

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

**Substantive Hearing
Monday 24 January – Friday 11 February 2022**

Virtual Hearing

Name of registrant: Mr Paul Alan Johnson

NMC PIN: 99I1697E

Part(s) of the register: Registered Nurse
Adult Nursing – 11 September 2002

Registered Midwife – 5 October 2004

Area of registered address: North Humberside

Type of case: Misconduct

Panel members: Derek McFaull (Chair, Lay member)
Jude Bayly (Registrant member)
Manjit Darby (Registrant member)

Legal Assessor: Ben Stephenson

Hearings Coordinator: Graeme King (24 January – 3 February & 9 – 12 February)
Philip Austin (4 February)
Leigham Malcolm (8 February)

Nursing and Midwifery Council: Represented by Dr Raj Joshi, Case Presenter

Mr Johnson: Present (not represented) on Day 12 of the hearing. Not present or represented on any other day.

Facts proved: Charges 1a), 1b), 1c), 1d), 1e), 2a), 2b), 2c)(i), 2c)(ii), 3a), 3b), 4a), 4b), 4c)(i), 4c)(ii), 5a), 5b), 5c), 5d), 5e), 6a), 6b), 6c)(i), 6c)(ii), 7, 8a), 8b), 9, 10a), 10b), 10c)(ii), 11a), 11b), 11c), 11d), 12a), 12b), 12c), 12d), 13, 14a), 14b), 14c), 15, 16a), 16b), 16c), 16d)(i), 16d)(ii), 17, 18, 19, 20a), 20b), 20c), 21a), 21c), 21d), 21e), 21f), 22, 23a), 23b),

23c), 23d), 24a), 24b), 25a), 25b)(i), 25b)(ii), 25b)(iii), 25c), 25d), 25e), 26a)(i), 26a)(ii), 26b), 26c), 26d), 26e), 26f), 26g), 27, 28a), 28b), 29a), 29b), 29c), 29d), 29e), 29f), 29g) and 29h)

Facts not proved:

Charges 10c)(i), 21b) and 25f)

Fitness to practise:

Impaired

Sanction:

Striking off order

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 Johnson was not in attendance and that a Notice of Hearing had been sent to his registered email address on 16 December 2021.

The panel took into account that the Notice of Hearing provided details of the allegations, the time, dates and venue of the hearing and, amongst other things, information about Mr Johnson's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Dr Joshi, on behalf of the Nursing and Midwifery Council (NMC), submitted that the Notice of Hearing was served in accordance 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.

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

Decision and reasons on proceeding in the absence of Mr Johnson

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

Dr Joshi referred the panel to two internal NMC emails dated 17 December 2021 and 13 January 2022 which summarise telephone conversations between an NMC Case Officer and Mr Johnson and state:

17 December 2021 - *'The registrant [Mr Johnson] thanked me [Case Officer] for my time and said he will send me an email over the weekend but to proceed on the basis that he will be submitting rebuttal evidence and for the hearing to proceed in his absence.'*

13 January 2022 – *'He [Mr Johnson] has stated that he wants the hearing to proceed in his absence...'*

Dr Joshi submitted that the two emails detailed above demonstrated express consent from Mr Johnson for this hearing to proceed in his absence. He submitted that Mr Johnson is evidently aware of the hearing but has not made an application to adjourn. Further, there is no information to suggest that adjourning this hearing would secure Mr Johnson's attendance on some future date. Dr Joshi submitted that there are 14 witnesses warned to give live evidence at this hearing and to delay proceedings would inconvenience those witnesses and their employers. He submitted that Mr Johnson has voluntarily absented himself and that in these circumstances, the panel could find it appropriate to proceed in his absence.

The panel accepted the advice of the legal assessor who advised it that the discretionary power to proceed in the absence of Mr Johnson 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*.

The panel has decided to proceed in the absence of Mr Johnson. In reaching this decision, the panel considered the submissions of Dr Joshi and the documentation before it. It had particular regard to the factors set out in the decisions of *Jones* and in the case of

General Medical Council v Adeogba [2016] EWCA Civ 162, as well as to the overall interests of justice and fairness to all parties.

The panel noted the two conversations, on 17 December 2021 and 13 January 2022 respectively, between a NMC Case Officer and Mr Johnson. The panel was satisfied that Mr Johnson had informed the NMC that he is aware of the hearing but that he did not wish to appear and that he was content for the hearing to proceed in his absence.

The panel also noted that there are 14 witnesses, 13 of whom are registered midwives, scheduled to give live evidence at this hearing and to delay matters would inconvenience them and their employers. It noted that Mr Johnson has not made an application to adjourn, nor is there any reason to suspect that doing so would secure his attendance on some future date. The panel took into account that the allegations raise public protection concerns and considered that the expeditious disposal of this case is in the public interest.

There is some disadvantage to Mr Johnson in proceeding in his absence. Although the evidence upon which the NMC relies has been sent to his registered email address, 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.

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

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

At the outset of the hearing Dr Joshi advised the panel that proper exploration of Mr Johnson's case may at certain points require reference to his private life, and to the private life of some witnesses. He submitted that it would be appropriate to hear such parts of the hearing in private to protect the confidentiality of any parties involved.

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

Having heard that there will be reference to Mr Johnson's private life, and to that of at least one witness, the panel determined to hold such parts of the hearing in private. The panel noted that a member of the NMC's Public Support Team (PST) is providing witness support in this case and it determined that this Rule 19 ruling would not apply to the PST should any witness request their support.

On Day 12 of the hearing, Mr Johnson gave evidence at the misconduct and impairment stage and indicated that he would be making reference to his health and, as such, applied for those parts of the hearing to be held in private. Having already made a Rule 19 ruling in this case, the panel granted Mr Johnson's application and determined to hold parts of the hearing which relate to Mr Johnson's health in private.

Decision and reasons on amending charges

Dr Joshi made an application to amend the wording of charges 2c), 2c)(i), 4c), 4c)(i), 6c), 6c)(i), 10c)(i) and 16c). He submitted that the amendments as applied for are typographical corrections and would better reflect the evidence in this case. Further, Mr Johnson was consulted about the amendment of charge 10c)(i) but has made no representations on the matter. Dr Joshi acknowledged that Mr Johnson is not present to respond to all of the proposed amendments but submitted that to make these

amendments would cause no unfairness or injustice to any party. He submitted that without the proposed amendments to charges 2c)(i), 4c)(i), 6c)(i) and 10c)(i), the panel would have to make a ruling on one or the other effects of Mr Johnson's alleged conduct which would be inappropriate. Dr Joshi applied to amend the charges as follows:

2. Your conduct in Charge 1 amounted to harassment of Colleague 1 in that:

c) It had the purpose or effect ~~of~~ of:

i. Violating Colleague 1's dignity, and/or

4. Your conduct in Charge 3 amounted to harassment of Colleague 2 in that:

c) It had the purpose or effect ~~of~~ of:

i. Violating Colleague 2's dignity, and/or

6. Your conduct at Charge 5 was inappropriate in that:

c) It had the purpose or effect of:

i. Violating the patient's dignity, and/or

10. Your conduct at Charge 9 amounted to harassment of Colleague 3 in that:

c. It had the purpose or effect of:

i. Violating Colleague 1's Colleagues 3's dignity

16. Behaved in a bullying and/or intimidating manner towards Colleague 3;

(c) On one or more occasions drove ~~pass~~ **past** her home address.

The legal assessor advised the panel that Rule 28 provides that:

'(1) at any stage before making its findings of fact, in accordance with [rule 24(5) or (11)] [...] the Fitness to Practise Committee, may amend:

(a) The charge set out in the notice of hearing; or

(b) The facts set out in the charge, on which the allegation is based, unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.'

The panel considered that all of the proposed amendments arise out of omissions or typographical errors in the wording of the charges. It noted that Mr Johnson has engaged with the NMC regarding this hearing so is well aware of the depth and severity of the charges but has chosen not to address each charge specifically. The panel did not consider that any of the proposed amendments would alter the gravity of the charges to the level that Mr Johnson would be inclined to respond to them, having not done so for the 29 original charges that he is aware of. In relation to the proposed amendments of charges 2c)(i), 4c)(i), 6c)(i) and 10c)(i), the panel agreed with Dr Joshi's submissions that it would be inappropriate to make a decision on one part of the impact of Mr Johnson's alleged actions, but not another. It considered that the proposed amendments for these charges are substantial, but that they do not seek to alter the conduct as alleged, rather its impact.

The panel considered that the proposed amendments would ensure that the charges better reflect the evidence in this case and it was of the view that Mr Johnson would not be taken by surprise to hear about them. It therefore determined that charges 2c), 2c)(i), 4c), 4c)(i), 6c), 6c)(i), 10c)(i) and 16c) could be amended with no unfairness or injustice caused. It took into account that Mr Johnson is not present at the hearing and is unable to respond to the application. However, it directed Dr Joshi to ensure that Mr Johnson was made aware of the amendments on Day 1 of the hearing so that he was offered time to respond to the amendments if he so wishes, prior to the panel concluding its decisions on the facts.

Accordingly, the panel amended the wording of charges 2c), 2c)(i), 4c), 4c)(i), 6c), 6c)(i), 10c)(i) and 16c) as per Dr Joshi's application.

Upon hearing all of the oral evidence, Dr Joshi made a further application to amend the wording of charges 5d), 11, 12 and 26a)(ii). He submitted that the evidence would suggest that there is a typographical error in the wording of each of these charges and that an amendment to the age detailed in charge 5d, the month in charge 11, the year in charge 12 and the month in charge 26a)(ii) is required. Dr Joshi submitted that the amendments as applied for would cause no unfairness or injustice.

Dr Joshi applied to amend charges 5d), 11, 12 and 26a)(ii) as follows:

5. Made the following comments about patients:

d) On a date unknown stated words to the effect of when suturing a lady *'there you go I've made you look like a 47 **16** year old again'*.

11. On the 30 ~~November~~ **December** 2018, using your mobile telephone, took a picture of a patient undergoing a caesarean:

12. On the 31 January ~~2020~~ **2019**, using your mobile telephone, took a picture of a patient undergoing a caesarean:

26. Failed to maintain behaviour adequate to a management position:

a) By disappearing whilst on duty on one or more occasions, in particular:

ii. On the 20 August **April** 2019.

The legal assessor drew the panel's attention to his earlier advice and reminded the panel of the requirements of Rule 28.

The panel determined that the further proposed amendments to charges 5d), 11, 12 and 26a)(ii) would not constitute material changes and would not alter the conduct as alleged. The panel considered that the proposed amendments would not cause any injustice or unfairness and therefore amended the wording of charges 5d), 11, 12 and 26a)(ii) as per Dr Joshi's application. The panel directed Dr Joshi to ensure that the NMC informs Mr Johnson of this decision.

Decision and reasons on admissibility of evidence

On Day 2 of the hearing, Dr Joshi made an application under Rule 31 to admit an additional written statement from Mr Johnson as evidence. He advised the panel that the NMC received an email from Mr Johnson to the NMC dated 24 January 2022 (received after the hearing had started) that provided additional written representations for the panel to consider. The email also indicated that Mr Johnson would be '*...available all week between the hours of 3:30-5:30 pm*' if the panel wishes to speak to him.

Dr Joshi submitted that it would be entirely appropriate for the panel to see the contents of Mr Johnson's email as it contained additional representations from him in relation to the

charges against him. He submitted that it would be fair to admit this email as evidence, albeit that some of the content does not go directly to the charges. Dr Joshi submitted that it would however be inappropriate to accede to Mr Johnson's request to speak to the panel between 15:30 and 17:30. He submitted that to grant this request would be contrary to the manner in which these regulatory matters should proceed and would not be conducive to a fair and proper hearing. Dr Joshi submitted that Mr Johnson is clearly aware of this hearing and was offered various opportunities to participate fully.

Dr Joshi advised the panel that Mr Johnson has made a further request that the panel should receive in evidence [PRIVATE].

Dr Joshi submitted that, with regard to Rule 31, it would not be relevant or fair to admit this [PRIVATE]. Dr Joshi submitted that it is Mr Johnson's responsibility to ensure that any evidence he wishes to adduce is capable of provenance and presented in an appropriate manner, but that he has not done so.

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

The panel determined that it would be appropriate for it to have sight of Mr Johnson's email dated 24 January 2022 and that it should be incorporated as part of Mr Johnson's response bundle. It considered that there would be no unfairness caused to any party to admit this email as evidence. The panel determined to attach the relevant weight to the contents of the email as it deems appropriate during its consideration of the facts.

The panel considered that it would not be appropriate to significantly amend the agreed timing of this hearing to accommodate Mr Johnson's updated availability, provided after the hearing had already begun. It considered that the Notice of Hearing was served

effectively and included the agreed times and dates for the hearing. Further, 14 witnesses have been scheduled in line with the agreed times and dates.

The panel noted that Mr Johnson has been aware of this hearing since 16 December 2021 and that it had been made clear to him that he could participate fully in this hearing if he so wished. It also had regard to its earlier decision to proceed in the absence of Mr Johnson in accordance with Rule 21. In all the circumstances, the panel determined that the hearing will proceed as per the times and dates as set out in the Notice of Hearing. The panel directed Dr Joshi to ensure that the NMC updates Mr Johnson by email or phone at each handing down stage of this hearing.

With regard to Mr Johnson's request for the panel to accept the video as evidence, the panel considered that it would be inappropriate for this to be admitted into evidence.

[PRIVATE].

[PRIVATE].

The panel therefore refused Mr Johnson's request for it to receive the video itself in evidence.

Decision and reasons on application to adjourn

On Day 12 of the hearing, Mr Johnson made an application to adjourn the start time of proceedings until 13:30 to allow him to address the panel on misconduct and impairment. Mr Johnson advised that he is unavailable before this due to work commitments.

Dr Joshi opposed the application to adjourn and submitted that Mr Johnson has had every opportunity to take part in this hearing and that the panel had already '*bent over backwards*' to encourage Mr Johnson's participation and to keep him aware of its decisions. He submitted that to adjourn as per Mr Johnson's request would be to

manipulate the process and would not be in line with the panel's earlier decision to proceed in Mr Johnson's absence.

The panel accepted the advice of the legal assessor who advised it that Rule 32 states:

'(1) The Chair of the Practice Committee may, of her own motion, or upon the application of a party, postpone any hearing of which notice has been given under these Rules before the hearing begins.

(2) A Practice Committee considering an allegation may, of its own motion or upon the application of a party, adjourn the proceedings at any stage, provided that:

(a) no injustice is caused to the parties; and

(b) the decision is made after hearing representations from the parties (where present) and taking advice from the legal assessor.

(4) In considering whether or not to grant a request for postponement or adjournment, the Chair or Practice Committee shall, amongst other matters, have regard to:

(a) the public interest in the expeditious disposal of the case;

(b) the potential inconvenience caused to a party or any witnesses to be called by that party; and

(c) fairness to the registrant'

The panel considered that there would be no injustice caused by granting this short adjournment. It did noted that, although all the witnesses have already presented their evidence, to adjourn may cause some inconvenience to the NMC. The panel however considered that it would be in the interests of fairness to allow Mr Johnson the opportunity to be heard. Further, to hear Mr Johnson's representations would assist the panel in its decision making and therefore increase the likelihood of an expeditious disposal of this case.

For the reasons above, and with regard to Rule 32, the panel granted Mr Johnson's application and decided to adjourn. The panel will therefore convene at 14:00 on Day 12 of the hearing.

Details of charges, as amended

That you, a Registered Midwife:

1. On the 23 August 2019 made the following inappropriate comments to Colleague 1:
 - a) Words to the effect of *'thank God, you will bring some glamour and youth to the team'*. **Proved**
 - b) Words to the effect of *'you have a gorgeous figure and what exercises do you do to stay fit'*. **Proved**
 - c) Words to the effect of *'oh just because you have a gorgeous figure you can eat something'*. **Proved**
 - d) Words to the effect of *'is your boyfriend horrible to you, I can see you are upset'*. **Proved**
 - e) Words to the effect of *'oh what's the matter have you never seen a man on the Labour Ward before'*. **Proved**

2. Your conduct in Charge 1 amounted to harassment of Colleague 1 in that:
 - a) It was unwanted. **Proved**
 - b) It related to Colleague 1's sex. **Proved**
 - c) It had the purpose or effect of:
 - i. Violating Colleague 1's dignity, and/or **Proved**

- ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague 1. **Proved**
- 3. On dates unknown made the following inappropriate comments to Colleague 2:
 - a) Words to the effect of *'has your husband ever drank your breast milk?'* **Proved**
 - b) Words to the effect of *'what is your favourite sexual position?'* **Proved**
- 4. Your conduct in Charge 3 amounted to harassment of Colleague 2 in that:
 - a) It was unwanted. **Proved**
 - b) It related to Colleague 2's sex. **Proved**
 - c) It had the purpose or effect of:
 - i. Violating Colleague 2's dignity, and/or **Proved**
 - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague 2. **Proved**
- 5. Made the following comments about patients:
 - a) On the 23 August 2019 stated words to the effect of *'the patient in the room would be going to the pub to get some cock'*. **Proved**
 - b) On a date unknown stated words to the effect of *'I bet her husband didn't make her make noises like that'*. **Proved**
 - c) On a date unknown when a patient required a wound pack to be removed, likened it to *'a magic trick, pulling flowers and scarves out of a vagina'* or words to this effect. **Proved**
 - d) On a date unknown stated words to the effect of when suturing a lady *'there you go I've made you look like a 16 year old again'*. **Proved**

e) On a date unknown, when a patient was to attend the Labour Ward, stated words to the effect of *'no I will take her, I have big hands. She won't come back if I see her'*.

Proved

6. Your conduct at Charge 5 was inappropriate in that:

a) It was unwanted. **Proved**

b) It related to a patient's protected characteristic, namely their sex and/or was sexual in nature. **Proved**

c) It had the purpose or effect of:

i. Violating the patient's dignity, and/or **Proved**

ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for anyone hearing your comment(s). **Proved**

7. On or before the 25 August 2019 made a video purporting to show you masturbating in one of the toilets at Hull University Teaching Hospitals NHS Trust.

Proved

8. Your conduct at charge 7 was:

a) Sexual in nature. **Proved**

b) Unprofessional because it purportedly related to your place or work. **Proved**

9. On or before the 25 August 2019 you sent the video as mentioned in charge 7 to Colleague 3. **Proved**

10. Your conduct at Charge 9 amounted to harassment of Colleague 3 in that:

a) It was unwanted. **Proved**

b) It was of a sexual nature. **Proved**

c) It had the purpose or effect of:

i. Violating Colleague 3's dignity, and/or **Not Proved**

ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague 3. **Proved**

11. On the 30 December 2018, using your mobile telephone, took a picture of a patient undergoing a caesarean:

a) For your personal use. **Proved**

b) Without having a professional reason. **Proved**

c) Without obtaining written consent from the patient and/or staff members involved.
Proved

d) Sent it to Colleague 3. **Proved**

12. On the 31 January 2019, using your mobile telephone, took a picture of a patient undergoing a caesarean:

a) For your personal use. **Proved**

b) Without having a professional reason. **Proved**

c) Without obtaining written consent from the patient and/or staff members involved.
Proved

d) Sent it to Colleague 3. **Proved**

13. Your actions in charges 11 and/or 12 demonstrated a lack of integrity because you knew that you did not have any justification and/or consent to take such photographs. **Proved**

14. On the 6 February 2020 you made the following incorrect statements in respect of the photographs as set out in charges 11 and 12:

- a) That you had not seen them before. **Proved**
- b) That you had not taken the photographs. **Proved**
- c) That you did not send them to Colleague 3. **Proved**

15. Your declarations in charge 14a and/or 14b and/or 14c were dishonest because you knew that at the time of making them they were not true. **Proved**

16. Behaved in a bullying and/or intimidating manner towards Colleague 3:

- a) By attending her home address unannounced on an unknown date. **Proved**
- b) By sending an email on the 31 January 2020 stating, *'I'm guessing that you have thrown me to the lions'*. **Proved**
- c) On one or more occasions drove past her home address. **Proved**
- d) On one or more occasions contacting her through the use of:
 - i. Email. **Proved**
 - ii. Social media. **Proved**

17. On or before the 6 June 2019 requested that when Colleague 3 attended a formal meeting that she lie and deny that you kissed each other whilst at work. **Proved**

18. On or before the 28 January 2020 requested that when Colleague 3 attended a Trust interview that she deny all matters relating to your suspension. **Proved**

19. Your conduct at charge 17 and/or 18 above demonstrated a lack of integrity in that you sought to influence a colleague to be dishonest in order to benefit yourself. **Proved**

20. On an unknown date behaved in an intimidating, bullying or unsupportive manner towards Colleague 4 by:

- a) Insisting that no medical review was required before administering medication to a patient. **Proved**
- b) Stating that she '*was not to bleep the doctor*' to seek a medical review or words to that effect. **Proved**
- c) Insisting that Colleague 4 could administer the medication under the midwife exemptions knowing that Colleague 4 felt uncomfortable in doing so. **Proved**

21. On the 1 February 2011 behaved in an intimidating, bullying or unsupportive manner towards Colleague 5:

- a) By undermining Colleague 5's decision that Patient C required an epidural. **Proved**
- b) By stating that Patient C required a medical review when one was not required. **Not Proved**
- c) By taking Colleague 5 to a room, closing the door behind you and standing over Colleague 5 whilst holding the door shut. **Proved**
- d) By stating words to the effect of '*this is my ward and that I am in charge*'. **Proved**
- e) By speaking to Colleague 5 in an aggressive way through tone of voice and/or body language. **Proved**
- f) By stating to Patient C in front of Colleague 5, words to the effect of '*that I am the reason that you had to wait before you could have the epidural*'. **Proved**

22. Behaved in an intimidating, bullying or unsupportive manner towards Colleague 2 by stating words to the effect of '*I know treasure, you're working really hard but I just can't help you*' on an unknown date in 2017. **Proved**

23. Behaved in an intimidating, bullying or unsupportive manner towards Colleague 6:

- a) When Colleague 6 requested support with a suturing procedure with a patient, and in front of the patient, stated words to the effect of, *'what does the NMC say about technique for repair?'* **Proved**
- b) After Colleague 6 had triaged a patient, stated to her in front of colleagues, words to the effect of, *'you need to learn the art of triage, and to be able to tell the difference patients who needed to come in and those who needed to stay at home'*. **Proved**
- c) Stated to Colleague 6, in relation to the triaged patient, words to the effect of, *'you invited her in so you can stay here and deal with/see her'*, preventing her from assisting on a busy ward. **Proved**
- d) In relation to another patient whereby Colleague 6 suggested to the medical team that a second passive hour would be appropriate, said words to the effect of, *'oh well we don't do that here, it is not protocol'*. **Proved**

24. In front of Colleague 6, behaved in an intimidating, bullying or unsupportive manner towards another midwife:

- a) In relation to decelerations on a cardiotocography (CTG) trace. **Proved**
- b) By quizzing the midwife on matters not in a nurturing way. **Proved**

25. On one or more occasions demonstrated poor management and decision making skills:

- a) By refusing to and/or delaying admission of patients to the Labour Ward. **Proved**
- b) Making excuses not to transfer patients to the Labour Ward by stating words to the effect of:
 - i. At the beginning of the shift, *'we will clear the decks before we bring up any inductions'*. **Proved**

- ii. In the middle of the shift, *'we will all have our breaks before we bring any inductions up'*. **Proved**
 - iii. Towards the end of the shift, *'we aren't going to bring any inductions up, then day staff can be the masters of their own destiny'*. **Proved**
- c) By writing the patient's name on the board in the Labour Ward stating words to the effect of, *'to shut her up'*, referring to a consultant that requested a patient transfer. **Proved**
- d) By keeping shifts quiet in order that midwives can relax and/or socialise with you in the office. **Proved**
- e) By allocating complex patients to midwives who you did not want to be with on shift. **Proved**
- f) By reallocating a midwife away from a patient that required constant care throughout the shift. **Not Proved**

26. Failed to maintain behaviour adequate to a management position:

a) By disappearing whilst on duty on one or more occasions, in particular:

- i. On the 27 July 2019. **Proved**
- ii. On the 20 April 2019. **Proved**

b) By failing to notify staff of your whereabouts on one or more occasions. **Proved**

c) By failing to present yourself when emergencies arose on one or more occasions. **Proved**

d) By failing to wear corporate uniform identifying you as a midwife on one or more occasions. **Proved**

e) By wearing scrubs when requested not to on one or more occasions. **Proved**

f) By refusing to engage in mediation with Colleague 5 to discuss the incident relating to Patient X. **Proved**

g) By breaching confidentiality about the Trust investigation when discussing it with others. **Proved**

27. On an unknown date declared to Colleague 7 that you wore scrubs because, '*you did not have any uniforms*' or words to that effect. **Proved**

28. Your declaration in charge 27 was dishonest because:

- a) You did have uniforms at the time. **Proved**
- b) You knew it was untrue. **Proved**

29. Failed to attend appropriate training when required, namely:

- a) Mandatory Day 2. **Proved**
- b) Yorkshire Medical Emergency Training. **Proved**
- c) CTG. **Proved**
- d) Maternal Resuscitation. **Proved**
- e) Deprivation of Liberty. **Proved**
- f) Safeguarding. **Proved**
- g) Mental Capacity. **Proved**
- h) Fire Training. **Proved**

And in light of the above, your fitness to practice is impaired by reason of your misconduct.

Background

Mr Johnson was referred to the NMC on 18 February 2020 by Hull University Teaching Hospitals NHS Trust (the Trust). Mr Johnson was employed at the Trust from September 2002 until his dismissal in September 2020. At the time of the alleged incidents, Mr Johnson was employed as a Band 7 Labour Ward Coordinator.

The referral alleged that Mr Johnson was responsible for: several breaches of professional boundaries with a colleague; sexualised behaviour towards a junior member of staff when working in a managerial position; potential breaches of confidentiality by taking photographs in an obstetric theatre; inappropriate behaviour at work; and inappropriate comments made at work.

The referral states that in June 2019, Mr Johnson was seen kissing Colleague 3 in the workplace. As a result of this, Mr Johnson and Colleague 3 were interviewed by the Trust. Both parties accepted responsibility and had sanctions applied. Mr Johnson was given a final written warning, having previously received a written warning in July 2018.

The Trust began an investigation into a complaint made by Colleague 1 about comments Mr Johnson was alleged to have made during a shift in August 2019. During that investigation, in January 2020, the Head of Midwifery at the Trust was informed by a Professional Midwifery Advocate (PMA) at the Trust that Colleague 3 had become '*extremely distressed*' during one of their support meetings. The PMA stated that she had serious concerns about Colleague 3's welfare due to her relationship with Mr Johnson. Colleague 3 had described her relationship with Mr Johnson as '*unhealthy, controlling and coercive*'. Colleague 3 had informed the PMA that Mr Johnson had sent her a video of him performing a sexual act that she believed to have been filmed on the Trust's property. Colleague 3 also alleged that Mr Johnson had sent her two photographs that were taken in the obstetric theatre during a caesarean section operation which show the patients and other staff present in the theatre.

It is also alleged that Mr Johnson had made a number of inappropriate comments at work including:

- making reference to a colleague's figure;
- describing that a patient would '*soon be going down the pub to get some cock*';

- asking a colleague what her favourite sexual position was; and
- asking a colleague if '*her partner drank her breast milk*'.

Further concerns were raised during the course of the Trust's investigation that related to attitudinal issues. These include:

- that Mr Johnson and Colleague 3 would disappear off together during work;
- concerns generally about Mr Johnson disappearing from the Labour ward whilst working as the Coordinator;
- concerns about prioritising of care including not accepting patients onto the Labour ward in a timely manner and delaying care for them;
- other colleagues reportedly being scared and intimidated by Mr Johnson;
- wearing scrubs instead of midwifery uniform to portray power and to intimidate and humiliate junior staff;
- contacting other members of staff about the Trust's investigation after being told not to do so.

Mr Johnson was suspended from work during the Trust's investigation and subsequently dismissed on 20 April 2020.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Dr Joshi. It heard evidence from:

- Colleague 1 – Midwife at the Trust
- Colleague 2 – Midwife at the Trust
- Colleague 3 – Midwife at the Trust

- Colleague 4 – Midwife Lead at the Trust
- Colleague 5 – Midwife at the Trust
- Colleague 6 – Midwife at the Trust
- Colleague 7 – Labour Ward Matron at the Trust
- Witness A - Midwife at the Trust
- Witness B - Midwife at the Trust
- Witness C – Former Head of Midwifery at the Trust
- Witness D - Head of Midwifery at the Trust
- Witness E – Former Labour Ward Matron at the Trust
- Witness F - Midwife at the Trust
- Witness G – Divisional General Manager at the Trust

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 then considered each of the charges and made the following findings:

Charge 1

1. On the 23 August 2019 made the following inappropriate comments to Colleague 1:

- a) Words to the effect of *'thank God, you will bring some glamour and youth to the team'*.
- b) Words to the effect of *'you have a gorgeous figure and what exercises do you do to stay fit'*.

- c) Words to the effect of *'oh just because you have a gorgeous figure you can eat something'*.
- d) Words to the effect of *'is your boyfriend horrible to you, I can see you are upset'*.
- e) Words to the effect of *'oh what's the matter have you never seen a man on the Labour Ward before'*.

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the oral and written evidence of Colleague 1. It considered that Colleague 1 has provided clear and consistent evidence in relation to charge 1a) – 1e) and how Mr Johnson's comments made her feel. The panel considered that, as these comments were made to her on her first day of ever working with Mr Johnson the comments remained clear in Colleague 1's mind and she had a good recollection of the incident.

The panel had regard to Colleague 1's email dated 8 October 2019 to her seniors that details her experience of working with Mr Johnson and states:

'When I [Colleague 1] did a full shift on Labour ward for the first time the midwife in charge was Paul [Mr Johnson]. I found some of his comments to be extremely inappropriate including comments about my 'figure' asking what exercises I do.'

The panel considered that Colleague 1, having reported the comments so promptly to her manager, clearly felt that Mr Johnson had acted inappropriately towards her.

The panel had regard to Witness G's written statement that details, when questioned about Colleague 1's allegations, Mr Johnson stated:

'...that he [Mr Johnson] did not recall [Colleague 1's] first shift but said that he would normally try to make new starters feel comfortable. He also referenced being a keen athlete and said it was highly possible that he would be able to tell if someone did sport, and that he may ask questions about it as an ice breaker. However, the Registrant stated that he would never use emotive words such as "gorgeous".

The Registrant said that he was sorry if his comments made [Colleague 1] uncomfortable, but that they were meant as an icebreaker.'

The panel considered that to make comments pertaining to a colleague's appearance, gender, figure and private life could not be considered an *'icebreaker'*. The panel noted that Mr Johnson refutes having made any reference to Colleague 1's boyfriend, as set out in charge 1d) but did not consider Colleague 1 to have any reason to manufacture this part of her allegations against Mr Johnson. It noted her clear and consistent evidence and had regard to her contemporaneous reporting of the incidents therefore preferred her evidence to Mr Johnson's in respect of charge 1d).

For the reasons above, the panel found charge 1 proved in its entirety.

Charge 2

2) Your conduct in Charge 1 amounted to harassment of Colleague 1 in that:

- a) It was unwanted.
- b) It related to Colleague 1's sex.
- c) It had the purpose or effect of:

- (i) Violating Colleague 1's dignity, and/or

(ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague 1.

This charge is found proved in its entirety

In reaching this decision, the panel took into account the oral and written evidence of Colleague 1. It noted that her recollection of events has remained consistent from her reflective email sent on 8 October 2019 to her oral evidence to the panel and that her evidence is clear as to how the comments detailed in charge 1 made her feel.

The panel had regard to Colleague 1's written statement that details how Mr Johnson's comments made her feel '*awkward*', '*upset how the shift had gone*' and led to her reporting the matter to her managers. Further, Colleague 1's described being '*taken aback*', '*extremely uncomfortable*', and '*shocked*' by Mr Johnson's comments during her oral evidence. The panel considered Colleague 1's evidence to show that Mr Johnson's comments were entirely unwanted.

The panel considered that to ask questions pertaining to her boyfriend and figure did constitute asking questions relating to Colleague 1's sex. It noted the explanation given by Mr Johnson at local level but again did not consider that such comments could, in any situation, be considered an '*icebreaker*'. The panel considered that all of Mr Johnson's conduct as set out in charge 1 would have impacted on Colleague 1's dignity and that all the comments made were degrading and humiliating, regardless of Mr Johnson's intentions.

The panel noted Colleague 1's evidence that, when using the words in charge 2e), Mr Johnson had touched her shoulders. It considered that the words spoken, as well as the unwarranted physical contact, would have placed Colleague 1 in an intimidating environment. Further, the panel noted the Trust's Management Report in respect of Paul Johnson dated 16 April 2021 that states that:

'When [Colleague 1] had finished her shift, she described almost running out of the department so she wouldn't need to leave with Mr Johnson.'

The panel considered that Mr Johnson's conduct as set out charge 1, both individually and collectively, formed a pattern of harassment towards Colleague 1.

For the reasons above, the panel found charge 2 proved in its entirety.

Charge 3

3) On dates unknown made the following inappropriate comments to Colleague 2:

a) Words to the effect of *'has your husband ever drank your breast milk?'*

b) Words to the effect of *'what is your favourite sexual position?'*

This charge is found proved in its entirety

In reaching this decision, the panel took into account the oral and written evidence of Colleague 2. It considered her evidence to be clear and consistent and that she presented as professional throughout.

The panel noted that Colleague 2 was able to provide consistent evidence in relation to the context of Mr Johnson's comment in both charge 3a) and b), and advised the panel what her response was on each occasion. The panel had regard to her oral evidence that Mr Johnson had approached her to discuss a documentary he had watched on breast milk and that, given the nature of her work, she initially engaged. Colleague 2 went on to advise the panel that Mr Johnson *'could turn any conversation'* and had proceeded to ask her if her husband had ever drank her breast milk. Further, it noted her oral evidence that

Mr Johnson had told her not to *'be a prude'* in response to her refusing to answer his inappropriate question detailed in charge 3b). The panel noted that Colleague 2 described Mr Johnson as *'the office pervert'* and was of the view that he was *'genuinely interested'* in whether or not her husband had tasted her breast milk and what her favourite sexual position was.

The panel noted that Mr Johnson did not respond directly to this allegation when questioned at local level but did deny using language of the nature of that set out in charge 3. It considered that Colleague 2 was clear and consistent in all of her evidence regarding these comments and therefore the panel preferred her evidence to Mr Johnson's.

For the reasons above, the panel found charge 3 proved in its entirety.

Charge 4

4) Your conduct in Charge 3 amounted to harassment of Colleague 2 in that:

- a) It was unwanted.
- b) It related to Colleague 2's sex.
- c) It had the purpose or effect of:
 - (i) Violating Colleague 2's dignity, and/or
 - (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague 2.

This charge is found proved its entirety.

In reaching this decision, the panel took into account the oral and written evidence of Colleague 2.

The panel noted Colleague 2's evidence that her '*immediate reaction was one of repulsion*' and that she had refused to answer each of the questions set out in charge 3. It therefore considered that Mr Johnson's questions were entirely unwanted.

The panel considered that to ask Colleague 2 about her husband, breast milk and her favourite sexual position plainly related to her sex.

The panel considered that being asked the questions detailed in charge 3 would have been humiliating for Colleague 2 and placed her in an intimidating environment. It accepted Colleague 2's evidence that she had refused to answer on both occasions. Further, Colleague 2's written statement states that Mr Johnson asked her what her favourite sexual position was despite her '*not engaging in the conversation in any way*'.

The panel considered that Mr Johnson's conduct as set out in charge 3, both individually and collectively, amounted to harassment towards Colleague 2.

For the reasons above, the panel found charge 4 proved in its entirety.

Charge 5

5) Made the following comments about patients:

Charge 5a)

a) On the 23 August 2019 stated words to the effect of '*the patient in the room would be going to the pub to get some cock*'.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Witnesses A and F.

The panel had regard to Colleague 6's written statement that states that she observed Mr Johnson tell other members of staff not to worry about a woman on the ward as '*she will be in the pub getting some cock at the weekend*'. Further, Colleague 6 described how she was concerned about this comment and shocked that other members of staff appeared to laugh at this comment. It noted that Colleague 6 reported the issue to Colleague 7 as it made her '*feel angry*'.

The panel noted that Colleague 6's evidence is not corroborated by any other members of staff present when the comment was made, but it considered that her evidence is clear and consistent. Further, Colleague 6 observed this comment on her first day working at the Trust.

For the reasons above, the panel found charge 5a) proved.

Charge 5b)

5) Made the following comments about patients:

b) On a date unknown stated words to the effect of '*I bet her husband didn't make her make noises like that*'.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 4. It noted that Colleague 4 provided a generalised view of Mr Johnson's conduct in her statement to the Trust but had now specified the words used in her written and oral evidence to the NMC. The panel considered that Colleague 4 had provided a clear indication as to why she did not report the matter straight away, namely that she was in a junior position and that she expected her more senior colleagues who witnessed the comment to take action.

The panel had regard to Colleague 4's written statement that stated:

'...he [Mr Johnson] would make inappropriate comments when speaking about conducting vaginal examinations on patients and on one occasion he said something like "I bet her husband didn't make her make noises like I did".

He would never make these comments in front of the patients themselves, but would make them to staff behind closed doors. He would also frequently speak inappropriately about young midwives in terms of their bodies and things like that.'

The panel also had regard to Colleague 4's oral evidence in that she '*wishes she had spoken up at the time*' as Mr Johnson's comments had made her feel '*uncomfortable*'. Further, it noted that while this is the only specific incident referred to in her evidence, Colleague 4 did describe Mr Johnson making comments like this '*all the time*'. The panel had no reason to suspect that Colleague 4 had fabricated any part of her allegation against Mr Johnson.

For the reasons above, the panel found charge 5b) proved.

Charge 5c)

5) Made the following comments about patients:

c) On a date unknown when a patient required a wound pack to be removed, likened it to '*a magic trick, pulling flowers and scarves out of a vagina*' or words to this effect.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 1 and Witness G as well as local admissions made by Mr Johnson.

The panel had regard to Colleague 1's written statement that details the words used and that she reported these concerns to her manager. Witness G's written statement confirms that Colleague 1 reported this comment and that '*she felt upset and disgusted by this*'. Further, in her oral evidence, Colleague 1 advised the panel that she had not seen such a magic trick and that the suggestion of it was '*sexual*' in nature.

The panel also had regard to the Trusts Record of Meeting 6 February 2020 that states, when questioned about using the words detailed in charge 5c), Mr Johnson responded:

'Yes I have used the analogy of the magic trick.'

For the reasons above, the panel found charge 5c) proved.

Charge 5d)

5) Made the following comments about patients:

d) On a date unknown stated words to the effect of when suturing a lady '*there you go I've made you look like a 16 year old again*'.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 6 and Witness G as well as local admissions made by Mr Johnson.

The panel had regard to Witness G's written statement that confirms that Colleague 6 reported Mr Johnson having said the words detailed in charge 5d).

The panel also had regard to the Trusts Record of Meeting 6 February 2020 that states, when questioned about using the words detailed in charge 5d), Mr Johnson stated that he *'may have said like it's 16 again'* and that such a comment was him *'using humour to de-escalate the woman's fear and tension about her wound.'*

For the reasons above, the panel found charge 5d) proved.

Charge 5e)

5) Made the following comments about patients:

e) On a date unknown, when a patient was to attend the Labour Ward, stated words to the effect of *'no I will take her, I have big hands. She won't come back if I see her'*.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 7 and noted that the evidence relied on for this charge is hearsay. It did however consider Colleague 7 to provide clear and consistent evidence from a

professional viewpoint and noted that she claimed to have a '*good working relationship*' with Mr Johnson.

The panel noted that a midwife at the Trust had reported this comment to Colleague 7 and that Colleague 7 had been '*really upset to hear that the Registrant [Mr Johnson] had said this*'. It also had regard to Colleague 7's oral evidence that she had '*no reason to doubt*' that this took place as alleged. Further, Colleague 7 had made every effort to try and convince the original witness to make a statement so that the matter could be dealt with formally, but that they refused due to '*fear of reprisals*'.

The panel noted that Mr Johnson '*totally refuted*' this charge at local level but it preferred Colleague 7's signed statement and oral evidence under affirmation.

For the reasons above, the panel found charge 5e) proved

Charge 6

6) Your conduct in Charge 5 was inappropriate in that:

- a) It was unwanted.
- b) It related to a patient's protected characteristic, namely their sex and/or was sexual in nature.
- c) It had the purpose or effect of:
 - (i) Violating the patient's dignity, and/or
 - (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for anyone hearing your comment(s).

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the oral and written evidence of Witnesses A, F and G as well as local admissions made by Mr Johnson in respect of charges 5c) and 5d).

The panel considered that all of the conduct detailed in charge 5 was inappropriate. It had no evidence before it to suggest that any patient, or indeed colleague, of Mr Johnson's was engaging in conversations of a similar nature so as to warrant him making such comments. It considered the seriousness of making such comments to be exacerbated by the fact that they were said about patients on a labour ward and who were all receiving or seeking treatment pertaining to child birth.

In relation to comments detailed in charges 5a), b), c) and e), all of which were said out of earshot of the patient, the panel considered that any patient would be shocked if they heard such inappropriate, derogatory and graphic comments. The panel considered that in all of these charges, the comments by Mr Johnson related to protected characteristics of each patient and had the purpose of violating their dignity. It noted that all of the professional midwives who had reported these comments had deemed them to be inappropriate.

In consideration of the comments detailed in charge 5d), the panel noted that this was said in the presence of the patient. It considered that to make comments about a patient's genitalia, while they are undergoing an intimate surgical procedure on that area, to constitute a grossly inappropriate comment. The panel could fathom no reason for Mr Johnson to have made this comment and considered that it would be wholly inappropriate regardless of circumstance. It noted that Mr Johnson justified the comment at local level by saying he uses humour to de-escalate situations; the panel found this to be an entirely inappropriate position to take by an advocate of a patient in such a vulnerable situation. It considered that Mr Johnson's comments as detailed in charge 5d) could have had a direct, immediate and serious impact on the patient.

For the reasons above, the panel found charge 6 proved in its entirety.

Charge 7

7) On or before the 25 August 2019 made a video purporting to show you masturbating in one of the toilets at Hull University Teaching Hospitals NHS Trust.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 2, Colleague 3, Witness C, Witness D and Witness G as well as local admissions made by Mr Johnson.

The panel noted that Colleague 3 had produced this video as evidence and that Colleague 2, Witness C and Witness D had also seen the video as part of the local investigation. All three of these witnesses corroborated Colleague 3's evidence that such a video exists.

The panel also noted that, despite denying any knowledge of such a video initially, Mr Johnson had subsequently been shown the video by the Trust in a meeting on 6 February 2020 and confirmed that it was a video of him masturbating.

The panel noted that Witness A had conducted a thorough investigation into the potential location shown in this film and was clear in her oral evidence as to where she believes this was. Witness G indicated to the panel that she '*had no doubt*' that it was filmed on the Trust's property.

The panel took into account contradictory evidence provided by Mr Johnson during the local investigation.

For the reasons above, the panel found charge 7 proved.

Charge 8a)

8) Your conduct at charge 7 was:

a) Sexual in nature.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 2, Colleague 3, Witness C and Witness D as well as local admissions made by Mr Johnson.

The panel considered that, having found it proved that Mr Johnson took a video of himself masturbating, it follows that such conduct is found to be sexual in nature.

For the reasons above, the panel found charge 8a) proved

Charge 8b)

8) Your conduct at charge 7 was:

b) Unprofessional because it purportedly related to your place or work.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 2, Colleague 3, Witness C and Witness D.

The panel noted that all of the witnesses who spoke to this charge found Mr Johnson's conduct as detailed in charge 7 to be unprofessional and that any sexual act carried out in the workplace would be deemed so. It had regard to Witness C's written statement that states:

'This act (being the act of masturbating while on duty) is completely inappropriate and I [Witness C] believe that it is an act of gross misconduct. It is my opinion that this conduct poses a potential safeguarding risk to women. Women trust midwives implicitly during childbirth and midwives have to undertake most intimate examinations. The thought that the Registrant [Mr Johnson] is performing a sexual act while carrying out a shift on the labour ward, where women are in labour, and giving birth, and therefore are at a very vulnerable stage of their lives, is dreadful. The Registrant engaging in this conduct at work, and in such close proximity to these women, does not uphold the standards expected of our profession.'

The panel also considered that a member of the public would view Mr Johnson's conduct as gross, completely unacceptable and not in keeping with the standards expected of a registered midwife.

For the reasons above, the panel found charge 8b) proved.

Charge 9

9) On or before the 25 August 2019 you sent the video as mentioned in charge 7 to Colleague 3.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 3 as well as local admissions made by Mr Johnson.

The panel noted that Colleague 3 provided clear evidence that, on 25 August 2019, she *'received a video from the Registrant [Mr Johnson]'* and that it was *'a video of him masturbating in one of the toilets at work'*. It also noted Colleague 3's evidence that the video was sent by WhatsApp and is timestamped as being sent on *'25 August 2019'*.

The panel also had regard to Mr Johnson account, when asked during a meeting with the Trust on 6 February 2019, why he had sent the video to the person in question (Colleague 3), stating that it was *'personal'*.

For the reasons above, the panel found charge 9 proved.

Charge 10a)

10) Your conduct in Charge 9 amounted to harassment of Colleague 3 in that:

a) It was unwanted.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 2 and Colleague 3 as well as local statements made by My Johnson.

[PRIVATE].

For the reasons above, the panel found charge 10a) proved

Charge 10b)

10) Your conduct in Charge 9 amounted to harassment of Colleague 3 in that:

b) It was of a sexual nature.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 2 and Colleague 3.

The panel considered that, in finding it proved that Mr Johnson sent a video of himself masturbating to Colleague 3, it follows that such conduct is also found proved of being sexual in nature.

For the reasons above, the panel found charge 10b) proved.

Charge 10c)(i)

10) Your conduct in Charge 9 amounted to harassment of Colleague 3 in that:

c) It had the purpose or effect of:

(i) Violating Colleague 3's dignity, and/or

This charge is found NOT proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 3 and local statements made by Mr Johnson.

[PRIVATE].

For the reasons above, the panel found charge 10c)(i) not proved.

Charge 10c)(ii)

10) Your conduct in Charge 9 amounted to harassment of Colleague 3 in that:

c) It had the purpose or effect of:

(ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague 3.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 3.

[PRIVATE].

For the reasons above, the panel found charge 10c)(ii) proved.

Charge 11

11) On the 30 December 2018, using your mobile telephone, took a picture of a patient undergoing a caesarean:

- a) For your personal use.
- b) Without having a professional reason.
- c) Without obtaining written consent from the patient and/or staff members involved.
- d) Sent it to Colleague 3.

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the oral and written evidence of Colleague 2, Colleague 3, Witness C and Witness G as well as local admissions made by Mr Johnson.

The panel had regard to the photograph provided as evidence by Colleague 3 that clearly shows a theatre setting with various clinicians and a patient present. It noted that Colleague 2, Witness C and Witness G corroborate having seen this photograph.

The panel noted that Mr Johnson had initially denied taking or recognising this photograph but had subsequently accepted that he took the photograph for his '*personal reflective process*'. It considered this acknowledgement to confirm that Mr Johnson had taken the photograph for personal use. Further, it had no evidence before it of any professional reason for such a photograph to have been taken. Similarly, the panel had no evidence before it to suggest that any of the subjects in the photograph had provided written consent which, as confirmed by Witness C and Witness G, is the Trust's policy. The panel noted that Mr Johnson claims to have obtained '*verbal consent*' but it had no evidence of this and, in any event, considered that verbal consent would still not comply with the Trust's policy as per Witness C and Witness G's evidence.

The panel noted that Colleague 3 had provided this photograph as evidence, it having been on her mobile phone. This was corroborated by Colleague 2 and Witness C.

For the reasons above, the panel found charge 11 proved in its entirety.

Charge 12

12) On the 31 January 2019, using your mobile telephone, took a picture of a patient undergoing a caesarean:

- a) For your personal use.
- b) Without having a professional reason.
- c) Without obtaining written consent from the patient and/or staff members involved.
- d) Sent it to Colleague 3.

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the oral and written evidence of Colleague 2, Colleague 3, Witness C and Witness G as well as local admissions made by Mr Johnson.

The panel had regard to the photograph provided as evidence by Colleague 3 that clearly shows a theatre setting with various clinicians and a patient present. It noted that Colleague 2, Witness C and Witness G corroborate having seen this photograph.

The panel noted that Mr Johnson had initially denied taking or recognising this photograph but had subsequently accepted that he took the photograph for his '*personal reflective process*'. It considered this acknowledgement to confirm that Mr Johnson had taken the photograph for personal use. Further, it had no evidence before it of any professional

reason for such a photograph to have been taken. Similarly, the panel had no evidence before it to suggest that any of the subjects in the photograph had provided written consent which, as confirmed by Witness C and Witness G, is the Trust's policy. The panel noted that Mr Johnson claims to have obtained '*verbal consent*' but it had no evidence of this and, in any event, considered that verbal consent would still not comply with the Trust's policy as per Witness C and Witness G's evidence.

The panel noted that Colleague 3 had provided this photograph as evidence, it having been on her mobile phone. This was corroborated by Colleague 2 and Witness C.

For the reasons above, the panel found charge 12 proved in its entirety.

Charge 13

13) Your actions in charges 11 and/or 12 demonstrated a lack of integrity because you knew that you did not have any justification and/or consent to take such photographs.

This charge is found proved

In reaching this decision, the panel noted that, having initially denied taking the photographs, it had no other evidence before it to suggest that Mr Johnson appropriately justified his taking of the two photographs in question, nor that he had sought consent via the accepted Trust procedure.

The panel considered it extremely likely that a Band 7 Midwife of Mr Johnson's experience would have known what the standards expected of him were and what the Trust's policy and procedures were. The panel is satisfied that Mr Johnson's actions in charges 11 & 12 demonstrate a lack of integrity.

For the reasons above, the panel found charge 13 proved.

Charge 14

14) On the 6 February 2020 you made the following incorrect statements in respect of the photographs as set out in charges 11 and 12:

- a) That you had not seen them before.
- b) That you had not taken the photographs.
- c) That you did not send them to Colleague 3.

This charge is found proved in its entirety.

In reaching this decision, the panel had regard to the Trusts Record of Meeting 6 February 2020 that stated:

The Trust – *‘Do you recognise anything about the photographs?’*

Mr Johnson – *‘No, only that the theatre is busy.’*

The Trust – *‘Do you recall taking the photos?’*

Mr Johnson – *‘No.’*

The Trust – *‘Do you recall sharing or sending these photos to another work colleague?’*

Mr Johnson – ‘No.’

The Trust – *‘I would like to just clarify my understanding, you do not know anything about the photographs, you are declaring that you have not taken these photographs and you have not sent or shared these photographs with anyone else, have I understood that correct?’*

Mr Johnson – ‘Yes.’

The panel noted that Mr Johnson offered a contradictory position in his email to the NMC dated 11 January 2022 in which he admitted that he had indeed taken the photographs in question.

For the reasons above, the panel found charge 14 proved in its entirety.

Charge 15

15) Your declarations in charge 14a and/or 14b and/or 14c were dishonest because you knew that at the time of making them they were not true.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 3 and its previous finding that Mr Johnson had made the declarations as set out in charge 14.

The panel considered that, having subsequently accepted that he took both the photographs, it follows that Mr Johnson’s initial declarations of not having seen the photographs, or having been the one to take them, are deemed to be dishonest.

The panel had regard to the Trusts Record of Meeting 6 February 2020 in which Mr Johnson was offered numerous opportunities to declare that he was aware of and had taken the photographs but that he had denied this repeatedly.

The panel noted that Mr Johnson claims that Colleague 3 had sent the photos to herself whilst she was in possession of his mobile phone. The panel accept the evidence of Colleague 3 as she was consistent in both her signed statement and evidence under affirmation. The panel took into account its findings in relation to charge 14 and was satisfied that Mr Johnson's declarations in relation to the photographs were dishonest.

For the reasons above, the panel found charge 15 proved.

Charge 16

16) Behaved in a bullying and/or intimidating manner towards Colleague 3:

- a) By attending her home address unannounced on an unknown date.
- b) By sending an email on the 31 January 2020 stating, *'I'm guessing that you have thrown me to the lions'*.
- c) On one or more occasions drove past her home address.
- d) On one or more occasions contacting her through the use of:

- (i) Email.
- (ii) Social media.

This charge is found proved in its entirety

In reaching this decision, the panel took into account the oral and written evidence of Colleague 3.

[PRIVATE].

For the reasons above, the panel found charge 16 proved in its entirety.

Charge 17

17) On or before the 6 June 2019 requested that when Colleague 3 attended a formal meeting that she lie and deny that you kissed each other whilst at work.

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence of Colleague 3 who provided clear and consistent evidence that Mr Johnson had asked her to lie to the Trust. It noted Colleague 3's statement that stated:

'I remember that the Registrant [Mr Johnson] was worried about the meeting because he had a previous warning on his file. I thought that the kiss could be the only thing that the meeting was about. The Registrant told me to lie about the kiss and deny that it had happened. He told me that whatever the meeting was about, just to deny it.'

The panel noted that Mr Johnson denied this allegation. However, the panel preferred the evidence of Colleague 3.

For the reasons above, the panel found charge 17 proved.

Charge 18

18) On or before the 28 January 2020 requested that when Colleague 3 attended a Trust interview that she deny all matters relating to your suspension.

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence of Colleague 3 who provided clear and consistent evidence that Mr Johnson had asked her to lie to the Trust. It noted Colleague 3's statement that stated:

'The Registrant [Mr Johnson] informed me of what had happened that morning and that he had been suspended. He told me that if they interviewed me that I must deny all of it, he then asked me to contact him later that day. However, I didn't contact him.'

The panel noted that Mr Johnson was never questioned regarding this charge and that he has not specifically responded to it other than a general assertion that Colleague 3 was making salacious accusations against him as a result of their relationship ending. However, the panel noted that at various points in the evidence, it appears as though Mr Johnson sought to downplay the seriousness of his relationship with Colleague 3.

The panel noted that Mr Johnson did not appear to accept this allegation. However, the panel preferred the evidence of Colleague 3.

For the reasons above, the panel found charge 18 proved.

Charge 19

19) Your conduct at charge 17 and/or 18 above demonstrated a lack of integrity in that you sought to influence a colleague to be dishonest in order to benefit yourself.

This charge is found proved.

In reaching this decision, the panel took into account its finding at charges 17 and 18 and considered that Mr Johnson, as a senior and experienced practitioner, should have been well aware of the standards expected of him. The panel considered that, in asking Colleague 3 to lie to her employer, Mr Johnson demonstrated a significant lack of integrity. Further, being a senior employee, Mr Johnson should have been aware that it is inappropriate for the subject of an investigation to make informal contact with any other person involved in the investigation.

The panel also considered that Mr Johnson was in a position of power and seniority over Colleague 3 and that it was wholly inappropriate for him to attempt to influence her input into a formal investigation. The panel was of the view that Mr Johnson's motivation behind doing so was more likely than not an attempt to avoid the consequences of his actions and to preserve his employment at the Trust. The panel is satisfied that Mr Johnson's actions in respect of charges 17 & 18 demonstrate a lack of integrity.

For the reasons above, the panel found charge 19 proved.

Charge 20

20) On an unknown date behaved in an intimidating, bullying or unsupportive manner towards Colleague 4 by:

- a) Insisting that no medical review was required before administering medication to a patient.
- b) Stating that she '*was not to bleep the doctor*' to seek a medical review or words to that effect.

c) Insisting that Colleague 4 could administer the medication under the midwife exemptions knowing that Colleague 4 felt uncomfortable in doing so.

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the oral and written evidence of Colleague 4. It considered that Colleague 4 provided clear oral evidence that did not deviate from her written statement. It noted her witness statement that stated:

'I was not sure if this situation fell within the midwife exemptions, and so I wanted to get a doctor to review the patient and prescribe the medication needed. The Registrant [Mr Johnson} told me the medical review was not necessary and that I could give the patient the medication under the midwife exemptions. I still felt quite unsure about this, and so I decided to just bleep the doctor for a review. When I did this the Registrant said asked me what I was doing and why I was bleeping the doctor. The Registrant told me something along the lines that he said it was okay to give the medication and so I needed to go and give the patient the medication now, and that I was not to bleep the doctor.

I felt like I did not know what to do. I did not feel comfortable giving the medication, and it was my registration at stake. I ended up going to a different area where the Registrant was not around and I bleeped the doctor to ask for the review. The doctor came and reviewed the patient, and the doctor was also unsure whether I could give the medication to the patient under the midwife exemptions, so the doctor prescribed the medication for me.'

The panel considered that Colleague 4 was acting within the scope of her duties and had regard to her statement that paints a general picture of Mr Johnson being unsupportive and intimidating towards staff:

'He [Mr Johnson] always seemed to find a way of going against what you were saying or finding an issue with what you were saying. This was not done in a supportive or nurturing way and it was intimidating. He would just make life so difficult sometimes when you were on shift with him.

[...]

... he would give me a difficult workloads, undermine and embarrass me in front of patients and just generally would be unsupportive.'

The panel noted that Mr Johnson was in a position of power and seniority to Colleague 4 and that his responses to her requests for assistance were not supportive. Further, it noted Colleague's 4 clear oral evidence that Mr Johnson *'liked to humiliate you'*.

The panel noted that Mr Johnson, when questioned by the Trust about general allegations of his bullying and intimidating manner, responded with *'that's the saddest thing I've ever heard'*. However, the panel preferred Colleague 4's clear and consistent signed witness statement and oral evidence under affirmation.

For the reasons above, the panel found charge 20 proved in its entirety.

Charge 21

21) On the 1 February 2011 behaved in an intimidating, bullying or unsupportive manner towards Colleague 5:

- a) By undermining Colleague 5's decision that Patient X required an epidural.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 5. It considered that her evidence was clear and powerful and, although the events took place in 2011, she was clear about the impact they had on her as '*she never forgot how she was treated*' by Mr Johnson. The panel had regard to the date of these charges but noted that Colleague 5 had reported these incidents at the end of her shift and was told that the issues raised would be dealt with.

The panel had regard to Colleague 5's statement that states:

'Patient X was in pain and was requesting an epidural, and therefore I requested that the anaesthetist come and administer this to her. When I went to speak to the anaesthetist the Registrant [Mr Johnson] was present. He told me that my Patient X could not have the epidural because she was pre-term and therefore it was not my decision to make.'

[...]

'I would argue that I was in an appropriate position to make this decision, as I was the patient's midwife, her waters had broken and she was in active labour. If the patient was not in active labour, then I would have understood the Registrant's request. The Registrant always needed to have power and control over situations, and I felt that this was his way of doing this in this situation.'

The panel considered that Colleague 5 had been clear in her evidence that she felt '*unsupported*'. It noted that Mr Johnson was a senior midwife in a position of authority and considered that his actions were not appropriate to the role of a supportive Labour Ward Coordinator.

For the reasons above, the panel found charge 21a) proved.

Charge 21b)

21) On the 1 February 2011 behaved in an intimidating, bullying or unsupportive manner towards Colleague 5:

b) By stating that Patient C required a medical review when one was not required.

This charge is found NOT proved.

In reaching this decision, the panel considered that the NMC had not placed before it any evidence as to whether or not Patient C required a medical review. The panel is not satisfied that element b) of the charge has been established, and therefore this charge is not proved.

For the reasons above, the panel found charge 21b) not proved.

Charge 21c)

21) On the 1 February 2011 behaved in an intimidating, bullying or unsupportive manner towards Colleague 5:

c) By taking Colleague 5 to a room, closing the door behind you and standing over Colleague 5 whilst holding the door shut.

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence of Colleague 5. It considered that her evidence was clear and compelling and, although the events took place in 2011, she was clear about the impact they had on her as '*she never forgot how she was treated*' by Mr Johnson. The panel had regard to the date of these charges but noted that Colleague 5 had reported these incidents at the end of her shift and was told that the issues raised would be dealt with.

The panel noted Colleague 5's statement that states:

'Following my conversation with the doctor, the Registrant [Mr Johnson] asked to have a word with me and we went into the room with the drug cupboard. The Registrant closed the door when we went in and he stood over me and had one hand holding the door closed. I don't remember exactly what he said, but he had a go at me because I requested the medical review twice. He said something about it being his ward and he was in charge etc. The way he was standing made me feel entrapped, like I was not able to leave because he was blocking the exit. He also spoke to me in a very aggressive way in terms of his tone of voice and body language. It made me fearful of him and I was very uncomfortable. I started to cry in front of him.

When he was done, I just took my telling off and went back to caring for my patient. Patient X could see that I was upset and had been crying, and the first thing she said to me was "I've got you in trouble haven't I?" I was so sad that she felt that way and that she asked me this question. I told her that she absolutely had not gotten me in trouble and that she was my priority.'

The panel noted Colleague 5's oral evidence that she was '*fearful*' as a result of '*being unable to leave the drug cupboard*' and had been left in tears. It considered Mr Johnson's conduct to be aggressive and intimidating towards Colleague 5 and that his aggressive

and intimidating manner was inappropriate towards any colleague and wholly unsupportive.

For the reasons above, the panel found charge 21c) proved.

Charge 21d)

21) On the 1 February 2011 behaved in an intimidating, bullying or unsupportive manner towards Colleague 5:

d) By stating words to the effect of *'this is my ward and that I am in charge'*.

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence of Colleague 5. It considered that her evidence was clear and compelling and, although the events took place in 2011, she was clear about the impact they had on her as *'she never forgot how she was treated'* by Mr Johnson. The panel had regard to the date of these charges but noted that Colleague 5 had reported these incidents at the end of her shift and was told that the issues raised would be dealt with.

The panel had regard to Colleague 5's statement as detailed above and considered that her evidence in relation to this charge is clear and consistent in that Mr Johnson *'said something about it being his ward and he was in charge'*. It considered this statement to be both unsupportive and intimidating and that such a manner was inappropriate towards any colleague and wholly unsupportive.

For the reasons above, the panel found charge 21d) proved.

Charge 21e)

21) On the 1 February 2011 behaved in an intimidating, bullying or unsupportive manner towards Colleague 5:

e) By speaking to Colleague 5 in an aggressive way through tone of voice and/or body language.

This charge is found proved

In reaching this decision, the panel took account of the evidence of Colleague 5 and Witness D.

In particular, the panel had regard to Colleague 5's NMC witness statement, in which she stated:

'...following my conversation with the doctor, the Registrant [Mr Johnson] asked to have a word with me and we went into the room with the drug cupboard. The Registrant closed the door when we went in and he stood over me and had one hand holding the door closed. I don't remember exactly what he said, but he had a go at me because I requested the medical review twice. He said something about it being his ward and he was in charge etc. The way he was standing made feel entrapped, like I was not able to leave because he was blocking the exit. He also spoke to me in a very aggressive way in terms of his tone of voice and body language. It made me fearful of him and I was very uncomfortable. I started to cry in front of him.'

In considering this charge, the panel had regard to Colleague 5's oral evidence. It considered Colleague 5 to have provided a compelling account of this incident, as she was able to explain to the panel how Mr Johnson's behaviour towards her had made her

feel. Colleague 5 told the panel that she felt undermined, scared and intimidated. She said that she has never forgotten the way she was spoken to as the incident took place near the start of her career, and no one has spoken to her like that since. The panel considered Colleague 5 had a good recollection of events.

The panel noted that Colleague 5's evidence was also supported by her reporting the incident to Witness D at the end of her shift. The panel acknowledged that the reason for her doing so was not to get Mr Johnson into trouble, but to try and resolve the issue, as she was unclear whether she had done something to upset him.

The panel determined that Mr Johnson used an aggressive tone to speak to Colleague 5 in, which the panel considered to be unacceptable in a professional working relationship. The panel was satisfied that Mr Johnson was attempting to assert his dominance over Colleague 5.

For the reasons above, the panel found charge 21e) proved.

Charge 21f)

21) On the 1 February 2011 behaved in an intimidating, bullying or unsupportive manner towards Colleague 5:

f) By stating to Patient C in front of Colleague 5, words to the effect of *'that I am the reason that you had to wait before you could have the epidural'*.

This charge is found proved

In reaching this decision, the panel took account of the evidence of Colleague 5 and Witness D.

In particular, the panel had regard to Colleague 5's NMC witness statement, in which she stated:

'I will never forget that the Registrant [Mr Johnson] made a point of coming to Patient C's room after he told me off. He was wearing scrubs and he introduced himself and said he was in charge. He told Patient C that he was the reason that she had to wait before she could be given the epidural. I remember that she was quite unhappy about this. I felt that this was just another power move from the Registrant, and it was quite humiliating.'

In considering this charge, the panel had regard to Colleague 5's oral evidence. It reminded itself that it had found Colleague 5 to have provided a compelling account of this incident, as she was able to explain to the panel how Mr Johnson's behaviour towards her had made her feel. Colleague 5 told the panel that she felt undermined, scared and intimidated. She said that she has never forgotten the way she was spoken too as the incident took place near the start of her career, and no one has spoken to her like that since. The panel considered that Colleague 5 had a good recollection of events.

The panel was of the view that in stating to Patient C, words to the effect of *'I am the reason that you had to wait before you could have the epidural'*, Mr Johnson was again attempting to stamp his authority on the situation. It received evidence from Colleague 5 to suggest that Mr Johnson was attempting to assert his dominance, and Patient C herself was *'unhappy'* at the way Mr Johnson was behaving. The panel was satisfied that Mr Johnson behaved in an undermining and unsupportive manner towards Colleague 5, by stating to Patient C in front of Colleague 5, words to the effect of *'that I am the reason that you had to wait before you could have the epidural'*.

For the reasons above, the panel found charge 21f) proved.

Charge 22

22) Behaved in an intimidating, bullying or unsupportive manner towards Colleague 2 by stating words to the effect of *'I know treasure, you're working really hard but I just can't help you'* on an unknown date in 2017.

This charge is found proved

In reaching this decision, the panel took account of Colleague 2's evidence, who stated in her NMC witness statement that:

'The Registrant [Mr Johnson] was the labour ward coordinator on shift on this occasion, and so I was liaising with him to get the patient moved to the labour ward. The Registrant spoke to me in a very patronising tone and was telling me that all of the rooms on the labour ward were full and that all of the labour ward midwives were busy. He said to me "I know treasure, you're working really hard but I just can't help you". When he said this, the language that he used and the way that he said it was as though he was speaking to a child. He was just patronising and very unhelpful.'

The panel noted from Colleague 2's oral evidence that this was one of the first times she had had any contact with Mr Johnson. It considered her to have given a clear and compelling account of this incident, as she was able to explain to the panel why this conversation had stuck in her mind.

Colleague 2 told the panel that she felt like she was being *'spoken to as if she were a child'* and that she had found Mr Johnson's language to be *'patronising'*. The panel noted that Colleague 2 herself was an experienced midwife and that she had worked at the Trust previously.

In considering this charge, the panel was satisfied that Mr Johnson had behaved in an unsupportive manner towards Colleague 2, by stating words to the effect of '*I know treasure, you're working really hard but I just can't help you*'. Whilst the panel determined that this behaviour did not meet the threshold for bullying or intimidation in this specific instance, the panel considered the language used by Mr Johnson to be both patronising and undermining. Colleague 2 was raising something in relation to Patient C's care with Mr Johnson, and his response was unhelpful and inappropriate in attempting to get the issue resolved. The panel decided that instead of having a professional conversation with Colleague 2, Mr Johnson had tried to make it into a personal matter.

For the reasons above, the panel found charge 22 proved.

Charge 23a)

23) Behaved in an intimidating, bullying or unsupportive manner towards Colleague 6:

a) When Colleague 6 requested support with a suturing procedure with a patient, and in front of the patient, stated words to the effect of '*what does the NMC say about technique for repair?*'

This charge is found proved

In reaching this decision, the panel took account of Colleague 6's evidence, who stated in her NMC witness statement that:

'On one occasion, which I think may have been my first shift on the Labour Ward, I requested the Registrant's [Mr Johnson] support with suturing procedure. I had completed my competencies on suturing, but as I had taken a few months off between my role at Rotherham Hospital and coming to the Trust, I just wanted

some support to make sure that I was carrying out the procedure correctly. Part of the Registrant's role as the Labour Ward Coordinator is to provide support to staff in clinical situations.

The Registrant's attitude towards me at this time was very much as though he would not expect that I would need support with this procedure as a Band 6 Midwife...instead of providing me with the practical guidance and support that I needed, he was questioning me on the NMC Guidelines...The Registrant was not doing this in a nurturing way, but was quite intimidating and just unhelpful.

All of this was carried out in front of the patient and I could see that it made her uncomfortable.'

The panel also noted that Colleague 6 had recounted her version of events to Witness G in her Trust interview.

In considering this charge, the panel had regard to Colleague 6's oral evidence. It considered Colleague 6 to have provided a compelling account of this incident, which was also consistent with her documentary evidence. Colleague 6 was able to articulate to the panel how Mr Johnson's conduct towards her had made her feel, and that this was intimidating and unhelpful.

In taking account of the above, the panel was satisfied that Mr Johnson had behaved in an intimidating, bullying or unsupportive manner towards Colleague 6, in saying words to the effect of '*what does the NMC say about technique for repair?*' in front of a patient. The panel received evidence to suggest that the patient was sufficiently concerned by Mr Johnson's actions so as to say "*oh who does he think he is?*" to Colleague 6.

For the reasons above, the panel found charge 23a proved.

Charge 23b)

23) Behaved in an intimidating, bullying or unsupportive manner towards Colleague 6:

b) After Colleague 6 had triaged a patient, stated to her in front of colleagues, words to the effect of *'you need to learn the art of triage, and to be able to tell the difference patients who needed to come in and those who needed to stay at home'*.

This charge is found proved

In reaching this decision, the panel took account of Colleague 6's evidence, who stated in her NMC witness statement that:

'After I got off the phone, the Registrant [Mr Johnson] asked me if I had been speaking to this particular patient. The Registrant told me that I needed to learn the art of triage, and to be able to tell the difference patients who needed to come in and those who needed to stay at home.'

The Registrant had this discussion with me in front of my colleagues, and was not doing this in a nurturing way. The Registrant made me feel stupid for telling the patient that it was okay to come in, and was indicating that I should have told her that she needed to stay at home.'

The panel noted that the patient in question had telephoned the labour ward several times, and was informing Colleague 6 that she was currently on her way to the hospital as she believed she was about to give birth.

The panel determined that it was intimidating and unsupportive of Mr Johnson to say to Colleague 6 *'you need to learn the art of triage, and to be able to tell the difference patients who needed to come in and those who needed to stay at home'* in front of colleagues, when Colleague 6 had just triaged a patient. It considered Mr Johnson to have been attempting to belittle Colleague 6's judgment, despite her having just spoken on the telephone with the patient, and her being in the best position to assess whether it was suitable for the patient to come into the ward.

For the reasons above, the panel found charge 23b) proved.

Charge 23c)

23) Behaved in an intimidating, bullying or unsupportive manner towards Colleague 6:

c) Stated to Colleague 6, in relation to the triaged patient, words to the effect of *'you invited her in so you can stay here and deal with/see her'*, preventing her from assisting on a busy ward.

This charge is found proved

In reaching this decision, the panel took account of Colleague 6's evidence, who stated in her NMC witness statement that:

'Following this, the ward downstairs needed some help as it was very busy and I offered to go and support them. However, the Registrant [Mr Johnson] made me stay on the Labour Ward to triage the patient who I spoke with over the phone. He said something to the effect of "you invited her in so you can stay here and deal with/see her

[...]

Again, this made me feel like I had done something wrong.'

In considering this charge, the panel had regard to Colleague 6's oral evidence. It reminded itself that it had found Colleague 6 to have provided a compelling account of this incident, and that it was also consistent with her documentary evidence.

The panel noted that when the patient that Colleague 6 had triaged by telephoned arrived on the Labour Ward, Colleague 6 was initially concerned as to what Mr Johnson would say, given that it did not look like the patient was about to give birth. Colleague 6 spoke of her relief when the patient ended up delivering her baby very rapidly after her attending the ward, as she was worried about what the repercussions may have been for her in making a wrong decision. This evidence compounded the suggestion that Colleague 6 felt intimidated by Mr Johnson.

The panel considered it to have been inappropriate of Mr Johnson to say to Colleague 6 '*you invited her in so you can stay here and deal with/see her*'. It considered Mr Johnson's attitude in this respect to be unsupportive to both Colleague 6, and the ward which required some assistance.

For the reasons above, the panel found charge 23c) proved.

Charge 23d)

23) Behaved in an intimidating, bullying or unsupportive manner towards Colleague 6:

d) In relation to another patient whereby Colleague 6 suggested to the medical team that a second passive hour would be appropriate, said words to the effect of *'oh well we don't do that here, it is not protocol'*.

This charge is found proved

In reaching this decision, the panel took account of Colleague 6's evidence, who stated in her NMC witness statement that:

'I was caring for a patient on Labour ward who was having a passive hour in the second stage labour with an epidural.

I recall that the doctors had come to do the ward rounds on the patient, and the Registrant [Mr Johnson] was with them. During this time, I was trying to be helpful and discussed with the medical team that it was the patient's first child, and that she had just had a passive hour, but suggested that it may be appropriate for her to have a second passive hour. The patient was fine at this time and I thought that she met the criteria and that it would be in her best interest, However, when I suggested this to the medical team, the Registrant said something like 'oh well we don't do that here, it is not protocol'.

The Registrant said this this in front of the patient, and I felt like it undermined my opinion. I felt like the Registrant's comment, made me look like I did not know what I was talking about, and I was worried that the patient may doubt my abilities as a midwife. However, the consultant agreed with my suggestion to allow the patient to have a second passive hour and that is what we did.' [sic]

In considering this charge, the panel had regard to Colleague 6's oral evidence. It reminded itself that it had found Colleague 6 to have provided a compelling account of this incident, and that it was also consistent with her documentary evidence.

The panel considered Mr Johnson to have undermined Colleague 6's clinical opinion and on this occasion in front of a patient. Despite the medical team agreeing with Colleague 6, the panel received evidence from her to suggest that she felt thoroughly embarrassed by Mr Johnson's behaviour towards her, as it made her look like she did not know what she was doing.

The panel considered Mr Johnson, who was in a senior position, to have belittled Colleague 6's clinical judgment. Colleague 6 herself commented that it came across as if Mr Johnson was trying to '*shut me down*'.

The panel determined it to have been unsupportive of Mr Johnson to say to Colleague 6 '*oh well we don't do that here, it is not protocol*'.

For the reasons above, the panel found charge 23d) proved.

Charge 24

24) In front of Colleague 6 behaved in an intimidating, bullying or unsupportive manner towards another midwife:

- a) In relation to decelerations on a CTG trace.
- b) By quizzing the midwife on matters not in a nurturing way.

These charges are found proved

In reaching this decision, the panel took account of Colleague 6's evidence, who stated in her NMC witness statement that:

'I have witnessed the Registrant [Mr Johnson] treating other staff in the same manner and can think of one example where a newly qualified member of staff was asking the Registrant for some support with decelerations on CTG trace. Instead of being supportive, the Registrant was quizzing her on things, and not in a nurturing way. I could see that the midwife was uncomfortable and very unsure. It's perfectly reasonable for the Registrant to ask staff questions on what the concerns are etc. However, it is more the way that he goes about it that makes staff very uncomfortable.'

In considering this charge, the panel noted that it did not hear evidence from the midwife in question, but did hear clear and consistent evidence from Colleague 6 who directly witnessed the interaction. The panel noted that Colleague 6's evidence is clear that Mr Johnson's behaviour towards the midwife was unsupportive and it accepted her evidence that Mr Johnson did not appear to be acting as a nurturing supervisor.

The panel had no evidence to confirm that the midwife felt intimidated or bullied by Mr Johnson, despite his unsupportive behaviour.

For the reasons above, the panel found charge 24 proved in its entirety.

Charge 25a)

25) On one or more occasions, demonstrated poor management and decision making skills:

a) By refusing to and/or delaying admission of patients to the Labour Ward.

This charge is found proved

In reaching this decision, the panel took into account the oral and written evidence of Colleague 2, Colleague 7, Colleague 5, Witness A, Witness D, Witness E, Witness F and Witness G.

In particular, the panel had regard to Witness D's NMC witness statement, in which she had stated that:

'When the Registrant [Mr Johnson] was asked about the incident as part of the serious incident investigation, he explained that his reason for preventing this patient from coming up to the labour ward was that there was already another emergency on the ward. When I looked into this other emergency situation that the Registrant mentioned, we decided that this patient that [Colleague 5] and [Witness B] were trying to get transferred to the labour ward was more of a priority and that the other situation should have waited until this patient had been addressed. Therefore, there was a concern about the Registrant's prioritisation of patients, and the serious incident investigation concluded that the Registrant had failed to prioritise properly.'

Witness D confirmed that this was the position in her oral evidence, and this was corroborated by her and Witness E having concerns reported to them in this respect. Witness G's investigation into this incident further supported the suggestion that Mr Johnson had demonstrated poor management and decision making skills by refusing to and/or delaying admission of patients to the Labour Ward.

The panel considered it to be Mr Johnson's responsibility, as Labour Ward Coordinator, to ensure the safe and appropriate transfer of patients between the maternity wards. He would have been expected to coordinate patient flow within the Maternity Unit, admit and transfer patients to and from the Labour Ward expeditiously as part of his role. The panel heard evidence that there was no valid reason to refuse or delay admissions when midwives were able to be allocated to patients. The panel was informed by several

witnesses that Mr Johnson was known as '*the gatekeeper*'. The panel considered that blocking patient flow could have impacted and compromised patient care.

The panel noted that Mr Johnson refuted this charge at local level and stated that he had to take into consideration lots of different factors in order to prioritise and accept women onto the ward. Further, he believed that he made the correct decisions for the safe care of woman and babies.

The panel rejected Mr Johnson's position and preferred the evidence of numerous witnesses who spoke to Mr Johnson having blocked patient flow on numerous occasions.

For the reasons above, the panel found charge 25a) proved.

Charge 25b)

25) On one or more occasions, demonstrated poor management and decision making skills:

b) Making excuses not to transfer patients to the Labour Ward by stating words to the effect of:

(i) At the beginning of the shift '*we will clear the decks before we bring up any inductions*'.

(ii) In the middle of the shift, '*we will all have our breaks before we bring any inductions up*'.

(iii) Towards the end of the shift, '*we aren't going to bring any inductions up, then day staff can be the masters of their own destiny*'.

These charges are found proved in their entirety

In reaching this decision, the panel took account of Witness A's evidence, who stated in her NMC witness statement that:

'The Registrant [Mr Johnson] would be very reluctant to bring patients on to the labour ward unless he absolutely had to. There have been situations where the labour ward was quiet and the midwives were without patients, but the Registrant still was not willing to allow patients to be admitted to the ward. I don't know why. Particularly, I have witnessed his reluctance to bring any patients needing to be induced onto the labour ward. His standard excuses would be as follows:

- a. At the beginning of the shift he would say something like "we will clear the decks before we bring up any inductions";*
- b. In the middle of the shift he would say something like "we will all have our breaks before we bring any inductions up"; and*
- c. Towards the end of the shift he would say "we aren't going to bring any inductions up, then the day staff can be the masters of their own destiny".'*

The panel considered Witness A's oral evidence to be consistent with that of her documentary evidence. It considered her account to be compelling, noting as it did, that she was specific on the language used and the general demeanour of Mr Johnson when on shift.

The panel was satisfied from the evidence it had received that Mr Johnson had, on more than one occasion, demonstrated poor management and decision making skills by refusing transfer of women clinically appropriate to the Labour Ward. The panel determined that the language used was wholly inappropriate to that expected of a senior midwife and that his poor management and decision making could have significantly impacted on patient care and teamwork within the Maternity Unit.

The panel noted that Mr Johnson stated that he would have expected a Datix (the Trust's system for reporting incidents) to have been completed if staff had any issues with his management or decision making skills. However, the panel heard from numerous witnesses who stated that staff were hesitant to complete Datix's regarding Mr Johnson as he was a tier 2 Datix reviewer which meant he would see any Datix's completed and be aware of who had raised them.

For the reasons above, the panel found charge 25b) proved in its entirety.

Charge 25c)

25) On one or more occasions, demonstrated poor management and decision making skills:

c) By writing the patient's name on the board in the Labour Ward stating words to the effect of '*to shut her up*', referring to a consultant that requested a patient transfer.

This charge is found proved

In reaching this decision, the panel took account of Witness A's evidence, who stated in her NMC witness statement that:

'I recall a particular situation during a nightshift where one of the consultants requested that a patient be moved to the labour ward. The Registrant [Mr Johnson] wrote the patient's name on the board in the labour ward to give the appearance as though he was bringing the patient up. I recall he assigned the patient to Room 3 or 4. The Registrant had no intention of bringing the patient up to the labour ward, and writing her name on the board was his way of manipulating the situation to make it look as though he was preparing to bring her up. In his words, the Registrant said

that he was putting the patient's name on the board to 'shut her up' and he was referring to the consultant. [sic].

The panel reminded itself that it had found Witness A's oral evidence to be consistent with her documentary evidence. It considered her to have had a good recollection of this particular incident, despite her not being able to remember the date, or the name of the patient.

Nonetheless, the panel was satisfied from the evidence it had received that Mr Johnson had demonstrated poor management and decision making skills by writing the patient's name on the board in the Labour Ward and stating words to the effect of '*to shut her up*', when referring to a consultant that had requested that a patient be transferred. It determined that the language used by Mr Johnson in reference to the consultant was inappropriate, and it considered his all-round behaviour to be detrimental to safe and effective practice. A consultant had made a clinical decision regarding the risk to a patient which required her transfer to the Labour Ward and the panel heard evidence that suggested that Mr Johnson had no intention of doing this.

For the reasons above, the panel found charge 25c) proved.

Charge 25d)

25) On one or more occasions, demonstrated poor management and decision making skills:

d) By keeping shifts quiet in order that midwives can relax and/or socialise with you in the office.

This charge is found proved

In reaching this decision, the panel took account of Colleague 2, Witness A and Witness D's evidence.

In particular, the panel had regard to Colleague 2's NMC witness statement, in which she had stated:

'The impact of the Registrant [Mr Johnson] refusing to bring up the inductions to the labour ward overnight, is that this creates a backlog of patients. This is because these ladies will have to be brought up to the labour ward in the morning to be induced and they will then labour all day and will usually give birth the following evening/overnight. The labour ward would then have to accommodate these inductions on top of the additional patients going into labour, and it creates very hectic shifts for the midwives on the dayshift and following nightshift.

As our nightshift was very quiet, the Registrant should have brought the inductions up to be induced so that they would labour throughout the night, and so that they could give birth and be moved to the postnatal ward in the morning or sometime during the following day.

The Registrant blocking patients from coming up to the labour ward happened regularly, and had been going on for a long time.'

The panel also noted that Colleague 2 had reported the issue of Mr Johnson blocking patients to Colleague 7.

Furthermore, this was supported by the evidence of Witness A, who stated in her NMC witness statement that:

'I can't recall any further specific examples of situations where he [Mr Johnson] blocked patients from being admitted to labour ward. But I can say that this happened all the time. It sticks in my mind. Every shift that I worked with him, I knew that minimal work would be done. When the Registrant was in charge, there would often be staff without a patient, staff that should be being utilised instead of sitting around. Some of the staff would just sit around doing nothing during shifts with the Registrant, and others would try to find tasks to do or use the opportunity to complete mandatory training.'

The panel also heard oral evidence from Witness D who informed it that Mr Johnson would often keep the staff members he liked free so that he could socialise with them in the office. The panel considered this to be consistent with the other evidence it had received in respect of this charge, and the panel was satisfied that there was sufficient evidence to find this charge proved.

The panel determined that this behaviour could have had a significant detrimental effect on patients, as it could have delayed treatment they required before giving birth. This delay could also have had ramifications on following shifts as it could have interrupted planned admissions to the Labour Ward.

For the reasons above, the panel found charge 25d) proved.

Charge 25e)

25) On one or more occasions, demonstrated poor management and decision making skills:

e) By allocating complex patients to midwives who you did not want to be with on shift.

This charge is found proved

In reaching this decision, the panel took account of Colleague 2's clear and consistent evidence. It noted that Colleague 2 stated in her NMC witness statement that:

'He [Mr Johnson] will allocate certain midwives who he does not want hanging around with him, to patients who are complex and who will require a lot of attention, so that these midwives are constantly busy. On the other hand, he will allocate the easier patients to midwives who he wants to hang around with, as these patients generally will require less attention throughout the night.'

The panel noted Colleague 2's candidness in stating that Mr Johnson '*didn't seem to mind her*' and that she felt compelled to raise his conduct with Colleague 7 as, after one 12-hour nightshift, she '*did not have a single patient*'.

For the reasons above, the panel found charge 25e) proved.

Charge 25f)

25) On one or more occasions, demonstrated poor management and decision making skills:

f) By reallocating a midwife away from a patient that required constant care throughout the shift.

This charge is found NOT proved

In reaching this decision, the panel took account of Witness D's evidence, who stated in her NMC witness statement that:

'Towards the end of the shift, the Registrant [Mr Johnson] pulled [Colleague 8] away from this patient and told her to go and assist another midwife with a birth with high risk of shoulder dystocia in another room. This meant that the patient was left unattended between the hours of 05:15 hrs and 06:30hrs. No reviews were done on the patient during this time.

[...]

Trust guidelines for care of women in labour state that women in established labour should not be left alone, except for short periods of time (unless the patient requests this) – see page 8 of the serious incident report. Therefore, the panel felt that it was not appropriate for this patient to have been left alone. [sic].

However, despite Witness D's evidence, this panel noted from the serious incident report that there was found to be no management failings on the part of Mr Johnson in reallocating Colleague 8 to a different patient. The panel who reviewed this matter as part of the serious incident report concluded that the patient had received an appropriate level of care, all other guidelines were followed appropriately and no other action could have been undertaken to prevent the distressing event.

Whilst the panel acknowledged that it may have been a poor management decision to reallocate a midwife away from this patient with the risk of premature birth, the panel considered that there was insufficient evidence presented by the NMC in support of this charge in that the patient in question required constant care. The patient was not regarded as being in established labour at the point Mr Johnson reallocated Colleague 8, so there is a lack of evidence to demonstrate that it would have been inappropriate for the patient to be left on her own.

For the reasons above, the panel found charge 25f) not proved.

Charge 26a)

26) Failed to maintain behaviour adequate to a management position:

a) By disappearing whilst on duty on one or more occasions, in particular:

- i. On the 27 July 2019.
- ii. On the 20 April 2019.

These charges are found proved

In reaching this decision, the panel took account of Colleague 3 and Witness A's evidence, as well as the evidence of Mr Johnson.

The panel noted that in order for Mr Johnson to have 'failed' to do something, there must first be a duty imposed on him to act in a certain way. The panel considered there to be a duty imposed on Mr Johnson to maintain behaviour adequate to a management position as he was a Band 7 Midwife who was in a managerial position when on shift. This is also supported by Mr Johnson's own evidence as he is clearly sets out his own management responsibilities in his Trust interview.

In considering charge 26a)(i), the panel noted that in Colleague 3's NMC witness statement, she had stated that:

'On 20 August 2019 the Registrant [Mr Johnson] and I were both on shift. I was doing a shift on the birth centre. I can't remember the reason that I went to the labour ward specifically, but I think I was transferring a patient, or perhaps I was pulled on to the labour ward for another reason.'

However, I was in the office on the labour ward and the Registrant handed over the medication keys to the Band 6 and said that he needed to go and move his car. However, he told me that he was really going down to Pulse and Cocktails (adult entertainment store). He said something about him needing to go before he went on holiday, and that this was the only chance he had to get there. I remember saying to him that he should not leave the ward. However, he left in his scrubs and went.

[...]

On another occasion, I was not on shift but was at Starbucks getting a coffee and he had asked me to bring him one. This was on 27 July 2019. I drove over to the Hospital and he came outside and sat in my car. I think he was with me for about 30 minutes or so.'

Colleague 3 confirmed this position to the panel in her oral evidence.

Mr Johnson denied the allegations in his Trust interview and stated that he never left work other than to attend a funeral.

Nonetheless, the panel noted that Colleague 3's evidence was also supported by the evidence of Colleague 2, who Colleague 3 had initially raised the concern with. Colleague 2 decided to report Mr Johnson to the Head of Midwifery based on some of this information.

There was also more generic evidence provided by other registered midwives on wards that Mr Johnson was said to be responsible for, as they suggested that he could often not be found within the ward environment. For example, Witness A had indicated that her

nickname for Mr Johnson was '*the Scarlett Pimpernel*', and there was evidence to suggest that Mr Johnson enjoyed being referred to as this.

Therefore, the panel considered there to be supportive evidence of what Colleague 3 was saying. It preferred the clear and consistent evidence of Colleague 3, in contrast to that of Mr Johnson's evidence, and it determined that by disappearing whilst on duty two separate occasions, Mr Johnson had failed to maintain behaviour adequate to a management position.

For the reasons above, the panel found both charges 26a)(i) and 26a)(ii) proved.

Charge 26b)

26) Failed to maintain behaviour adequate to a management position:

b) By failing to notify staff of your whereabouts on one or more occasions.

This charge is found proved

In reaching this decision, the panel took account of Witness A, Witness E and Witness F's evidence, as well as the evidence of Mr Johnson.

In particular, the panel had regard to Witness A's NMC witness statement, in which she had stated:

'...we borrowed a midwife from Rowan ward as we were busy. Around 5:40am, Rowan ward rang asking for their midwife back as it was getting busy on the ward. I needed to speak to the Registrant [Mr Johnson] to get his approval for her to go

back. However, I could not find him anywhere. I searched for him for about 15 minutes. Eventually he reappeared on the labour ward...

I cannot think of any further specific examples, but I would say that this conduct happened on practically every nightshift that I worked with the Registrant. However, I qualify this by saying that it would really only happen on the nightshifts where he was not working with another Band 7. However, if he was the only Band 7 on shift and certain midwives were not on he knew he could get away with it more and he would just disappear.

It is quite dangerous working a shift when you don't know where the Band 7 is...He is the first point of call to staff in clinical situations, and is supposed to provide support to staff and coordinate the staff and medical teams in the event of an emergency.'

In her oral evidence, Witness A explained to the panel that she would be 'really cross' with Mr Johnson because she had wasted so much time looking for him when on shift. Witness A told the panel that she had challenged Mr Johnson as to his whereabouts, and he himself confirms this was the case in his Trust interview.

The panel noted that Witness A's account was also supported by the evidence of Witness F, as she stated in her NMC witness statement that:

'During my interview on 3 February 2020 I raised a concern that the Registrant [Mr Johnson] would disappear from the labour ward during shifts and no one would be able to find him. This happened frequently and mostly during nightshifts...

The Registrant would only tell us if he was going on a formal break, otherwise he would just disappear and we would not know where he was. This was concerning

as he was not accessible to staff and it meant that there was no senior support for junior staff in clinical situations.'

Witness E was also aware of concerns about Mr Johnson disappearing when on shift.

From the evidence before it, the panel noted that it heard evidence from three staff members raising concerns as to the whereabouts of Mr Johnson when he was on shift as a Band 7 Midwife. It considered all three witnesses' evidence to be consistent and corroborated, and it preferred their evidence to that of Mr Johnson. The panel found the NMC witnesses to be clear in their accounts in explaining that Mr Johnson often disappeared when on shift, failing to notify staff of his whereabouts on one or more occasions. In so doing, the panel considered Mr Johnson to have failed to maintain behaviour adequate to a management position.

For the reasons above, the panel found charge 26b) proved.

Charge 26c)

26) Failed to maintain behaviour adequate to a management position:

c) By failing to present yourself when emergencies arise on one or more occasions.

This charge is found proved

In reaching this decision, the panel took account of Colleague 4's evidence, who stated in her NMC witness statement that:

'I don't remember the dates or the precise details of these incidents but I am able to recall generally what happened:

a. The first situation was a shift where there were two post-partum haemorrhages ('PPH') which happened on the birth centre. He [Mr Johnson] was the Band 7 on shift. I pulled the emergency alarm. As the Band 7, the Registrant should have attended these emergencies promptly. Other staff including doctors attended, but the Registrant did not attend. The only reason why the Registrant should not have attended was if there was another emergency situation happening that he was dealing with. I cannot be sure that this was not the case, but the response by the doctors to the emergency alarm suggested that there was not any other emergencies going on at that time;

b. The second situation which occurred was during a birth. The woman was standing up and as the baby was born, the cord (attaching the baby to the placenta) snapped. When this happens it can cause the baby's blood to pour out of the cord and so the cord needs to be clamped very quickly. Usually what would happen is that we would clamp the cord prior to cutting it. We managed to get the cord clamped but the baby was very pale and required resuscitation. We sounded the emergency alarm and while other midwives from the labour ward attended, the Registrant did not attend. I don't know why, but I recall that even after the incident he did not come to check to see what had happened and whether everything was okay. He did not come at all.'

The panel considered Colleague 4's oral evidence to be consistent with that of her documentary evidence, and it considered her to have provided a compelling account. The panel found Colleague 4 to offer clear evidence and considered that she had a good recollection of the incidents.

Colleague 4 informed the panel that when the emergency cord was pulled the alarm could be heard across the Labour Ward and midwife led unit, and that she would have expected

Mr Johnson to attend in emergency situations. She stated that it was clear to her that there was no other emergency situation ongoing by the response of the doctors who attended to the emergency alarm.

Colleague 4's evidence was also supported by the oral evidence of Colleague 6, who told the panel that, in her view, Mr Johnson did not present himself when emergencies arise.

The panel was satisfied from the evidence it heard that Mr Johnson failed to present himself when an emergency arose on one or more occasions. It determined that in finding this to be the case, Mr Johnson had failed to maintain behaviour adequate to a management position.

For the reasons above, the panel found charge 26c) proved.

Charge 26d)

26) Failed to maintain behaviour adequate to a management position:

d) By failing to wear corporate uniform identifying you as a midwife on one or more occasions.

This charge is found proved

In reaching this decision, the panel took account of the evidence of Colleague 5, Colleague 7, Witness A, Witness B, Witness E and Witness G, as well as the evidence of Mr Johnson.

In particular, the panel had regard to Colleague 7's NMC witness statement, in which she stated:

'There was also a concern that the Registrant [Mr Johnson] never wore his uniform which is used to identify him as a midwife, and also the coordinator on shift...

It is important that the Registrant is easily identifiable for safety reasons, so that all staff can know who is in charge, and also so that that any patients or visitors can readily identify the midwife in charge if required.'

The panel considered this to be supported by the evidence of Witness G, who stated in her NMC witness statement that:

'As a Band 7 Midwife, the Registrant [Mr Johnson] would have had a specific uniform to wear. He is required to wear this as a part of his role. Scrubs are what the surgeons and consultants wear, and by wearing scrubs, the Registrant gives a false impression to visitors and staff that he is part of the medical teams.

During the interview on 6 February 2020 with the Registrant, we asked him why he wore scrubs instead of his midwifery uniform. The Registrant said that he felt that his uniform was a demarcation of his status as coordinator and he did not like that as he was not a power person and was more of a team person. He said that he felt this was the right thing for him to do to reduce the demarcation between staff, and that he did not need to garner respect within the team by wearing his coordinator uniform.'

In taking account of the above, the panel noted that Mr Johnson did not appear to deny to Witness G that he did not wear his corporate uniform on one or more occasions when on shift. Mr Johnson acknowledged in his Trust interview that there is a uniform policy that he should be complying with but, nonetheless, the evidence suggests that he knowingly chose not to wear his corporate uniform.

The panel also received evidence to suggest that scrubs should only have been worn when staff were going into theatre, and that they should be removed a short time after coming out of theatre. However, there was an acknowledgement from the Trust that staff may remain in scrubs if it was coming towards the end of their shift. The evidence the panel received was that Mr Johnson would regularly wear scrubs when he was not clinically required to do so.

The panel accepted Colleague 7's explanation as to why it was important for Mr Johnson to wear his corporate uniform, as it would have made him easily identifiable for safety reasons, so that all staff, patients and visitors knew who was in charge of the shift.

The panel considered Colleague 7's oral evidence to be consistent with that of her documentary evidence, and it considered her to have provided a compelling account. The panel found Colleague 7 to offer clear evidence and considered that she had a good recollection of the incidents.

The panel determined that Mr Johnson failed to wear his corporate uniform which would have identified him as a midwife on one or more occasions.

For the reasons above, the panel found charge 26d) proved.

Charge 26e)

26) Failed to maintain behaviour adequate to a management position:

e) By wearing scrubs when requested not to on one or more occasions.

This charge is found proved

In reaching this decision, the panel took account of the evidence of Witness C, Witness E, Witness G and Colleague 7, as well as the evidence of Mr Johnson.

In particular, the panel had regard to Colleague 7's NMC witness statement, in which she stated:

'There was also a concern that the Registrant [Mr Johnson] never wore his uniform which is used to identify him as a midwife, and also the coordinator on shift. Instead the Registrant would wear scrubs. This was a concern before I came into post as the Labour Ward Matron.

As soon as I came into post, I addressed the concern with the Registrant and requested that he wear his allocated uniform. The reason that I requested the Registrant to do this, is because we have a corporate uniform on display in the Labour ward to demonstrate to patients, visitors to the appearance of staff members and the seniority/grade of the staff members based on their uniform. Therefore, the Registrant's uniform allows him to be easily identifiable as the Labour Ward Coordinator.

It is important that the Registrant is easily identifiable for safety reasons, so that all staff can know who is in charge, and also so that any patients or visitors can readily identify the midwife in charge if required. The Registrant never wore his allocated uniform while on shift and always wore scrubs. To the best of my knowledge, this was a constant and happened on every shift.'

The panel noted that this is also supported by Colleague 7's assertion in her Trust interview, as she is recorded as stating:

'Paul [Mr Johnson] was wearing scrubs again instead of his uniform and I have told him not to wear the scrubs and that he is a Midwife and to wear his uniform...he always wears his scrubs despite being warned numerous times.'

The panel noted that Colleague 7 had made reference to having to tell Mr Johnson not to wear his scrubs on multiple occasions as he should have been wearing his corporate uniform as per the Trust's policy. It had regard to its decision at charge 26(d) in considering this matter.

The panel noted the reason given by Colleague 7 as to why it was appropriate for Mr Johnson to be in his uniform. It agreed that he would have needed to have been easily identifiable for safety reasons, so that all staff, patients and visitors can know who is in charge of the shift.

The panel reminded itself that it had found Colleague 7's oral evidence to be consistent with her documentary evidence. It considered her to have had a good recollection of this particular incident.

In not adhering to the request to stop wearing scrubs on one of more occasions, the panel determined Mr Johnson to have failed to maintain behaviour adequate to a management position.

For the reasons above, the panel found charge 26e) proved.

Charge 26f)

26) Failed to maintain behaviour adequate to a management position:

f) By refusing to engage in mediation with Colleague 5 to discuss the incident relating to Patient C.

This charge is found proved

In reaching this decision, the panel took account of the evidence of Witness D and Colleague 5, as well as the evidence of Mr Johnson.

In particular, the panel had regard to Witness D's NMC witness statement, in which she stated:

'The Registrant [Mr Johnson] absolutely refused to engage in the mediation process and to have a discussion with [Colleague 5] about it. He told me that he actually felt quite threatened and intimidated by having this meeting. I don't know why he would feel like this. However, his answer was no. He was not willing to have the meeting and as a result the meeting never happened.'

This was supported by the evidence of Colleague 5, who stated in her NMC witness statement that:

'After this shift, I went and spoke to my supervisor, [Witness D], and also [Witness E] (Labour Ward Manager) about what had happened. [Witness D] asked me how I would like to handle it and asked me if I would like to meet with the Registrant [Mr Johnson] and have a conversation about what happened and get his side of the story. I agreed to this, and [Witness D] was going to set it up.

However, my understanding from [Witness D] is that the Registrant refused to meet with me.'

The panel noted that Witness D had tried to resolve an outstanding issue between Colleague 5 and Mr Johnson through the use of an informal mediation process. However, the evidence before the panel was that Mr Johnson had refused to engage in any form of mediation.

The panel noted from Witness D's oral evidence that Mr Johnson would have had a professional expectation to have engaged in mediation. She told the panel that she had never had a midwife refuse to engage in this kind of process to resolve an outstanding issue between staff.

Whilst the panel was not drawn to any formal mediation policy of the Trust confirming that Mr Johnson had to engage with a mediation process, the panel considered that due to his level of seniority, there was a professional expectation imposed on him to at least engage with such a process.

The panel was satisfied from the evidence presented that Mr Johnson had refused to engage in mediation with Colleague 5 to discuss the incident relating to Patient C. It determined that in finding this to be the case, Mr Johnson had failed to maintain behaviour adequate to a management position.

For the reasons above, the panel found charge 26f) proved.

Charge 26g)

26) Failed to maintain behaviour adequate to a management position:

g) By breaching confidentiality about the Trust investigation when discussing it with others.

This charge is found proved

In reaching this decision, the panel took account of the evidence of Witness G, Colleague 7, Dr A as well as the evidence of Mr Johnson.

In particular, the panel had regard to Witness G's NMC witness statement, in which she stated:

'The Registrant [Mr Johnson] said that he had also discussed the investigation with [Dr A] He said that this was because [Dr A] had reached out to him as he did not seem himself. The Registrant said that initially he brushed it off but that [Dr A] had asked him what was going on a second time, and that at this time, without providing any specific details he told her what he was going through...

We concluded that despite being asked not to discuss the investigation, the Registrant had disclosed the investigation to two senior managers, [Colleague 7] and [Dr A]. We found this was a breach of confidentiality.'

Whilst the panel did not hear direct evidence from Colleague 7 or Dr A which confirmed that Mr Johnson had breached confidentiality by discussing the Trust's investigation with them, Mr Johnson had indicated in his Trust interview with Witness G that he had spoken to Colleague 7 and Dr A in respect of this. This was also supported by Mr Johnson's handwritten response to Witness G's investigation, as he stated:

'I told my manager [Colleague 7].

[...]

I also told [Dr A] because she had taken me in an isolated theatre to ask me for a second time what was wrong with me as I had been noticeably out of sorts. I cried and had to give the very briefest of explanations.'

Therefore, the panel considered there to be a clear admission on the part of Mr Johnson which confirmed that he had spoken to others about the Trust investigation.

The panel considered Mr Johnson's communication with others to amount to a breach of confidentiality, as he was aware that he should not have been discussing the Trust investigation with others. Witness G had expressly warned Mr Johnson at the beginning of each interview that the details of their meeting should remain confidential, and that Mr Johnson should not discuss the case with any other party in the workplace. She also offered Mr Johnson support via the Trust's Occupational Health department should it have been required. However, despite this warning, Mr Johnson confirmed that he had ended up disclosing details of the Trust's investigation to two people.

In taking account of the above, the panel was satisfied from the evidence presented that Mr Johnson had breached confidentiality by discussing the Trust's investigation with staff who he was not authorised to do so with.

For the reasons above, the panel found charge 26g) proved.

Charge 27

27) On an unknown date declared to Colleague 7 that you wore scrubs because '*you did not have any uniforms*' or words to that effect.

This charge is found proved

In reaching this decision, the panel took account of Colleague 7's evidence, who stated in her NMC witness statement that:

'I spoke to the Registrant [Mr Johnson] and asked him to wear his appropriate uniform and he informed me that he did not have any uniforms. As a result, I immediately ordered him some uniforms, but these were never collected by the Registrant. However, after I spoke with him, I noted that he did start wearing his uniform which meant that he obviously did have uniforms despite him telling me that he did not. I spoke with [Witness E] about this (the previous matron) and she confirmed that he was ordered uniforms and that he had collected these previously.'

During her oral evidence, Colleague 7 was able to explain to the panel that, upon being informed by Mr Johnson that he did not have any uniforms, she immediately went to order him some new ones. Colleague 7 had told the panel that it was important for Mr Johnson to dress in the appropriate outfit as a Band 7 Midwife so that he could be easily identified on shift. However, Colleague 7 said that before Mr Johnson had collected this order, he had started wearing his uniform again.

The panel had found Colleague 7 to provide clear evidence and considered that she had a good recollection of this particular incident. It had no reason to doubt her oral evidence, and it considered this to be corroborated with the documentary evidence before it. The panel preferred the evidence of Colleague 7 in comparison to that of Mr Johnson; he stated in his written representations that he did not wear his uniform because he had lost weight and none of his uniforms fitted him correctly.

For the reasons above, the panel found charge 27 proved

Charge 28

28) Your declaration in charge 27 was dishonest because:

- a) You did have uniforms at the time.
- b) You knew it was untrue.

This charges is found proved in its entirety.

In reaching this decision, the panel account of the evidence of Colleague 7.

It had regard to the case of *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67 in determining whether Mr Johnson had been dishonest in his actions, as outlined in charge 27. In particular, the panel noted in paragraph 74:

'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

The panel noted that upon being informed by Mr Johnson that he *'did not have any uniforms'*, of words to that effect, Colleague 7 immediately went to order him some more. However, Colleague 7's evidence was that Mr Johnson then began wearing his uniform before receiving this order.

Mr Johnson had previously been issued uniforms, and by saying that he did not have uniforms at that material time, the panel considered that he must have been aware that this declaration was not true.

In his written representations to the panel, Mr Johnson stated that he had lost weight and that none of his uniforms fitted him properly, which is the reason he did not wear his uniform. However, this is not what he had reportedly told Colleague 7 at the time of the incident, as he categorically said that he did not have a uniform.

Therefore, there is evidence to suggest that Mr Johnson did have uniforms at the time that he made the comments to Colleague 7. The panel determined that in saying that he did not have any uniforms, Mr Johnson was clearly making a dishonest declaration, and he would have been aware that what he was saying to Colleague 7 was untrue.

The panel determined that Mr Johnson was seeking to create a misleading impression in saying that he did not have any uniforms when he did. It was not satisfied that Mr Johnson had made an honest mistake and it determined that ordinary and decent people would consider his actions to be dishonest.

For the reasons above, the panel found charge 28 proved in its entirety.

Charge 29

29) Failed to attend appropriate training when required, namely:

- a) Mandatory Day 2.
- b) Yorkshire Medical Emergency Training.
- c) CTG.
- d) Maternal Resuscitation.
- e) Deprivation of Liberty.

- f) Safeguarding.
- g) Mental Capacity.
- h) Fire Training.

This charge is found proved in its entirety.

In reaching this decision, the panel took account of Witness C's evidence, who stated in her NMC witness statement that:

'On the training record I have indicated which training was annual training, three yearly training or once only training. I have also indicated the training that the Registrant [Mr Johnson] was not compliant with as at 25 September 2019 in the column titled "compliance as at 25 September 2019", being around which time the concerns were noted.

[...]

Page four of [the Mandatory Training Policy] confirms that it is the responsibility of the employee to ensure "access/attendance and compliance in relation to statutory and mandatory training". This policy also outlines the statutory and mandatory training requirements of all employees at the Trust.'

The panel noted that these concerns came to light after a review was conducted of a serious incident involving CTG monitoring. After it became apparent that Mr Johnson was not in date with his training of CTG monitoring, a further investigation into his full training record was undertaken. Upon discovering that Mr Johnson was out of date with his training in a number of areas, Witness C recorded her concerns around Mr Johnson's lack of training and sent him a letter dated 25 September 2019.

The panel had sight of Mr Johnson's training record which showed that he was out of date for multiple training courses, as identified in the sub-headings of the charge. The panel was satisfied that these training courses were a requirement of his role, and it noted that some of them had been out of date for a significant period of time.

The panel determined that it was Mr Johnson's professional responsibility to keep himself up to date with all training required in his role as a Band 7 midwife and that he had failed to do so.

For the reasons above, the panel found charge 29 proved in its entirety.

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 Mr Johnson's 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 suitability to remain on the register unrestricted.

The panel, in reaching its decision, 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, and only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mr Johnson's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Dr Joshi invited the panel to take the view that the facts found proved amount to misconduct. He directed the panel to have regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (The Code) in making its decision. Dr Joshi submitted that he would usually have detailed specific areas of the Code which had been breached. However, he submitted in this particular case, it is his submission that every one of the four themes, namely: prioritise people, practise effectively, preserve safety and promote professionalism and trust, had been breached.

Dr Joshi submitted that, with the number of charges found proved which involve serious clinical and attitudinal concerns, misconduct is clearly made out.

Submissions on impairment

Dr Joshi 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.

Dr Joshi submitted that if the panel are satisfied that the matters found proved do amount to misconduct, the next matter the panel must consider is whether Mr Johnson's fitness to practise is currently impaired by reason of that misconduct. He submitted that there is an overarching theme amongst the charges found proved of Mr Johnson misusing his position of authority to establish his power. Further, numerous attitudinal concerns arise out of the charges found proved, not least Mr Johnson's willingness to lie to his employer during a formal investigation, and his frequent humiliation and intimidation of junior colleagues. Dr Joshi submitted that the attitudinal concerns identified also extend to Mr Johnson having frequently disappeared from the Trust while on shift.

Dr Joshi submitted that there is no evidence of any insight whatsoever from Mr Johnson and that he had failed to grasp the standards and conduct expected of him as a senior midwife. Further, when asked to provide a reason or reflection on any of the concerns, Mr Johnson has adopted the position that his ways and means of doing things were always right. Dr Joshi submitted that this demonstrates Mr Johnson's arrogant approach towards his own failings, and to his impact on others.

Mr Johnson apologised for his earlier disengagement and [PRIVATE]. Mr Johnson stated that he is '*not a bad man*' but that he had made a '*succession of bad choices*'.

Mr Johnson advised the panel that he now appreciates that what happened in 2019 happened because of him and that he is '*eternally ashamed*' for that period in his life. He stated that choices made in 2019, including being in a '*toxic*' and '*abhorrent*' relationship with a colleague, impacted on his ability to perform in '*any aspect of his life*'. Mr Johnson stated that he is aware of how his behaviour impacted on others around him and he was sorry that they had to experience that. He stated that he was not treated with care and compassion by the Trust, rather that he was '*inhumanely cut adrift*'. Mr Johnson advised the panel that, had the Trust not allowed his conduct to go '*unchecked*', he did not think he would be subject to NMC proceedings today.

[PRIVATE]. He stated that he would not seek to return to full time work nor would he seek a role with managerial responsibilities. Mr Johnson advised that he has kept his journal subscriptions open and remains up to date with the latest trends in nursing and midwifery. He stated that he has a desire to serve the public and still has the skillset to do so. Mr Johnson stated that he never caused harm to a patient and does not pose a threat to colleagues or the public.

The panel accepted the advice of the legal assessor which included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

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 Johnson's actions repeatedly fell significantly short of the standards expected of a registered midwife and amounted to multiple breaches of the Code. It considered the misconduct to be so wide-ranging that it is sufficient to say that all four themes of the Code (prioritise people, practise effectively, preserve safety and promote professionalism and trust) had been comprehensively breached.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, it determined that Mr Johnson's failings amounted to serious misconduct, both individually and collectively. It noted that as well as multiple breaches of the Code, Mr Johnson's misconduct had also breached the Trust's policies.

The panel considered that Mr Johnson's conduct demonstrated repeated and serious departures from the standards expected of a registered midwife and involved sexual misconduct, sexually inappropriate comments made directly and indirectly about patients as well as sexual comments directed towards colleagues, harassment, bullying, intimidation, dishonesty and significant breaches of professional standards. It could fathom no scenario in which the charges found proved could be deemed anything other than serious misconduct. The panel considered that both patients and colleagues were impacted by Mr Johnson's misconduct and that his actions, at certain points, appear to have paralysed a maternity unit and created an environment where colleagues were fearful of him.

The panel had regard to its earlier finding that Mr Johnson's behaviour at times had been gross and completely unacceptable. It considered that Mr Johnson had chosen to behave

in such an abhorrent manner on a labour ward, and other areas of the maternity unit, when he should have been acting as an advocate for all maternity patients. The panel heard substantial evidence from 14 professional and compelling witnesses, all of whom spoke to Mr Johnson not abiding by the standards expected of a senior and experienced midwife. The panel was satisfied that confidence in the profession would be undermined if its regulator did not find Mr Johnson's actions to constitute serious misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Johnson's fitness to practise is currently impaired.

Midwives occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust midwives with their lives and the lives of their loved ones. To justify that trust, midwives must 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 *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;'*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future'*

The panel found that all of the limbs were engaged in this case.

The panel found that Mr Johnson had placed patients at a risk of harm on numerous occasions due to his deliberate inaction and poor management of transfers to and from the labour ward. It also considered that to knowingly disregard mandatory training requirements could jeopardise a midwife's ability to practise safely and effectively. The panel heard no acceptable reason for Mr Johnson's actions or for why his training was as out of date as it was.

The panel found that Mr Johnson did not adhere to the standards expected of a midwife and that his behaviour brought the profession into disrepute. It considered Mr Johnson's fellow practitioners would find his behaviour and repeated breaches of the Code deplorable.

The panel found that Mr Johnson, by way of his dishonesty, lack of integrity, bullying behaviour and grossly inappropriate sexualised behaviour had breached the fundamental tenets of the profession.

In relation to the charges found proved regarding dishonesty, the panel noted that this was not isolated to one incidence of dishonesty and that Mr Johnson has not given any reasons to account for his dishonest actions, expressed any remorse or showed insight. It therefore considered that there is a risk that Mr Johnson may act dishonestly in the future.

The panel next considered whether Mr Johnson's practice can be strengthened in relation to the serious and repeated misconduct identified.

The panel was not satisfied that Mr Johnson has insight into his actions and considered that he has not demonstrated any strengthening of his practice. It heard Mr Johnson's representations and was of the view that he had a lack of insight as to the risk he caused to patient care, his failures in management and the impact of his abusive and discriminatory behaviour towards colleagues. Further, it considered that the attitudinal concerns raised in this case will be extremely difficult to address. The panel noted that Mr Johnson expressed some remorse for his actions at this hearing but did not consider that he had any appreciation of the impact his behaviour had on patients, colleagues, the public and the midwifery profession.

The panel had regard to Mr Johnson's statement that his behaviour was a '*product of the circumstances*' and considered this to demonstrate an unwillingness to take full responsibility for his actions. Indeed Mr Johnson was of the view that had the Trust not

allowed his behaviour to continue *'unchecked'*, things would not have *'spiralled out of control'* as they did. The panel considered that this attempt to place responsibility in the hands of others further demonstrated his lack of insight.

The panel noted that concerns regarding Mr Johnson were first raised in 2011 but that it would appear that a number of opportunities to act on such concerns were missed by management. The panel heard evidence from witnesses about difficulties associated with the culture on the Labour Ward, escalation of concerns and management oversight and it was the actions of a determined midwife that led to the revealing of the full extent of the concerns about Mr Johnson's behaviour.

Mr Johnson in his oral evidence outlined that he had kept himself up to date by reading journals and discussing current health policy changes [PRIVATE]. The panel had sight of an employment testimonial provided by Mr Johnson. However the panel noted that this did not address the areas of concern. The panel also received a reflective journal entry from Mr Johnson as well as [PRIVATE].

Due to the serious and repeated nature of the concerns raised, lack of insight and reflection, and there being no evidence of sufficient strengthening of practice, the panel considered that there is a high risk of Mr Johnson's misconduct being repeated. The panel therefore determined that a finding of impairment is necessary on the grounds of public protection.

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

The panel considered that a member of the public would be shocked to hear of an experienced midwife, in a managerial position, having demonstrated such a prolonged period of serious misconduct of the kind identified. It therefore considered that a finding of current impairment is also in the public interest.

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 Johnson's name off the register. The effect of this order is that the NMC Register will show that Mr Johnson's name has been removed from 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

Dr Joshi submitted that given the seriousness and number of the regulatory concerns, the only appropriate sanction is a striking off order. He submitted that cases involving dishonesty will always be of the utmost seriousness. Further, as well as the dishonesty concerns, there is also a misuse of power over vulnerable colleagues to be considered, as well as Mr Johnson being directly responsible for a risk to patients as a result of his poor management of admissions and discharges to and from the labour ward. Dr Joshi submitted that this is not a case where the misconduct or dishonesty is a one off or spontaneous incident, rather a series of incidents going back over ten or so years.

Dr Joshi drew the panel's attention to Mr Johnson's representations on Day 12 of the hearing when he appeared to indicate that the lack of intervention from the Trust contributed to these events. He invited that panel to consider what method of intervention

would have been required to ensure that Mr Johnson did not send a video of himself masturbating to a colleague, or to make numerous sexually inappropriate comments about patients and colleagues.

Dr Joshi submitted that the panel has no specific information from Mr Johnson on his clinical learning since the incident and, while noting his apology to his former colleagues made during the hearing, Dr Joshi submitted that Mr Johnson still sought to apportion blame for his actions elsewhere and did not fully accept the decision of the panel at the facts stage

Decision and reasons on sanction

Having found Mr Johnson'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:

- Abuse of position of trust and power
- Lack of insight into failings
- Pattern of serious misconduct repeated over a period of years
- Evidence of deep seated attitudinal issues
- Misconduct put patients at risk of harm

The panel also took into account the following mitigating feature:

- Mr Johnson apologised to his previous colleagues involved in this hearing

Further the panel had regard to the NMC sanctions guidance 'Considering sanctions for serious cases'. The panel determined that Mr Johnson's misconduct was extremely serious in that it involved bullying, intimidating, dishonest and sexual behaviour.

The panel considered that Mr Johnson had breached the professional duty of candour to be open and honest and that he had attempted to cover up his inappropriate actions. Further, it noted that Mr Johnson had encouraged a colleague not to tell the truth which could have otherwise contributed to a culture which suppresses openness about the safety of care

The panel also considered that Mr Johnson displayed discriminatory views and behaviours, including harassment, and that this amounted to a serious departure from the NMC's professional standards

The panel considered that Mr Johnson was directly responsible through his poor management of the Labour Ward for putting his own priorities before his professional duty to ensure patient safety.

The panel considered that Mr Johnson's inappropriate behaviour towards others did not uphold their dignity and that he regularly failed to treat colleagues and patients with kindness, respect and compassion. It also considered that Mr Johnson did not maintain the knowledge and skills for safe and effective practice as a result of allowing his mandatory training to lapse over a period of years.

In all of the circumstances, the panel determined that Mr Johnson did not uphold the reputation of the profession, did not act with honesty and integrity and did not treat people fairly, without bullying or harassment, or in a way that did not take advantage of their vulnerability or cause them upset or distress.

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

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, an order that does not restrict Mr Johnson'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 Johnson's 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 Mr Johnson's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. It noted that there is no evidence before the panel of any clinical concerns with Mr Johnson's practice that could be managed by a conditions of practice order. Further, there are no conditions of practice which the panel identified which could sufficiently address the serious and varied attitudinal concerns in this case, including dishonesty. Also, the panel concluded that the placing of conditions of practice on Mr Johnson's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel considered that Mr Johnson's was not a single instance of misconduct and that there was evidence of deep seated attitudinal concerns. Further, it considered that Mr Johnson has not displayed insight into the regulatory concerns and that there remains a risk of the misconduct being repeated.

The panel noted that at the time of the incidents, despite having a number of opportunities to correct his behaviour and act in a professional and honest way, Mr Johnson continued to act inappropriately and disregarded those impacted by his misconduct. The panel has found that it is likely that Mr Johnson's behaviour would be repeated and, as a consequence, he poses a risk to patients or service users.

Mr Johnson's misconduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered midwife.

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

Finally, in considering 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?’*

The panel determined that Mr Johnson’s misconduct raises fundamental concerns about his professionalism, and considered that other practitioners would find it extremely difficult to place their confidence in a colleague who had acted in the manner Mr Johnson had over a significant period. Further, members of the public would find it difficult to place their trust in a midwife who had displayed bullying, sexually inappropriate and intimidating behaviour, made sexual comments to patients and colleagues, made dishonest representations to his employer and put patients at risk of harm by means of his poor management of a ward.

The panel also considered the NMC guidance ‘Cases involving dishonesty’, in particular:

“The most serious kind of dishonesty is when a nurse, midwife or nursing associate deliberately breaches the professional duty of candour to be open and honest when things go wrong in someone’s care...

... Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients*
- *misuse of power’*

Mr Johnson's actions and associated dishonesty were significant departures from the standards expected of a registered nurse and midwife, and are fundamentally incompatible with remaining on the register. The panel considered that Mr Johnson's misconduct and associated dishonesty was extremely serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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. The panel considered that, Mr Johnson's actions having brought the profession into disrepute by adversely affecting the public's view of how a registered midwife should conduct themselves, nothing short of this sanction would be sufficient in this case.

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

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 Johnson's interest 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 Dr Joshi. He submitted that in view of the panel's substantive decision, an interim suspension order is necessary for a period of 18 months.

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.

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

This decision will be confirmed to Mr Johnson in writing.

That concludes this determination.