

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

The panel was of the view that the information contained in paragraph 49 is not the sole and decisive evidence for any of the charges but instead is relevant to understanding the context of the situation. The panel also determined that it was not unfair to admit the evidence as there is other evidence that speaks to this, and Mr Buxton will have the opportunity to cross-examine Mr 1's evidence.

In these circumstances the panel refused the application.

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

At the outset of the hearing, Mr Buxton made a request that this case be held partly in private on the basis that your case may involve reference to your health matters. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Hazlewood indicated that she did not oppose the application.

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

The panel determined to go into private session when references are made to your health matters.

Decision and reason on application of further disclosure

Mr Buxton made a request for the following documents to be disclosed by the NMC.

1. Any and all emails sent by you to Ms 1 from 25th May 2019 until the date of your suspension and any response.
2. Any and all emails sent by you to Mr 1, specifically an email dated 24 April 2020 at 14:17:38 BST and any response.
3. Any and all notes of interviews/meetings conducted with you which were sent for approval and signature together with signed copies returned by you or on your behalf.
4. Are there any recordings in existence of meetings/interviews held over the telephone either by landline or designated teleconferencing facilitated or accessed through password or code.

Mr Buxton submitted that any recordings of meetings that took place at the investigatory and disciplinary stages could be relevant to the issues that are raised in this case. Mr

Buxton emphasised that the email from you to Mr 1, dated 24 April 2020, is relevant to this hearing.

Mr Buxton submitted that these requests were reasonable, and efforts should be made for these items to be sought by Mr 1 as he said that these could be found.

Mr Buxton invited the panel to grant the disclosure request.

Ms Hazlewood submitted that the request is wide-ranging, involves a significant amount of material and could delay proceedings substantially. She said it could and should have been requested at an earlier stage prior to the commencement of the hearing. She noted that your representative at the RCN had returned the Case Management Form (CMF) on 8 March 2022 and the Case Examiners had decided there was a case to answer on 6 April 2022. Instead, the material was requested during Mr 1's cross-examination.

Ms Hazlewood submitted that the NMC have disclosed all of the documentation that is relevant to this case and granting the disclosure application will add time to the proceedings and is likely to cause unnecessary delay to the hearing.

Ms Hazlewood invited the panel to not uphold Mr Buxton's request for disclosure.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor. It noted that the decision it makes on the disclosure application is without prejudice to subsequent decisions on the admissibility of any material which might be disclosed.

The panel was satisfied that the material requested is potentially relevant to these proceedings. The panel concluded that the key issue is fairness to you and the NMC. You are facing a number of charges which include a specific allegation of dishonesty in providing false minutes. The panel determined that any evidence of consultation regarding DHU Health Care ('DHU') own records of relevant meetings is related to your case and the NMC's. It did not accept the argument that it is too late to request the evidence, given its potential significance. However, it was surprised that neither party had sought the material

sooner. The panel was not persuaded that the request need be particularly onerous for DHU; it may well be that there was not a great deal of relevant material that could be found and that one or more of the requests can be answered straightforwardly. This request would not necessarily result in an inordinate delay in the proceedings.

Therefore, given the potential significance of the evidence and in the interest of fairness, the panel upheld the request for disclosure with some narrowing of its terms. The panel directed that the following material should be sought by the NMC:

1. Any and all emails sent by you to Ms 1 from 25th May 2019 until the date of your suspension and any response.
2. The emails sent by you to Mr 1, on 24 April 2020 at 14:17:38 BST and any responses.
3. Any and all notes of investigatory and disciplinary interviews/meetings conducted with you which were sent for approval and signature together with signed copies returned by you or on your behalf.
4. Any recordings in existence of investigatory and disciplinary meetings/interviews held over the telephone either by landline or designated teleconferencing facilitated or accessed through password or code.

The panel requested that DHU Healthcare initially provides an estimate as to how long it will take to seek and provide any evidence.

Decision and reasons on application on admissibility of evidence

Submissions relating to your document

Mr Buxton made an application to admit the document submitted by you which includes a series of screenshots, pictures of medication you were on at that time and an email to Mr 1 dated 24 April 2020.

Mr Buxton submitted that the screenshots were relevant in supporting his case with regard to the charges 3a and 3b and the fact that you sent an email with this evidence in response to a request from Mr 1.

Mr Buxton submitted that this material should be admitted into evidence.

Ms Hazlewood submitted that she did not oppose Mr Buxton's application.

Submissions relating to email from Ms 1 regarding shift pattern

Ms Hazlewood made an application to admit this email that speaks to yours and Colleague A's shift pattern during the period the incidents took place.

Ms Hazlewood submitted that spreadsheets related to shift patterns had been produced as a result of earlier disclosure requests. Ms 1 was challenged on the question of whether you and Colleague A had worked together on any additional shifts, and she disputed that point. Ms Hazlewood submitted that the latest evidence showed that you and Colleague A had not worked a shift together on 25 May 2019.

Ms Hazlewood submitted that this was an important matter in issue, whilst it does not speak directly to a charge, it will be relevant to the assessment of your credibility which the panel would have to make when it decided on the facts.

Ms Hazlewood invited the panel to admit the covering e-mail and attachment as evidence.

Mr Buxton submitted that he agreed that the rota provided by Ms 1 was requested by him. Mr Buxton further submitted that if the NMC seek to rely on this evidence, then he would require Ms 1 to produce this evidence and to be cross examined about it.

Decisions on admissibility

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

The panel view that the material contained in the email to Mr 1 was relevant to the charges and relevant to your engagement with your employer during the investigatory and disciplinary process.

The panel determined that given the NMC has provided evidence with screenshots of the recording it would be unfair to decline another email with a similar attachment. Therefore, on this basis, the panel determined to admit your document into evidence.

In relation to the email from Ms 1, the panel determined that the information was relevant to live issues in this case and Ms 1 was previously questioned on it. In the interest of fairness, the panel decided that Ms 1 should be recalled and questioned on the basis of the document she provided.

Background

On 13 April 2021, we received a referral from Mr 1, at DHU which raises concerns about you.

You started working for DHU in February 2019 as a community nurse on a bank contract. You subsequently successfully achieved a substantive post contracted for 16 hours per week.

You were suspended by DHU on 3 June 2019 after Colleague A had reported significant concerns about your conduct after working with you on a night shift on 28 May 2019.

Action taken by DHU

DHU began an investigation which led to disciplinary proceedings and you were formally dismissed on 15 April 2020. An appeal hearing was held on 12 May 2020 but the appeal was rejected. The disciplinary process was temporarily suspended whilst consideration was given to a grievance which you raised about Colleague A.

It is alleged that you provided false information in support of your grievance in an attempt to argue that the claims made by Colleague A were false and vindictive. This material included an audio recording which you said was of you and Colleague A in the car during the shift of 28 May 2019. In the recording, a female voice, which you said was Colleague A, can be heard making inappropriate and insulting comments to you about your sexuality and gender.

Employment Tribunal ('the Tribunal')

You lodged a claim of unfair dismissal on 12 November 2019. A hearing was conducted remotely from 21-25 March 2021. There are further allegations that you sought to mislead the tribunal by falsely stating that you were born in South Africa, by providing your own notes from investigatory and disciplinary meetings with DHU which were inaccurate, and by making a false claim for financial losses.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Buxton, who informed the panel that you made an admission to charge 2a.

The panel therefore finds charge 2a proved by way of your admission.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Hazelwood and Mr Buxton.

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

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

- Mr 1: Executive Medical Director at DHU
- Ms 1: Head of Community Nursing at DHU
- Ms 2: Band 5 Community Nurse at DHU
- Colleague A: Community Staff Nurse at DHU
- Colleague B: Urgent Care Co-ordinator at DHU

The panel also heard evidence from you under affirmation.

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

Before making its decision on the charges, the panel began its considerations by examining the credibility of the key witnesses. Although the panel noted that witness' credibility must be looked at in relation to each charge, the panel was satisfied that, in the specific circumstances of this case, it was necessary for it first to make an overall assessment of the evidence of Colleague A, your evidence and the voice recording.

In regard to charges 1 and 2, the only direct evidence of what was said and done on the night of the shift comes from Colleague A and you.

The panel was conscious of the evidence and submissions before it which raised issues about how DHU had managed its investigatory and decision-making processes. The panel clearly has had no regard to the findings of the DHU processes and the panel's task is to make its own assessment of the primary evidence. Its focus has therefore been on the evidence of Colleague A.

In the panel's view, Colleague A was a credible witness who gave a clear and straightforward account which was consistent with her initial statement and what she told DHU during its investigation. The panel was of the view that under close questioning in these proceedings Colleague A's account remained consistent.

You said in your oral evidence that there was a history between you and Colleague A as a result of a shift she had worked with you on 25 May 2019. The panel received persuasive documentary evidence from DHU showing records of rotas linked to their pay roll system which made it clear that Colleague A and you had not worked together in the days before the shift in question and had only ever worked together on two previous occasions, namely 12 March and 8 May 2019.

In assessing your credibility, the panel has been conscious that you are otherwise of good character, with no previous regulatory findings against you over a career of 18 years. The panel had regard to the testimonials provided on your behalf. The panel accepted that all this makes it less likely that you would have behaved in the manner alleged in charges 1 and 2. However, in considering the credibility of both you and Colleague A, the panel was of the view that it is important to make an assessment of the authenticity of the voice recording that you claimed you made on the shift beginning 28 May 2019. The panel noted that the recording is of a conversation between you and a female, where the female makes derogatory remarks in relation to your sexuality. The female in the recording suggests that you had not been sufficiently assertive in seeking to hand back a case that you and Colleague A had been asked to attend. You have always maintained that the female voice in the recording is Colleague A's. she has always been adamant that it is not. The panel was not satisfied that this recording was genuine. The panel's primary reason

for reaching this conclusion was that the female voice sounded very different from Colleague A's voice, which the panel heard at length when she gave live evidence. The panel noted that the recording was only produced at a later stage in the DHU investigation and noted your position that you wished to get further advice before you shared it with your employers.

In the panel's view, the timing of the production of this recording is a secondary matter. The primary point is that it did not accept that it was Colleague A's voice nor that it was a genuine contemporaneous conversation. The panel noted that the recording contained an audible reference made by a radio presenter in the background to music being played before '11:00'. The panel found it difficult to understand why a radio presenter would make such a reference if the recording was being made at 4am as was claimed by you.

Bearing the above in mind, the panel then considered each of the disputed charges and made the following findings.

Charge 1(b-h)

- 1. On or around 28 May 2019, made rude and/or inappropriate comments, with words to the effect of:**
 - a. ...**
 - b. That Colleague B was "getting nasty with me, who does that jumped up little shit think he is, he is not in charge of us, I am going to speak to Ms 4 about this, it's not fair, everyone is so sick of it, I'm fucking sick of it, no one has any regard for us but they all try and tell us what to do";**
 - c. That Colleague B was a "little cunt that needs to learn";**
 - d. You "hated old people because they were all demanding";**
 - e. That one day you might "get struck off for placing a pillow over an old person's head";**

- f. After throwing the work phone shouted “fuck off, you fucking bastard”.**
- g. That a patient visit was a "waste of time visit" and you wished the patient was dead.**
- h. “I don’t fucking care”**

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the evidence from Colleague A and your evidence.

The panel noted that this charge is entirely concerned with what you had allegedly said to Colleague A during the shift on 28 May 2019. The panel found that the comments alleged at charges 1a-1g were all included within the written statement that Colleague A produced for DHU, immediately after the shift in question. The panel noted that the comment at charge 1h was referred to within Colleague A’s witness statement for the NMC and it related to an incident which Colleague A mentioned at an investigatory meeting on 11 June 2019 when she was asked if there was anything she wanted to add to her initial statement.

The panel determined that on the balance of probabilities, the NMC had discharged its burden of proof. In coming to this conclusion, the panel was satisfied that Colleague A’s evidence was credible and consistent and given the issues that it had noted regarding your account, the panel was satisfied that it was more likely than not that Colleague A’s account was correct and that words to the effect of those set out within charges 1a-1h were all said.

In light of this evidence, the panel found charge 1b-h, on the balance of probabilities, proved.

Charge 2b)

2. On or around 28 May 2019, behaved in an inappropriate manner towards patients and colleagues:

b. Became stressed and/or frustrated with a patient;

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence from Colleague A and your evidence.

The panel was conscious that it had no evidence that any of the patients involved in the various incidents referred to in charge 2 had ever been contacted by DHU or the NMC to ask about their experience. The panel was also conscious that the wording of charges 2b-2e was unspecific in relation to the identity of the patients and was imprecise in its description of the allegedly inappropriate behaviour.

The panel bore in mind Colleague A's evidence in which she stated that your behaviour had been abrupt with some patients and had shown signs of stress and/or frustration. However, the panel noted that charge 2b is not focused on any one particular patient and does not set out just how your behaviour was inappropriate.

The panel determined that on the balance of probabilities, the NMC has not discharged its burden of proof. The panel therefore concluded that it did not have sufficient specific evidence in relation to any single patient to find that on or around 28 May 2019, that you behaved in an inappropriate manner towards patients and colleagues, in that you became stressed and/or frustrated with a patient.

The panel therefore found charge 2b not proved.

Charge 2c)

- 2. On or around 28 May 2019, behaved in an inappropriate manner towards patients and colleagues:**
 - c. Would not help a patient get dressed as you were too busy**

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence from Colleague A and your evidence.

The panel noted Colleague A's evidence in which she stated that you were unwilling to dress a patient in PJ bottoms because the patient had not been wearing PJ bottoms when both you and Colleague A had arrived at the Patient's residence.

The panel also noted your denial of this charge and your account that you had left the room in order to take some laundry to the patient's kitchen. Furthermore, the panel bore in mind Colleague A's evidence, in which she confirmed that she had in fact put the patient's PJ bottoms on.

The panel concluded that it had insufficient evidence of you specifically not helping the patient to get dressed because you were too busy.

The panel reminded itself that the burden of proof at the fact-finding stage is upon the NMC. The panel determined that the NMC has not discharged its burden of proof and, therefore, on the balance of probabilities, the panel found this charge not proved.

Therefore, Charge 2c is found not proved.

Charge 2d)

2. On or around 28 May 2019, behaved in an inappropriate manner towards patients and colleagues:

d. Ignored a patient's instructions to leave their front door unlocked

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence from Colleague A and you.

The panel bore in mind Colleague A's evidence that the patient had asked for their front door to be unlocked and that you did not comply with this request.

Your evidence was that it would in any event have been unsafe to leave a patient's door unlocked in the circumstances.

The panel noted some inconsistencies in Colleague A's evidence in relation to this alleged event, given that in her initial account to DHU, she referred to a key being put back through the letter box after the front door had been locked. In her oral evidence to the panel, she had referred to you putting the key in a key box.

The panel determined that given that lack of consistency and it not being obvious that a patient's instruction to leave the front door unlocked should be complied with, the panel was not satisfied it had sufficient evidence to find this charge proved.

The panel reminded itself that the burden of proof at the fact-finding stage is upon the NMC. The panel determined that the NMC has not discharged its burden of proof and, therefore, on the balance of probabilities, the panel found this charge not proved.

Therefore, Charge 2d is found not proved.

Charge 2e)

- 2. On or around 28 May 2019, behaved in an inappropriate manner towards patients and colleagues:**
 - e. Told a patient off for calling the nurses.**

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence from Ms 2.

The panel noted that this charge depends wholly on the evidence of Ms 2. The panel reminded itself that Ms 2 gave evidence to the panel which was clear and consistent with her earlier statement. However, the panel bore in mind that it included only hearsay evidence that a Patient had spoken to her about the behaviour of a male member of staff.

The panel noted that Ms 2 had not used the word “told off” in her witness statement or her oral evidence. The panel further noted that the phrase “told off” does appear in the statement written by Ms 1 after receiving a telephone call from Ms 2 on 7 June 2019.

The panel further noted from your evidence that you had had a conversation with a patient about the circumstances in which it was appropriate to call the nurses when the patient had concerns about their catheter. However, given there was no direct complaint or evidence from the patient concerned, the panel concluded that there was insufficient to find that you had told the patient off.

The panel reminded itself that the burden of proof at the fact-finding stage is upon the NMC. The panel determined that the NMC has not discharged its burden of proof and, therefore, on the balance of probabilities, the panel found this charge not proved.

Therefore, Charge 2e is found not proved.

Charge 3a)

3. Between 28 May 2019 and 26 May 2020, during your employer's investigation and/or disciplinary proceedings, produced and/or relied upon a false:

a) voice recording of Colleague A

This charge is found proved.

In reaching this decision, the panel took into account the evidence from Colleague A, your evidence and the panel listened carefully to the voice recording on a number of occasions.

The panel concluded that the recording was not genuine. The panel was satisfied that the recording was fabricated and was designed to undermine the credibility of Colleague A. The panel's primary reason for reaching this conclusion was that in its assessment that the voice in the recording sounded very different to Colleague A's voice when she gave oral evidence to the panel.

The panel therefore found that between 28 May 2019 and 26 May 2020, during your employer's investigation and/or disciplinary proceedings, produced and/or relied upon a false voice recording of Colleague A.

The panel therefore found charge 3a proved.

Charge 3b)

- 3. Between 28 May 2019 and 26 May 2020, during your employer's investigation and/or disciplinary proceedings, produced and/or relied upon a false:**
 - b) timestamp of the voice recording in Charge 3a**

This charge is found proved.

In reaching this decision, the panel took into account the evidence from Colleague A, your evidence, the copies of various screenshots that you had provided to DHU and its decision at charge 3a above.

Having found charge 3a above proved, the panel determined that charge 3b must also be found proved. If, as the panel has found, the recording was not made during the shift of 28 May 2019, it is necessarily the case that any supporting evidence purporting to show when and where the recording was made must also be false.

The panel therefore found charge 3b proved.

Charge 3c)

- 3. Between 28 May 2019 and 26 May 2020, during your employer's investigation and/or disciplinary proceedings, produced and/or relied upon a false:**
 - c) Character statement**

This charge is found NOT proved.

In reaching this decision, the panel took into account your evidence and its own assessment of the character statement. It noted the evidence of DHU witnesses that they had concluded that the statement was false, but the panel needs to reach its own conclusion.

The panel had before it a purported character statement initially produced as a typed script and later as a handwritten version. The panel noted that the statement is anonymous. The panel did not accept that just because the statement was anonymous it was necessarily the case that it was false. Furthermore, the panel had no evidence before it to show that the statement had been fabricated. The panel was therefore not persuaded that the character statement was false.

The panel reminded itself that the burden of proof at the fact-finding stage is upon the NMC. The panel determined that the NMC has not discharged its burden of proof and, therefore, on the balance of probabilities, the panel found this charge not proved.

Given the evidence above, the panel found charge 3c not proved.

Charge 4a)

4. Between 12 November 2019 and 25 March 2021, provided:

- a. false information that you had been born in Western Cape, South Africa;**

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence from Mr 1 and your evidence.

The panel noted that the sole evidence that you had stated that you were born in South Africa comes from Mr 1. The panel heard that there were employment tribunal proceedings where this is alleged to have been said by you, however, the panel did not have any transcript or formal record from the employment tribunal.

The panel was informed that the DHU hold a copy of your passport in their records, which shows clearly that you were born in the UK and not in South Africa. Your evidence was that you spent part of your childhood in South Africa and that your father is South African. In your evidence at this hearing you were asked specifically if you ever told the Tribunal that you had been born in South Africa and you replied “absolutely not”, pointing out that DHU had a copy of your passport.

The panel reminded itself that the burden of proof at the fact-finding stage is upon the NMC.

In the absence of any formal record from the tribunal, the panel determined that the NMC has not discharged its burden of proof. The panel was of the view that it was more likely that you did not give this false information, given that you not having been born in South Africa is very easily demonstrated.

The panel therefore found charge 4a not proved.

Charge 4b)

4. Between 12 November 2019 and 25 March 2021, provided:

b. false minutes of investigatory meetings

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence from Ms 1.

The panel took particular account of the wording of this charge. It bore in mind that the notes concerned in this charge have never before been described as 'minutes. The panel considered that the notes are your own records of what you believed happened at three investigatory meetings. The panel concluded that these notes should not properly be describes as 'minutes. The panel had before it copies of DHU's own records of these three meetings. There is no evidence that the DHU records were ever put before you for your comments or agreement.

Ms 2 was very clear in her evidence that your account was incorrect. The panel noted that Ms 3 was the other participant in the meeting and would be able to assist in relation to this charge, however, she was not a witness in these proceedings and had never provided a witness statement.

Taking all the above into account, the panel noted that there may have been some information in your account that was incorrect, but in all the circumstances the panel concluded that the charge of providing false minutes has not been proved.

The panel reminded itself that the burden of proof at the fact-finding stage is upon the NMC. The panel determined that the NMC has not discharged its burden of proof and, therefore, on the balance of probabilities, the panel found this charge not proved.

Given the evidence above, the panel found charge 4b not proved.

Charge 4c)

4. Between 12 November 2019 and 25 March 2021, provided:

c. a false claim for financial losses

This charge is found NOT proved.

In reaching this decision, the panel took into account your evidence and that of Mr 1, together with the claim form you provided to the tribunal.

The panel was not satisfied that it had evidence that you had deliberately set out to mislead the employment tribunal. The panel noted that there were inaccuracies in your statement of financial losses made for the tribunal. However, the panel was satisfied that you had made a genuine attempt to deal with an unfamiliar process. The panel accepted that you had received your salary from DHU during your suspension, but this was limited to your contracted hours. The panel was satisfied that it was normal for DHU staff to work additional shifts in a typical week. Accordingly, the panel was satisfied that you would have earned less than your usual earnings during your period of suspension. Therefore, the panel was not satisfied on balance of probabilities, that you had made a false claim for financial losses.

The panel reminded itself that the burden of proof at the fact-finding stage is upon the NMC. The panel determined that the NMC has not discharged its burden of proof and, therefore, on the balance of probabilities, the panel found this charge not proved.

The panel therefore found charge 4c not proved.

Charge 5

- 5. Your actions at Charge 3 were dishonest in that you sought to mislead your employer.**

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague A, your evidence and its decision at charge 3 above.

The panel reminded itself that it found charge 3 proved, in that you produced and relied upon a false voice recording of Colleague A and a time stamp of that voice recording. The panel was satisfied that it was a deliberate fabrication and that you sought to persuade your employers that it was authentic. The panel, therefore determined that this was dishonest conduct by you to mislead your employer. The panel was of the view that you must have known that you were fabricating evidence and the panel concluded that any ordinary decent person aware of your actions, would find your conduct to have been dishonest.

The panel therefore concluded that your actions at charge 3 were dishonest in that you sought to mislead your employer.

The panel therefore found charge 5 proved.

Charge 6

- 6. Your actions at Charge 4 were dishonest in that you sought to mislead your employment tribunal.**

This charge is found not proved.

In reaching this decision, the panel took into account its decision at charge 4 above.

As the panel found charge 4 not proved, this charge is also found not proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted. The panel must determine whether a registrant is able to practise safely, kindly and professionally.

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

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

Submissions on misconduct

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.*'

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

Ms Hazlewood identified the specific, relevant standards where your actions amounted to misconduct. She submitted that the way in which you had spoken to a fellow colleague about patients, a carer, and a colleague, was both rude and inappropriate. She submitted that your behaviour had fallen short of what would be proper in the circumstances. She submitted in relation to charge 2a, whilst no evidence is put forward about actual harm, your initial refusal to undertake a visit that you were asked to make by Colleague B could have led to actual harm.

Ms Hazlewood also submitted that in relation to charges 3a and 3b, producing and relying upon a false recording of a colleague and a false timestamp of the recording was very serious. She submitted that such conduct would be regarded as deplorable by fellow practitioners.

Mr Buxton submitted from the outset that he does not seek to persuade the panel that your conduct found proved is not serious. He accepted that your actions amounted to misconduct.

Submissions on impairment

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

She submitted that all four limbs of the Grant test are engaged. She reminded the panel that comments were not made to the patients directly but about them to a colleague. However, she invited the panel to be mindful that patients and colleagues have the right to be treated with respect at all times and the facts found proved in charges 1 and 2 suggest that your demeanour on the night of the 28 May 2019 had a negative impact on the care you provided to patients and caused distress. Furthermore, in addition or in the alternative, your conduct would have caused Colleague A to whom the comments were made significant distress, which could have also impacted on patient care. She submitted that your behaviour which was found proved and the language you were found to have used plainly brings the profession into disrepute. Ms Hazelwood submitted that refusing to undertake a visit as instructed by a colleague, breaches fundamental tenets of the profession and the Code. She submitted that through your dishonesty regarding the voice recording, you have seriously departed from the standards expected of a registered nurse.

Ms Hazelwood submitted that your honesty is a prerequisite to safe patient care, and that your willingness to misrepresent events at the DHU investigation could pose a risk to patient care. She therefore invited the panel to find you impaired on public protection grounds.

Regarding public interest, Ms Hazelwood submitted that members of the public's confidence in the profession would be deeply undermined if they were to learn about these charges against you and would have doubts about how medical professionals would behave within the workplace and, in particular, they may question the level of care vulnerable patients receive. She submitted that your behaviour within these charges found proved suggest that there are underlying attitudinal concerns. She submitted that any patients, including those most vulnerable, should be protected from fear of being mistreated.

Ms Hazelwood submitted that the concerns identified are difficult to address as it related to your attitude and dishonesty. She reminded the panel that you had produced a reflective piece and several testimonials. She invited the panel to assess the quality and nature of

the insight within. She submitted that the reflective piece does not specifically address the concerns in this case. She submitted that you have not identified how you would behave differently in the future or acknowledged the risk of harm to patients or the seriousness of the issues raised. She further submitted that lack of response to the inappropriate behaviour towards your colleague suggests that you do not recognise the effects of such behaviour on the reputation of the profession. She told the panel that you have not undertaken any training to address these matters and, given the limited insight and lack of efforts to strengthen your practice, the risk of repetition of the concerns identified remains.

Ms Hazelwood submitted that the concerns identified raises fundamental concerns about your trustworthiness as a registered professional, and given the long-standing deception, your fitness to practice remains impaired on both public protection and public interest grounds.

Mr Buxton submitted that it is not in dispute that a finding of impairment should be made in your case. However, he submitted that the first limb of Grant is not engaged and so the finding should be made on the ground of public interest alone.

Mr Buxton informed the panel that you have, aside from the events of May and the ensuing short period, thereafter, demonstrated being capable of prioritising people, practising effectively, and preserving safety. He submitted that the recent evidence suggests that you are perfectly capable of, and indeed have engaged in practice, which is kind, safe and professional.

Mr Buxton acknowledged that the comments made in charge 1 are rude and inappropriate. However, he submitted that these were made in private and that the submissions made by the NMC to suggest that these comments may have caused distress to patients or service users or that they may have been provided with sub-optimal care is 'stretching it'. He reminded the panel that, at no point, were the patients exposed to harm or neglect.

Whilst it is a matter for the panel, Mr Buxton submitted that your conduct did not concern direct treatment of patients or service users and accordingly the ground of public protection was not engaged in this case.

He conceded your dishonest conduct raises attitudinal concerns, but he submitted that there is no evidence to suggest any dishonest conduct occurred either before or since the events of 2019.

Mr Buxton referred the panel to your reflective piece and submitted that it demonstrates an objective assessment of the implications of the charges and, whilst, you have denied the charges, you are fully aware of the need to behave properly and uphold the standards of the profession, particularly through the Code.

He then referred the panel to the testimonials provided which speak to you being a kind and compassionate nurse who is dedicated and one who acts with honesty and patience.

Accordingly, Mr Buxton submitted that a finding of impairment is not necessary on the ground of public protection and submitted that it may be appropriate to find you impaired on public interest grounds alone.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

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

“1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.5 respect and uphold people’s human rights

2 Listen to people and respond to their preferences and concerns

To achieve this, you must

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

8 Work co-operatively

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that that your actions did fall seriously short of the standards expected of a registered nurse and amounted to misconduct.

The panel determined that your behaviour was both inappropriate and unacceptable. It bore in mind that the comments were not made directly to the people who you were referring to but occurred during a private conversation with Colleague A. However, the panel found that the language used by you fell well below what is

expected from a nurse in any situation.

The panel found your dishonesty in respect of the voice recording to be shocking. It found the deliberate fabrication of evidence with the aim of undermining the professional standing of a colleague to be completely unacceptable.

The panel noted that charge 2a, taken in isolation does not meet the threshold for misconduct, as there was not at the time a clear and unequivocal policy on the geographical deployment of DHU's out of hours team. However, taken together with the remainder of the charges found proved, the panel found that your actions, individually and cumulatively in this case, did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper

professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

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

The panel finds that limbs b, c and d are engaged in this case. It determined that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious. The panel bore in mind that these comments were made whilst you were on duty. The panel was satisfied that although your comments were completely

unacceptable, they were not made directly to the patients and therefore does not engage patient harm.

Regarding insight, the panel considered that you have not demonstrated sufficient understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel found your reflection piece to be lacking in detail and substance.

The panel noted that the nature of charge 1 and the proved dishonesty charges are such that remediation is not straightforward. The panel noted that your behaviour in charge 1 appears to be a one off on incident, on a particular night shift, however, given that it was sustained over much of the shift and included extremely unpleasant comments, the panel could not be certain that there are no underlying attitudinal issues.

The panel took account of your dishonest actions and considered whether they constituted a single instance of dishonesty designed to protect your job. The panel concluded that this could not properly be characterised as an isolated incident. The panel considered your dishonesty to be very serious. The fabrication of evidence was found to be premeditated and you then sought to sustain your deception over a long period of time. The panel bore in mind that the fabrication of this recording could have had a serious impact upon Colleague A as a material challenge to her integrity, and that you had not demonstrated any insight into the impact of this conduct.

The panel was of the view therefore that there is a significant risk of repetition based on the fact that you have not been able to show to the panel sufficient insight into your conduct and also show any practical steps taken to address the concerns identified. The panel was therefore of the view that there is a real risk of repetition of the misconduct identified in your case.

Given there was no patient harm caused and given your actions did not engage any clinical concerns, the panel determined that no public protection concerns arise in this case.

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

The panel had regard to the serious nature of your conduct and determined that public confidence in the profession would be seriously undermined if a finding of current impairment was not made. For this reason, the panel determined that a finding of current impairment on public interest grounds was required.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

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

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

Submissions on sanction

In her submissions on sanction, Ms Hazlewood invited the panel to impose a striking-off order. She outlined what the NMC considered to be the aggravating and mitigating features of this case, and submitted that, because of the seriousness of the facts found proved and the subsequent reasons for finding your practice impaired, the only sanction that would suitably satisfy the public interest would be to permanently remove your name from the register.

She submitted that this case raises fundamental questions about your professionalism and that there is a danger that public confidence in nurses will not be maintained if you remain on the register.

Mr Buxton invited the panel to impose a suspension order.

He reminded the panel of the reflective piece in which you have addressed the charges, that your reflective piece recognises the seriousness of the charges against you and you have fully engaged with these proceedings. He reminded the panel to look carefully at the individual circumstances, the nature and conduct of this case.

Mr Buxton submitted that it is acknowledged that the panel has determined that there is a risk of repetition. However, he informed the panel that you have been in practice since this incident for four plus years without any issues.

He reminded the panel of the testimonials presented on your behalf which attest to your good character and practice, and in particular, one where it indicates that your conduct above, does not reflect your character.

Given all the above, Mr Buxton invited the panel to impose a sanction short of a striking-off order.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Deliberate premeditated dishonesty which was sustained over a period of time;
- Impact upon Colleague A as a result of your dishonesty and falsely accusing her of improper behaviour;
- Some of the unacceptable comments made by you were in relation to vulnerable patients; and
- Limited insight and only abstract reflection regarding your conduct and these charges.

The panel also took into account the following mitigating features:

- There are no concerns as to your clinical practice, and you have continued to practise as a nurse without incident since the relevant events took place;
- You are of previous good character;
- Your actions did not put patients at direct risk of harm;
- You accepted charge 2a at the outset of these proceedings; and
- Several positive testimonials were provided which attest to your character and clinical practice.

The panel noted that you have engaged with these proceedings and there are no previous regulatory concerns.

The panel first considered whether to take no action but concluded that this would be wholly 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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took account of the SG, which 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 was of the view that your behaviour was not at the lower end of the spectrum of fitness to practise and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing a conditions of practice order on your nursing registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel was of the view that there are no practical or workable conditions that could be formulated, given the seriousness and the nature of the concerns in in this case, which included dishonesty. The panel noted that the concerns in this case relate solely to your conduct and behaviour; there were no identifiable areas of clinical nursing practice which needed to be addressed.

The panel also determined that the public interest elements of this case would not be met by the imposition of a conditions of practice order, given your dishonesty. The panel had serious concerns regarding your dishonesty and behaviour which was found to be deliberate and premeditated.

The panel then went on to carefully consider whether a suspension order would be an appropriate sanction.

The panel reminded itself that it had found your dishonesty and the underlying behaviour behind them to be serious. It had considered it to be a significant departure from the standards expected of a registered nurse. The panel considered that your premeditated

and calculated deception may well be indicative of a deep-seated attitudinal issue. You had acted in a way that was completely contrary to all that nursing stands for.

The panel found you to have offered very limited insight and remediation in respect of your conduct. The panel considered there to be a real risk of repetition, given the nature of your conduct and your limited insight.

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

The panel was of the view that the findings in this particular case demonstrate that your actions were serious, and to allow you to remain on the NMC register as a registered nurse would undermine public confidence in the nursing profession and in the NMC as a regulatory body. With this in mind, the panel concluded that the only appropriate and proportionate sanction available to it was to impose a striking-off order. It considered that any other sanction in this case would be inadequate given this panel's findings.

Taking into account all of the above, the panel determined that your actions were not merely serious departures from the standards expected of a registered nurse and serious breaches of the fundamental professional tenets, of maintaining proper professional values. They were fundamentally incompatible with you remaining on the NMC register. In the panel's judgment, to allow someone who had behaved in this way to maintain registration with the NMC would undermine public confidence in the nursing profession and in the NMC as a regulatory body. It would be insufficient to uphold and declare proper standards of professional conduct.

In reaching its decision, the panel bore in mind that its decision would have an adverse effect on you both professionally and personally. Nonetheless, the panel was satisfied that the need to protect the public interest outweighs your interest in this regard.

Considering all of these factors, the panel determined that the appropriate and proportionate sanction is a striking-off order. Having regard to the matters it identified, in particular, the effect of your actions in damaging public confidence in the nursing profession, the panel has concluded that nothing short of this would be sufficient in this case.

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 is in your own interest until the striking-off order takes effect.

Submissions on interim order

Ms Hazlewood invited the panel to impose an interim suspension order for a period of 18 months. She submitted that this interim order is necessary on the ground of it being in the public interest.

Mr Buxton made no submissions on an interim order.

Decision and reasons on interim order

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

The panel was satisfied that an interim order is necessary on the grounds of public interest. The panel had regard to the seriousness of your concerns, and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. Owing to the seriousness of the case, along with the risk of repetition identified, it determined that your actions were sufficiently serious to justify the imposition of an interim suspension order until the striking-off order takes effect. In the panel's judgement, public confidence in the regulatory process would be undermined if you were permitted to practise as a registered nurse prior to the substantive order coming into effect.

The panel decided to impose an interim suspension order in the circumstances of this case. To conclude otherwise would be incompatible with its earlier findings.

The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.