



~~AC-2023-LON-000239~~

AC-2024-LON-000239

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

BETWEEN:

THE PROFESSIONAL STANDARDS AUTHORITY
FOR HEALTH AND SOCIAL CARE

Appellant

- and -

(1) NURSING AND MIDWIFERY COUNCIL
(2) KATIE ADAMS

Respondents

ORDER BY CONSENT

UPON the parties having agreed to the terms of this Order, in particular that it is just and convenient for the Court to make the Order set out below

AND UPON neither party being a child or protected party and the appeal not being an appeal from a decision of the Court of Protection

AND UPON the Second Respondent being a Midwife on the register established and maintained by the First Respondent.

AND UPON the Committee having decided on 15 November 2023 to impose a 12-month suspension order with review on the Second Respondent ("the Sanction Decision")

AND UPON the Appellant having lodged an appeal on 19 January 2024 against the decision of the Panel pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002 (as amended)

AND UPON the First Respondent conceding that the appeal should be allowed on the basis of the reasons set out in Schedule 2.

AND UPON the Second Respondent having no objection to an order directing that her name be removed from the Register.

BY CONSENT IT IS ORDERED THAT:-

1. The appeal is allowed.
2. The Sanction Decision is quashed and substituted with an order directing the Registrar of the First Respondent to strike the Second Respondent's name from the Register.
3. The First Respondent is to pay the Appellant's reasonable costs in the agreed amount of £6,069.64
4. There be no order as to costs as between the Appellant and Second Respondent

Dated: 25 July 2024

Signed :

Browne Jacobson

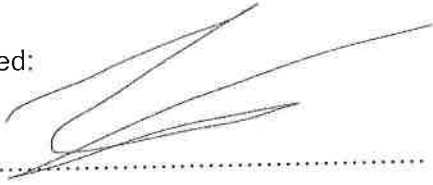
.....
Browne Jacobson LLP
For and on behalf of the Appellant

Signed:

M. Mohamed

**Nursing and Midwifery Council
For and on behalf of the First Respondent**

Signed:



**Ms Katie Adams
Second Respondent**

APPROVED BY MRS JUSTICE FARBEY DBE

BY THE COURT

Schedule 1

1. The charges before the Panel were as follows:

(1) On various dates between 2016 and 2018 Sent messages to colleague/s:

(a) that referred to patients and / or colleagues using racist language namely:

- 'black bastards' **[no case to answer]**
- 'fat black fucker' **[no case to answer]**
- 'but you weren't shagging a blacky'
- 'someone's let their kids shit in the clinic twice and it smells like a Romanian orphanage'
- 'big dick black South African'

(b) That referred to patients in a derogatory way namely:

- 'This woman's built like a brick house'
- 'Blast them fat bastards out' **[no case to answer]**
- ' I swear she was the size of a whale' **[no case to answer]**
- 'little shit was looking away from me today I'm telling u!! I 've bruised all the woman lol'
- 'had some stinky fuckers but wafted the cash to let them in'
- 'Fat dog!!! hope she gets run over.'
- 'Fat bastards need to stop breeding' **[no case to answer]**
- 'I'll come and weigh some chubbas! PS I'm still fucked lol'
- 'Tight, twisted mother fucker'

- 'They are all twat heads'
- 'Twat'
- "fucker" **[no case to answer]**

(2) Appeared in a video in which you impersonated staff from "Windows in the Womb" or "Windows to the Womb" in a racially offensive and / or discriminatory way.

(3) On a date unknown in relation to Mr 1 pointed at a number of cucumbers that he had and said 'Someone is going to have a good time tonight! I have a store room full of KY jelly ready if you need it' or words to that effect. **[not proved]**

(4) Your conduct at charge 3 created a humiliating and/or hostile environment for Mr 1. **[not proved]**

Schedule 2 – statement of reasons

1. On 15 November 2023 a Fitness to Practise Committee (“the Committee”) of the Nursing and Midwifery Council (“NMC”) decided that Katie Adams (“the Registrant”) should be suspended. Between 2016 and 2018, Katie Adams engaged in messaging (via, WhatsApp, IMessage, and Facebook Messenger) with a former colleague, Colleague A, who was the owner and manager at Miracle in Progress’ Clinic (“The Clinic”). The Clinic provided maternity services to pregnant woman, predominantly sonography scan.
2. The Registrant admitted to sending three messages to Colleague A where she referred to patients and/or colleagues using racing language as set out in Schedule 1. The Registrant further admitted appearing in a video where she impersonated staff from a rival business in a racially offensive and/or discriminatory way.
3. The Panel found that the admitted charges, cumulatively, amounted to misconduct, and that the conversations went *“well beyond the boundary of what would be acceptable professional language between midwives”*. In respect of the video recording, the Panel found that the Registrant *“intentionally impersonated a colleague from a competitor business and mimicked their personal and protected characteristics in a derogatory, mocking and racist way”* and that this fell *“far below the standard expected of midwives and amounted to serious misconduct.”*
4. The Panel found the Registrant’s fitness to practise impaired on public interest grounds. At that stage:
 - (a) The Panel noted the Registrant’s misconduct *“undoubtedly brought the profession into disrepute”*;

- (b) The Panel considered that the Registrant did not have full insight as to how her actions were wrong, or why she acted as she did. The Panel was concerned that the Registrant had not understood that the comments made were hurtful, rude and racist;
 - (c) The Panel was not satisfied that the Registrant would now act differently in a similar situation, nor that she had taken responsibility for her actions;
 - (d) The Registrant continued to deflect much of the blame to other people and the environment she was in;
 - (e) The Panel concluded there "*could be an attitudinal issue*";
 - (f) The Panel considered there was a risk of repetition of similar behaviour; and
 - (g) A member of the public aware of the facts of this case would find the Registrant's actions and words deplorable
5. In respect of sanction, the NMC sought a striking-off order.
6. The Panel did not identify any aggravating features of the misconduct, apparently not considering either "*a pattern of misconduct over a period of time*" nor "*lack of insight into failings*" to be engaged. The Panel recognised that there were no mitigating features.
7. The Panel considered that the misconduct was "*confined to a specific period and [the Registrant's relationship with [her] then employer*". The Panel determined that this was "*a single, albeit prolonged, period of time when [the Registrant] acted in a way which seems to have been out of character*".
8. Whilst the Panel found that the incident "*might indicate some attitudinal issues*" it considered that these "*may not be deep-seated*". This was despite those attitudes having apparently persisted for at least five years since the misconduct itself occurred (up to and including at the hearing), to the extent that a risk of repetition still existed.

9. The Professional Standards Authority for Health and Social Care considers that the decision of the Committee was not sufficient for the protection of the public on the following grounds:

Ground 1

The Panel erred in its assessment of the factors relevant to sanction. The Panel erred in its approach to sanction in four material ways:

- i. It failed to recognise the aggravating factors that made the conduct particularly serious;

The NMC's Sanction Guidance ('the Guidance') specifically identifies that both "*a pattern of misconduct over a period of time*" and a "*lack of insight into failings*" are possible aggravating factors. Whilst accepting that the conduct "*was not an isolated incident but a series of actions which took place over the period from 2016 to 2018*" the Panel found that this was not an aggravating factor. They provided no adequate reasoning for this.

When considering suspension, they again noted that "*this was not a single instance of misconduct*" but found that "*that this was a single, albeit prolonged, period of time when you acted in a way which seems to have been out of character.*" This was a mischaracterisation of serious and repeated misconduct over the course of two years, on twelve separate occasions, involving referring to colleagues and patients using derogatory, racist and discriminatory terms, and partaking in a racist video, mocking the staff of rival business. This was very clearly a pattern of misconduct over a period of time, indicative of underlying character traits. The fact that the misconduct occurred over a "*single period of time*" was irrelevant and nonsensical, particularly when this was a two-year period, and where the underlying views still persisted.

The Panel further failed to recognise that the Registrant's lack of insight made the conduct more serious. The Panel had clearly identified its concerns about the lack of insight at the impairment stage, noting: the Registrant's failure to take responsibility for her actions; her attempts to shift the blame to others; her failure to understand the hurtful, rude and racist nature of the behaviour; and the risk that the behaviour would be repeated. This all provided the clearest possible indication of a lack of insight, which materially aggravated the seriousness of the behaviour.

ii. It wrongly concluded that the behaviour was "out of character"

The Panel concluded that:

"this was a single, albeit prolonged, period of time when you acted in a way which seems to have been out of character, taking account of the positive testimonials you have provided, and the fact that the behaviour has not been repeated since the incidents."

The Panel however recognised that, five years after the conduct had occurred, and even after the profound unacceptability of the behaviour had been brought firmly to the Registrant's attention through the regulatory proceedings, there remained a risk that such behaviour might be repeated.

Given the repeated nature of the misconduct, both through the racist and derogatory messaging and performing in a racist video, combined with the lack of insight into the misconduct, persisting over many years, the conclusion that this was "*out of character*" was irrational and wrong. The behaviour, and lack of insight into the same, was a clear indicator of an element of the Registrant's character.

iii. It wrongly failed to conclude that there was evidence of harmful deep-seated personality or attitudinal problems; and

The Panel, somewhat equivocally, concluded that the “*incidents might indicate some attitudinal issues, these may not be deep-seated.*”

The NMC’s guidance on “*How we determine seriousness*” makes clear that:

Discriminatory behaviours of any kind can negatively impact public protection and the trust and confidence the public places in nurses, midwives, and nursing associates. We therefore take concerns of this nature seriously regardless of whether they occur in or out of the workplace. These concerns may suggest a deep-seated problem with the nurse, midwife or nursing associate’s attitude, even when there’s only one reported complaint.

The nature of the conduct itself, and the fact that it was repeated over an extended period of time, was a clear indicator of deep-seated attitudinal issues. Additionally, however, five years after the misconduct, there remained a lack of insight, and the risk of repetition. This was obvious additional evidence of harmful deep-seated attitudinal problems.

The Panel’s failure to conclude that there was evidence of deep-seated attitudinal problems was irrational and wrong.

iv. It placed excessive weight on remediation and lack of repetition

When considering whether a striking-off order was appropriate, the Panel concluded that balanced against the “extremely serious behaviour” was the fact that the Registrant had engaged with the regulatory proceedings, made admissions, and undertaken some training and reflection.

These factors were of limited significance, and should have been given little weight given the negative impact that discriminatory behaviours of any kind can have on public protection and the trust and confidence the public places in the profession. The significance of these factors was further diminished given that the views were still present and the behaviour might be repeated.

Ground 2

The Committee failed to correctly apply the NMC's Sanctions Guidance. On proper assessment, the only factor of the Guidance which indicated that suspension might be appropriate was "*no evidence of repetition of behaviour since the incident*". Given the requirement for registered professionals not to commit serious professional misconduct, this is a factor that should be given relatively little weight (particularly where a risk of repetition is identified).

Against that, the following relevant factors which might suggest that suspension was appropriate were not engaged:

- a single instance of misconduct but where a lesser sanction is not sufficient
- no evidence of harmful deep-seated personality or attitudinal problems
- the Committee is satisfied that the nurse, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour

Accordingly, suspension was not indicated. The Registrant had displayed serious racist and derogatory views towards patients and colleagues over a lengthy period of time. She had failed to recognise the seriousness of her behaviour, and risked repeating the same. This was particularly deplorable misconduct, which undermines public confidence in the profession. Such behaviour, with limited insight and the risk of repetition, is fundamentally incompatible with being a registered professional, and should have resulted in an order for erasure. On proper assessment, all of the three "*key*

considerations" for a striking-off order were engaged. The decision to impose a suspension rather than make a striking off order was irrational and wrong.

Ground 3

The Committee failed to give adequate reasons why suspension was the appropriate sanction. The Panel failed to give adequate reasons as to why a suspension order, rather than a striking off-order was appropriate. The Panel concluded that removal from the Register would be disproportionate, but failed to explain how the need to uphold public trust and confidence in the profession would be met by an order for suspension.

The Panel did not provide any adequate reasoning for why an apparent departure from the Guidance was justified in these circumstances, nor why the "*key considerations*" for a striking off were not met. Further, the Panel failed to adequately address why such behaviour was not fundamentally incompatible with continued registration. This lack of reasoning amounted to a serious procedural irregularity.