Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 16 October 2023 – Monday 30 October 2023
Wednesday 1 November 2023
Monday 12 February 2023 – Thursday 15 February 2023

Virtual Hearing

Name of Registrant:	**Theresa Ellen Franklyn**
NMC PIN:	77I1506E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing - 30 June 2003 Registered Nurse – Sub Part 2 Adult Nursing – 1 January 2002 Registered Nurse – Sub Part 1 Mental Health Nurse – 1 January 2002
Relevant Location:	Northampton
Type of case:	Misconduct
Panel members:	Florence Mitchell (Chair, Registrant member) Allwin Mercer (Registrant member) Lorraine Wilkinson (Lay member)
Legal Assessor:	Nigel Mitchell (16, 18 - 30 October 2023, 1 November 2023 and 12 – 15 February 2024) Nigel Pascoe (17 October 2023)
Hearings Coordinator:	Deen Adedipe (16 – 30 October 2023) Sophie Cubillo Barsi (1 November 2023) Shela Begum (12 – 15 February 2024)
Nursing and Midwifery Council:	Represented by Alban Brahimi, Case Presenter
Mrs Franklyn:	Present and represented by Mary-Teresa Deignan, Counsel (Royal College of Nursing)

Facts proved by way of admission:	Charges 1a,1c, 5a, 5b, 5c
Facts proved:	Charges 1b,1d,1e,1f, 2, 3a, 3b, 6, 7b (for charges 1b and 1d)
Facts not proved	3c, 3d, 4a, 4b, 7a (for charges 1a, 1b, 1d and 1e) 7b (for charges 1a and 1e)
Fitness to practise:	Impaired
Sanction:	**Conditions of practice order (18 months)**
Interim order:	**Interim conditions of practice order (18 months)**

Details of charge

That you, a Registered Nurse:

1) On 27 August 2018 said words to the effect of:

    a) In reference to Patient A: “Caucasian woman with big bambi eyes”;
    b) In reference to Patient B: “I call her my African queen, though she wears white people make up. If she is looking in a magazine she is looking at white people make up, she must be mentally ill”;
    c) In reference to Patient C: “ they are a beautiful girl but very volatile”;
    d) In reference to Patient D: “ Asian girl but has her hair done blonde, thinks she is a white person, acts like a white person, acts very British”;
    e) In reference to an unknown patient: “wanting to be a white person”;
    f) To an unknown colleague: “All you need to do is sit in the lounge and open doors for them when they want”.

2) On or around 22 October 2018 said to Patient A, in the presence of Patient G, words to the effect of: “if you did this to me, I’d beat you”.

3) On or around 22 October 2018 in reference to Patient A, said words to the effect of:

    a)”Patient A urinates herself”;
    b) “Patient A stinks because she does not wash”;
    c) “Staff let her get away with anything because they blame how ill she is”;
    d) “Patient A is capable sometimes of knowing what she is doing”.

4) On or around 22 October 2018 in the presence of Patient G:

    a) Informed Patient G the reasons for Patient A being admitted to the ward;
    b) Discussed why ~~unknown~~ patients were put on red on the ward.

5) On 12 February 2019:

    a) Left Diazepam tablets in the communal sitting area on the ward;
    b) Did not transfer the Diazepam to the drugs trolley and / or locked drugs cupboard.
    c) Did not complete a medication borrowing form.

6) On 12 March 2019 you did not go to assist Colleague A when they were assaulted by Patient A.

7) Your actions at charge 1a), 1b), 1d),1e) in respect of the comments were:
    a. Racially motivated and/or
    b. Discriminatory in that you treated the subject of that comment less favourably due to a protected characteristic, namely the subject's race.

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

Sundry preliminaries

Ms Deignan referred the panel to documents she wished to produce on your behalf at this stage which included;

- your application for agreed removal, which sets out;
    - the grounds on which you seek it.
    - [PRIVATE].
- your response bundle which contains information about your background and training.

Ms Deignan told the panel that the agreed removal had been put before it by way of information only.

Mr Brahimi then requested some redactions to the written evidence before the panel. He took the panel to the relevant parts that had been agreed with Ms Deignan and asked the panel to put a line through various passages which they should ignore.

The panel accepted the documents introduced by Ms Deignan and applied the agreed redactions to the papers.

Decision and reasons on application to admit hearsay evidence

The panel heard three separate applications made by Mr Brahimi under Rule 31 to allow the written evidence of Patient G, Patient I and Colleague A as part of its considerations. He submitted that admitting the evidence would satisfy the tests of relevance and fairness.

Mr Brahimi referred the panel to Rule 31, the NMC guidance DMA-6, the cases of *Thorneycroft v Nursing and Midwifery Council* [2014], and *El Karout v NMC* (2020) EWHC 3079.

Mr Brahimi submitted that a panel considering an allegation may admit oral documentary or other evidence in a careful balancing exercise as to whether to

admit the statements from non-attending witnesses. He submitted that the essential factors that must be considered are the quality of the evidence, how it was obtained and the ability to cross examine the evidence. He submitted that there may be circumstances in which it would not be fair to admit such hearsay evidence, for example, where it is the sole or decisive evidence in respect of a serious charge.

Mr Brahimi referred to the evidence matrix before the panel and submitted that each charge to which Colleague A, Patient G, and Patient I address is supported by a number of other witnesses.

Colleague A

Mr Brahimi reminded the panel that you have admitted charge 5 to which Colleague A's statement relates. He submitted that it is clear from Colleague A's statement that he will not be attending and that you have been aware of this for some time.

Patient G

Mr Brahimi told the panel that Patient G has only recently disengaged although the NMC has been proactive and made a significant effort over a period of time to ensure the witness's attendance. However, he advised the panel that the witness has produced a signed witness statement which allows the panel to make an informed decision as to how much weight it applies to it rather than not being introduced at all.

Patient I

Mr Brahimi told the panel that this is a vulnerable patient. The NMC through its Witness Liaison team and the public support service offered to support the witness through the entire hearing process. The witness sent in a response indicating she is not well enough to attend, and this is supported by a consultant's letter. Mr Brahimi submitted that the NMC has accepted the consultant's advice and now seeks to adduce her statement by way of hearsay.

Ms Deignan submitted that the first question the panel must ask itself is whether it is fair to admit the evidence and not what weight it should ascribe to it. Citing *Thorneycroft*, she referred the panel to the issues of fairness and other

considerations which include whether there was any suggestion that the witness had reasons to fabricate their allegations, the seriousness of the charge, and taking into account the impact that adverse findings might have on your career.

Colleague A

Ms Deignan told the panel that this witness's statement not only goes to charge 5, but also to charge 6. She submitted that there is no explanation as to why Colleague A will not attend nor any further exploration as to why he was unwilling to attend. She submitted that the NMC has not taken reasonable steps to secure their attendance.

Patient G and Patient I

Ms Deignan submitted that their evidence is the sole or decisive evidence in charge 2 and their evidence does not, in any event, closely fit with the charges as drafted.

Ms Deignan submitted that it was not clear whether the patients had reported and recollected matters accurately. She submitted that Patient G's statement was sketchy and unreliable, did not refer to specific names and times and indicates that it was written: *'following an incident I witnessed on the ward. I cannot remember the date of the incident or how long after the incident.'*

Ms Deignan submitted that there was a potential for collusion, or at least discussions between Patient G and Patient I before their statements were made. For example, she submitted that Patient I was a ringleader and Patient G was a follower, and Patient I had been racially abusive towards you. She told the panel that they referred to you as the nurse that would not indiscriminately give out PRN medication.

Ms Deignan submitted that there appeared to be different versions of Patient I's evidence within the bundle, and it was not clear if they were written by Patient I. She challenged the evidence matrix provided by the NMC and submitted that the only witnesses of first-hand evidence to charges 3 and 4 are Patient G and Patient I. She submitted that all the other witnesses only refer to exhibits produced by others.

Ms Deignan submitted that there was no information before the panel to say Patient I is currently vulnerable. There has been no contact between 2021 and 2023.

As regards Patient G, she submitted that there had been 5 attempts at communication using the same method and may have been using a nonfunctioning email address and said the NMC had not used a tracing service.

Mr Brahimi on behalf of the NMC challenged the position regarding attempts to contact Patient I, and stated that attempts had been made by email, several telephone calls and by a letter enclosing the witness papers.

Panel's decision

The panel heard and accepted the legal assessor's advice which included reference to *Thorneycroft*, *NMC v Ogbonna* [2010] EWCA Civ 1216 and *R (Bonhoffer) v and GMC* [2012] IRLR 37.

The panel considered the applications to adduce the evidence of the three witnesses separately.

The panel considered that all three witnesses had provided relevant evidence.

Patient I

Patient I speaks to charges 2 and 3. Her evidence was not sole or decisive. It was supported in relation to charge 2 by the evidence of Patient G and Witness 3, to whom a near-contemporaneous account of the incident had been given. It was supported in charge 3 by the evidence of Patient G and Witness 3 and Witness 2 and Witness 4, but they were not direct witnesses to the events.

The evidence of Patient I comprises one handwritten local statement and one typewritten local statement both dated and signed but do not contain the declaration of truth. The panel acknowledged that there may be evidential weaknesses, but that notwithstanding it was fair to admit it. The panel will decide what weight if any to give it in due course.

The panel was satisfied that the NMC had taken reasonable steps to secure Patient I's attendance. The panel determined that it was reasonable to accept the consultant's opinion.

The panel acknowledged that there was challenge to this witness's evidence and that the issue of fabrication had been raised, but this could be explored with other witnesses.

The panel also acknowledged the seriousness of the charges and the potential consequences of any adverse findings but determined that these were matters that can be considered at a later stage after hearing all the evidence.

Patient G

Patient G speaks to charges 2, 3 and 4. As regards charge 2 her evidence was not sole or decisive. It was supported by the evidence of Patient I and Witness 3, to whom a near contemporaneous account of the incident had been given. It was supported in charge 3 by the evidence of Patient I and Witness 3 and Witness 2 and Witness 4, but they were not direct witnesses to the events. Accordingly, her evidence was not sole or decisive in respect of charge 3.

In relation to charge 4 her evidence is sole or decisive and there are no other means of testing it. Although there is limited supporting evidence, he was not a direct witness nor was the matter reported directly to him. Accordingly, the panel has determined that it would not be fair to admit Patient G's evidence on this charge, but it is fair to admit it in respect of charges 2 and 3.

The panel acknowledged that there was challenge to this witness's evidence and that the issue of fabrication had been raised, but this could be explored with other witnesses.

The panel noted that Patient G initially engaged with the NMC and had prepared a signed witness statement but had ceased to engage. The panel had sight of evidence of a number of attempts by the NMC to secure the witness's attendance which include email, telephone and post. In the panel's view, in all the

circumstances, the NMC had made reasonable attempts to secure the attendance of Patient G. The panel acknowledged that you did not have notice that she would not be attending until the commencement of the hearing, but this did not outweigh the other factors in support of admitting the evidence.

The panel also acknowledged the seriousness of the charges and the potential consequences of any adverse findings but determined that these were matters that can be considered at a later stage after hearing all the evidence.

Colleague A

Colleague A speaks to charges 5 and 6. In relation to charge 5 this has been found proved by reason of your admissions and so his evidence would not require to be tested in relation to the decisions on facts. In respect of charge 6 his evidence was not sole or decisive. It was supported by the evidence of Witness 2, Witness 6 and Witness 3. Witness 3 was present at the time of the incident and provides a near-contemporaneous account of the incident as well as a written statement and exhibits. Her evidence can also be tested in oral evidence. Witness 2, and Witness 6 also provide evidence, but the panel acknowledge that they were not direct witnesses to the events.

The evidence of Colleague A, in relation to charge 6 comprises meeting notes from a local investigation and a witness statement containing the declaration of truth, dated and signed. The panel will decide what weight if any to give it in due course.

It is evident from his witness statement that he did not intend to give evidence to the panel. The panel acknowledged that there was challenge to this witness's evidence, but this could be explored with other witnesses.

The panel also acknowledged the seriousness of the charges and the potential consequences of any adverse findings but determined that these were matters that can be considered at a later stage after hearing all the evidence.

Application for special measures for Witness 6

Mr Brahimi made an application under Rules 18 and 23 of the Nursing and Midwifery Council fitness to practise rules, 2004, which provide for special measures available to vulnerable witnesses. He referred to Rule 23 which outlines categories of vulnerable witnesses.

Mr Brahimi told the panel that Witness 6 had informed him that she had had discussions with the NMC to give her evidence under special measures. He did not have sight of documentation to that effect, hence this application. Witness 6 made this request as she feels uncomfortable to give evidence while being able to see you, being mindful of potential consequences for your ability to practise, or in any event, on the chance that you both had to work together in the future.

Mr Brahimi referred to Rule 23 f which allows for special measures for a witness who complains of intimidation. He said that this was the only possible category under which his request can stand. He submitted that if it were approved, it would be a case of you turning off your camera so that she can give her evidence without feeling uncomfortable.

Ms Deignan opposed this application. She told the panel that it was not raised with you before this. She submitted that there was a distinction between being intimidated and being uncomfortable.

Mrs Deignan submitted that Witness 6' s request is not well founded and is based on the dynamics of her working relationship with you which has been hostile. Further, she submitted that in line with your application for removal from the register, the likelihood of both of you working together again is slim.

The panel accepted the advice of the legal assessor.

The panel determined that Witness 6 does not fall within the guidelines of a vulnerable person under the Rules 18 and 23f.

Based on the information before it, the panel has decided not to grant the application.

Decision and reasons on application to amend a charge and renewed hearsay application.

At the close of your evidence in chief and before he commenced his cross examination, the panel heard an application by Mr Brahimi to amend the wording of charge number 4 b under Rule 28. His request was to strike out the word *'unknown'* so that it now reads :

4) On or around 22 October 2018 in the presence of Patient G:

b) Discussed why ~~unknown~~ patients were put on red on the ward.

Mr Brahimi told the panel that the reason for his request was as a result of the panel's decision not to allow Patient G's hearsay evidence towards this charge. He referred to Patient I's handwritten local statement dated 23 October 2018 which stated that *'PA winds up patient PH up and it's PA 's fault PH got put on red…'* which is a traffic light behaviour management system adopted by the Hospital. He submitted that there is a 'known' patient (Patient H), and this amendment would clarify the NMC's case.

Mr Brahimi submitted that Patient G also mentioned in her statement how you spoke about the traffic light behavioural management system and who and why people were put on 'red'. He submitted that this shows Patient G 's evidence would not be sole or decisive towards charge 4b with this amendment.

Mr Brahimi submitted that if the panel accepted the application to amend, it could then reconsider his application to admit Patient G's evidence as hearsay in relation to charge 4b as it was not sole or decisive.

Ms Deignan submitted that the matters before the hearing were more than 5 years old and that the charges had been formulated a significantly long time ago. She submitted that the application to amend would be inappropriate, prejudicial and unfair to allow the NMC to amend the charge at this stage with you at the close of your evidence in chief.

Ms Deignan submitted that this request is as a result of the panel's decision on the hearsay application in respect of Patient G. She submitted that denying this amendment would be in line with maintaining the integrity of the panel's earlier decision and fairness to you. She submitted that allowing it would amount to more than an amendment and would permit the NMC to move things around just to suit its case.

Mr Brahimi, in response to panel questions, clarified that the request has come about based on your examination in chief where there was reference made to sections of the hearsay evidence. He submitted that the proposed amendment is more specific, would better reflect the evidence and would be of assistance to you because the charge is more limited.

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). He referred the panel to the case of *Ruscillo v CRHCP & GMC* [2005] 1 WLR 717, which provides that disciplinary tribunals should play a more proactive role than a judge in a trial to ensure that the case is properly presented, and the relevant evidence is placed before it.

The panel was of the view that such an amendment was in the interests 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 amendment being allowed. The change was minor and did not substantially affect the nature of the case against you.

It was therefore fair to allow the amendment, to ensure clarity and accuracy and to better reflect the evidence.

The panel then went on to consider Mr Brahimi's renewed application to admit the evidence of Patient G, as hearsay in respect of charge 4b.

On the first day of the hearing and before any evidence had been heard, Mr Brahimi made three applications to admit hearsay evidence, one of which was that of Patient G. He provided the panel with a written 8-page hearsay application which included an evidence matrix.

In respect of charge 4, Mr Brahimi's matrix directed the panel to Patient G's witness statement at paragraphs 8 and 9 which attributes you to speaking about the traffic light management system but not who and why people were put on *'red'*. The matrix also mentions G1 which is not a named exhibit, but which the panel infers is referencing [Patient G/1]. The matrix in respect of this charge also directs the panel's attention to the witness statement of Witness 2, para 19 and 21 and exhibit [Witness 2/2].

Witness 2's statement at those paragraphs makes only general observations in relation to the traffic light behavioural management system and the inappropriateness of a registered nurse divulging why patients were on *'red'* in the presence of other patients. His witness statement makes clear that he was not a direct witness to the incident, nor was the matter reported to him. Exhibit [Witness 2/2] is a disciplinary investigation report containing a number of appendices. The disciplinary investigation report makes reference to a witness who is neither named nor provides any evidence to the panel, who had provided a local witness statement alleging that you had discussed your interactions with one of the patients in front of the other patients. The report and the appendices also provide hearsay references to Patient I and Patient G.

The panel determined that the renewed application to admit the hearsay evidence of Patient G in respect of charge 4b is refused. The panel considered that the hearsay evidence of Patient G is not demonstrably reliable and is incapable of being properly tested. Although Patient I and Patient G are broadly supportive of each other, there was no contemporaneous account given to any witness who has appeared before the panel. Accordingly, the panel concluded that there was no way of establishing its reliability in regard to charge 4b.

Further, you are at the halfway point in your evidence having just concluded your evidence in chief. It would be unfair on you to admit it.

Background

At the time of these allegations, you were a registered nurse at Saint Andrews Healthcare (the Hospital) in Northampton. In December 2018 there were concerns raised around alleged derogatory terminology that you had used when describing patients during handovers.

In March 2019 you were subject to further internal meetings where other issues were raised. It is alleged that you had placed in your pocket diazepam tablets returned from another ward rather than returning them to the drugs trolley or the locked drugs cupboard. These tablets were later found in the communal sitting area on the ward and no medication borrowing form had been completed.

Further concerns were raised during the meeting where it was alleged that you had failed to intervene when a patient had assaulted another member of staff.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Deignan, who informed the panel that you made admissions to charge 1 a,1c,1e,5a, 5b, 5c.

The panel therefore, following these admissions, found charge 1 a,1c,1e, 5a, 5b, 5c proved.

However, during the course of your evidence in respect of charge 1e it was unclear as to whether you did in fact admit this charge and therefore the panel later determined to treat this charge as not admitted.

Ms Deignan told the panel that you do not accept that your fitness to practise is currently impaired by reason of misconduct as alleged [PRIVATE].

Ms Deignan referred the panel to a number of cases, including *Suddock v NMC* [2015] EWHC 3612 (Admin), *Dutta v GMC* [2020] EWHC 1974 (Admin), *Khan v*

GMC [2021] EWCH 374 (Admin), *Gestmin v Credit Suisse UK Ltd* [2013] EWCA 3560 (Comm) and *Lambert-Simpson v HCPC* [2023] EWHC 481 (Admin).

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 Brahimi on behalf of the NMC and by Ms Deignan 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 the panel is satisfied that it is more likely than not that the incident occurred as alleged.

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

- Witness 1: Healthcare assistant (HCA) Sinclair Ward, Saint Andrews Healthcare
- Witness 2: Mental Health Nurse, Line manager Sinclair Ward, Saint Andrews Healthcare;
- Witness 3: Senior Healthcare Assistant, Saint Andrews Healthcare;
- Witness 4: Senior Human Resources Advisor, Saint Andrews Healthcare;
- Witness 5: Countywide Crisis Houses Manager, Northamptonshire Healthcare Foundation Trust;

- Witness 6: Clinical Nurse Lead, Sinclair Ward, St Andrew's Healthcare.

The panel also heard evidence from you under affirmation. You told the panel that you had been a registered nurse since 1977 and a psychiatric nurse since 1982. You described yourself as a 'woman of integrity'. The panel took your good character into account both generally and when considering your evidence.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

Charge 1b

"1) On 27 August 2018 said words to the effect of:

b) In reference to Patient B: "I call her my African queen, though she wears white people make up. If she is looking in a magazine she is looking at white people make up, she must be mentally ill"

This charge is found proved.

In relation to charge 1b when the charges were read you accepted the part of the charge that says *'I call her my African queen'*. The rest of charge 1b was not admitted at this stage. Under cross examination whilst giving your evidence, you further accepted the next part which states *'..though she wears white people make up.'.*

The panel noted that in the Case Management Form (CMF) you had not indicated a response to this charge, however during the local investigations it was documented

that you admitted *'I call her my African queen, though she wears white people make up'.*

You have said this was an effort to describe the pale shade of makeup used by the patient. You have denied the part that alleges you said, *'If she is looking in a magazine she is looking at white people make up, she must be mentally ill'.*

You have stated that the patient called herself 'an African Queen'.

The panel noted your inconsistency in respect of the parts you admit and the parts you deny. It noted that you admit saying 'white people make up' and determined that it was more likely than not that you did make the second reference to 'white people makeup' in the concluding part of the charge.

Witness 1 gave evidence that she was present in the office at the time of the handover and overheard you making these comments to an agency health care assistant. She was sufficiently upset by them to remove herself from the room and seek out and report to a more senior member of staff, (Witness 6).

The panel found Witness 1 to be consistent in both her documentary and her oral evidence, making reference to specific patients. The panel noted that Witness 1 also wrote an email as requested by Witness 6 reporting what she heard within approximately half an hour. In addition, Witness 1 was consistent in her local interview describing the incident in detail and how it had made her feel. The panel also had regard to Witness 6's evidence that Witness 1 had approached her after the incident and she was able to describe Witness 1's demeanour at the time. The panel determined that Witness 1 was consistent, credible and reliable and was supported by her near-contemporaneous email and early reporting to Witness 6.

The panel found this charge proved on the balance of probabilities.

Charge 1d)

"1) On 27 August 2018 said words to the effect of:

d) In reference to Patient D: " Asian girl but has her hair done blonde, thinks she is a white person, acts like a white person, acts very British";

This charge is found proved.

In relation to 1d, you accept that part of the charge that reads 'Asian girl but has her hair done blonde, thinks she is a white person' . The rest of 1d is not admitted.

The panel noted that during cross examination you were not sufficiently clear about whether you accept the next part *'acts like a white person..'* . You told the panel that you were making observations of the patient's manifestations of her condition and also told it that, *'we say things we should not say'* when answering panel questions during your oral evidence.

The panel found Witness 1 very clear in her recollection and noted she said that the way in which you said these words felt 'spiteful' both in her oral testimony and in her witness statement. She also stated in her witness statement:

> *'I felt incredibly offended and actually quite upset about the way Theresa had spoken about some of the service users. The comments made me feel incredibly uncomfortable and I felt it was unprofessional for a handover to be done like this, focusing on service user appearance and not about risks.'*

Witness 1 had left the room upset and made a verbal report to Witness 6 who advised her to *'write it down so I had a record of it'*. The panel had regard to Witness 1's email exhibit reporting the incident.

The panel preferred Witness 1's account to your inconsistent and varying admissions and accounts in respect of which parts of the allegation that you accept. The panel found it more likely than not that you said the remainder of the statement, *'acts like a white person, acts very British*' given the parts which you admit that you said.

The panel found this charge proved on the balance of probabilities.

Charge 1e)

On 27 August 2018 said words to the effect of:

e) In reference to an unknown patient: ‘wanting to be a white person’;

Whilst you admitted this charge at the outset of the hearing, during the course of your oral evidence you said that you had no recollection of saying these words. In cross-examination, in response to a question as to how these words would help an agency worker, you replied ‘I didn’t say it to be racially motivated or discriminatory’.

The panel had before it the witness statement of Witness 1, her email to management and the notes of the local meeting. The panel also heard oral evidence from Witness 1 which the panel found to be broadly consistent, credible and reliable. There was additional evidence from Witness 6, to whom the matters were reported to shortly after the incident.

The panel preferred the evidence of Witness 1. The panel found your evidence to be inconsistent in relation to this charge. On the balance of probabilities, the panel find this charge proved.

Charge 1f)

On 27 August 2018 said words to the effect of:

f) To an unknown colleague: “All you need to do is sit in the lounge and open doors for them when they want”.

This charge is found proved.

The panel noted that you denied this charge and that you do not recall this conversation. You stated in your evidence in chief that you have never belittled anybody nor that you believe people are below any other.

The panel noted that Witness 1 in her witness statement stated she heard you say this when she returned to the nursing office. In her email report she also stated that;

> *' I also feel really offended that SSN TF thinks all we do it [sic] ''sit in the lounge all day and open doors'' which is very hurtful and I think creates a split in the team.'*

In her oral evidence, Witness 1 stated that this comment suggested that the role of a health care assistant is 'simple' and that you were 'simplifying a complex task'.

The panel determined that this is consistent with Witness 1's oral evidence and her email to management and therefore the panel preferred her account.

The panel found this charge proved on the balance of probabilities.

Charge 2,3 and 4

The panel noted that these charges relate to alleged events and comments by you which are said to have taken place in the presence of Patient G and Patient I, in relation to Patient A on 22 October 2018. The hearsay evidence from Patient G was allowed in relation to charges 2 and 3 only. The panel is satisfied that their evidence is supported by the evidence of Witness 3, to whom separate near-contemporaneous accounts of the alleged incident were given.

The panel has noted that you have denied these allegations in their entirety and approached the hearsay evidence with caution.

In cross-examination you said that you did not dislike Patient A, indeed that you had a good relationship with her, as you had with all patients. You have described Patient I as a 'leader', hostile, disruptive and difficult to manage. You said Patient I threatened to make you lose your PIN, that she had made a lot of nurses lose their PINs and that she enjoys conflict, is a ringleader and known for telling lies. You described Patient G as a 'follower' who has addressed you on occasion with extremely offensive racial slurs.

The panel considered the potential for a risk of collusion but weighed this against the fact that you also described them as mentally ill and therefore inferred that their evidence may not be reliable. Their statements were both consistent with the allegations, and differed in some respects, albeit not on the important details. Witness 3 in her oral evidence gave some indication of their reliability and does not believe they would make the event up. Whilst not determinative, the panel gave it some weight as it was the only evidence before it, other than yours, as to the reliability of Patient G and Patient I's statements. The panel balanced Witness 3's observations on those patients with your observations on the same patients.

Charge 2)

On or around 22 October 2018 said to Patient A, in the presence of Patient G, words to the effect of: "if you did this to me, I'd beat you".

This charge is found proved.

The panel considered your position that this allegation was fabricated and a result of a collusion between Patient G and Patient I. You stated that the words allegedly said by you were not words that you would use.

The panel decided that you, more likely than not, had made this statement. The panel carefully considered that the reports of Patient G and Patient I were similar but not identical and were made separately. The panel found no evidence or concerns raised during the local investigations that Patient G and Patient I were considered as manipulative and scheming and accordingly unreliable. Patient G and Patient I both gave signed local statements. Patient G's witness statement and exhibit were admitted as hearsay but contained the signed statement of truth, to which the panel afforded some weight. Both patients had reported the incident to Witness 3 who gave evidence before the panel. She had sent a near-contemporaneous email to senior staff and was cross-examined on this on your behalf. The panel determined that Witness 3 was credible, reliable and consistent in her evidence and therefore was able to add weight to the hearsay evidence of Patient G and Patient I.

The panel found this charge proved on the balance of probabilities.

Charge 3a)

On or around 22 October 2018 in reference to Patient A, said words to the effect of:

a)"Patient A urinates herself";

This charge is found proved.

The panel considered and found Patient G's witness statement and local statement consistent. The panel took into account that Patient G had provided the NMC with a witness statement, which had a signed statement of truth. Patient I made a similar, not identical but supporting report that you said Patient A *'pisses herself'* . When the matter was reported to Witness 3, she made a near-contemporaneous report documenting the allegations and has stated she does not believe Patient G or Patient I made it up. The panel found Witness 3's oral evidence to be broadly consistent with her email to management, in which she described both patients raising this specific concern. The panel noted that you deny the charge and believe they made it up, stating that these are words you would never use.

The panel preferred the evidence of Patient G and I, reported by witness 3, to your evidence.

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 3b)

On or around 22 October 2018 in reference to Patient A, said words to the effect of:

b) "Patient A stinks because she does not wash";

This charge is found proved.

The panel considered and found Patient G's witness statement and local statement consistent. The panel took into account that Patient G had provided the NMC with a witness statement, which had a signed statement of truth. Patient I made a similar, not identical but supporting report that you said words to the effect that Patient A *'stinks because she does not wash'*. When the matter was reported to Witness 3, she made a near contemporaneous report documenting the allegations and has stated she does not believe Patient G or Patient I made it up. The panel found Witness 3's oral evidence to be broadly consistent with her email to management, in which she described both patients raising this specific concern. The panel noted that you deny the charge and believe they made it up, stating that these are words you would never use.

The panel preferred the evidence of Patient G and I, reported by witness 3, to your evidence.

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 3c)

> On or around 22 October 2018 in reference to Patient A, said words to the effect of:
>
> c) "Staff let her get away with anything because they blame how ill she is";

This charge is found NOT proved.

Witness 3 does not make reference to this in her email report. The panel could not find any other evidence or material against which to test the statements of Patient G and Patient I in respect of this allegation.

In view of the inherent weakness of unsupported hearsay evidence, the panel found this charge not proved.

Charge 3d)

On or around 22 October 2018 in reference to Patient A, said words to the effect of:

d) “Patient A is capable sometimes of knowing what she is doing”.

This charge is found NOT proved.

Witness 3 does not make reference to this in her email report. The panel could not find any other evidence or material against which to test the statements of Patient G and Patient I in respect of this allegation.

In view of the inherent weakness of unsupported hearsay evidence, the panel found this charge not proved.

Charge 4a)

On or around 22 October 2018 in the presence of Patient G:

a) Informed Patient G the reasons for Patient A being admitted to the ward;

This charge is found NOT proved.

The panel noted that Patient I mentioned this in her handwritten local statement dated 23 October 2018. The panel determined that this was a more generalised complaint of many events which did not have a declaration that it was a statement of truth. It was not corroborated by staff statements and thus inherently weak. The panel determined that there was insufficient evidence to find this charge proved.

Charge 4b)

On or around 22 October 2018 in the presence of Patient G:

b) Discussed why patients were put on red on the ward.

This charge is found NOT proved.

The panel had before it the signed local statement made by Patient I. As in Charge 4a, the panel could not substantiate this allegation with other evidence and found this charge not proved.

Charge 6)

On 12 March 2019 you did not go to assist Colleague A when they were assaulted by Patient A.

This charge is found proved.

The panel had regard to a sketch/ drawing of the layout of the area from Witness 2 which it accepted into evidence. You confirmed the accuracy of the sketch.

In your account of the incident during oral evidence you told the panel that you were seated in the lounge observing patients under your care and with no clear sight of the dining room. You told the panel that there was a door with a clear perspex upper half, leading from the lounge into the dining room, through which the patient who alerted you could have seen the incident.

Your attention was drawn twice, by this patient, to the fact that Patient A had hit Colleague A. You told the panel that on the first occasion you got up immediately and went to the dining area, having got a key to open the locked door. You asked Colleague A how he was and he said ‘ok’. You said that both he and Patient A seemed ok so you went back to the lounge. On the second occasion, you were told that Patient A had hit Colleague A again and you ‘rushed in’ and all was fine and calm, both having lunch. When you next saw Colleague A and Patient A they were both with Witness 3 and Witness 6, who were walking Patient A to the seclusion. You said you saw no reason for Patient A to be restrained.

When questioned if there had have been a requirement for restraint, you said your training was not up to date and therefore you would not have been allowed to intervene.

The panel considered the witness statement of Witness 3, which it found to be specific and placed you in the dining room. She stated in her witness statement that her memory of the event is limited and that she has used the interview minutes from her local investigation to refresh her memory. However, on review of the substance of the report and in her oral evidence she maintained it sounds right and was able to describe exactly where you were sitting in the dining room and was clear that you would have been able to see the incident clearly as you were a short distance away.

Witness 6 had responded to the incident and went to assist her colleagues. Witness 6 could not say for certain that you were in the dining room at the moment that Patient A assaulted Colleague A but was very clear that you were sitting in the dining room eating lunch upon her return from placing Patient A into seclusion. She asserted that that task would have taken her five minutes or less.

Colleague A, whose statement was admitted as hearsay, could not say that you had definitely seen the incident but stated that you were in either the dining room or the kitchen/servery. He did not mention you having checked upon him to see if he was ok.

The panel considered that your colleagues were all broadly consistent that you were in either the dining room or the kitchen and not in the lounge and that you did not come to assist although you were trained in restraint. The panel received evidence that your training in this regard was up to date and it did not have any evidence to suggest that you were not allowed to intervene.

The panel was not satisfied that there was any evidence, other than your bare assertion, to support your case that you were in the lounge.

The panel preferred the evidence of your colleagues and has found that it is more likely than not you did not assist in Colleague A when he was assaulted, and find this charge proved on the balance of probabilities.

Charges 7a and 7b

Your actions at charge 1a), 1b), 1d),1e) in respect of the comments were:

a. Racially motivated and/or

b. Discriminatory in that you treated the subject of that comment less favourably due to a protected characteristic, namely the subject's race.

In respect of Charge 1a: 'In reference to Patient A: 'Caucasian woman with big bambi eyes';

Mr Brahimi had submitted that your use of words such as 'Caucasian' were used in a racial context. That your use of 'Bambi eyes' was discriminatory and went beyond descriptive purposes.

You told the panel that your use of 'bambi eyes' was an expression of large eyes and descriptive whilst you also passed on patient risk factors to agency staff that were around during handover. You told the panel that other staff used this kind of descriptive language as well during handover.

The panel considered your subjective state of mind, namely, what you had in mind when you made those comments.

The panel considered that use of 'bambi eyes' does not appear to be hostile or indicate racial motivation, as it can be seen as a descriptive facial feature attributable to any race.

The panel determined that this was not an abusive comment and its purpose was in no way referable to race and was therefore not racially motivated.

This charge is found **NOT proved** for 7a (not racially motivated)

It next went onto consider charge 7 b) in relation to charge 1 a) namely that you were discriminatory in that you treated the subject of that comment less favourably due to a protected characteristic, namely the subject's race.

Given that the comment did not relate to the Patient's race and that there is no evidence before the panel that you treated the subject of the comment less favourably, it therefore did not find that this comment was discriminatory.

This charge is found **NOT proved** for 7b (not discriminatory)

In respect of Charge 1b: ‘In reference to Patient B: “I call her my African queen, though she wears white people make up. If she is looking in a magazine she is looking at white people make up, she must be mentally ill”.

The panel considered your subjective state of mind, namely, what you had in mind when you made those comments.

It is your evidence that Patient B often referred to herself as an ‘African Queen’ and that you were merely being descriptive and informative for the purpose of the handover. You accepted that you should not have made reference to ‘white people make up’ and that it would be an abusive thing to say. You also told the panel that you yourself had been subject to racial abuse on many occasions and you would not intentionally do this to another person.

The panel determined that the comment made by you fell slightly short of being abusive and hostile. The panel accepted your evidence in relation to this charge and determined that the NMC had not discharged its burden of proof and therefore finds charge 7 a **NOT proved** in relation to 1 a (not racially motivated).

The panel went onto consider charge 7 b in relation to charge 1 b. It has found from your part admissions and through evidence that all four parts of this statement are proved.

The panel found the part, *‘white people make up, she must be mentally ill’* went beyond the purported purpose of being descriptive during handover. The panel noted it made Witness 1 upset and offended.

Whilst there was no evidence that the patient was treated differently in a clinical sense, your use of this language was unnecessary in the circumstances of a handover as such descriptions were not clinically justified. In this regard, the panel determined that the comment made by you was discriminatory in that you treated the subject of that comment less favourably due to a protected characteristic, namely the subject’s race.

The charge is found **proved** for 7b (discriminatory in that you treated the subject of that comment less favourably due to a protected characteristic, namely the subject's race)

In respect of Charge 1d: 'In reference to Patient D: "Asian girl but has her hair done blonde, thinks she is a white person, acts like a white person, acts very British'

The panel considered your subjective state of mind, namely, what you had in mind when you made those comments. In your cross-examination, you told the panel that you were describing 'the patient's manifestations'. You accepted that the first two observations were not professional i.e. 'Asian girl but has her hair done blonde, thinks she is a white person…'. You made admissions to this part of the charge, accepted that the language was not professional nor was it in keeping with the NMC's code. However, you vehemently denied that this comment was racially motivated, unkind or hostile towards Asian girls or white people. You also stated that you have never racially discriminated against any human being.

The panel noted that you have allegedly been a subject of racial slurs yourself and should have been more professional in your choice of words in the workplace. The panel noted you made a remark during your oral evidence that 'we say a lot of things we should not say'. The panel accepted your evidence that your state of mind at the time was not racially motivated.

Therefore, the panel finds charge 7 a **NOT proved** in relation to 1 d (not racially motivated).

The panel went onto consider charge 7 b in relation to charge 1 d.

The panel determined that the references to race, colour and nationality , although not racially motivated, were discriminatory.

Whilst there was no evidence that the patient was treated differently in a clinical sense, your use of this language was unnecessary in the circumstances of a handover as such descriptions were not clinically justified. In this regard, the panel determined that the comment made by you was discriminatory in that you treated the

subject of that comment less favourably due to a protected characteristic, namely the subject's race.

Therefore, the panel finds charge 7 b **proved** in relation to 1 d (discriminatory in that you treated the subject of that comment less favourably due to a protected characteristic, namely the subject's race).

In respect of Charge 1e: 'In reference to an unknown patient: "wanting to be a white person'

The panel considered your subjective state of mind, namely, what you had in mind when you made those comments. You told the panel that whilst you did not recall making this comment, when asked what it meant, you stated that the patient was 'delusional' and if you had used the term then the emphasis was on explaining a diagnosis. You went on to say that you were describing the type of behaviour the patient displayed. In cross-examination you were asked how the description would help an agency worker and you responded that it 'did not'.

The panel determined that the comment made by you fell short of being abusive and hostile. The panel accepted your evidence in relation to this charge and determined that the NMC had not discharged its burden of proof and therefore finds charge 7 a **NOT proved** in relation to charge 1 e (not racially motivated).

The panel went onto consider charge 7 b in relation to charge 1 e.

The panel had no evidence before it to suggest the race of the unknown patient. Further, the panel had not received any documentation or evidence detailing the context in which the comments were made. In the absence of this documentation, the panel determined that the NMC had not discharged its burden of proof and therefore finds charge 7 b **NOT proved** in relation to charge 1 e. (discriminatory in that you treated the subject of that comment less favourably due to a protected characteristic, namely the subject's race)

Submissions on interim order

Mr Brahimi told the panel that up until this point, you have not been made subject to an interim order. However, given the facts found proved, Mr Brahimi submitted that the NMC is neutral as to whether an interim order should be imposed at this time.

Ms Deignan submitted that there is no risk to the public and therefore an interim order is not necessary for the protection of public, is not in the public interest and would not be in your own interests. She told the panel that you have not practised as a registered nurse since August 2019 and that you do not intend to do so in the future [PRIVATE].

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

Decision and reasons on interim order

The panel noted that an interim order has not been deemed necessary for public safety throughout these regulatory proceedings. It acknowledged that you have requested agreed removal from the NMC and that this hearing is due to recommence on 12 February 2024. Given the relatively short adjournment and your indication that you do not intend to practise as a registered nurse in the future [PRIVATE], the panel determined that an interim order is not necessary on the grounds of public protection, would not be in the public interest and would not be in your own interests.

[This hearing adjourned on 1 November 2023. The hearing resumed on 12 February 2024.]

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.

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

Mr Brahimi provided written submissions to the panel in which he stated:

> *"1. Misconduct is a matter for the Panel's professional judgment. The leading case is Roylance v GMC [2000] 1 AC 311 which says:*
>
> *"misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of proprietary may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances."*
>
> *2. In Calhaem v GMC [2007] EWHC 2006 (Admin) Mr Justice Jackson commented on the definition of misconduct and he stated:*
>
> *'it connotes a serious breach which indicates that the doctor's fitness to practise is impaired.'*

3. Mr Justice Collins in Nandi v GMC [2004] EWHC 2317 (Admin) stated that:

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

4. The NMC submit that the remainder of proven charges amount to misconduct. The following submissions are collectively made in respect of the proved charges:

a. The Registrant has demonstrated poor behaviour in the way that she communicated to her patients and also how she communicates about her patients. Some of this language, such as at charge 2, demonstrates an act of aggression and threat that certainly falls short of what would be proper in the circumstance from a nurse;

b. The registrant has used language that extends beyond to that of just inappropriate descriptions. The descriptions within charge 1 are also discriminatory which carries a greater form of misconduct. This is behaviour that would be considered as deplorable by fellow practitioners;

c. The Registrant is also responsible for errors in the way of drug handling as per charge 5. To not follow the correct procedure presents risk in the management of drugs and could lead to further consequences for patients. This connotes a serious breach in so far as the Registrant's fitness to practice;

d. The Registrant has made degrading comments towards patients as per Charge 3 which is conduct that would undermine and contradict the care and respect expected of any registered nurse. This is conduct that would be deemed contrary to the rules and standards required by a medical practitioner.

5. The NMC say that the following parts of The Code have been breached, but of course the Panel is able to consider any other parts as it sees fit (note that it is the 2015 version of the Code that applies in this case):

1 Treat people as individuals and uphold their dignity;

2 Listen to people and respond to their preferences and concerns;

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

8 Work cooperatively;

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

20 Uphold the reputation of your profession at all times;

21 Uphold your position as a registered nurse, midwife or nursing

associate;

25 Provide leadership to make sure people's wellbeing is protected and to

improve their experiences of the health and care system.

6. Overall, the NMC further submits that the Registrant's actions as proven fall far short of what would be expected of a Registered Nurse. The public would expect that the profession will have staff that uphold a professional reputation. The Panel may find that most in breach are that of "20" and "21" above. The Registrant has clearly put into question of whether nurses can demonstrate kindness and professionalism within the workplace. There has been repeated conduct addressing multiple patients, some of which has extended to physical threats. Overall this will also have an effect on the public's trust in the medical profession.

7. The NMC therefore invite the Panel to find misconduct."

In response to Mr Brahimi's submissions, Ms Deignan submitted, in relation to his paragraphs 4a and 6 and his suggestion of 'acts of aggression', that the charges relate only to words. In relation to his paragraph 4b, she reminded the panel that it had only found discriminatory behaviours in respect of charges 1b and 1d.

Ms Deignan submitted that there is no dispute on what the applicable law is in this case. She submitted that you have accepted the findings the panel has made and that you have reflected on your failures. She informed the panel that in order to produce your more recent

reflection, you had gone back over the learning you had previously undertaken to better and further reflect on the implications the panel's findings.

Ms Deignan informed the panel that you accept that the charges found proved amounted to misconduct and that you accept that the conduct found proved falls below the standards expected of you as a registered nurse.

However, Ms Deignan invited the panel to consider whether your actions as set out in charge 5 amounted to misconduct. She referred the panel to the evidence it had heard which suggested that there was a wider issue relating to the process of borrowing of medications between wards at the Hospital. She accepted that this does not detract from criticisms of your conduct but that it provides the panel with the wider context within which to look at these charges.

Submissions on impairment

Mr Brahimi provided written submissions to the panel in which he stated:

> *"9. Current impairment is not defined in the Nursing and Midwifery Order of the Rules. However, the NMC as of 27th March 2023, states the following on how to decide on impairment (reference DMA-1):*
>
> *"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".*
>
> *10. The Panel may be assisted by the questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin):*

"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:

(i) Has in the past, and/or is liable in the future to act as so as to put a resident or residents at unwarranted risk of harm;

(ii) Has in the past, and/or is she liable in the future to bring the profession into disrepute;

(iii) Has in the past, and/or is she liable in the future to breach one of the fundamental tenets of the profession;

(iv) Has in the past, and/or is she liable in the future to act dishonestly."

11. As further stated at paragraph 74 of Grant, the Panel should:

"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.

12. The NMC say that the Registrant is impaired and that the first 3 limbs of Grant are engaged in this case.

13. The first limb is engaged as a result of the Registrant putting patients and staff in unwarranted risks of harm. The Panel have accepted the evidence in respect of the charges proven and it follows that individuals were put at risk of harm where (but not limited to):

a. While the NMC acknowledge there was no harm caused to a patient by the Registrant, there is still evidence of a conditional threat of harm which is no less excusable than an actual threat of harm;

b. The Panel have also found that the Registrant did not go to assist another

colleague when they were being assaulted by a patient. This presents a risk of harm because while of course the Registrant needs to be mindful in not being hurt herself, there ought to have been some (reasonable) engagement in assisting her colleagues;

c. The incorrect processing of drugs (as per charge 5) could also lead to unwarranted risk of harm to patients and other users if the drugs are not immediately available, or they are incorrectly taken by other (vulnerable) patients. Not recording these matters correctly (medication borrowing form) places the institution at a disadvantage as to the accuracy of where they stand with the volume and transfer of drugs.

14. The second limb is engaged as a result of the Registrant's behaviour, as found proven, plainly brings the profession into disrepute:

a. The language used was in respect of multiple patients and touched upon

different backgrounds (African, Asian and British). The finding that some of this language was discriminatory may go towards the emotional impact it can have on patients and those hearing such language in the workplace. This is contrary to the kindness that nurses are expected to show as part of their registered status.

15. The third limb is engaged, where the Registrant has plainly breached fundamental tenets of the profession in numerous areas of the Code of Conduct as referred to above, but in particular:

a. Treat people as individuals and uphold their dignity (1.1 and 1.3);

b. Uphold the reputation of your profession at all times (20.1 and 20.2);

c. Uphold your position as a registered nurse, midwife or nursing associate

(21.3).

16. As further stated at paragraph 74 of Grant, the Panel should:

"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."

17. The NMC submit that there is a serious departure from the standards expected of a nurse and the Panel should consider impairment on the following grounds:

18. Public protection

a. A real risk of harm does arise out of the Registrant's practice because she has demonstrated that she is not willing to take any action when another staff member is being assaulted. Further to this she has expressed suggested that she would "beat" patients if they acted in a way that did not line with her views. Not following drug process can also lead to a risk of harm for patients requiring those drugs and lastly, the variety of comments can have an emotional toll on patients themselves as well staff members hearing discriminatory language. There is a strong risk of repetition given there is repeated language and multiple patients involved.

19. Otherwise in the public interest

a. The Registrant accurately stated herself that a "registered nurse's duty is not to belittle but to promote care". The Registrant accepted that her use of language would "humiliate" patients and when the public learn of this conduct it would "lose respect for the registered nurse". Overall, the public would deem her behaviour as "unprofessional and unacceptable". A member of public's confidence in the medical profession would be deeply undermined as upon learning about these charges, they would have doubts about how medical professionals behave within the workplace, in particular questioning whether patients are discriminated and turn if they would receive the same level of care. The Registrant's behaviour suggest that there are fundamentally harmful and underlying attitudinal concerns given this behaviour extended to multiple patients. Discrimination is a serious concern and this breach not only undermines the trust employers extend to their employees doing their job properly but also raises concerns for patients, where they would question whether a nurse is going to treat them fairly because of their background. As a result of the Registrant's conduct, the NMC submit that the integrity of the medical profession has been challenged and evidently been put into disrepute.

20. As such the NMC invite the Panel to find that the Registrant is currently impaired."

Ms Deignan moved on to the issue of impairment. She invited the panel to consider your reflective accounts and the evidence you provided at the impairment stage. She submitted that you have presented yourself today in a calmer and more reflective way. She submitted that, first of all, this is a different stage from the facts stage where it is not possible to exaggerate the challenges a registrant is faced with during professional conduct proceedings. She submitted that at this stage, having had time to sit back and reflect upon what the panel has found, you were able to present yourself in a calmer and more reflective manner.

Ms Deignan submitted that you have informed the panel that you would now like to return to nursing. [PRIVATE].

Ms Deignan submitted that whilst you have not practised since 2019, you have taken on board the panel's findings and that you have explained your understanding of the impact of this conduct on patients and how it would be viewed and experienced by colleagues. She submitted that you have told the panel in your own words, the damage that this conduct causes to the reputation of the nursing profession, and particularly to the confidence that colleagues and patient would have in a registered nurse of your experience. She submitted that you have explained how you would conduct yourself in the future and that you understand that in circumstances where there may be other issues at play, you understand what your role is in terms of protecting patients and the wider responsibilities as a registered nurse.

Ms Deignan submitted that you recognise that as a psychiatric nurse you must be alert not just for yourself and the patients, but also for your colleagues. She submitted that whilst you have not practised as a registered nurse, within your reflections you have incorporated that you have learned and gained insight not just into the conduct found but the impact of that on patients, on colleagues and the wider public.

Ms Deignan invited the panel to take into account that you have a previously unblemished 45 years of nursing behind you and that you take on board the learning you have gained from these experiences. She invited the panel to consider carefully whether it would be

appropriate to find that your fitness to practise is currently impaired on public protection grounds.

Ms Deignan addressed the panel on the wider public interest. She informed the panel that you accepted that this conduct would be viewed as unacceptable and that it is accepted by you that your fitness to practise is currently impaired on the basis of public interest.

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, Cohen v GMC 2008 EWHC 581 (Admin) and Grant.

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***
>
> *1.1 treat people with kindness, respect and compassion*
>
> *1.2 make sure you deliver the fundamentals of care effectively*
>
> *1.3 avoid making assumptions and recognise diversity and individual choice*
>
> *1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay*
>
> *1.5 respect and uphold people's human rights*
>
> ***2 Listen to people and respond to their preferences and concerns***

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

8 Work co-operatively

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

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

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

18.4 take all steps to keep medicines stored securely

20 Uphold the reputation of your profession at all times

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

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

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

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

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

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, 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. However, the panel went on to consider whether each of the charges found proved were sufficiently serious to amount to misconduct.

The panel considered charge 1. It noted that all of the sub-charges 1a-1f involved you using language which was inappropriate within the professional environment during a handover which you accepted to be a time for communicating clinically relevant topics relating to the patients. The panel noted that it had heard from Witness 1 that she had found these comments to be very distressing and that she considered some of them to be 'spiteful'. The panel also took into account that during the time of these incidents, you were working as a psychiatric nurse with very vulnerable patients. The panel took the view that your actions as set out in charges 1a-1f were sufficiently serious to amount to misconduct and that fellow practitioners would consider your actions to be deplorable. The panel determined that your conduct breached the fundamental tenets of prioritising people and promoting professionalism and trust.

In respect of charge 7b, which the panel only found proved in relation to charges 1b and 1d, the panel concluded that discriminatory comments demonstrated a very serious departure from the behaviour and professional standards expected of a registered nurse. The panel determined that these comments fall far short of what would be considered proper in the circumstances. The panel found that this was sufficiently serious to amount to misconduct. These comments breached the fundamental tenets of prioritising people and promoting professionalism and trust.

In respect of charges 2 and 3, the panel concluded that your actions were so serious as to amount to misconduct. The panel noted that this language would never be considered appropriate to use concerning a vulnerable patient and in front of other patients within a psychiatric unit. The panel concluded that the comments set out in charges 2 and 3 caused distress to the other patients who had heard the comments, the staff to whom it was reported

and had the potential to cause significant emotional harm to Patient A. The panel found that your actions as set out in charges 2 and 3 breach fundamental tenets of the nursing profession in relation to prioritising people and promoting professionalism and trust.

In relation to charge 5a and 5b, the panel noted that these charges involved accidentally leaving controlled drugs in the position where they could be accessed by vulnerable patients. This gave rise to a potential of a risk of harm to the patients and found that your actions were sufficiently serious to amount to misconduct. Your actions breached the fundamental tenets of preserving safety, practising effectively and promoting professionalism and trust.

The panel found that charge 5c did not amount to misconduct. It found that your failures as set out in charge 5c demonstrated poor practice but did not conclude that it was sufficiently serious to amount to misconduct.

In respect of charge 6, the panel found that this did amount to misconduct. The panel determined that as a registered nurse who was appropriately trained, in not going to the assistance of a colleague who was being assaulted by a patient, you fell far short of what would have been expected of you in the circumstances. The panel determined that in your actions set out in charge 6, you failed to preserve safety, prioritise people and promote professionalism and trust. The panel concluded that this was so serious as to amount to misconduct.

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

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, 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.'*

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, 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) *[…].'*

The panel considered the limbs set out in the "test". It concluded that your actions have in the past put patients at a risk of harm and have in the past breached fundamental tenets of the nursing profession and thereby brought the profession into disrepute.

Regarding insight, the panel took into account your more recent reflective account and your oral evidence at the impairment stage. The panel found that you have demonstrated significant insight into your misconduct. The panel noted that you stated:

"I acknowledge the findings made are not in keeping with the code of practice as laid out by the NMC. I wholeheartedly regret the issues my behaviour and conduct may have caused. […]
I have examined the faults in my past practices and behaviours, I understand the gravity of the situation and aim to continue the journey of reconstruction of my attitudes, behaviours and future practices in response to the lessons this experience has taught me.
[…] Therefore, with this learning in mind and the requirements of the code with which I must adhere I can fully understand the inappropriate nature of the comments listed in the charges and the way in which it can create division and alienation in the working environment, which although not my intention is a very real possibility that

requires my empathy and for the necessary changes in attitude and behaviour to be made moving forward to remedy same."

The panel was satisfied that you have demonstrated an understanding of how your actions put the patients at a risk of harm, an understanding of why what you did was wrong and the negative implications of your actions on the reputation of the nursing profession.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice.

The panel took into account that you have undergone additional training in the relevant areas of concern in efforts to refamiliarize yourself with proper protocol and procedures. The panel also had regard to your earlier reflective piece which was prepared in response to the regulatory concerns and also a number of positive testimonials dated 2019.

However, the panel noted that, whilst you have undertaken theory-based learning, as you have not yet returned to employment in a clinical setting, or an ancillary role. [PRIVATE] it was of the view that this was required in order to demonstrate that there was not a need for a finding of impairment on public protection grounds. The panel noted that the concerns in this case relate to more than one aspect of nursing. Further, it noted that the discriminatory comments and the failure to assist a colleague were suggestive of attitudinal issues. In all the circumstances, the panel was not satisfied that the risk of repetition is so sufficiently low that a finding of current impairment is not required on the grounds of public protection. The panel therefore found that your fitness to practise is impaired on public protection grounds.

The panel bore in mind 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 profession and upholding the proper professional standards for members.

The panel determined that a finding of impairment on public interest grounds is required. It concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

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 conditions of practice order for a period of 18 months. The effect of this order is that your name on the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this order.

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 Brahimi provided written submissions in which he stated:

> *"1. The Panel have now reached a stage of finding misconduct in respect of the Registrant's behaviour and have concluded that fitness to practice is currently impaired. The Panel should therefore consider what sanction is appropriate to address:*
>
> *a. The proven charges which includes findings of discrimination.*
>
> *2. The Panel should first take into account relevant factors before deciding on sanction,*
> *as set out by the NMC Fitness to Practice Library guidance SAN-1:*
>
> *3. Proportionality*
> *a. Finding a fair balance between Registrant's rights and the overarching objective of public protection;*
> *b. To not go further than it needs to, the Panel should think about what action it needs to take to tackle the reasons why the Registrant is not currently fit to practise;*

c. The Panel should consider whether the sanction with the least impact on the nurse practise would be enough to achieve public protection, looking at the reasons why the nurse isn't currently fit to practise and any aggravating or mitigating features.

4. Aggravating features

a. Senior position of responsibility;

b. Abuse of position of trust;

c. Further observations:

i. Multiple patients;

ii. Comments upset staff members;

iii. Diazepam is a strong drug (risk involved);

iv. Neglectful conduct in not assisting colleague.

5. Mitigating features

a. First and only referral to the NMC;

b. Registrant has been qualified for a number of years;

c. Transfer of drugs (diazepam) was a not followed by others also.

6. Previous interim order and their effect on sanctions

a. The Registrant has not been subject to an Interim Order.

7. Previous fitness to practice history

a. None.

Sanctions available

8. NMC submit that taking no action and a caution order are not suitable options for this case due to the number and variety of concerns. Guidance is found at SAN-3a and 3b.

a. Taking no action: this would not be an appropriate course of action as the regulatory concern of discriminatory behaviour is serious. The public protection and public interest elements in this case are such that taking no action would not be the appropriate response;

b. Caution Order: similarly, a Caution Order is also not suitable as this is a sanction aimed at misconduct that is at the lower end of the spectrum. In this case the concern involved multiple forms of inappropriate language. Given these concerns, a more effective sanction is required.

9. With regards to a conditions of practice order (COPO), the NMC submit that this option does not adequately address and reflect upon the number of breaches in this case. NMC guidance is found at reference SAN-3c.

a. It is always difficult to formulate or consider such conditions that effectively deal with wide-ranging behaviour, which is an attitudinal problem in this case.

b. The level of concern in this case would require a higher level of sanction than a COPO. The guidelines refer to "When conditions of practice are appropriate" and the Panel may find that these conditions are not met.

c. Measurable, workable and appropriate conditions can be put into place to address instances such as clinical failures, however, a COPO would not suitably address discriminatory language or the attitudinal and behavioural concerns that were demonstrated towards multiple patients.

10. The NMC submit the Registrant's actions do warrant a suspension order (SO) but this would not be sufficient. Suspension guidance is found at reference SAN-3d, and includes some of the following (but not limited to):

a. "Key things to weigh up before imposing this order include:

• whether the seriousness of the case require temporary removal from the register?

b. "Use the checklist below as a guide to help decide whether it's appropriate or not. This list is not exhaustive:

• a single instance of misconduct but where a lesser sanction is not sufficient"

c. The seriousness of the regulatory concerns does warrant a temporary removal from the Register; however, the Registrant's actions are not isolated but in fact a repeated misconduct where she also expressed her views to another colleague, causing them also to be upset about comments to service users.

d. A suspension order will not address the concerns in this case or proportionately provide for an appropriate response to such serious charges.

11. The NMC submit that a striking-off order is appropriate in this case. The Panel may be assisted by guidance provided at reference SAN-3e. The NMC make the following submissions in response to the guidance:

a. Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?

i. The NMC submit that yes, they do. The charges found proven are those in the higher category of seriousness as per the guidance. There has
been insight into these incidents but the wrongdoing was deliberate, that it calls into question as to the level of care the Registrant had shown during this conduct.

b. Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate is not removed from the register?

i. The NMC submit that no, it cannot. There has been repeated conduct over a period of time. The public would be concerned that the Registrant be allowed to remain on the register, in particular when knowing the varied language used by the Registrant and not assisting colleagues.

c. Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?

i. The NMC submit that yes, it is. As outlined in the guidance Panels "…will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse, midwife or nursing associate from

the register". There is no further evidence that the Panel has read or seen which would justify pointing to a less severe sanction. A member of public may not understand why a less sever sanction is imposed and most likely not accept that it would be a true and proportionate measure in response to the serious proven charges.

d. Given that the charges involve discrimination, the Panel will also be assisted with guidance at reference FTP-3. This guidance says "The NMC takes concerns about bullying, harassment, discrimination and victimisation very seriously. Although bullying is not included as a prohibited behaviour under the Equality Act, it can have a serious effect on workplace culture, and therefore patient safety, if it is not dealt with" – further consideration includes:

i. "When a professional on the register engages in these types of behaviours, the possible consequences are far-reaching";
ii. "Members of the public may experience less favourable treatment, or they may feel reluctant to access health and care services in the first place";
iii. "Where a professional on our register displays discriminatory views and
behaviours, this usually amounts to a serious departure from the NMC's
professional standards".

e. The NMC submit that the Registrant has not yet fully remediated the concerns raised. The Panel will recall that in the Registrant's evidence, she confirmed that she has not been working since 2019 and, save for the training in January 2023, the majority of her training certificates also relate to 2019. The Registrant intends to return to work for the 111 service or the patient psychiatry services and there has respectfully been no build up towards these important roles.

f. The law about healthcare regulation makes it clear that a nurse, midwife or nursing associate who has been discriminatory will always be at risk of being removed from the register. The actions of the Registrant are an abuse of responsibility. She had engaged in this conduct until she was reported and

would have most likely continued to do so until matters were brought to the employer's attention. As submitted previously, there may wrong perceptions formed by patients and staff members as to how nurses should conduct themselves in the workplace.

g. A striking off order should then be considered proportionate as the misconduct
will raise fundamental questions surrounding the Registrant's respect and professionalism. Ultimately her actions (abusive comments, discrimination and omission to assist colleagues) will be considered incompatible with continued registration.

Sanction request:
12. The concerns in this case may be described as being attitudinal in nature. For all the reasons previously argued, the NMC submit that the appropriate sanction in this case is a:
Striking-off Order
13. The NMC have sought to assist the Panel by going through each of the possible sanctions and when weighing the evidence against the set guidance, it is justified that there be a striking-off order. Discriminatory behaviour is difficult to remediate. Although the Registrant has provided a reflective piece, this is an attitudinal concern and there is an absence of persuasive material showing that she has put her understandings to the test within a new workplace. This sanction would reflect that the conduct of the Registrant has been properly addressed and maintain trust with the public that the NMC do take such allegations seriously and will take swift and appropriate action.
14. The NMC respect that the Panel is entirely at liberty to proceed as they deem most suitable for this case."

The panel also bore in mind the submissions from Ms Deignan.

Ms Deignan submitted that she accepted that in principle there are some forms of conduct that are so egregious that striking off is warranted. However, she submitted that the conduct the panel has found does not fit into that category.

Ms Deignan submitted that a conditions of practice order would meet the concerns that the panel has identified. She outlined the chronology in relation to the matters of this case. She stated that the misconduct took place in 2018-2019, the fact-finding stage took place in October to November 2023 and the panel has heard your evidence in relation to impairment in February 2024.

Ms Deignan referred the panel to its earlier finding that the misconduct is capable of being remediated and that the reason for impairment on public protection grounds is because you had not returned to work to demonstrate your ability to practise as a nurse.

Ms Deignan reminded the panel that you have demonstrated an understanding of how your actions put patients at risk of harm, why what you did was wrong, and also the negative implications of your actions on the reputation of the nursing profession.

Ms Deignan submitted that the insight demonstrated by you, together with your commitment to return to working as a registered nurse in some form, is everything that the panel requires to put in place a conditions of practice order.

Ms Deignan submitted that in relation to mitigating factors, you have had a 45-year nursing career, during which no other matters have come to the attention in relation to any concerns about your practice. She submitted that you have had no previous regulatory concerns.

Ms Deignan submitted that if the panel were minded to impose a conditions of practice order which would enable you to return to nursing practice, you would have that opportunity of putting into practice the insight that you have gained. She suggested some conditions which she deemed appropriate in the circumstances of this case. which including keeping the NMC informed about your practice and any agency work.

Ms Deignan informed the panel that you do not wish to return to nursing practice on a full-time basis but rather that you are likely to work fewer hours a week and on a

less regular basis. She further stated that it would be some time before you would be able to return to nursing practice as she informed the panel that you have not practiced as a nurse since 2019 and that you would need to go through the revalidation process before you were able to return to nursing practice. She therefore proposed that a conditions of practice order for a period of 18 months would be appropriate.

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 panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Conduct which put vulnerable patients at a risk of suffering harm
- Neglectful conduct which put colleagues at risk of suffering harm
- Abuse of a position of trust
- Misconduct does not relate to a single incident but repeated incidents of misconduct

The panel also took into account the following mitigating features:

- Evidence of significant insight
- Previous history of good nursing practice in excess of 40 years
- Contextual factors in relation to procedures of medication transfer within the workplace

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict 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 determined that a caution order would be inappropriate in view of the issues identified. 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 noted that this is a case which relates to concerns which are serious in nature.

The panel considered whether or not the public would be adequately protected if a conditions of practice order were imposed. The panel found that there are identifiable areas of your practice in which you have undertaken theory-based training which you need an opportunity to put into practice. The panel determined that, in the circumstances of this case, conditions could be formulated to safeguard the public from these areas of concern within your nursing practice. Further, it noted its earlier finding in relation to impairment that the reason it was not able to determine that the risks associated with your practice were sufficiently low was because you had not yet returned to nursing practice to demonstrate you can practice kindly, professionally and safely as a nurse.

The panel considered whether the public interest would be met by a conditions of practice order. It noted that cases relating to discriminatory behaviours are taken very seriously and that the SG states *'no form of discrimination […] should be tolerated within healthcare'.* Notwithstanding the steps you have taken, and the panel's decision that the public could be protected by a conditions of practice order,

the panel carefully considered whether the public interest would demand a more restrictive sanction.

The panel had regard to the SG which in relation to cases involving discrimination states:

> *"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."*

The panel determined that this is a case where there has been a very significant level of insight demonstrated by you within your reflective accounts and relevant training undertaken by you to strengthen your practice. The panel found that you demonstrated comprehensive and significant progress and insight in your two reflective accounts, one produced at the outset of this hearing and the other at the impairment stage together with your oral evidence.

The panel noted that whilst it found that some of the charges in themselves were suggestive of attitudinal concerns, it did not have any evidence of deep-seated personality or attitudinal problems. However, it did have clear evidence of your extensive and well-developed insight, and reflections as to how you could better yourself as a nurse and demonstrate greater professionalism. The panel determined that your misconduct with regard to discrimination was remediable because it reflected a short episode in a long career and that whilst all form of discrimination were very serious, the incidents in your case were at the lower end of the spectrum. The remarks were not directed at an individuals but were instead wholly inappropriate descriptors given at handovers. The panel determined that such behaviour could be modified through training, monitoring and self-reflection. The

other misconduct identified was also conducive to training and monitoring in the panel's view. In all the circumstances, the panel concluded that the public interest could be satisfied by the imposition of a conditions of practice order, given the extensive level of insight demonstrated by you, and it was satisfied that the public would be adequately protected by such an order.

The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you would be willing to comply with conditions of practice.

The panel had regard to the fact that these incidents happened some time ago and that, other than these incidents, you have had an unblemished career of 45 years as a nurse. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to practise as a nurse. Further, the panel had regard to the positive testimonials submitted on your behalf by other healthcare professionals. One stated:

"I have not witnessed Mrs. Franklyn during any handovers or other communications, act in a way that was unprofessional or in breach of patient confidentiality. All communication I have observed has been professional, clinically significant and in the interest of patient care."

Another stated:

"I have known Theresa Franklyn since 2012 when she worked as a Staff Nurse on the ward that I managed as a Clinical Team Leader in Guernsey, Chanel Islands, UK and have continued to mentor and coach her professionally in my other current capacity as a qualified Masters Mentor and Coach.

I have worked very closely with Theresa as her coach, throughout this whole period of the NMC allegations.

I have also had the opportunity to observe Theresa's clinical practice first hand on far too many occasions through working together. My professional observations of Theresa in practice have always shown Theresa to be a highly skilled and experience practical nurse who takes her NMC Code of Professional Conduct very seriously.

Theresa is highly dedicated to the nursing profession and loved working with patients. She has a lot of respect for both patients and their relatives. She was a champion of Patients' Rights and an excellent advocate for best practice when it came to patient care. Theresa always preferred to listen to and actively involve patients and their relatives in Care Planning and decision making. She is good at managing very difficult and challenging clients as she has a very humble personality. Theresa is very soft spoken and tends to ask more questions than give answers in discussions as she finds that approach enables the patient to own the decision making process more as they tend to engage with her more openly."

Balancing all of these factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel gave careful consideration whether a suspension order or a striking off order should be imposed given the nature of the concerns. The panel was of the view that to impose a suspension order or a striking-off order would not be a proportionate or appropriate response in the circumstances of your case because of the progress that you have made in addressing the concerns.

Although your actions were significant departures from the standards expected of a registered nurse, the panel determined that they were not so serious as to be fundamentally incompatible with you remaining on the register in light of your reflection, insight, engagement and willingness to learn from the process. The panel determined that the public could be protected and professional standards maintained by the imposition of a less onerous sanction.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

In making this decision, the panel carefully considered the submissions of Mr Brahimi in relation to the sanction that the NMC was seeking in this case. However, the panel considered that given your engagement and insight, removal from the register would not be an appropriate response given the circumstances of this case.

The panel determined that the following conditions are appropriate and proportionate in this case:

For the purposes of these conditions, ‘employment’ and ‘work’ mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, ‘course of study’ and ‘course’ mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must limit your nursing practice to one substantive employer or one agency.

2. You must ensure that you are indirectly supervised by a colleague of more seniority than you any time you are working. Your supervision must consist of monthly meetings with your line manager, mentor or supervisor to discuss:
    - The importance of demonstrating respect to colleagues and patients at all times
    - Working collaboratively with colleagues and the importance of working in a team

3. You must work with your line manager, mentor or supervisor to create a personal development plan (PDP). Your PDP must address the concerns about:
    - The importance of demonstrating respect to colleagues and patients at all times
    - Proper transfer and storage of controlled drugs
    - Working collaboratively with colleagues and the importance of working in a team

    You must send your case officer a copy of your PDP following its formation.

4. You must engage with your line manager, supervisor or mentor on a monthly basis to discuss the progress you are making towards the aims set in your PDP.

5. You must send your case officer a report from your line manager, supervisor or mentor before the next review of this order. This report must show your progress towards achieving the aims set out in your PDP.

6. You must keep the NMC informed about anywhere you are working by:

- Telling your case officer within seven days of accepting or leaving any employment.
- Giving your case officer your employer's contact details.

7. You must keep the NMC informed about anywhere you are studying by:
   - Telling your case officer within seven days of accepting any course of study.
   - Giving your case officer the name and contact details of the organisation offering that course of study.

8. You must immediately give a copy of these conditions to:
   - Any organisation or person you work for.
   - Any agency you apply to or are registered with for work.
   - Any employers you apply to for work (at the time of application).
   - Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

9. You must tell your case officer, within seven days of your becoming aware of:
   - Any clinical incident you are involved in.
   - Any investigation started against you.
   - Any disciplinary proceedings taken against you.

10. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
    - Any current or future employer.

- Any educational establishment.
- Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 18 months.

Before the order expires, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your attendance at any future review hearing
- Evidence of professional development
- Up-to-date testimonials from colleagues
- A reflective account commenting on how you have put your insight, presented to this panel, into practice in a clinical setting.

This will be confirmed to you in writing.

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 interests 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 Brahimi. He submitted that whilst, up until this stage, there has not been an interim order in place, the panel should impose an interim order which reflects the same terms of the substantive conditions of practice order. He submitted that this was necessary for the public protection and wider public interest issues identified to cover the 28-day appeal period.

Ms Deignan did not oppose the application for an interim conditions of practice order.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months to cover the 28-day appeal period and the period during which any appeal may be heard and dealt with.

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

That concludes this determination.