

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

**Substantive Hearing  
Tuesday, 11 April 2023 – 18 April 2023  
Monday, 13 – Wednesday, 15 November 2023**

Virtual Hearing

**Name of Registrant:** Katie Victoria Adams

**NMC PIN** 04J0262E

**Part(s) of the register:** Registered Midwife – September 2004

**Relevant Location:** Leicester

**Type of case:** Misconduct

**Panel members:** Peter Wrench (Chair, Lay member)  
Karen Shubert (Registrant member)  
Linda Redford (Lay member)

**Legal Assessor:** Michael Hosford-Tanner

**Hearings Coordinator:** Xenia Menzl

**Nursing and Midwifery Council:** Represented by Rakesh Sharma, Case Presenter

**Mrs Adams:** Present and represented by Zahra Ahmed, Barrister (Thompsons Solicitors)

**No Case to Answer:** Charges 1a)i), 1a)ii), 1b)ii), 1b)iii), 1b)vii) and 1b)xii

**Facts proved by admission:** Charges 1a)iii), 1a)iv), 1a)v), 1b)i), 1b)iv), 1b)v), 1b)vi), 1b)viii), 1b)ix), 1b)x) and 1b)xi), 2

**Facts not proved:** Charges 3 and 4

**Fitness to practise:** Impaired

**Sanction:**

Suspension Order (12 Months) with review

**Interim order:**

Interim Suspension Order (18 Months)

## Details of charge (as amended)

That you, a registered midwife:

- 1) On various dates between 2016 and 2018 Sent messages to colleague/s:
  - a) that referred to patients and / or colleagues using racist language namely:
    - i) 'black bastards' **[no case to answer]**
    - ii) 'fat black fucker' **[no case to answer]**
    - iii) 'but you weren't shagging a blacky' **[proved by admission]**
    - iv) 'someone's let their kids shit in the clinic twice and it smells like a Romanian orphanage' **[proved by admission]**
    - v) 'big dick black South African' **[proved by admission]**
  - b) That referred to patients in a derogatory way namely:
    - i) 'This woman's built like a brick house' **[proved by admission]**
    - ii) 'Blast them fat bastards out' **[no case to answer]**
    - iii) ' I swear she was the size of a whale' **[no case to answer]**
    - iv) 'little shit was looking away from me today I'm telling u!! I 've bruised all the woman lol' **[proved by admission]**
    - v) 'had some stinky fuckers but wafted the cash to let them in' **[proved by admission]**
    - vi) 'Fat dog!!! ..... hope she gets run over.' **[proved by admission]**
    - vii) 'Fat bastards need to stop breeding' **[no case to answer]**
    - viii)'I'll come and weigh some chubbas! PS I'm still fucked lol' **[proved by admission]**
    - ix) 'Tight, twisted mother fucker' **[proved by admission]**
    - x) 'They are all twat heads' **[proved by admission]**
    - xi) 'Twat' **[proved by admission]**
    - xii) "fucker" **[no case to answer]**

- 2) Appeared in a video in which you impersonated staff from “Windows in the Womb” or “Windows to the Womb” in a racially offensive and / or discriminatory way.  
**[proved by admission]**
  
- 3) On a date unknown in relation to Mr 1 pointed at a number of cucumbers that he had and said ‘Someone is going to have a good time tonight! I have a store room full of KY jelly ready if you need it’ or words to that effect. **[not proved]**
  
- 4) Your conduct at charge 3 created a humiliating and/or hostile environment for Mr 1.  
**[not proved]**

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

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

The panel heard an application made by Mr Sharma on behalf of the Nursing and Midwifery Council (NMC) to amend the charges, under Rule 28 of the ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules).

Mr Sharma explained that the changes were in two parts. Firstly, he invited the panel to amend the head of charges. He submitted that the charges are laid out as ‘*that you as a registered nurse*’, however, this was incorrect and simply an error that needed to be changed to ‘midwife’.

Additionally, Mr Sharma submitted that he would like to add a date range to charge 1. He suggested to add ‘*on various dates between 2016 and 2018*’. He submitted that this simply provides a slightly narrower view of when these events took place. Mr Sharma submitted that this was in fairness to the registrant as it could otherwise allege that the messages had taken place over a considerably longer period of time.

Further, Mr Sharma submitted that the NMC would like to add a fifth sub charge to charge 1a). He suggested the additional charge 1a)v) would read '*big dick black South African*'. Mr Sharma submitted that this was evidence which was already contained within the screenshots put as evidence to the panel. He therefore submitted that the evidence this additional charge would rely on is based on evidence you have already seen and has been known to you for a considerable amount of time. Mr Sharma submitted that this charge was simply missed by the reviewing lawyer at the time of drafting the charges.

Next, Mr Sharma submitted that he would like to add further additional charges, charges 3 and 4. The proposed wording for the charges is:

- 3) *On a date unknown in relation to Mr 1 pointed at a number of cucumbers that he had and said 'Someone is going to have a good time tonight! I have a store room full of KY jelly ready if you need it' or words to that effect.*
- 4) *Your conduct at charge 3 created a humiliating and/or hostile environment for Mr 1.*

Mr Sharma submitted that it is alleged that on an unknown date, in relation to Mr 1, you pointed at a number of cucumbers that he was carrying and said '*Someone is going to have a good time tonight! I have a store room full of KY jelly ready if you need it*'. He submitted that charge 4 stood in relation to charge 3. Mr Sharma submitted that the evidence to substantiate your comment can be found in Mr 1's witness statements and his oral evidence which the panel will hear during the course of the hearing. He explained that these statements have been obtained by the NMC very recently on 7 and on 21 March 2023. He submitted that your alleged words were taken from Mr 1's first statement and then further substantiated in his second statement to the NMC. Mr Sharma submitted that this information had only been known to the NMC for a short period of time.

Mr Sharma submitted that notification was sent to you and your representative on the 20 and 22 March 2023 and that there was no delay in providing the supplementary statements and the suggested additional charge. He submitted that you and your

representative were aware of the proposed amendments and that therefore no injustice would be caused by amending the charges.

Ms Ahmed, on your behalf, submitted that there was no objection to the application and the proposed amendments to the charges. However, she registered a caveat about the very substantial delay in finalising the charges.

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

The panel was of the view that the amendments, as applied for, were in the interest of justice. It noted that both parties were in agreement and that you did not object to the amendment of the charges. 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 reflect the evidence put to the panel accurately.

### **Decision and reasons on application for part of the hearing to be held in private and anonymisation of Colleague A, her business, and Mr 1.**

Mr Sharma made a request that part of this case be held in private on the basis that proper exploration of your case involves the mention of Colleague A and her business, and additionally Mr 1's personal matters. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Sharma explained that Colleague A [PRIVATE].

Mr Sharma submitted that your case necessarily involves mention of Colleague A and indeed the business that she was running at the time as relevant background. Whilst the panel will not be hearing evidence from Colleague A directly you were working with

Colleague A in her private clinic at the time of the allegations. Mr Sharma therefore proposed to only name Colleague A as such and refer to her business as '*the Clinic*'.

Further, Mr Sharma submitted that Mr 1 has never been a registrant with the NMC, so has never been a nurse, midwife or a nursing associate. He has similarly never worked for or with Colleague A or you or any other witnesses in this case. Mr 1 [PRIVATE] near the Clinic. Mr Sharma submitted that due to the nature of charges 3 and 4, Mr 1 was going to give evidence regarding his personal life which includes very personal and sensitive evidence. He submitted that this was not evidence which could be redacted from Mr 1's written statement nor can it be excluded in his oral evidence.

Mr Sharma therefore made an application to anonymise Colleague A, her business, and Mr 1. Additionally, he requested that the parts of the hearing in which Mr 1 is talking about his personal life are heard in private to maintain his confidentiality and privacy.

Ms Ahmed indicated that she did not object to the application to the extent that any reference to Colleague A, her business, and Mr 1 should be anonymised. She also did not object to parts of the hearing to be heard in private in order to maintain Mr 1's confidentiality and privacy.

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

Having heard the submissions. The panel determined that it was fair to anonymise Colleague A, her business, and Mr 1 in order to maintain their confidentiality and privacy. Further, the panel determined to go into private session when matters personal to Mr 1 are raised in order to maintain his confidentiality and privacy.

## **Decision and reasons on application to allow adjustments during Mr 1's evidence.**

The panel heard an application made by Mr Sharma to make adjustments in order to enable Mr 1 to give his best evidence. He explained that the adjustment asked for is that you turn off your camera whilst Mr 1 gives his evidence.

Mr Sharma informed the panel that he does so not because Mr 1 is a vulnerable witness or because you have intimidated him. He referred the panel to the NMC guidance CMT 12:

- 1. We'll find out what support people feel they need to give evidence in a hearing and engage effectively.*
- 2. We'll always try to provide people with the support they tell us they need as long as it is fair and practical to do so. One way we'll do this is to work collaboratively with the parties in the case to get support measures agreed before the hearing.*

Mr Sharma assured the panel that this application was not made because Mr 1 felt intimidated by you, nor are there any allegations that you have intimidated Mr 1 regarding his evidence. Mr Sharma submitted that this application was made simply because Mr 1 felt intimidated by the process of giving evidence and informed the NMC that it would help him to give his evidence if he was not able to see the registrant. Mr Sharma therefore asked the panel to allow for your camera to be turned off whilst Mr 1 gives his evidence to support him to give evidence effectively.

Ms Ahmed submitted that there were no objections regarding this application as long as it was clear that this adjustment was as Mr 1 felt intimidated by the process of giving evidence and not by you. She agreed that the adjustment was requested to make Mr 1 more comfortable whilst giving evidence.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application.



The panel gave the application in regard to Mr 1 serious consideration. The panel considered whether you would be disadvantaged by Mr 1 giving evidence whilst you turn your camera off. The panel noted that this adjustment was not requested because Mr 1 felt intimidated by you, but rather by the process of giving evidence about a matter which Mr 1 felt was sensitive. The panel was of the view that you would not be disadvantaged by this adjustment and that it would allow Mr 1 to give his best evidence and make him more comfortable with the NMC process.

In these circumstances, the panel came to the view that it would be fair and just to allow the requested adjustment for Mr 1.

### **Decision and reasons on application of no case to answer**

The panel considered an application from Ms Ahmed that there is no case to answer in respect of charge 1a)i), 1a)ii), 1b)ii), 1b)iii), 1b)vii) and 1b)xii). This application was made under Rule 24(7).

In relation to this application, Ms Ahmed gave the panel a timeline of events and referred the panel to the cases of *R v Galbraith* [1981] 1WLR 1039, *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) and *El Karout v NMC* [2019] EWHC 28 (Admin). She submitted that the evidence is tenuous as such that no reasonably directed tribunal or court could find the facts proved.

Ms Ahmed submitted that the case was built on the fact that you sent the messages as charged. However, the evidence the NMC relies upon consists of pages of screenshots of WhatsApp and Facebook messages. She submitted that the two NMC witnesses were not able to attest to the authenticity of the underlying messages. Neither Mr 1 nor Witness 2 were participants of the WhatsApp or Facebook chats and were only shown the messages by Colleague A on her phone or on another device long after the alleged occasions.

Ms Ahmed pointed out that the screenshots contained two names, 'Katie Lambert' and 'Katie Lambert.', the latter one with a full stop after your name. She submitted that this implied that more than one mobile number had been saved under your name.

Ms Ahmed submitted that any number can be saved under any name the owner of the phone chooses. She submitted that therefore the screenshots themselves do not prove that it was you who sent the messages. She referred the panel to the agreed facts between you and the NMC:

*'The following facts are agreed between the parties:*

- 1. The user of messaging services such as WhatsApp create a 'contact' by saving the mobile telephone number of the originating or destination device and assigning a name to that contact. The user has full control over the choice of name they assign to each contact at the time it is saved within the device.*
- 2. Original screenshots from electronic communication such as WhatsApp and Facebook contain hidden identification data known as Meta Data.*
- 3. Meta Data contains information about the screenshot including the time and date of creation, the type of device the screenshot was taken from and, depending on the type of device, information to identify the device such as a mobile telephone number and/or an IP address (Internet Protocol address).*
- 4. NMC exhibits [Mr 1]/1 and [Witness 2]/1 consist of screenshots which have been copied and arranged onto PDF documents (Portable Document File documents).*
- 5. The process of creating these PDF documents removes all meta data from the screenshots.*

6. *In the absence of the Meta Data from the original screenshots, the original devices which messages were sent and received or accepted evidence from the sender or receiver of the messages, it is not possible to identify:*
- a) *The sending device*
  - b) *The receiving device*
  - c) *The time and date of the messages'*

Ms Ahmed submitted that in this case the user would be Colleague A. However, Colleague A is not here to give evidence and she is not relied upon as a witness by the NMC. [PRIVATE]

Ms Ahmed therefore submitted that there is no direct evidence about the private chats in real time as neither Mr 1 nor Witness 2 can assist further on the authenticity of the messages. Further she submitted that the accounts of Mr 1 and Witness 2 were inconsistent over time and that there was no explanation for the witnesses changing and expanding on their evidence. Ms Ahmed submitted that the evidence of inconsistency is a relevant factor when assessing the reliability of evidence.

Ms Ahmed then referred the panel to inconsistencies within the provided screenshots and evidence and explained that these inconsistencies, and the lack of direct witnesses make the evidence inherently unreliable. Further, an additional witness who could have possibly spoken to the reliability of the evidence did not appear before the panel and has in fact disengaged from the proceedings.

Ms Ahmed submitted that the screenshots of the messages are hearsay and are the sole and decisive evidence against you. However, as previously laid out, the evidence is hearsay and of an unreliable nature. She submitted that the panel needs to assess the inherent reliability of the hearsay, firstly, in relation to admissibility and whether it is fair to admit it into evidence at all. Only if it is to be admitted will the question of the weight to be attached to the hearsay evidence be considered. Ms Ahmed submitted that in light of the

issues with the screenshots of the messages, which include no metadata, it cannot be proved that the disputed messages were sent by you.

Ms Ahmed referred the panel to the cases of *Bonhoeffer*, *Thorneycroft* and *El Karout* and invited the panel to find that, due to the inherent unreliability of the evidence, there is no case to answer in relation to charges 1a)i), 1a)ii), 1b)ii), 1b)iii), 1b)vii) and 1b)xii).

Mr Sharma informed the panel that there will be no counter arguments made by the NMC. However, he submitted that it was important at this stage to clarify that the NMC does not make any concession as to the proposition that the messages on the screenshots have been fabricated or that there has been any untoward collusion between the witnesses.

Mr Sharma acknowledged that after hearing from the witnesses the documents, which the NMC relies upon, remain hearsay and in fact, having listened to all the evidence remain multiple hearsay. He referred the panel to the agreed facts and that there appear to be two different contacts labelled as Katie Lambert. Mr Sharma acknowledged that the NMC have been unable to show evidence to explain this or prove whose number it was that was saved. He submitted that the panel will be able to see that none of the admitted messages originated from the '*Katie Lambert*.' contact. He further acknowledged that the fact that the evidence was only produced as copies of screenshots without metadata, which could have provided the panel with some conclusive evidence as to the sender and timing of the messages.

Mr Sharma submitted that in light of this the NMC was in a position where it has no further evidence to provide nor has it been able to counter the arguments made by Ms Ahmed that there is no case to answer with regards to charges 1a)i), 1a)ii), 1b)ii), 1b)iii), 1b)vii) and 1b)xii).

The panel took account of the submissions made and heard and accepted the advice of the legal assessor. He referred the panel also to the words of the fitness to practice rules,

in particular Rule 24 (7), which states the panel must determine whether sufficient evidence has been presented by the Case Presenter to find the facts proved.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer.

The panel was of the view that, taking account of all the evidence before it, there was not a realistic prospect that it would find the facts of charge 1a)i), 1a)ii), 1b)ii), 1b)iii), 1b)vii) and 1b)xii) proved.

The panel considered the arguments laid out by Ms Ahmed. It noted that the evidence relied upon by the NMC are printed screenshots of messages. It noted that these screenshots appear to have messages from two contacts '*Katie Lambert*' and '*Katie Lambert*'. The witnesses the NMC relied upon, Mr 1 and Witness 2, were not privy to these chats. They explained that they were shown these messages by Colleague A whilst assisting her to compile evidence for her own Fitness to Practise case. The panel noted that none of the witnesses could verify if the number saved under your name was indeed your phone number nor were they consistent regarding the process of compiling these messages. The witnesses gave differing and incomplete accounts about how the photocopied screenshots had been compiled. The panel further considered that it did not have any evidence before it to rely upon to verify whether or not you had indeed sent those messages. The panel therefore concluded that the evidence presented by the NMC was inherently weak and unreliable. It noted that Colleague A had disengaged and did not appear before the panel to give evidence and could therefore not speak to the reliability of the screenshots.

The panel concluded that it was not fair to you to rely upon the documentary evidence provided by the NMC to support the contested charges as it was tenuous in nature. The documentary evidence is therefore excluded to the extent that it relates to the charges

which you have denied. The NMC witnesses have not been able to provide any greater certainty as to its provenance and reliability. It was an unverified document compiled by an unknown person at an unknown date, apparently using screenshots from an unverified device or devices. Neither of the NMC witnesses could say with any authority how the document that they exhibited had been produced. The panel therefore concluded there was not sufficient evidence before it such that it could find the facts alleged in charges 1a)i), 1a)ii), 1b)ii), 1b)iii), 1b)vii) and 1b)xii) proved and therefore determined that in regards to these charges, you had no case to answer.

### **Decision and reasons on application to admit hearsay evidence**

The panel heard an application made by Ms Ahmed under Rule 31 to allow the hearsay testimony of Witness 6, a receptionist at the Clinic at the time of the allegations, into evidence. She submitted that the evidence is highly relevant and deals with the disputed charges 3 and 4 about the alleged comment made to Mr 1 which caused him to feel humiliated and offended.

Ms Ahmed informed the panel that Witness 6 had been approached by both the NMC and you asking her to give evidence in this case. She submitted that Witness 6 has not provided a statement that is supportive of the NMC case and she has been clear that she does not want to engage further with the hearings process. Witness 6 had said that she was not prepared to attend the hearing but that she was content with her signed written statement being used as evidence in this case.

Ms Ahmed referred the panel to the cases of *Thorneycroft* and *El Karout*. She submitted that the evidence is relevant with regards to Mr 1's evidence who stated that there were eyewitnesses present, including Witness 6. Ms Ahmed submitted that it was relevant whether Witness 6 was present at the time the alleged comment was made as that has been asserted by Mr 1.

Ms Ahmed acknowledged that Witness 6 not being present causes some unfairness to the NMC as she cannot be cross examined and her evidence cannot be tested in that way. However, she submitted that this can be balanced by the panel attaching the relevant weight to the statement. She submitted that whilst Witness 6 is not attending the hearing, other witnesses that have been named by Mr 1 as being present will be giving evidence before the panel and their evidence can be tested. Ms Ahmed submitted that the panel can then assess the appropriate weight to be given to the statement and consider whether there is any corroborative evidence, as it is not the sole evidence produced by you on the disputed charges.

Mr Sharma submitted that the application was opposed by the NMC. He submitted that Witness 6's statement was clearly hearsay. Mr Sharma informed the panel that in relation to Witness 6 there were questions of loyalty that cannot be explored in her absence.

Mr Sharma submitted that the evidence is relevant to the remaining disputed charges and that Witness 6 purports to give evidence on those. However, he submitted that admitting Witness 6's statement into evidence was not fair as there was no means of testing or challenging this evidence by either cross examination or by panel questions. He submitted that Mr 1 gave lengthy evidence about charges 3 and 4 and was open to extensive questioning. Mr 1 maintained his position as far as what he had said in his witness statements.

Mr Sharma submitted that Witness 6's statement is an essential part of the defence case. He explained that whilst the NMC had contacted Witness 6 during the investigation, it was simply the investigator's duty to explore all avenues of this case. The NMC was keen to get any statement, whether it supported the NMC case or not, however, Witness 6 refused to provide a witness statement to them. He stated that Witness 6 is now refusing to attend to give live evidence. Mr Sharma submitted that this calls into question the validity of what she is saying in her statement.

Mr Sharma therefore submitted that it was not fair to admit Witness 6's statement into evidence as there was no way to test this controversial evidence.

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

The panel gave the application regarding Witness 6's statement serious consideration. The panel noted that Witness 6's statement had been prepared for this hearing on very short notice as the additional charges were only added on 22 March 2023 and the charges were of a different nature to the first charges. Whilst the panel acknowledged that Witness 6 did not appear to have good reasons as to why she did not want to appear before the panel, it was of the view that you and your representative Ms Ahmed had been afforded very little time to obtain evidence from the alleged eyewitnesses in Mr 1's second statement of 21 March 2023 to present a case regarding the additional charges. Your representatives had little time to encourage witnesses to attend, although there is one alleged eyewitness who will be attending at the request of your representatives. You and your representative have cooperated in agreeing to the additional charges being dealt with at this hearing, despite inadequate notice under the Fitness to Practice Rules.

The panel accepted that the NMC would be disadvantaged by not being able to cross examine Witness 6. The panel acknowledged that Witness 6's evidence could not be tested by the NMC through cross examination or by the panel's questions. There was also a public interest in the issues being explored as fully as possible. The panel was satisfied that the matters in the written statement are relevant and not the sole evidence called by you on the point of whether Witness 6 heard those comments.



In these circumstances, the panel determined that it would be fair and relevant to accept the written statement of Witness 6 into evidence but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

## **Background**

The charges arose whilst you were employed as a registered midwife at the Clinic which was owned and run by Colleague A. The Clinic provided maternity services to pregnant women, predominantly sonography services. You resigned from employment at the Clinic in August 2018 and in 2019 set up your own maternity services clinic.

[PRIVATE] referrals were received in relation to you alleging misconduct. [PRIVATE]

It is alleged that, during the time of your employment for Colleague A, you were frequently in contact with her by various private messaging services such as WhatsApp and Facebook Messenger. At times these conversations would be single, short messages regarding work related issues and at other times there would be longer conversations, including matters not directly related to your work. It is alleged that in those messages you used racist language and referred to patients and/or colleagues in a derogatory way.

It is further alleged that on an unknown date Mr 1 came to the clinic to deliver lunches. He carried a tray of cucumbers with him. Mr 1 stated that you pointed at him and said words to the effect of '*Someone is going to have a good time tonight! I have a store room full of KY jelly ready if you need it*'. It is alleged that by doing so you created a humiliating and hostile environment for Mr 1.

## Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Ahmed, who informed the panel that you made admissions to charges 1a)iii), 1a)iv), 1a)v), 1b)i), 1b)iv), 1b)v), 1b)vi), 1b)viii), 1b)ix), 1b)x), 1b)xi) and 2.

The panel therefore finds charges 1a)iii), 1a)iv), 1a)v), 1b)i), 1b)iv), 1b)v), 1b)vi), 1b)viii), 1b)ix), 1b)x), 1b)xi) and 2 proved, by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Sharma on behalf of the NMC and by Ms Ahmed on your behalf.

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

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

- Mr 1: Member of the public, [PRIVATE];
- Witness 2: Registered Midwife, friend of Colleague A, not associated with the Clinic.

The panel heard evidence from you under affirmation.

The panel also heard evidence from the following witnesses that have been called on your behalf:

- Witness 3: Reception staff at the Clinic at the time of the allegations;
- Witness 4: Sonographer, contracted on a self-employed basis at the Clinic at the time of the allegations;
- Witness 5: Reception staff at the Clinic at the time of the allegations.

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.

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

### **Charge 3**

- 3) On a date unknown in relation to Mr 1 pointed at a number of cucumbers that he had and said '*Someone is going to have a good time tonight! I have a store room full of KY jelly ready if you need it*' or words to that effect.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account Mr 1's written and oral evidence, as well as Witness 3's, Witness 4's and Witness 5's written statements, oral evidence and Witness 6's written statement. The panel further took into account your own written statement and your oral evidence.

The panel noted that you denied the alleged event ever happened and that you stated that you would not say something like this to anyone.

The panel found that Mr 1 was very clear about what you said and the circumstances in which the alleged words were said. It noted his explanation as why it has taken him so long to come forward with the allegation, that he felt ashamed and that it was of a sensitive nature for him. The panel was of the view there was no necessary reason to question the lateness of the accusation as the possible effect on alleged victims of comments such as these has to be taken into account. Further, the panel noted Mr 1's acknowledgement that there were some inconsistencies in his witness statement and the possibility of changing names on a WhatsApp contact and that he did not challenge that this could be done. The panel took account of Mr Sharma's submission that these acknowledgements should be considered as adding to Mr 1's credibility.

The panel found that Mr 1's live evidence was consistent within itself, and he was keen to answer all questions in full, even when pressed on matters he did not want to talk about, Mr 1 explained himself well even when the questions were sensitive.

However, the panel found that there were significant inconsistencies between his written statements. In his first statement Mr 1 did not mention any other staff being present at reception when you allegedly made the derogatory comment toward him. However, in Mr 1's second statement he named Witness 4 and Witness 6 as present.

The panel noted that neither Witness 4 nor Witness 6, in their written statements, recall any such comments ever being made. Further, the panel noted that in Witness 4 and Witness 5's evidence it was stated that Mr 1 only delivered lunch to the Clinic on a handful of occasions. The panel noted that this contradicted Mr 1's statement that he regularly delivered catering to the clinic and did interact with staff there quite often.

Additionally, the panel noted that Mr 1 was almost certain ('99.9 percent') that the comment was made on a Friday, as this was the day there was a market nearby, which

would explain him carrying cucumbers with him. He explained that the market was usually on a Friday, unless there was a bank holiday. However, the other witnesses could not corroborate this. The panel also heard evidence from witnesses that certain named people could not have been present at such an event on Friday, as it was their non-working day. Witness 6 said in her statement that she never worked in the Clinic on a Friday and Witness 4 confirmed this and it was not challenged. These inconsistencies with the witnesses who Mr 1 stated to have been present at the alleged incident created doubt about Mr 1's certainty over the day, witnesses of the event, and his account.

The panel noted a further inconsistency between Mr 1's two written statements. In his first statement on 7 March 2023 he said,

*'I was present in the clinic on many occasions when Katie would make offensive videos and use homophobic and racist language and I witnessed all this myself, but I took these on the chin and laughed them off.'*

However, in his second statement two weeks later he said,

*'This comment is the only one that has stuck in my mind because of the complete humiliation...this is the only account that has stayed with me and I cannot provide any more details.'*

The panel was of the view that in his oral evidence Mr 1 tried his best to assist the panel and to tell the truth as he saw it. However, there were inconsistencies in Mr 1's written and oral evidence and none of the other witnesses could corroborate Mr 1's evidence. The panel attached some weight to the hearsay evidence of Witness 6 as it was supported by the live evidence of Witness 4 and not challenged, which demonstrated that Mr 1 was wrong on an important point, namely whether Witnesses 4 and 6 were present at the time of the remarks alleged in charges 3 and 4. For all these reasons the panel could not fully rely on the evidence given by Mr 1.

The panel also took into account the screenshots of public Facebook posts which had not been challenged that Mr 1 has made. According to Witness 4 these screenshots were in

contradiction to Mr 1's statement that he is a '*shy person and keep myself to myself*'. However, the panel was of the view that these posts were not consistent with Mr 1's statement as they openly made reference to sexual matters. The panel acknowledged that Facebook could be a performative platform but concluded that these public posts undermined Mr 1's statement.

The panel was conscious that there is a long history of issues between you and Colleague A about which it has been given only partial information. It has properly focused solely on the specific charges which have been brought against you. [PRIVATE]. It does not seem to be disputed that there has been a lengthy history of friction and animosity, nor that the witnesses in this case are, to a greater or lesser extent, members of one of two camps. The panel has needed to take into account that, in hearing evidence on the disputed charges, it has not been hearing from entirely disinterested observers.

The panel noted that the burden of proof lies with the NMC. In this instance, the evidence was contradictory, the NMC evidence on these charges was uncorroborated and there were inevitable concerns about the witnesses' impartiality. The panel was not satisfied that the NMC has discharged its burden to prove this charge that it was, on the balance of probabilities, more likely than not that on a date unknown in relation to Mr 1 you pointed at a number of cucumbers that he had and said '*Someone is going to have a good time tonight! I have a store room full of KY jelly ready if you need it*' or words to that effect.

#### **Charge 4)**

- 4) Your conduct at charge 3 created a humiliating and/or hostile environment for Mr 1.

**This charge is found NOT proved.**

Following from the fact that the panel has found charge 3 not proved, this charge falls and is also 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 ability to practise kindly, safely and professionally without any restriction on their practice.

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.*'

Mr Sharma invited the panel to take the view that the facts found proved amount to misconduct. He referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and identified the specific, relevant standards where your actions amounted to misconduct.

Mr Sharma submitted that you showed racist and derogatory attitudes and demonstrated mocking behaviour which fell far short of the standard expected of a midwife and amounted to serious professional misconduct.

Ms Ahmed submitted that misconduct was a matter for the panel to determine.

### **Submissions on impairment**

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

Mr Sharma submitted that two limbs of *Grant* were engaged, in that you brought the profession into disrepute and you breached the fundamental tenets of the profession. He submitted that whilst there has been some explanation of context, including a toxic environment, it does not fully explain or excuse your behaviour. Regardless of the behaviour of Colleague A, there was no reason for you to say what you said or to act in the way you did.

Mr Sharma submitted that the misconduct in this case was particularly serious and difficult to remediate. Conduct involving racism and derogatory language may come from deep seated attitudinal problems which are not easily remediable. He acknowledged that there were no concerns prior to these incidents and that your previous good character may weigh in favour of the misconduct being remediable.

Mr Sharma submitted that the misconduct in this case, which included racist and discriminatory behaviour, was so serious that a finding of impairment was required



regardless of how much work you may have done to show that the concerns have been remediated.

Mr Sharma acknowledged that you have undertaken a number of relevant courses. However, you had difficulty answering questions about your motivations when you were engaged in the misconduct. You were able to explain what you should and should not have done but without a detailed narrative of what your thought process or your motivation was at the time. This makes it difficult to see how things would be different if the same circumstances arose in the future. Your explanation of engaging in this behaviour with Colleague A in order to placate each other in a toxic environment does not properly explain your thought process. Therefore, there remained a risk of repetition.

Ms Ahmed reminded the panel that the incidents date back to the period between 2016 to 2018. Since then you have continually reflected and consistently examined yourself and your behaviour. You have expressed remorse for your actions at the time. Your behaviour occurred against the backdrop of a 19 year unblemished career.

Ms Ahmed submitted that you have remedied your conduct. This is demonstrated through your oral evidence, your documentary evidence of relevant courses and training, your positive reflections and positive testimonials attesting to your high standards of behaviour and professionalism. She referred the panel to your latest reflection which demonstrated insight and the application of your additional training and development. You have accepted responsibility for your actions and have admitted them.

Ms Ahmed reminded the panel that the misconduct occurred in the context of private conversations between you and Colleague A which were never meant to be shared with any member of the public, clients or other members of staff. However, they were disclosed as a part of a referral and you have been on a steep learning curve since then. You have continuously shown that you reflected and cooperated with the NMC investigation both at the earliest stages and throughout the final hearing. The panel have heard about the additional training both mandatory and supplementary which have led to your own

reflection process and the need to adopt positive social norms. You have taken a step back to look and applied your training to your behaviour back in 2016 – 2018 when you were '*blinded by the effect norms could create*'. You have questioned yourself and understand how irresponsible you were. You have also put mechanisms into place to hold yourself accountable. You are being a role model to your staff and it is clear from the testimonials that they speak very highly of you.

Ms Ahmed referred the panel to your oral evidence in April 2023, when you submitted yourself to external scrutiny as you submitted yourself to the Care and Quality Commission. You were open to feedback from this lengthy process and it ended with a positive outcome enabling you to continue your business. You have also proactively sought feedback from external platforms where clients can give positive or negative feedback about the standard of care you and your staff provide as part of your business.

Ms Ahmed submitted that you are a highly motivated midwife as you act as a role model both professionally and personally to both your family and also your staff members, many of whom look to you for guidance in terms of training, protocols and setting of standards. You engage with the diverse community in Leicester.

Ms Ahmed submitted that there was no risk of repetition. You have taken full accountability and looked at the issues in depth. You have implemented a whistle blowing policy so that staff members who do not feel comfortable with something said or done within the business can raise concerns without feeling judged. This demonstrates that lessons have been learned since the allegations came to light and you have taken responsibility for your behaviour. You have also been able to explain the context of your behaviour, in particular the negative environment which affected staff members. Ms Ahmed submitted that whilst you may have brought the profession into disrepute and have breached the fundamental tenets of the profession there remains no risk that you will do so in the future. Therefore, she invited the panel to find that a finding of impairment on public protection grounds was not necessary.

Ms Ahmed submitted that an informed member of the public, in knowledge of your remedial actions and insight, would not be concerned were you allowed to practise unrestricted. The public interest has been marked by the NMC taking on this investigation and these proceedings. To particularise the matters that have been found proved by admission in these circumstances do not warrant a finding of impairment on public interest grounds.

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), *Remedy UK Limited v GMC* 2010 EWHC 1245 (Admin), *Johnson and Maggs v NMC* 2013 EWHC 2140 (Admin) and *BC v Police Scotland* 2019 CSOH 48.

## **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*

### **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*
- 20.5 *treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*
- 20.7 *make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way*
- 20.8 *act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*
- 20.10 *use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel was of the view that the matters in charge 1 were sufficiently similar to be considered together as mutually reinforcing and cumulatively amounting to serious misconduct. It determined that the WhatsApp messages between you and Colleague A showed a lack of respect and compassion towards patients and manifestly failed to uphold their dignity. In three cases, the comments included racist language and those three taken together were sufficiently serious to amount to misconduct. Whilst the panel appreciated that the comments were made within the context of a closed conversation between you and Colleague A and not aimed directly at patients, they were well beyond the boundary of what would be acceptable professional language between midwives. The panel determined that this behaviour fell far below the standard expected of midwives and amounted to serious misconduct.

The panel then considered charge 2. The panel was of the view that you intentionally impersonated a colleague from a competitor business and mimicked their personal and protected characteristics in a derogatory, mocking and racist way. Whilst the video may not have been intended for a wider audience it clearly required thought and consideration

before being executed. The panel was satisfied that this was a planned and deliberate act. It determined that this fell far below the standard expected of midwives and amounted to serious misconduct.

The panel found that your actions did not show kindness, respect or compassion, and fell seriously short of the conduct and standards expected of a midwife 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.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

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

*“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”*

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

Midwives 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 midwives with their lives and the lives of their loved ones. To justify that trust, midwives 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) [...]*

*b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

*c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

*d) [...].'*

The panel finds that your misconduct undoubtedly brought the profession into disrepute. Furthermore, as the panel's earlier identification of the way in which your misconduct was in breach of the Code has shown, your misconduct breached fundamental tenets of the midwifery profession.

Regarding insight, the panel considered your written reflections and your oral evidence. It noted that in your latest written reflection, dated 9 November 2023, you state:

*'I understand how such comments appear hurtful and rude. My intention was never to cause distress or appear unempathetic. I am deeply sorry I exchanged such words about clients in this way. I can assure all, that these behaviours are not a representation of my personal or professional attitudes prior to 2016 and post 2018.'*

The panel was concerned that you state that you understand how such comments 'appear' to be hurtful and rude not acknowledging that they were hurtful, rude and racist. The panel was further concerned that in none of the reflections you address the content of the video impersonating a person from a competitor business in a derogatory and racist way. Whilst the panel acknowledges that you have taken steps to strengthen your practice by attending personal development courses including an equality, diversity and inclusion course, it was of the view that there was a disconnect between your learnings and your reflections which indicate that you have not yet gained full insight into how your actions were wrongful and why you acted as you did. You were therefore not able to satisfy the panel how you would act differently were you in a similar situation again. Whilst you state that you are taking responsibility for your actions the panel was not satisfied that you have done so. On the contrary, it was of the view that you continue to deflect much of the blame to other people and the environment you were in.

The panel noted that in your reflections and oral evidence you continually referred back to your own business and how you make your staff aware of equality, diversity and inclusion. However, you were not able to explain your own earlier actions when working in another business in relation to your derogatory and racist behaviour which included mockery intended to demean patients and another person in a competitor business. The panel determined that was unacceptable behaviour even though not said or done directly to the patients and other person. The panel considered that your reflections and your oral evidence reflected the terminology of equality, diversity and inclusion training but you did

not seem able to apply your learning in giving a clear explanation of your actions and the incidents in the charges. The panel was satisfied that you know what you did was wrong, but it was not satisfied that you properly understand why you did it. The panel concluded that this could be an attitudinal issue. Only in your oral evidence today you acknowledged that you '*had no one to blame but [your]self*'. The panel therefore concluded that you have only developing insight into your misconduct.

The panel was of the view that the misconduct in this case was not easily remediable. Therefore, the panel carefully considered all the evidence before in assessing the steps you have taken to strengthen your practice. The panel took into account the additional relevant training you have undertaken and the positive testimonials provided on your behalf. However, the panel determined, as explained above, that you have not yet been able to connect your learnings to your misconduct and that you have therefore not yet been able to strengthen your practice to the extent that is required.

Therefore, the panel is of the view that there is a risk of repetition.

However, the panel noted that the NMC has accepted that this is a case which does not engage the first limb of the *Shipman* test which states '*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*'. It determined that a finding of impairment is not required on the grounds of public protection as the behaviour which might be repeated is not behaviour which posed an unwarranted risk of harm to patients. The remaining risk in the future is of further damage to the reputation of the profession.

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



The panel determined that a finding of impairment on public interest grounds is required. This case relates to derogatory and racist language and behaviour even though not made directly to patients or person to whom the comments and behaviour related. Your language and behaviour were not kind nor respectful nor compassionate. An informed member of the public aware of the facts of this case would find your actions and words deplorable and their trust in the NMC as your regulator would be damaged if no finding of impairment were made. The panel was of the view that the misconduct in this case was so serious, that a finding of impairment must be made on public interest grounds.

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

## **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months with a review. The effect of this order is that the NMC register will show that your registration has been suspended.

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

## **Submissions on sanction**

Mr Sharma outlined the mitigating and aggravating features of this case. He submitted that you have engaged with this hearing, have admitted the charges, provided numerous testimonials and relevant training certificates. However, he invited the panel to consider the period of time over which the misconduct took place, the number of individual incidents and the range of misconduct from mildly offensive to serious racism.

Mr Sharma submitted that neither taking no action nor imposing a caution order would be appropriate in this case. A conditions of practice order would also not be appropriate or relevant as there may be attitudinal problems and there are no concerns about your clinical practice.

Mr Sharma submitted that a suspension order was also not appropriate as this was not a single incident of misconduct. Additionally, there was evidence of attitudinal problems. The concerns raise fundamental questions about your professionalism and the NMC consider any form of racism to be very serious. For these reasons Mr Sharma invited the panel to impose a striking off order.

Ms Ahmed acknowledged that the panel had raised attitudinal matters as a key concern, however, she submitted that attitudes can change with further insight, education and application. This makes a case for a conditions of practice order as an appropriate sanction. No previous regulatory concerns had been raised about you. You are a good practitioner, who has received good feedback from your clients and the community. You are generally well liked and well regarded.

Ms Ahmed submitted that the misconduct was confined to a set of messages within a particular context. You have since taken yourself out of that situation and are practising in an entirely different environment now. She submitted that you have started to develop insight.

Ms Ahmed referred the panel to the SG which lays out the factors to consider when determining sanctions for serious cases and submitted that your case does not fit in the categories of dishonesty, harm to patients, sexual misconduct and conviction cases. A suspension order would be disproportionate and would be punitive.

Ms Ahmed submitted that a conditions of practice order would deal with the key concerns and balance the public interest with the need to send a clear message, allowing you to develop insight and bridge the gap between learning and reflection. Conditions could

include formalising any learning to be written up by way of a practice log and maintaining a further training log which can be provided to the NMC on a periodic basis. This would chart your learning and development in which feedback from course tutors or any other person could be contained. A reflective practice profile and reflection would also support you to bridge the gap between developing insight and full insight, charting all learning, logs and reflection on the particular section of the community that you serve and any interactions with patients, colleagues and training.

Ms Ahmed reminded the panel that the purpose of these regulatory proceedings was to allow practitioners to grow and develop their insight. A conditions of practice order would allow you to do this.

Ms Ahmed submitted, that were the panel not with her on a conditions of practice order it needed to consider the length of time for which it would impose a suspension order. Taking account of the mitigation, the length of time that has passed since the incidents and your developing insight a shorter period of suspension would be appropriate.

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

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 was not convinced that there were either aggravating or mitigating features which added to or detracted from the very serious misconduct in this case. The panel appreciated that this was not an isolated incident but a series of actions which took place over the period from 2016 to 2018 in the context of private exchanges between you and your employer. These included WhatsApp and Facebook messages and the making of a video. However, the misconduct was confined to that specific context. The panel heard undisputed evidence that there was a '*toxic working environment*' and that you have not

repeated similar misconduct since you have left this place of employment. The panel also acknowledged that you made early admissions, have an otherwise unblemished career and have taken some steps to strengthen your practice. However, this is generally what would be expected of a registered professional and the panel was not satisfied that these were positive mitigations as opposed to an absence of aggravation.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public interest issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the misconduct involving racist and derogatory language and behaviour. 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG and gave careful consideration to Ms Ahmed's submissions. However, it was not satisfied that conditions of practice were appropriate to address this type of attitudinal issue and the development of insight. The panel considered that attitudes cannot be measured in the same way as clinical issues. Conditions of practice are usually geared toward protecting patients and the panel had not found that there were public protection issues. Further, the panel considered that whilst you have been on training courses and

have taken some steps to strengthen your practice, you have been unable to apply your learning and develop your insight comprehensively.

The panel decided that there are no practical or workable conditions that could be formulated, given the nature of the misconduct in this case. The misconduct identified in this case was not something that can be addressed solely through retraining. This needs to be addressed through deep reflection on the impact and meaning of your racist and derogatory language and behaviour, and a comprehensive understanding of why you did what you did.

The panel also concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not adequately address the public interest.

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

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

The panel acknowledged that this was not a single instance of misconduct. However, the misconduct was confined to a specific period and your relationship with your then employer. The panel determined that this was a single, albeit prolonged, period of time when you acted in a way which seems to have been out of character, taking account of the positive testimonials you have provided, and the fact that the behaviour has not been repeated since the incidents. You have

demonstrated that you have started to develop the necessary insight. Whilst the incidents might indicate some attitudinal issues, these may not be deep-seated.

The panel seriously considered whether the misconduct was incompatible with remaining on the register and a striking-off order would be proportionate. It took into account the NMC guidance on sanctions for serious cases which includes cases relating to discrimination. The guidance says:

*'We may need to take restrictive regulatory action against nurses, midwives or nursing associates who've been found to display discriminatory views and behaviours and haven't demonstrated comprehensive insight, remorse and strengthened practice, which addresses the concerns from an early stage.*

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

In making this decision, the panel carefully considered the submissions of Mr Sharma in relation to the sanction that the NMC was seeking in this case. The misconduct related to racist and derogatory behaviour, was extremely serious and cannot be tolerated.

However, you have engaged with the regulatory process and admitted the proven charges from the start. The panel also acknowledged the training and reflection you have done so far and, whilst you still have some way to go to develop comprehensive insight, you have started to work on this. The panel concluded that removal from the register would be disproportionate at this time. It is unnecessary in your case at this time to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

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

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct and allow enough time for you to develop your insight further.

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

Any future panel reviewing this case would be assisted by:

- A further reflective piece addressing your intention and motivation for making the remarks in the messages and behaving in the way that you did in the video. It should explain in detail why you acted as you did and what you would do if you found yourself in a similar situation in the future. This should go beyond the generalities of your equality, diversity and inclusion training. You should focus on how you have used your learning to develop a comprehensive understanding of why you acted as you did;
- Your continued engagement with the NMC and your attendance at any review hearing; and
- Testimonials from any paid or unpaid work you have undertaken.

### **Interim order**

As the conditions of practice order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own

interest until the conditions of practice sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Mr Sharma. He submitted that an interim order is necessary to uphold professional standards and maintain public confidence in the profession. An order is necessary for the reasons identified by the panel earlier in their determination until the suspension order comes into effect. He therefore invited the panel to impose an interim suspension order for a period of 18 months to cover the 28 day appeal period and any period until an appeal is determined.

Ms Ahmed did not object to Mr Ahmed's submissions and submitted that it was a matter for the panel.

The panel heard and accepted the advice of the Legal Assessor.

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

The panel was satisfied that an interim order was necessary in the public interest in order to uphold professional standards and maintain public confidence in the profession. The panel had regard to the seriousness of the charges found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28 day appeal period and any period until an appeal is determined.



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

That concludes this determination.

This will be confirmed to you in writing.