Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 20 October 2025- Thursday, 23 October 2025

Virtual Hearing

Name of Registrant:	**Davina Luan Clarke**
NMC PIN:	18C0767E
Part(s) of the register:	Nursing Associates Registered Nursing Associate – 1 April 2019
Relevant Location:	Staffordshire
Type of case:	Misconduct
Panel members:	Museji Ahmed Takolia CBE (Chair, lay member) Charlotte Cooley (Registrant member) Dino Rovaretti (Lay member)
Legal Assessor:	Michael Bell
Hearings Coordinator:	Eidvile Banionyte
Nursing and Midwifery Council:	Represented by Benjamin D'Alton, Case Presenter
Mrs Clarke:	Present and not represented
Facts admitted:	Charge 1
Facts proved:	Charge 2
Fitness to practise:	Impaired
Sanction:	**Suspension order (4 months)**
Interim order:	**Interim suspension order (18 months)**

Details of charge

That you, a nursing associate,

1) On 28 May 2024 said to Colleague A “I am sweating like a nigger in a rape trial” or words to that effect.

2) Your conduct in charge 1 was racially motivated.

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

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

At the outset of the hearing, Mr D’Alton, on behalf of the Nursing and Midwifery Council (NMC), submitted that there are two separate matters that potentially engage Rule 19 of the ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules), in this case. Firstly, he submitted, it was the matters regarding [PRIVATE] and advised the panel that you, following preliminary discussions, wished for the matters relating to [PRIVATE] to be considered in public. He told the panel that this was because you wanted the public to have access to the full circumstances of events that led to your actions in charge 1 as admitted. Mr D’Alton submitted, that you were entitled to request this and said that the NMC was not objecting to this request.

The second part to the privacy consideration for the panel was reference to your former partner’s [PRIVATE] at the time of the events. Mr D’Alton submitted that matters relating to third party’s [PRIVATE] are to be heard in private and invited the panel to go into a private session if and when such matters are raised.

You indicated that you supported this application.

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

The panel determined to hear matters regarding [PRIVATE] in public, as per your request, and to go into private session in connection with your former partner's [PRIVATE] as and when such issues are raised in order to protect his privacy.

Agreed evidence

Mr D'Alton advised the panel that there are several witness statements and accompanying exhibits in the exhibits bundle. He advised that these have been agreed by both parties as the facts that they speak are not in dispute. He further explained that the NMC does not intend to call any of the witnesses in this case as their evidence is not in dispute and that the NMC relies on the admission of these documents under Rule 31 of the Rules.

You indicated that you supported this.

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

The panel agreed to admit this evidence as relied upon by the NMC.

Background

You were referred to the NMC on 2 July 2024 in relation to comments you are alleged to have made while employed as a Nurse Associate at Midlands Partnership University NHS Foundation Trust (the Trust).

There is only a single incident involved in this case and that is the words used by you to Colleague A. It is alleged that on or around 28 May 2024 while you were standing in the

office with colleagues about to go outside for a break, you responded to Colleague A's suggestion to wear a jacket by saying: *"I'm sweating like a nigger on trial for rape."*

Decision and reasons on facts

At the outset of the hearing, you informed the panel that you made full admissions to charge 1.

The panel therefore finds charge 1 proved in its entirety, by way of your admissions.

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

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely on 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 evidence from you under oath.

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

The panel then considered the disputed charge and made the following findings.

Charge 2

"Your conduct in charge 1 was racially motivated."

This charge is found proved.

In reaching this decision, the panel took into account your oral and written evidence as well as the evidence presented by the NMC.

In your oral evidence you told the panel that you disagreed with the fact that your comments were racially motivated. You told the panel that you respected the beliefs of others and that you liked to learn about other cultures. In the internal investigation held on 6 September 2024, in response to a question:

> "*Do you understand the impact that hearing "I am sweating like a n****a in a rape trial" could have on patients under the care of the Trust if this was heard?".*
>
> You answered:
>
> "…*yes, it is not something anyone should say because it is so wrong. I'm so ashamed it has come out of my mouth. I look after black, Asian, Chinese people and I don't treat them any different because of their race and religion"*.

In your oral evidence, you went on to say that '*there was no intent or malice on my part to hurt anybody'.* You further explained to the panel your personal circumstances at the time of the incident, principally because of the [PRIVATE]. [PRIVATE]. You told the panel that, in your judgment, you '*should have been better not coming into work'* that day.

You mentioned [PRIVATE] and told the panel that around this time, you also felt you were [PRIVATE]. You explained that this left you [PRIVATE] and that '*it sounds like an excuse, but at the time, [you] did not know if [you were] coming or going'*.

Finally, you told the panel '*I made a very serious comment. I made this comment based on a word sweating because I was sick of running around. I don't even know where it came from, it's something I've heard*'.

In your cross-examination you accepted that you said this comment in front of your colleagues, that it was a derogatory statement, deeply offensive, racist and that it was not acceptable. You confirmed the same in your written statement:

> *"During this time of [PRIVATE], I made a racist comment. I deeply regret my words and recognize that, regardless of my circumstances, they were wrong. [PRIVATE], but I fully acknowledge that this does not excuse what I said."*

When asked whether you understood what your comment meant, you explained that you did and that you probably repeated something you overheard at a pub previously. You explained in the local investigation and your oral evidence that you were also offended when you first heard this statement being made by someone else at the time.

In reaching its decision, the panel also had regard to the judgment in *Robert Lambert-Simpson v Health and Care Professions Council* [2023] EWHC 481 (Admin), 2023 WL 02687292. It noted that the court found that "*a blatantly racist slur, in combination with a highly derogatory racist description, encapsulated well the finding of racially motivated conduct"*. The panel also noted that you had admitted that this was a racist slur and that the comment had racist connotations and was offensive to black people.

The panel whilst accepting that this was a one-off comment, which you reportedly had previously heard at a pub, and which you accepted yourself was racist, offensive and inappropriate. The panel also took into account your evidence that you were not racist. However, it determined that the phrase used by you has parallels with the issues raised in the case of *Robert Lambert-Simpson*. It therefore determined that, taking into account the case law and the words you used which are fully admitted, that there can be no other interpretation placed your use of the specific words other than it being racially motivated. It determined that in your case, the words used fell into the category described by the judge in the case of *Robert Lambert-Simpson* as "*constituting a racial slur, used in combination with a high derogatory mark is an unmistakably, knowingly and consciously-hostile towards the relevant racial group".*

You were directly asked questions by the panel about your understanding of the following NMC Guidance on “Particular features of misconduct charging” (PRE-2e):

> *“When deciding whether an act is “racially motivated” it is likely to be helpful to consider the following questions:*
> *(a) Did the act in question have a purpose behind it which at least in significant part is referable to race? and;*
> *(b) Was the act done in a way showing hostility or a discriminatory attitude to the relevant racial group?”*

You demonstrated a clear understanding of the above guidance when you responded ‘*yes’* to both.

In reaching its conclusion the panel had particular regard to the comments made by the judge in paragraph 24 in *Robert Lambert-Simpson:*

> *“In confronting this "racially motivated" unacceptable and offensive language the Panel did not say they were "labelling" the Registrant as "a" racist, still less "forever". The same could be said of Roberts, where the comment made was racist. Here, the Panel was clear, and careful, as to what it found. Its finding was made, in light of all the evidence, including from the Registrant.”*

In its findings of fact, the panel was solely deciding upon whether the words used by you on 28 May 2024 and admitted to being used by you were racially motivated. The panel therefore found your conduct in charge 1 to be racially motivated and found charge 2 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your

fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

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

Submissions on misconduct

In coming to its decision, the panel heard submissions made by Mr D'Alton who referred to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

Mr D'Alton also referred the panel to the case of *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), where it was outlined that misconduct denotes a serious breach, which indicates that the professional's fitness to practise may be impaired and that the adjective serious must be given its proper weight.

Mr D'Alton invited the panel to take the view that the facts found proved amounted to misconduct. He referred the panel to the terms of NMC Code (the Code): Professional standards of practice and behaviour for Nurses and Midwives 2015' (the Code) and made reference to specific provisions of the Code, where breaches were identified, specifically 20.1, 20.2, 20.3, 20.7, 20.8 and 20.10.

*‘**20 Uphold the reputation of your profession at all times***

To achieve this, you must:

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

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

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

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

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.’

Mr D’Alton further submitted that whilst not every breach of the Code of conduct will amount to misconduct, your actions as found proved, do fall very short of what would be expected of any registered professional and would be considered deplorable by a fellow practitioner. He further submitted that you yourself made admissions that this statement was racist and unacceptable in a workplace setting in front of colleagues.

Mr D’Alton submitted that your actions cannot be seen as condoned and that the charges found proved amount to misconduct.

You provided the panel with your updated reflective statement and declined to give any further oral evidence.

Submissions on impairment

Mr D'Alton 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

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) *…'*

Mr D'Alton, referring to the *Grant* test, submitted that the second and third questions, both in respect of your past and potential future actions, are engaged, and that the first question relating to patient risk is also engaged.

With regards to the risk to the public, Mr D'Alton submitted that whilst there was no patient harm in the case of the conduct found proven, the panel should consider whether there is any risk of you making a similarly offensive remark in the future in the presence of a patient. He further submitted that although you have admitted to making the comments outlined and have shown some remorse and regret, you still do no appear to have a full insight and understanding into why you said what you said in a workplace.

Mr D'Alton submitted that you have admitted that what you said was racist and that it was unacceptable, that it could cause significant distress and upset to anyone hearing this. He further reminded the panel that you have admitted that you could have used any other phrase to describe your position. Mr D'Alton submitted that despite this, you used highly offensive, racist and inflammatory language in a professional setting and until you have been able to show more full and in-depth insight into the underlying cause and reasons behind your actions, there is a real risk of you repeating similarly offensive conduct not just in front of colleagues, but patients too. Referring to the NMC guidance, Mr D'Alton submitted that conduct which creates a difficult working environment and tension or friction between colleagues does have the potential to affect patient care.

Mr D'Alton reminded the panel that when asked how the panel could be reassured that similar conduct would not be repeated, you explained that you would not allow yourself to attend work if you found yourself in a similar position [PRIVATE]. He submitted that there has been no explanation provided as to how these matters would have caused you to make the comments you made and that there does not appear to be any connection between your personal circumstances and inappropriate racist comment. Mr D'Alton submitted that there is no adequate reassurance to the panel that such conduct would not be repeated.

With regards to remediation, Mr D'Alton submitted that it may be that discriminatory conduct and conduct that may relate to an underlying attitudinal issue is more difficult to remediate. He submitted that by attending relevant courses and undertaking further reflection you would be able to develop further insight into your misconduct. Mr D'Alton

submitted that given your insight is still developing, there is a real risk of similar conduct being repeated, potentially in the presence of other colleagues or patients and therefore invited the panel to find that a finding of impairment is necessary for the protection of the public.

Turning to the public interest, Mr D'Alton submitted that a finding of impairment is also necessary on the grounds of public interest. He submitted that you have brought the profession into disrepute as the words used were extremely inappropriate for a medical professional to use, particularly in registered context. He further submitted that members of the public have an expectation that no matter their background and personal circumstances, they will be treated equally and fairly and have the same access to care and that a member of the public, aware of the comments made by you, would be deeply shocked and troubled to know that a registered professional expressed such views.

Mr D'Alton further submitted that expressing such views is a breach of a fundamental tenet of the profession and if similar conduct were to be repeated, it would be liable to breach a fundamental tenet of the profession again.

Mr D'Alton referred the panel to the judgment in *Professional Standards Authority for Health and Social Care v Health and Care Professions Council, Roberts* [2020] EWHC 1906 (Admin):

> *'There is a thoroughgoing repugnance for racially offensive language and attitudes. At the heart of a worthwhile society must come respect for others. Such behaviour may well be indicative of an attitude that is wholly incompatible with professional practice. In such a case, the public interest may only be vindicated by impairment and significant sanction. Such cases call always for the utmost caution on the part of the regulator. Where there is a matter as delicate and abhorrent as a racial slur, it will be rare that anyone who allows themselves to trespass into this repugnant territory will not be considered impaired going forward.'*

Mr D’Alton submitted that racially offensive language and attitudes, particularly including racial slurs, should be treated with the utmost seriousness and reverence as it is indicative of an attitude that is wholly incompatible with professional practice. He submitted that in the present circumstances, given the extreme nature of the language used and given that you are still developing insight that there is a real risk of repetition and therefore a finding of impairment is necessary to address the serious nature of the conduct on the grounds of public interest. Mr D’Alton finally submitted that a member of the public, aware of the charges in this case and the language used, would be deeply shocked and troubled to learn that a finding of impairment was not made.

In answering the panel’s question about the absence of a victim in this case, Mr D’Alton referred the panel back to the judgment in *Robert Lambert-Simpson*:

> *‘...Suppose someone in a private group of police officers thinks it will make other police officers laugh, to "use" gender identity, with a "combination" of a "blatantly" discriminatory "slur" and a "highly derogatory remark" about people with a gender identity. No person with the disability, or gender identity, was ever supposed to hear what was said. The rest of the group were supposed to laugh. It was supposed to be funny. In my judgment, it is appropriate and important that a regulatory supervisory authority should be able to see in this a serious "attitudinal" problem. There is a hostility in this behaviour. There is a hostility in the state of mind of the person communicating. Attitudes matter. The relevant hostility can thrive in attempted 'humour', as it can in 'ridicule'. The 'private' context may be relevantly – indeed may be especially– revealing.’*

He went on to submit that your comments show potentially serious underlying attitudinal concerns and although they were not directed at a particular person, it is clear that colleagues who heard these comments have found to be them of great concern such that they reported those.

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*, *Nandi v General Medical Council, Professional Standards Authority for Health and Social Care v General Medical Council, Uppal* [2015] EWHC 1304 (Admin) and *R (Calhaem) v General Medical Council* [2007] EWHC 2606 (Admin).

Decision and reasons on misconduct

When determining whether the facts found proved amounted to misconduct, the panel had regard to the terms of the Code. It also had regard to relevant case law and specifically the aforementioned case of *Roberts*. It noted the submissions made by the NMC as well as your up-to-date reflective statement.

The panel also had regard to the NMC guidance on Misconduct (FTP-2a) and particularly the section on discrimination. It gave close consideration to the following parts of the guidance. Firstly, where the guidance points to:

> '*Not every finding of misconduct about these concerns will result in a finding of impaired fitness to practise, even though it will be likely with concerns relating to discrimination, such as racism, sexism, homophobia or other discriminatory behaviour. Conduct of these types can be more difficult to address as they suggest an attitudinal problem.'*

Secondly, it took account of guidance in relation to discrimination, bullying, harassment and victimisation which states:

> *'The Code says that nurses…must treat people fairly without discrimination…it also states that individuals should be aware of how their behaviour can affect and influence the behaviour of others…'.*

The guidance further goes on to set out in unambiguous terms:

'We've made clear that no form of discrimination including, for example, racism should be tolerated within healthcare'.

Taking all of the above into account, the panel is of the view that your actions did fall significantly short of the standards expected of a registered nursing associate, and that your actions amounted to a breach of the Code. The panel considers the facts found proved breaches the following sections of the Code:

*'**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
20.8 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 was of the view that discriminatory behaviour is a serious breach of the Code, and it would be considered deplorable by another professional and a member of the public. It also determined that your actions fell short below the standard expected of a registered nursing associate.

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 NMC Guidance on *'Impairment'* (Reference: DMA-1 Last Updated: 03/03/2025) in which the following is stated:

> *'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.'*

Nursing associates 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 nursing associates with their lives and the lives of their loved ones. To justify that trust, nursing associates must 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 noted your updated reflective statement and had regard to other evidence which show that the charges found proved involved a single statement made during a single event on a single day.

The panel is satisfied that it had no evidence that patients were put at risk or were caused emotional harm as a result of your misconduct. Your misconduct did not relate to your clinical practice and was not directed towards your patients, their relatives or carers or members of the public. However, your conduct could have had an impact on your colleagues and on the atmosphere and culture of the working environment at the Trust.

However, the guidance is clear on this in terms of influencing the attitudes and behaviours of others, including the potential to influence patients and the public, who in turn may feel excluded and less safe in an environment where it is perceived that people hold racist views. It determined that if your conduct was to be repeated and others are influenced by it, your colleagues would again find it deplorable. It also leaves the potential risk to patients and the public who would be put at risk of emotional harm and have a negative impact on the quality-of-care patients receive.

The panel further determined that your misconduct had in the past breached fundamental tenets of the nursing profession and had brought its reputation into disrepute.

The panel then went on to consider whether you are likely to breach fundamental tenets of the nursing profession and to bring its reputation into disrepute in the future.

Regarding insight, the panel considered that you demonstrated continued and ongoing insight into your misconduct. The panel noted that you have made admissions to charge 1 and have demonstrated an increased level of understanding through this hearing about what you did; that what you did was wrong and how this impacted negatively on the reputation of your profession.

The panel next considered your explanation as to how you would handle the situation differently now and in the future. You said that you would "*pause and reflect before speaking"*. It found this to be a helpful insight but still limited. It concluded that you have provided insufficient assurance that your learning and insight is fully developed. Your updated response and earlier statements given in oral evidence focused on removing yourself from the workplace but says very little about how the comments you made in front of colleagues might impact on them, patients, the public, your Trust as an employer and the reputation of the nursing profession.

The panel was satisfied however, that the misconduct in this case is capable of being addressed. Therefore, it went on to look closely for evidence before it in determining

whether or not you have taken adequate steps to strengthen your practice. The panel took into account your reflective piece written for this hearing and noted your explanations about the learning you have undertaken:

> *'Since this incident, I have reflected deeply and taken active steps to learn and grow. I have undertaken self-directed learning on equality, diversity, and inclusion, including unconscious bias and cultural awareness, and have engaged in discussions with colleagues to better understand different perspectives.'*

The panel also had regard to your character references provided at this hearing, but noted that these were made prior to findings of fact and the panel considered they were of a little assistance to it in relation to current impairment. It also noted that there was no reference from your current or most recent employer.

Most significantly, the panel determined that there was a lack of specific information and details about what has been done in relation to the self-directed learning that you say you have undertaken since this incident and your referral to the NMC. It would have assisted the panel to have more details, for example, how many hours were involved, whether the learning was online or face to face, whether the courses you took were accredited by a professional organisation and your reflections on these. The panel further determined that given this lack of clarity with regards to your learning and strengthening of practice, you have not yet fully addressed the issues arising from your actions that led to findings of misconduct in your case.

The panel decided that there remains a risk of repetition based on the under-developed nature of your insight and the lack of evidence to demonstrate that you have implemented and embedded the learning and strategies you say you have put in place to prevent any future repetition of your misconduct. Furthermore, the panel noted that you explained that you would think before speaking next time and not attend work when undergoing difficult personal circumstances. It concluded that this stemmed principally from the perspective of your [PRIVATE] and how you would manage [PRIVATE] in the future, instead of

addressing the important underlying regulatory concerns about racist comments and their impact on others. In particular how the comments you made in front of colleagues might impact on them, patients, the public, your Trust as an employer and the reputation of the nursing profession. In the absence of more developed insight and reflection into the full nature and extent of your misconduct, the panel concludes that the risk to patients remains as does the likelihood of repetition and consequent risk of harm. 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 are 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 also required in this case because public confidence in the profession would be seriously undermined if a finding of impairment were not made. This was an incident of a highly offensive racially motivated and derogatory comment made publicly. The public expects nursing associates to treat everyone with dignity and respect regardless of their race.

The panel determined that a member of the public, knowing that such racially motivated comment was said by a nursing associate in the workplace, would have concerns about being cared for and feeling that they would be treated equally and fairly by registered nursing professionals who were perceived to hold such views. As a result, this would impact negatively on their confidence and trust in the nursing profession. In such circumstances, a reasonable and well-informed member of the public would expect a finding of impairment to be made. Therefore, the panel 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 suspension order for a period of four months. The effect of this order is that the NMC register will show that your registration has been suspended.

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

Submissions on sanction

Mr D'Alton submitted that the aggravating factors in this case were:

- Racially motivated conduct (particularly serious)

He then submitted that below were the mitigating factors in this case:

- Early admissions
- Single and isolated misconduct
- Remorse
- Insight not yet complete

Mr D'Alton submitted that given the seriousness of the misconduct in this case, a six-month suspension order would be the appropriate sanction.

Mr D'Alton submitted that no-order or caution order would not be appropriate in this case as per the NMC Guidance on Sanction. The reasons he cited included the fact that

misconduct in this case is not at the lower end of seriousness and that breaches of the Code included breaching fundamental tenets of the nursing profession. He further submitted that to make no order or a caution order would not address the seriousness of the regulatory concerns found proved. It would also fail to protect the public.

He next turned to a conditions of practice order and submitted that this would also not be appropriate as no workable conditions could be drafted to address the misconduct in this case and furthermore stated that conditions would be difficult to monitor and regulate given the nature of this case.

Addressing the panel on a suspension order, Mr D'Alton submitted that this was the appropriate order in this case and invited the panel to impose a six-month suspension order with a review. He referred the panel to the NMC guidance on suspension orders and reminded the panel that suspension may be appropriate where: the conduct involved a single instance of misconduct but where a lesser sanctions is not sufficient, where there are no evidence of deep-seeded personality of attitudinal problems, where there is no evidence of repetition of behaviour since the incident, and where the panel can be satisfied that the registrant has insight and does not pose a significant risk of repeating the behaviour.

Mr D'Alton submitted that whilst it is acknowledged that this is a serious case, this is a single incident of misconduct and there has been no evidence of repetition since the incident. He further submitted that while there may be a risk of repetition, this could be appropriately addressed by a suspension order with a review which would give you a chance to develop insight into your conduct and undertake further learning and reflect on that learning.

Referring to the panel's judgment on misconduct and impairment, Mr D'Alton reminded the panel that whilst it did find your misconduct to be particularly serious, it also found that it was remediable. He submitted that given the steps you have taken thus far, the suspension order would be the appropriate outcome.

With regards to a striking-off order, Mr D'Alton submitted that it would be a disproportionate sanction in this case. He submitted that whilst the misconduct raises concerns about your professionalism, it could be addressed and remediated. Mr D'Alton submitted that you have shown some progress towards insight and are deeply remorseful and that this conduct was a single one-off incident during a [PRIVATE]. He further submitted that a striking-off order is not the only sanction sufficient to protect patients and members of the public.

Mr D'Alton invited the panel to impose a suspension order for a period of six months with a review.

You indicated that you agreed with the NMC's proposal on sanction.

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

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, it may have such consequences. The panel had careful regard to the SG. Noting your willingness to accept the case made by the NMC for a particular sanction, the decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Serious racially motivated misconduct
- Potential future risk of emotional harm to patients, colleagues and the public

The panel also took into account the following mitigating features:

- No previous regulatory concerns
- Personal mitigation at the time in question
- Remorse and insight
- Single misconduct on a single occasion
- Early admissions in relation to charge 1
- Engagement with the NMC in relation to these proceedings

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 fact that the misconduct in this case is not at the lower end of seriousness and that breaches of the Code included breaching fundamental tenets of the nursing profession. It determined that to make no order would fail to address the seriousness of the regulatory concerns found proved. It would also fail to protect the public. The panel decided, in these circumstances, that it would be neither proportionate nor in the public interest to take no further action.

The panel next 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. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the 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 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, midwife or nursing associate'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*
- *…*

The panel in considering this order faced a particular challenge with being unable to identify ways to properly monitor and regulate the impact of your learning and development in the future workplace and settings. Therefore, an order that does not enable evidence to be recorded from your learning about "*racism at work"* and that does not allow the issues raised to be discussed with a manager or mentor, would not adequately protect the public or be in the public interest. 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 panel further determined that it would be difficult to create conditions that could be monitored and assessed.

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 panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

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

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

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

The panel determined that a suspension order for a period of four months was appropriate in this case to mark the seriousness of the misconduct and the public interest in this case.

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

Any future panel reviewing this case would be assisted by:

- Evidence of ongoing training in Equality, Diversity and Inclusion (EDI), including documentary evidence of completion of any relevant courses;

- Testimonials from a line manager or supervisor that detail your current work practices;
- A deeper reflection and demonstration of insight into your understanding of how racist language and attitudes impact in the workplace; and
- Your reflection demonstrating how learning has been implemented to strengthen practice.

This will be confirmed to you in writing.

Interim order

As the suspension 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 suspension 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 D'Alton. He submitted that an interim order was required to cover the 28-day appeal period following the imposition of a substantive order. Whilst he acknowledged that the substantive order is for a period of four months, he invited the panel to impose an interim suspension order for a period of 18 months. He invited the panel to do so on both grounds, for public protection and otherwise in the public interest, in line with the panel's determination for imposing the substantive order.

You did not object to this application.

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 the appeal period.

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

That concludes this determination.