Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 16 June 2025 – Tuesday 24 June 2025

Virtual Hearing

Name of Registrant:	**Charles Forsyth Johnstone**
NMC PIN:	13I0314S
Part(s) of the register:	Nurses part of the register Sub part 1 RNA, Registered Nurse – Adult (05 September 2016)
Relevant Location:	England
Type of case:	Misconduct
Panel members:	Liz Dux (Chair, Lay member) Penelope Howard (Registrant member) Alyson Young (Lay member)
Legal Assessor:	Hala Helmi
Hearings Coordinator:	Hazel Ahmet
Nursing and Midwifery Council:	Represented by Leesha Whawell, Case Presenter
Mr Johnstone:	Not present and not represented at the hearing
Facts proved:	Charges 1a, 1b, 1c, 1d, 1e, 1f, 1g, 1h, 1i, 2, 3a, 3b, 3c, 4i, 4ii, 5i, 5ii, 5iii, 5iv, 6, 7, 8
Facts not proved:	Charges 3d
Fitness to practise:	Impaired
Sanction:	**Strike-off**
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Johnstone was not in attendance and that the Notice of Hearing letter had been sent to Mr Johnstone's registered email address by secure email on 07 May 2025.

Ms Whawell, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Johnstone's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Johnstone has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision and reasons on proceeding in the absence of Mr Johnstone

The panel next considered whether it should proceed in the absence of Mr Johnstone. It had regard to Rule 21 and heard the submissions of Ms Whawell who invited the panel to continue in the absence of Mr Johnstone.

Ms Whawell submitted that there has been engagement from Mr Johnstone with the NMC in relation to these proceedings, whereby he stated through an email to his case officer that he is aware of and would not be attending this hearing. As a consequence, Ms Whawell submitted that there was no reason to believe that an adjournment would secure his attendance on some future occasion. Ms Whawell also reassured the panel that the case officer had ensured that no further communication had been received from Mr Johnstone on the morning of this hearing or the proceeding days.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Johnstone. In reaching this decision, the panel has considered the submissions of Ms Whawell and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and the *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- The email from Mr Johnstone dated 28 January 2025, stating that he would not be attending;
- No application for an adjournment has been made by Mr Johnstone;

- There is no reason to suppose that adjourning would secure his attendance at some future date;
- A number of witnesses are due to attend this hearing to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Johnstone in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, he has made no response to the allegations. He will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Johnstone's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Whawell on behalf of the NMC, to make amendments to the original charges. It was submitted by Ms Whawell that the proposed amendments are intended to more accurately reflect the evidence in this case to assist the panel in working through the legal advice that will be given on racial motivation and matters under the Equality Act, whilst removing matters that are not necessary. Ms Whawell submitted that the proposed amendments do not add anything beyond clarity and detail and therefore cannot result in any unfairness or injustice in this case. The panel had sight of an email dated 13 June 2025 from the case coordinator to Mr Johnstone, giving him notice of the application to amend the charge.

The original charges in this case were as follows:

That you, a registered nurse, between 2019 and 2021 whist working as deputy manager at Camilla House:

1. When referring to colleague A and B, said words to the effect of:

a. [PRIVATE]
b. [PRIVATE]
c. [PRIVATE]
d. [PRIVATE]
e. [PRIVATE]

2. The language used in charges 1(a) – (e) is racist and/or discriminatory and/or offensive.

3. The language used in charges 1(a)-(e) was intended to cause offense.

4. Your actions as specified in charge 1 was:

a. unwanted conduct related to race;
b. had the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for colleague A and B

5. Called members of staff ‘hopeless’ or used words to that effect;

6. Called members of staff ‘morons’ and or ‘imbeciles’ or used words to that effect;

7. Pushed a colleague

8. Threw a folder at or near to a member of staff;

9. Your actions in charges 4 and/or 5 and/or 6 and/or 7 amounted to bullying and/or violence.

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

The amended charges as set out by Ms Whawell, were as follows:

'That you, a registered nurse, between 2019 and 2021 whist working as deputy manager at Camilla House:

1) *On one or more occasions when referring to and/or speaking to Colleague A and/or Colleague B, said words to the effect of:*

a) [PRIVATE]
b) [PRIVATE]
c) [PRIVATE]
d) [PRIVATE]
e) [PRIVATE]
f) [PRIVATE]
g) [PRIVATE]*'*
h) *'*[PRIVATE]
i) [PRIVATE]

2) *Your conduct at charge 1 was motivated by your hostility to Colleague A and/or Colleague B's race.*

3) *Your conduct at charge 1:*

a) Was unwanted by Colleague A and/or Colleague B.
b) Related to a protected characteristic, namely race.
And
c) Was intended to violate Colleague A and/or Colleague B's dignity and/or created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A and/Colleague B.
Or

d) Had the effect of violating Colleague A and/or Colleague B's dignity and/or creating and intimidating, hostile, degrading, humiliating or offensive environment for Colleague A and/or Colleague B

4) On one or more occasions when referring to and/or speaking to Colleague A said:

i) Colleague A was a 'moron' or words to that effect.

ii) 'you know you are an imbecile' or word to that effect.

5) On one or more occasions when referring to and/or speaking to Colleague B said Colleague B was:

i) 'hopeless' or words to that effect.

ii) 'a hopeless case' or words to that effect.

iii) 'an imbecile'

iv) 'a moron' or words to that effect.

6) You conduct in charge 4 and/or charge 5 was intended to bully Colleague A and/or Colleague B.

7) Pushed one or more colleagues into a wall.

8) Threw a folder at or near to Colleague C.

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

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

The panel was of the view that such amendments, as applied for, were in the interest of justice, accuracy, and clarity. The panel was satisfied that there would be no prejudice to

Mr Johnstone and no injustice would be caused to either party by the proposed amendments being granted. Further, the panel acknowledged that the substance of the charges would not be changed through the approval of the proposed amendments.

The panel was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Whawell under Rule 31 to allow three pieces of hearsay evidence to be admitted before the panel. Firstly, Ms Whawell applied for an email dated 30 March 2021, from Person D, be provided by the panel. She submitted that this email confirms that staff had complained about racism, and sets out the terms which, Person D says, Mr Johnstone had used. The NMC submit that these are similar words attributed to Mr Johnstone, by Witness 1, Witness 2, and Witness 4, and is relevant to Charge 1, two, and three.

Secondly, Ms Whawell applied to have the local interview of Person E placed before the panel. This interview was conducted on 8 March 2021, and Ms Whawell submitted that it is relevant to Charge 7. Ms Whawell submitted that this hearsay evidence is relevant to the matters relating to the alleged offensive language used by Mr Johnstone, alongside the allegation that Mr Johnstone had pushed an individual into a wall and hit another individual with the off-duty folder.

Further, Ms Whawell applied for the local interview of Person F from 5 March to be placed before the panel. Ms Whawell submitted that this hearsay evidence is relevant to Charge 7 and relates to the alleged matter of Mr Johnston having *'shoved'* individuals into a wall.

Ms Whawell noted that Person D, Person E and Person F were not present at this hearing. She noted that the NMC had made sufficient efforts to ensure that Person D and Person F were present, however, these individuals chose not to attend this hearing today.

Ms Whawell submitted that the NMC did not attempt to gain the attendance of Person E, but she did not provide a reasoning for this.

Ms Whawell submitted that the evidence is highly relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the internal investigations.

The panel took into account the advice of the legal assessor.

In the preparation of this hearing, the NMC had indicated to Mr Johnstone in an email dated 13 June 2025, that it was the NMC's intention for Person D, Person E and Person F's evidence to be placed before the panel. On this basis Ms Whawell advanced the argument that there was no lack of fairness to Mr Johnstone in allowing these three pieces of hearsay evidence.

The panel took into account that, although Mr Johnstone had chosen not to attend this hearing, he had been given notice of the application to have the hearsay evidence of Person D, Person E and Person F, presented before the panel.

In relation to the application to admit the hearsay evidence of Person D, which is an email dated 30 March 2021, the panel were of the view that this was not sole and decisive evidence in this case. The panel determined that this hearsay evidence, as applied for would not be fair to admit. It noted the fact that Mr Johnstone had, within his testimony, raised an allegation that Person D is self-serving, and, due to Mr Johnstone's connection with a relative of Person D, this individual may have an axe to grind. This alleged personal tension which was ongoing between Mr Johnstone and Person D was confirmed by the HR Business Partner for Sanctuary Care. The panel were of the view that, due to its inability to question Person D in relation to this alleged personal hostility, given his absence, it would be unfair to accept it as hearsay evidence.

Consequently, the panel determined that this email may be motivated by a lack of objectivity. In addition, it contains second-hand hearsay in that it refers to what other staff may have reported. In the circumstances, this hearsay evidence should not be admitted.

In relation to the second application to admit the local interview of Person E as hearsay evidence, the panel once again determined that this was not the sole or decisive evidence of this case. It was further considered that this local interview was not signed, nor was it dated; the panel had before it no evidence to determine that Person E had corroborated or reviewed this interview. Furthermore, the panel noted that the NMC did not make efforts to secure Person E's attendance as a witness at this hearing today; no reasons for such lack of an effort were given.

Consequently, given the fact that the hearsay evidence of Person E is quite general, is not corroborated, and did not, on the face of it, appear to add value to the evidence before the panel, it was determined to be unfair to admit it.

Finally, in relation to the third application to admit the local interview of Person F as hearsay evidence, the panel once again noted that this was not the sole and decisive evidence in this case. The panel noted that the statement was not signed, nor dated. However, the panel distinguished her evidence as different to that of Person E, as Person F's hearsay evidence was specific in relation to the case. In particular, Person F's hearsay evidence related to the allegation of Mr Johnstone having pushed his colleague into a wall. Consequently, Person F's hearsay evidence was determined by the panel to add further detail to this case, which in turn, could add value to the panel's ability to make its decision. The panel also noted that efforts were made by the NMC to secure Person F as a witness, however, she declined such an invitation.

Consequently, the panel determined that it would admit the hearsay evidence of Person F.

The panel considered whether Mr Johnstone would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Person F to that of a written version of the local interview which took place.

The panel considered that Mr Johnstone had been provided with a copy of Person F's local interview and that Mr Johnstone had chosen voluntarily to absent himself from these proceedings, therefore, he would not be in a position to cross-examine this witness in any case. The panel noted however that there was a public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

The panel considered that the unfairness in this regard worked both ways in that the NMC was deprived, as was the panel, from reliance upon the live evidence of Person F and the opportunity of questioning and probing that hearsay evidence.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay evidence of Person F but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Details of charge

That you, a registered nurse, between 2019 and 2021 whist working as deputy manager at Camilla House:

1) On one or more occasions when referring to and/or speaking to Colleague A and/or Colleague B, said words to the effect of:

a. [PRIVATE]
b. [PRIVATE]
c. [PRIVATE]
d. [PRIVATE]
e. [PRIVATE]
f. [PRIVATE]
g. [PRIVATE]
h. [PRIVATE]
i. [PRIVATE]

2) Your conduct at charge 1 was motivated by your hostility to Colleague A and/or Colleague B's race.

3) Your conduct at charge 1:

a. Was unwanted by Colleague A and/or Colleague B.
b. Related to a protected characteristic, namely race.
   And
c. Was intended to violate Colleague A and/or Colleague B's dignity and/or created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A and/Colleague B.
   Or

d. Had the effect of violating Colleague A and/or Colleague B's dignity and/or creating and intimidating, hostile, degrading, humiliating or offensive environment for Colleague A and/or Colleague B

4) On one or more occasions when referring to and/or speaking to Colleague A said:

i. Colleague A was a 'moron' or words to that effect.

ii. 'you know you are an imbecile' or word to that effect.

5) On one or more occasions when referring to and/or speaking to Colleague B said Colleague B was:

i. 'hopeless' or words to that effect.

ii. 'a hopeless case' or words to that effect.

iii. 'an imbecile'

iv. 'a moron' or words to that effect.

6) You conduct in charge 4 and/or charge 5 was intended to bully Colleague A and/or Colleague B.

7) Pushed one or more colleagues into a wall.

8) Threw a folder at or near to Colleague C.

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

Background

The charges arose whilst Mr Johnstone was employed as a Deputy Manager by Camilla House, a 39-bed care home for individuals with dementia. The allegations in this case do not directly concern the care of any resident but relate to a broader issue of Mr Johnstone's interactions and attitude. It is alleged that Mr Johnstone used inappropriate,

racist, and hurtful language, both towards and about his colleagues. It is further alleged that Mr Johnstone threw a folder at or near one of his colleagues, and also allegedly pushed a colleague into a wall.

Decision and reasons on facts

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

The panel has drawn no adverse inference from the non-attendance of Mr Johnstone.

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

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

- Witness 1: Registered Nurse at Camilla House Care Home, Sanctuary Care.
- Witness 2: Registered Nurse at Camilla House Care Home, Sanctuary Care.
- Witness 3: Team Leader at Camilla House Care Home, Sanctuary Care.
- Witness 4: Care Assistant at Camilla House Care Home, Sanctuary Care.

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

The panel also took into consideration Mr Johnstone's good character which goes towards his credibility and his propensity to act as alleged, alongside his account of the alleged events, given his absence at today's hearing, and inability to question any witness evidence. The panel further considered the text messages between Mr Johnstone, Colleague A and Colleague B, which Mr Johnstone had requested to be viewed and acknowledged within this hearing.

The panel took into account the cross-admissibility submissions made by Ms Whawell who referred to the case of PSA v GMC and Garrard [2025] EWHC 318 and accepted the advice of the legal assessor. Ultimately, the panel took into account each allegation separately and each element of the evidence in relation to each allegation. As such, the cross-admissibility was considered but not utilised.

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

Charge 1)

That you, a registered nurse, between 2019 and 2021 whist working as deputy manager at Camilla House:

1) On one or more occasions when referring to and/or speaking to Colleague A and/or Colleague B, said words to the effect of:

a. [PRIVATE]
b. [PRIVATE]
c. [PRIVATE]
d. [PRIVATE]

e. [PRIVATE]
f. [PRIVATE]
g. [PRIVATE]
h. [PRIVATE]

This charge is found proved.

In determining its decision on Charge 1, the panel took into account the witness statements of Witness 1, Witness 2, and Witness 4. It noted the following evidence in relation to each specific term:

Term a, Witness 1:

[PRIVATE]

Term a, Witness 2:

[PRIVATE]

Term b, Witness 1:

[PRIVATE]

Term b, Witness 2:

[PRIVATE]

Term c, Witness 2:

[PRIVATE]

Term c, Witness 4:

[PRIVATE]

Term d, Witness 2:

[PRIVATE]

Term e, Witness 2:

[PRIVATE]

Term e, Witness 4:

[PRIVATE]

Term f, Witness 4:

[PRIVATE]

Term g, Witness 4:

[PRIVATE]

Term h, Witness 4:

[PRIVATE]

Term i, Witness 4:

[PRIVATE]

The panel concluded that, given the above witness accounts which were both written and oral, it is more likely than not that you did in fact, on more than one occasion when speaking to or about Colleague A and/or Colleague B, use words the words disclosed in Charge 1a, b, c, d, e, f, g, h and i.

Consequently, this charge is found proved.

Charge 2)

2) Your conduct at charge 1 was motivated by your hostility to Colleague A and/or Colleague B's race.

This charge is found proved.

In reaching this decision, the panel took into account the case of Lambert-Simpson v HCPC [2023] EWHC 481 (admin), alongside the witness evidence provided within the statements of Witness 1, Witness 3 and Witness 4. The panel considered the following:

Witness 1:

'The registrant was racist towards me. In the beginning, I never heard anything from him but after a while he started calling me bad words and bad names straight to my face'

'This language usually happened during handover, which was the only time we used to see each other. It would only be me and him during handover, in the office. There were no other witnesses really. But after he was investigated and other care staff spoke up, I then realised he would still use those horrible words behind our backs and in front of the carers.'

Witness 3:

‘At handover, the registrant played the fool with them. I remember one time when the handover was over and we were going back to work and he played the fool, he said something nasty about the African nurse. They were from another country; he was saying something but unfortunately, I’m unable to recall what was said.’

‘The registrant was never racist towards me, he also never made any racist comments to me. I didn’t feel that he treated me any differently than the other staff.’

Witness 4:

‘The registrant was not a good communicator. He used to swear at all the staff a lot of the time. He was also quite racist.’

‘definitely heard the registrant use racist language about [Witness 2]. He called her a ‘useless [PRIVATE]. He was also always nasty to [Witness 1] (the other international nurse) as well. He used to be quite horrible to Nilton another carer. I never heard him use racist language to the residents.’

‘I did witness the registrant make racist comments towards staff. He used to make comments behind [Witness 2’s] back. One time when we were coming out of handover. Alex was there again. The registrant said something along the lines of ‘she hasn’t done this that that the other’ and he called her a [PRIVATE].’

‘Other staff were aware of the registrant’s discriminatory language.’

The panel further noted that, within her oral evidence, Witness 4 had said the conduct such as that identified in Charge 1 occurred on almost *‘every single shift’.*

The panel determined that Mr Johnstone’s conduct at Charge 1 was motivated by his hostility to Colleague A and/or Colleague B’s race. The panel were of the view that Mr Johnstone’s conduct derived from a particular motivation to cause distress, and that that it

is clear that he had an attitudinal problem. The panel noted that Mr Johnstone's conduct appeared to be targeted towards the two black, African nurses whom he worked with, as opposed to Witness 3 or Witness 4, who are not black or African women. Further, the panel heard several times within witness evidence that Mr Johnstone's conduct, as mentioned in Charge 1 had occurred on multiple occasions. It was of the view that this conduct included the repetition of words which are of a derogatory nature in that they were racist and offensive and ultimately, motivated by a feeling of hostility towards the race of Witness 1 and Witness 2.

The panel considered the lived experience of Witness 1 and Witness 2, and how Mr Johnstone's words had impacted them. It noted that Witness 1 and Witness 2 both felt direct hostility through the words which had been said to them, and that they had even experienced trauma; during their oral evidence, both individuals were clearly traumatised and showing signs of distress.

Furthermore, Mr Johnstone was also noted to have used derogatory words during hand-over, which indicates an intention to belittle or to undermine Colleague A ['Witness 1'] and Colleague B ['Witness 2'] in the presence of several people. This evidence is corroborated through the written statement of Witness 2:

'His comments and behaviour made me upset. He made me feel like I didn't know what I was doing, the carers didn't respect me, because of how he treated me. If one of the cares had an issue she wouldn't come to me as the nurse on shift she went straight to the office to the registrant. She didn't respect me as a nurse because of what he had told her.'

The panel determined that, Mr Johnstone's intention was, at least in significant part, referable to race. His conduct was acted out in a way to show hostility and a discriminatory attitude towards Witness 1 and Witness 2's specific racial group.

Therefore, on the balance of probabilities it is more likely than not that Mr Johnstone's conduct at Charge 1 was motivated by his hostility towards Colleague A and Colleague B.

Consequently, this charge is found proved.

Charge 3a)

3) Your conduct at charge 1:

a. Was unwanted by Colleague A and/or Colleague B.

This charge is found proved.

In reaching this decision, the panel considered both the written and oral statements of Colleague A and Colleague B. It noted the emotional nature of Witness 1 and Witness 2, and the distress they both expressed during their oral evidence. The panel considered the lived experience of Colleague A and Colleague B and noted that they had both departed from their employed roles in order to avoid such experiences, such as that in Charge 1. This, the panel determined, is significant, as not only did it impact both Witness 1 and Witness 2 financially as they had been sponsored and were contractually bound to remain employed for three years. Further, it also changed their geographical location entirely; this further solidifies the distress they must have felt due to Mr Johnstone's conduct in charge 1.

The written and oral statements of Witness 4 was considered by the evidence to corroborate that of Witness 1 and Witness 2. The panel noted the following:

'He made us feel very uncomfortable at work. He was the deputy manager and I was working with one of the nurse from Africa [Witness 2] and I knew he was going to make her life difficult and I often saw her crying and it was so bad'

'I decided to send the email as I went to work one day and [Witness 2] was crying. The registrant made her life hell.'

‘[Witness 2] was miserable but she couldn’t leave Camilla House as she was on a work visa, she had to stay in post for three years. It got the point where she couldn’t sleep.’
‘I saw [Witness 2] cry a few times and I heard from other staff that she had been upset. I would go home crying and it wasn’t even happening to me. We were all afraid of the registrant.’

Therefore, on the balance of probabilities it is more likely than not that Mr Johnstone’s conduct at Charge 1 was unwanted by Colleague A and/or Colleague B.

Consequently, in considering all of the above, the panel determined that this charge is found proved.

Charge 3b)

b. Related to a protected characteristic, namely race.

This charge is found proved.

In reaching this decision, the panel took into account the written witness statements of both Witness 1 and Witness 4.

Witness 1:

‘The second reason I left, was the racism, I felt I was really discriminated against by the registrant. Whenever he referred to either my colleague or myself he used very discriminatory language. All my life, that was my first time experiencing racism. He would use terms that were really inappropriate and hurting.’

‘During the investigation I had spoken up and said he was racist to me, bullied me and made my life miserable on the floor I was really petrified of him.’

Witness 4:

‘The registrant was […] also quite racist.’

‘I definitely heard the registrant use racist language about [Witness 2]’

‘.I did witness the registrant make racist comments towards staff. He used to make comments behind [Witness 2’s] back.’

The panel, in considering the evidence given by Witness 1 and Witness 4, determined that Mr Johnstone’s conduct at Charge 1 was in fact related to a protected characteristic. The panel was of the view that the definition of race as a protected characteristic within the Equality Act, 2010, has been satisfied.

Consequently, this charge has been found proved.

Charge 3c)

And

c. Was intended to violate Colleague A and/or Colleague B’s dignity and/or created an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A and/Colleague B.

This charge is found proved.

The panel considered that the behaviours of Mr Johnstone, as found proved in previous charges, illustrate ill intentions and a statement of mind of hostility towards both Colleague A and Colleague B, based on their race.

The panel determined that Charge 3c is found proved for the same reasons as those given above at Charge 2.

Charge 3d)

Or…

d. Had the effect of violating Colleague A and/or Colleague B's dignity and/or creating and intimidating, hostile, degrading, humiliating or offensive environment for Colleague A and/or Colleague B

This charge is found NOT proved.

The panel noted that Charge 3d was an alternative Charge. Therefore, given that the panel had found Charge 3c proved, it did not go on further to consider Charge 3d.

Consequently, this charge is found not proved.

Charge 4)

4) On one or more occasions when referring to and/or speaking to Colleague A said:

i. Colleague A was a 'moron' or words to that effect.
ii. 'you know you are an imbecile' or word to that effect.

This charge is found proved.

In reaching this decision, the panel took into account the written evidence of Witness 1 and Witness 2. It considered the following:

Witness 1:

‘One fateful morning after the handover, it was just the registrant and I in the office, he called me a moron.’
‘After handover he said to me do you know you are an imbecile. He said it out of the blue. I went home crying.’

‘The registrant would call us names, for example he would call [Witness 2] a “hopeless case” and me an ‘imbecile’.’

Witness 2:

‘He even said this to my face and to [Witness 1], the other international nurse, he called her a moron.’

‘The registrant would swear or make these inappropriate comments everyday and sometimes in the presence of carers. One example of this is when the registrant used to call me an imbecile’

The panel determined that it preferred the evidence of Witness 1 and Witness 2, and determined that, on the balance of probabilities, it is more likely than not that Mr Johnstone did refer to, and/or call Colleague a, a ‘moron’ and ‘imbecile’.

Consequently, this charge is found proved.

Charge 5)

5) On one or more occasions when referring to and/or speaking to Colleague B said Colleague B was:

i. ‘hopeless’ or words to that effect.
ii. ‘a hopeless case’ or words to that effect.
iii. ‘an imbecile’

iv. ‘a moron’ or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account the witness statements of Witness 1, and Witness 2. It highlighted the following:

Witness 1:

‘he [Mr Johnstone] just shook his head and said that [Witness 2] was just hopeless.’

‘He [Mr Johnstone’ has also called my colleague [Witness 2] a moron when I told him she had made a mistake’

Witness 2:

‘A lot of the time the registrant came across as a bully. He […] has called me a hopeless case’

‘*‘The registrant would swear or make these inappropriate comments everyday and sometimes in the presence of carers. One example of this is when the registrant used to call me an imbecile’*

Witness 2, local interview:

[PRIVATE]

The panel were of the view, that given the evidence before it, it is more likely than not that you did use the words indicated in Charge 5 when referring to or speaking to Colleague B.

Consequently, this charge is found proved.

Charge 6)

6) You conduct in charge 4 and/or charge 5 was intended to bully Colleague A and/or Colleague B.

This charge is found proved.

In reaching this decision, the panel took into account the NMC's Fitness to Practice Committee Guidance; in particular, that nurses, midwives, and nursing associates must treat all individuals with fairness, respect, and without discrimination, bullying, or harassment. The panel noted that the definition of bullying has been defined by the NMC in the Guidance FTP-2a, as follows:

> *'Bullying can be described as unwanted behaviour from a person or a group of people that is either offensive, intimidating, malicious or insulting. It can be an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone. It can be a regular pattern of behaviour or a one-off incident and can happen face-to-face, on social media or over emails or telephone calls.14 Usually bullying would be a pattern of behaviour, but an example of when it could be a one off incident could be if a member of the public felt that they had been bullied into agreeing to a do not resuscitate decision by a healthcare professional.'*

The panel took into consideration the witness statements of Witness 1, Witness 2 and Witness 4, as follows:

Witness 1:

‘I felt that the registrant bullied me. I was the nurse on shift. The registrant would be speaking to the carers behind my back, undermine me. As a nurse, the carers would never listen to the nurses because the registrant was used to speaking ill of me and [Witness 2] in front of them.’

Witness 2:

‘He was going in for us. He made efforts to find faults with my work and making comments to care staff and to my hearing that the shift I just concluded was a ‘nightmare’ and ‘shitty’ when it obviously wasn’t. The pressure was so much. I was so scared he was going to get me in trouble and I was going to lose my pin.’

‘His comments and behaviour made me upset. He made me feel like I didn’t know what I was doing, the carers didn’t respect me, because of how he treated me. If one of the cares had an issue she wouldn’t come to me as the nurse on shift she went straight to the office to the registrant. She didn’t respect me as a nurse because of what he had told her.’

Witness 4:

‘I witnessed the registrant bullying or being discriminatory towards staff.’

The panel were of the view that Mr Johnstone’s conduct in Charge 4 and Charge 5 was a pattern of repeated behaviour in that he repeatedly used derogatory words to undermine, offend and belittle Colleague A and Colleague B. The panel noted that Mr Johnstone’s conduct in Charge 4 and Charge 5 were unwanted behaviours, and has proven to have caused distress to both of his colleagues.

The panel were consequently of the view that Mr Johnstone’s state of mind was that he did have a deliberate intention to cause offence, and that his comments were intended to undermine or belittle Colleague A and Colleague B. Therefore, the conduct in Charge 4 and Charge 5 can be considered to have intended to bully Colleague A and Colleague B.

Consequently, this charge is found proved.

Charge 7)

7) Pushed one or more colleagues into a wall.

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Witness 4, and the hearsay evidence of Person F.

The panel considered the following statement made by Witness 4:

'I have seen the registrant push staff into the wall. He used to do that a lot in a jokey way. It happened to me outside the toilet and kitchen. It was the summer, we didn't have air conditioning, or ventilation and I was going outside for some air, and I had a can of energy drink in my hand, he pushed me into the wall. He did this by putting his hand on my shoulder and then pushing me back into the wall. It only happened to me once that I can remember, I've seen him do it to other staff as well.'

The panel were of the view that Witness 4's evidence was not clear to determine whether or not the push which had allegedly occurred, was done so in a jovial or forceful manner in order to cause harm. The panel heard and considered the witness evidence that the corridors in the Home were narrow, and that it was difficult to move around. However, the panel noted that more than one set of individuals had provided evidence during the course of this hearing, and within their written statements, to state that the alleged 'pushing' did occur on a regular basis.

The panel also considered the hearsay statement of Person F, who had confirmed Mr Johnstone's consistent behaviour of pushing. The panel attached some weight to this statement, as it corroborated the evidence of the other witnesses.

The panel were of the view that, given the evidence before it, Mr Johnstone did push one or more of his colleagues into a wall; the panel did not however determine his intention in doing so.

Charge 8)

8) Threw a folder at or near to Colleague C.

This charge is found proved.

In reaching this decision, the panel took into account the written statement and oral evidence of Witness 3, Witness 4, and the oral evidence of Witness 1. It considered the following:

Witness 4:

'I don't know what […] said but the registrant came down and said 'I fucking done it' and threw the folder at [Witness 3]. [Witness 3] was crying, she got changed, got her jacket and bag and went to the manager's office and said I'm not putting up with that. The manager managed to talk her down, by saying that she would talk to the registrant. It was a regular occurrence for staff.'

'I never witnessed the registrant being violent except when he threw the folder at [Witness 3]'

The panel noted that within Witness 1's oral evidence, she had stated that Witness 3 had been impacted greatly by Mr Johnstone having thrown a folder towards her. This evidence is corroborated by Witness 3's written statement:

'He came and dashed the resident notes on the table in front of everyone and said, "this is what you wanted" and he threw the folder (with the papers inside) down with force. That is how I knew Alex had told him. 16.I was so shaken. I was trying to do the correct thing.'

The panel determined that based on the evidence above, it is more likely than not that Mr Johnstone did in fact throw a folder at or near Witness 3.

Consequently, this charge is found proved.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which describes misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances … It is not any professional misconduct which would qualify. The professional misconduct must be serious.'*

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

Ms Whawell identified the specific, relevant standards where Mr Johnstone's actions amounted to misconduct. Ms Whawell submitted that Mr Johnstone's behaviour towards his colleagues was an extremely serious breach of the code; he failed to treat his colleagues with kindness, respect and compassion, and also deliberately targeted two international nurses whilst working as their superior. Furthermore, Mr Johnstone undermined and bullied these two colleagues, calling them hopeless, imbeciles, and

morons, as they went about their working day at Camilla House. Ms Whawell submitted that Mr Johnstone subjected his two colleagues to unnecessary, upsetting and intimidating insults on a regular basis. Mr Johnstone's conduct involved racial motivation, and his language was not only repeated, but also of the worst kind, in that it was intimidating, degrading, hostile, humiliating, and offensive.

Ms Whawell submitted that bullying and discriminatory behaviour have no place in nursing and that behaviour of this of the kind displayed by Mr Johnstone have a negative impact on both colleagues, patients and the wider community. Ms Whawell submitted that Mr Johnstone's behaviour suggests a deep-seated attitudinal concern.

Ms Whawell also submitted that Mr Johnstone's behaviour crossed into the physical, in that he pushed colleagues into a wall for seemingly no reason, and on one occasion was so angry with a colleague that he threw a folder at or near them. Ms Whawell noted that a loss of temper of this manner, could have resulted in physical harm. Ultimately, Mr Johnstone's behaviour was a very serious departure from the fundamental tenets of the nursing profession and the standards and behaviours expected of registered nurses.

Ms Whawell therefore invited the panel to find that each of the charges found proven, do in fact amount to misconduct.

Submissions on impairment

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

Ms Whawell submitted that Mr Johnstone's conduct suggests an attitudinal concern, and that within his actions is an inherent risk of harm to both colleagues and patients. Mr Johnstone's actions led to a great impact on his colleagues in a negative manner; Witness 1 and Witness 2 both expressed upset regarding their treatment. Furthermore, there is also a risk of harm to patients, in that Mr Johnson's behaviour may lead to a patient being discouraged from seeking care, given his displays of both offensive comments and physical behaviour. Consequently, Mr Johnstone has in the past acted and is liable in the future to act as to put a patient or patients at unwanted risk of harm.

Ms Whawell submitted that Mr Johnstone's behaviour towards Witness 1 and Witness 2 was deliberate with the intention to cause offence. Mr Johnstone's comments were intended to undermine and belittle these two colleagues and were motivated by hostility towards his colleagues. Ms Whawell submitted that Mr Johnstone is liable to repeat his behaviour in the future; he has not accepted his behaviour, nor has expressed any insight or reflection on how his behaviour could have impacted his colleagues or patients.
Ms Whawell submitted that given Mr Johnstone's lack of engagement in the process, lack of reflection and lack of any insight, the concerns found proven by the panel are difficult to address. Ms Whawell noted that Mr Johnstone has denied the allegations, and although he has provided a reflective form, he has not provided any evidence of true reflection or understanding of the issues raised in this case. Ms Whawell submitted that there is a risk of repetition in this case, and that Mr Johnstone has presented deep seated attitudinal problem.

Ms Whawell submitted therefore, that an order is required on the ground of public protection.

Ms Whawell submitted that a finding of impairment is also required on the ground of public interest in order to uphold proper professional standards and conduct, and to maintain public interest in the profession.

Ms Whawell submitted that, behaviours such as racism or discriminative behaviour of any kind, negatively impacts professional standards and the public's trust which is placed in nurses. She submitted that racist language negatively impacts the workplace and engages the public interest.

Ms Whawell submitted that considerations should be given to what message would be sent to the public if a regulator were not to mark the seriousness of the racially motivated comments and bullying set out in the charges. She submitted that a finding of impairment is important to demonstrate that racist terminology will not be tolerated.

Ms Whawell submitted therefore, that an order is also required on the ground of public interest.

The panel reviewed a bundle of documents provide by Mr Johnstone, in particular, his reflective account form and the final registrant's response bundle. The panel took into account that Mr Johnstone was of previously good character.

The panel accepted Mr Johnstone's right to deny the charges and noted that this in itself does not amount to a lack of insight.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *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 Mr Johnstone's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Johnstone's actions amounted to a breach of the Code. The panel also noted that it is aware that the nature of the Code, in many of its sub-sections, relates specifically to patients. However, the panel noted that Mr Johnstone's conduct goes against the spirit of the Code itself, and therefore, is also applicable and relevant to his treatment and conduct towards his colleagues in particular.

The panel determined that the following sections of the Code, were engaged:

1) Treat people as individuals and uphold their dignity
1.1 treat people with kindness, respect and compassion
1.3 avoid making assumptions and recognise diversity and individual choice
1.5 respect and uphold people's human rights

8) Work cooperatively. To achieve this, you must:
8.2 maintain effective communication with colleagues

9) Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues. To achieve this, you must:
9.4 support students' and colleagues' learning to help them develop their professional competence and confidence

20) Uphold the reputation of your profession at all times. To achieve this, you must:
20.1 keep to and uphold the standards and values set out in the Code
20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment
20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people
20.4 keep to the laws of the country in which you are practising
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

25) Provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care system
To achieve this, you must:
25.2 support any staff you may be responsible for to follow the Code at all times. They must have the knowledge, skills and competence for safe practice; and understand how to raise any concerns linked to any circumstances where the Code has, or could be, broken.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel found that Mr Johnstone's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. The panel, in relation to misconduct, considered the following proven charges in grouped formats, due to their similarity in nature:

Charge 1 and Charge 2:

In relation to Charge 1 and Charge 2, the panel found that Mr Johnstone had intentionally used deplorable language in the form of racial slurs, which were directed at his two black, African colleagues. The panel determined that this was misconduct at its most serious level, given Mr Johnstone's intentions being racially motivated, deriving from a deep-seated attitudinal issue; this attitudinal issue placed both his colleagues and his patients at risk. Mr Johnstone's actions belittled, undermined, and had a profound effect on his colleagues, leading to both emotional, physical, financial, and career related harm.

Furthermore, the panel were of the view that patients were at an unwarranted risk of harm, as both Witness 1 and Witness 2 may have feared to seek advice from Mr Johnstone, which may have led to a failure in their clinical care. The panel considered the risk of harm that was also imminent to Mr Johnstone's patients, in that there was a risk to their care; if they were to have experienced such similar disrespectful conduct, and/or if they were also black or African individuals, they may have, due to fear, refrained from requesting help from him, as their carer. The panel determined that due to Mr Johnstone's conduct, the working environment which surrounded him would have inevitably been a toxic atmosphere, which is an unsafe environment for patients.

Mr Johnstone's behaviour fell so far below the standards expected of a registered nurse, as to constitute to misconduct.

The panel determined that, ultimately, Mr Johnstone's conduct in Charge 1 and Charge 2 breached and undermined the fundamental tenets of the nursing profession.

Charge 3:

In relation to Charge 3, the panel determined that Mr Johnstone's conduct and language was of the worst possible kind, and ultimately, was deplorable in nature. The panel were of the view that Mr Johnstone's conduct deliberately targeted his two colleagues, Witness 1 and Witness 2, due to their skin colour and ethnicity. Mr Johnstone's language and conduct was continual, repeated, and ranged over a long period of time, showing both discrimination and disrespect. Mr Johnstone's conduct in Charge 3 was a serious breach of the fundamental tenets of the nursing profession. Mr Johnstone's conduct in Charge 3 is the kind which would ultimately raise serious public concerns, and if the public were aware of this, they would be shocked by the level of unprofessionalism; this would bring the profession into disrepute.

Mr Johnstone's behaviour fell so far below the standards expected of a registered nurse, as to constitute to misconduct.

The panel determined that, ultimately, Mr Johnstone's conduct in Charge 3 breached and undermined the fundamental tenets of the nursing profession.

Charge 4, Charge 5 and Charge 6:

In relation to Charge 4, Charge 5 and Charge 6, the panel determined that Mr Johnstone's behaviour was deplorable and fell significantly below the expectancies of a registered nurse; particularly given the fact that he was due to be a role model for other colleagues. The panel were of the view that Mr Johnstone created hostility within the workplace and deliberately undermined the confidence of his colleagues whom he was due to be mentoring from overseas. The panel regarded this behaviour as extremely serious, and noted Mr Johnstone's conduct to amounts to bullying, which is the deliberate and sustained act of undermining and belittling those whom he was responsible for mentoring. The panel also determined that Mr Johnstone abused his position of power, creating serious distress to those working under his leadership.

Mr Johnstone's behaviour fell so far below the standards expected of a registered nurse, as to constitute to misconduct.

The panel determined that, ultimately, Mr Johnstone's conduct in Charge 4, Charge 5 and Charge 6, breached and undermined the fundamental tenets of the nursing profession.

Charge 7 and Charge 8:

In relation to Charge 7 and Charge 8, the panel determined that Mr Johnstone's conduct is a serious deviation from the NMC's Code of Conduct. Mr Johnstone's action of throwing a folder at his colleague led to real emotional harm, causing unwanted intimidation and distress to this colleague. Further, Mr Johnstone's conduct of pushing his colleagues into a wall was both serious and repeated in that it occurred on more than one occasion. Mr Johnstone's conduct presents a lack of professionalism, and an inability to control his

behaviour, leading to an unwarranted risk of harm to his colleagues. Mr Johnstone's behaviour did not ensure that his colleagues were working in a free, comfortable, respectful, and safe environment. Mr Johnstone's conduct in Charge 7 and Charge 8 fall below the standards expected of a registered nurse, in particular, given the fact that he was in a position of seniority and responsibility as a Line Manager.

Mr Johnstone's behaviour fell so far below the standards expected of a registered nurse, as to constitute to misconduct.

The panel determined that, ultimately, Mr Johnstone's conduct in Charge 7 and, Charge 8 breached and undermined the fundamental tenets of the nursing profession.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Johnstone's 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, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

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

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

d) *[…]'*

The panel finds that both colleagues and patients were put at an unwarranted risk of harm, and that the colleagues of Mr Johnstone were caused actual emotional harm as a result of

his misconduct. Mr Johnstone's misconduct, including racial slurs towards his colleagues and his mistreatment of colleagues in both verbal and physical forms, had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to such sensitive, and racist expressions, extremely serious.

Regarding insight, the panel took into account the written reflections of Mr Johnstone but considered that they were brief and lacked substance. He has not acknowledged if and/or how his conduct may have impacted his fellow colleagues, and possibly his patients. Mr Johnstone has not engaged with the NMC through this hearing process; he has denied all of the allegations, which he was entitled to do. However, there is no evidence before the panel that he has understood or meaningfully reflected upon why this behaviour happened, or how to prevent it reoccurring. Moreover, there is no evidence before the panel that he has a sufficient level of understanding of the impact of his behaviour on his colleagues, the potential impact on patients, and the effect of such behaviour on public confidence in the profession and the profession as a whole.

Whilst the panel noted that Mr Johnstone undertook a course on Equality and Diversity, by way of showing an attempt to address concerns arising out of the allegations, because he has sought to distance himself from the misconduct which has been found proved, he has not demonstrated a sufficient level of remediation to address the causes of his behaviour and the risk of it reoccurring.

The panel ultimately concluded that Mr Johnstone has a severe attitudinal problem, which is hard to remediate.

The panel is of the view that there is a real risk of repetition based on the repeated nature of the concerns in this case, and the fact that the impact of Mr Johnstone's conduct was wide-ranging and involved both an unwarranted risk of emotional and physical harm. The panel determined that there is an insufficient level of insight and remediation which means

that the risk of repetition is a real one in this case. Given the risk of repetition in this case, the panel determined that there remained a real unwarranted risk of harm to both the colleagues who work alongside, and patients under the care of Mr Johnstone. The panel determined that it has before it no evidence to suggest that Mr Johnstone can practice kindly, safely, or effectively as a registered nurse. In addition, the panel remained concerned about the risk to patients where the misconduct found proved could prevent nurses, particularly in a junior position, from feeling able to seek Mr Johnstone's help and guidance in relation to patients and their care.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because Mr Johnstone's conduct strayed far from that which is expected of a registered nurse. The panel determined that a nurse must not bully, nor exhibit racially motivated, unkind or hostile behaviour towards their colleagues which may impact upon patient care undertaken by nurses who are the subject of such behaviour. The position of trust and responsibility should not be abused. In addition, the panel 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 Mr Johnstone's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Johnstone's fitness to practise is currently impaired.

Sanction

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

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

Submissions on sanction

Ms Whawell informed the panel that in the Notice of Hearing, the NMC had advised Mr Johnstone that it would seek the imposition of a strike-off if it found Mr Johnstone's fitness to practise currently impaired.

Ms Whawell submitted that the aggravating features in this case are as follows:

1. Mr Johnstone's lack of insight;
2. Mr Johnstone's pattern of conduct of a period of time;
3. Mr Johnstone's conduct which put people receiving care, at a risk of suffering harm.

Ms Whawell submitted that there are no mitigating features in this case.

Ms Whawell submitted that a suspension order is not an appropriate or proportionate sanction in this case. She submitted that there is evidence of harmful, deep seated personality and/or attitudinal problems. Further, she noted that Mr Johnstone has demonstrated little insight, and is therefore at risk of repeating his behaviour. As such, a suspension order would not be sufficient in this case.

Ms Whawell submitted that a striking-off order is the only appropriate and proportionate sanction in this case, as Mr Johnstone's behaviour is fundamentally incompatible with him remaining on the register.

Ms Whawell submitted that Mr Johnstone's conduct raises concerns relating to his professionalism. Secondly, she submitted that the public confidence in the profession cannot be maintained if Mr Johnstone were to be allowed to remain on the register; the concerns are extremely serious and difficult to put right. Finally, Ms Whawell submitted that a striking-off order is the only sanction which will sufficiently protect patients, member of the public, and maintain professional standards; he has engaged in a campaign of discrimination and bullying against his colleagues and showed no remorse or insight into his behaviour.

Ms Whawell submitted that a striking-off order should be imposed.

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

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

1. Mr Johnstone's very limited insight and remediation;
2. Mr Johnstone's abuse of his position of trust;
3. Mr Johnstone's pattern of conduct of a period of time;

4. Mr Johnstone's conduct which put people receiving care, at a risk of suffering harm.
5. The likelihood of reoccurrence of Mr Johnstone's misconduct.

The panel considered Mr Johnstone's previous good character, however determined that this was not a mitigating factor in this case on the basis that a professional person is expected to have a good character history. There were no testimonials submitted by Mr Johnstone. There were no further mitigating factors in this case.

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 Mr Johnstone's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Johnstone's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Johnstone's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was unlikely to be something that could be remediated through the implementation of conditions on Mr Johnstone's practice, due to the nature of his deep-seated attitudinal views and behaviours. Furthermore, the panel concluded that the placing of conditions on Mr Johnstone's registration would not adequately address the seriousness of this case and would not protect the public or satisfy public confidence. In any event, Mr Johnstone has

not engaged with this process and has given no indication that he would be willing to comply with conditions.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Johnstone's actions is fundamentally incompatible with Mr Johnstone remaining on the register. Mr Johnstone's conduct was repeated, there is evidence of a deep-seated attitudinal problem, he has limited insight, and there is a real risk of him repeating his behaviour.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Mr Johnstone's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Johnstone's actions were serious and repeated. Consequently, to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. Furthermore, it would place colleagues and potentially patients of Mr Johnstone, at risk.

The panel took advice from the NMC Guidance for specific cases in relation to discriminatory misconduct, which states the following:

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

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Johnstone's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse

should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

The panel, in applying the principle of proportionality, took into account the impact a striking off order will have on Mr Johnstone's right to practice, and the potential impact reputationally and financially. However, the panel decided that the need to protect the public and uphold the public interest outweighed his interests in this regard.

This will be confirmed to Mr Johnstone in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Johnstone's own interests until the striking-off 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 Ms Whawell.

She submitted that the only proportionate interim order at this stage, which would sufficiently protect the public during the 28-day appeal period, would be that of an interim suspension order.

Ms Whawell made a submission that the interim suspension order should be imposed for a period of 18 months in order to cover any appeal period.

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

Decision and reasons on interim order

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

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

That concludes this determination.