Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 22 July 2024 – Friday, 26 July 2024
Monday, 29 July 2024 – Friday, 2 August 2024
Monday, 5 August 2024 – Friday, 9 August 2024
Monday, 23 September 2024 – Thursday, 26 September 2024 (In-Camera)
Friday, 27 September 2024
Monday 10 March 2025 - Friday 14 March 2025

Virtual Hearing

Name of Registrant:	Kara Louise Hannigan
NMC PIN	87Y2235E
Part(s) of the register:	RN1: Adult nurse, level 1 (27 August 1991) RN3: Mental health nurse, level 1 (27 August 1991)
Relevant Location:	Vale of Glamorgan
Type of case:	Misconduct
Panel members:	John Kelly (Chair, Lay member) James Carr (Lay member) Jim Blair (Registrant member)
Legal Assessor:	Cyrus Katrak
Hearings Coordinator:	Rim Zambour (22 July 2024 – 25 July 2024) (30 July – 9 August 2024) Khadija Patwary (26 July 2024) Sherica Dosunmu (29 July 2024) Amira Ahmed (23 September 2024) Zahra Khan (24 – 26 September 2024) Elizabeth Fagbo (10 March 2025 – 11 March 2025) Nicola Nicolaou (12 March 2025) Leigham Malcolm (13-14 March 2025 only)
Nursing and Midwifery Council:	Represented by Alex Radley, Case Presenter

Mrs Hannigan:	Present and represented by Louisa Simpson, counsel, instructed by the Royal College of Nursing (RCN)
Abuse of process application:	Rejected
No case to answer:	Charges 7 (as it relates to charge 6f), 8, 10 (as it relates to charge 8)
Facts proved:	Charges 1a, 1j, 2 (in relation to 1a and 1j), 2b (in relation to 1a and 1j), 3, 4a, 5a (in relation to 3), 6c, 6d, 6e, 6i, (in relation to Colleagues C and F only,
Facts not proved:	Charges 1b(i), 1b(ii), 1c, 1d, 1e, 1f, 1g(i), 1g(ii), 1h, 1i, 1k, 1l, 1m, 4b, 5a (in relation to 4a), 6a, 6f, 6g, 6h,
Fitness to practise:	Impaired
Sanction:	**Suspension order (12 months)**
Interim order:	**Interim suspension order (18 months)**

First application to amend the charge

The panel heard an application made by Mr Radley, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charge 10.

The proposed amendment was to correct a typographical error in the sub charges referred to. It was submitted by Mr Radley that the proposed amendment would more accurately reflect the evidence.

> "That you, a registered Band 7 nurse:
>
> 10. Your actions at one or more of the charges at 8 and 9(a) to ~~8(d)~~ **9(d)** above, had the purpose or effect of creating an intimidating and/or hostile environment for Colleague A/B.
>
> And in light of the above, your fitness to practise is impaired by reason of your misconduct."

Ms Simpson took that no issue with this application to amend the charge as it is clearly an administrative error.

Decision and reasons on application to amend the charge

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Details of charge (as amended)

That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:
    a) Endeavoured to have a meeting with Colleague A, as requested by them, without prior notice to Colleague A;
    b) Informed Colleague A:
        i. that “it’s a good job she did tell me about your [PRIVATE] as this won’t go against you on your sickness” or words to that effect;
        ii. Your words at charge 1b)i. above, were said with a smile or a smirk on your face.

    c) Shouted at Colleague A in regards to an unknown patient’s capacity;
    d) Berated/Shouted at Colleague A loudly, in regards to an incident form;
    e) stated “I was just being nice when I said you had completed the incident report correctly as it needed lots of things changed” or words to that effect.
    f) Shouted at Colleague A in regards to a Datix report;
    g) In regards to a tree of patient experience, created by Colleague A said:
        i. “look what a mess she’s made” or words to that effect;
        ii. “why has she done this, it’s a waste of time”.

    h) Called a Doctor in the presence of Colleague A/E/other colleagues, and apologised for Colleague A organising treatment for an unknown patient;
    i) Put a mediation appointment with Colleague A in the diary which was visible to other colleagues;
    j) Said to Colleague A “it’s something like prostitutes would wear” or words to that effect, when commenting on Colleague A’s appearance.

k) Ticked box/es on the theatre list when Colleague A was carrying out treatment to unknown patient/s;
l) Said “is it such a bloody issue and can’t you just put another tick in the box/put another tick box” or words to that effect;
m) Erased the allocations that Colleague A had written on the allocations board, moments after Colleague A had completed it;

2. Your actions at one or more of the charges at 1(a) to 1(m) above amounted to bullying and/or harassment of Colleague A in that:
    a. Your conduct was unwanted;
    b. Your conduct had the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

3. On or after 17 September 2015 you inappropriately placed Colleague A on an informal stage of the capability policy.

4. Between May 2016 and July 2019, on one or more occasions you:
    a) Re-wrote a list of appointments without informing Colleague A;
    b) Would undermine Colleague A by changing ECT treatment plans.

5. Your action/s at charge 3 and/or charge 4a) and/or charge 4b) above amounted to bullying and/or harassment of Colleague A in that:
    a. your conduct had the purpose or effect of:
        i. violating Colleague A’s dignity, or
        ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

6. Between November 2014 to July 2019 on one or more occasions:
    a. Publicly discussed Colleague B’s personal affairs;
    b. Stated that you would “go into the drugs cupboard and mess it all up”, or words to that effect;
    c. Put a meeting in the daily diary between yourself and Colleague B, for no reason;

d. Said to Colleague A that Colleague C had a “[PRIVATE] issue”, or words to that effect.
e. Said to Colleague B, “look at the way he’s done his notes, that’s disgusting, I need to have a word with him” or words to that effect, in regards to Colleague C;
f. Told Colleague A/B to put details on the unit computer which you then changed without informing colleagues;
g. Informed colleagues that Colleague D was lying about their previous 2 years of working in theatre;
h. Disclosed information about Colleague D’s possible retirement to colleague/s;
i. Disclosed information about Colleague C/E/F’s [PRIVATE];

7. Your actions at one or more of the charges at 6(a) to (i) had the purpose or effect of creating an intimidating and/or hostile environment for Colleague A and/or Colleague B and/or Colleague C.

8. On or around January 2015, you did not help Colleague B when she requested your help, or at all.

9. Between December 2014 to April 2019 on one or more occasions:
    a) Belittled Colleague B about the way she had said the word “cocaine”;
    b) Accused Colleague B of breaking the Christmas tree;
    c) Informed Colleague A/B that if there was only one member of staff available, they would have to cope with the support of support workers;
    d) Said to Colleague B:
        i. “we’ve all been worried about you, you’re often late, your clothes don’t seem clean, but at least you’ve washed your hair today”, or words to that effect.
        ii. Said “You need to learn how to talk to senior managers in meetings, I was told the way you spoke was disgusting”, or words to that effect.

10. Your actions at one or more of the charges at 8 and 9(a) to 9(d) above, had the purpose or effect of creating an intimidating and/or hostile environment for Colleague A/B.

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

Abuse of process application

Following the reading of the charges, Ms Simpson made an abuse of process application and, as a consequence invited the panel to permanently stay these proceedings. She referred the panel to the NMC guidance on Abuse of Process (reference: DMA 4), which states:

- *'it will be impossible for the nurse, midwife or nursing associate to have a fair hearing, or*
- *continuing with the case would, in all the circumstances, offend the panel's sense of 'justice and propriety'.*

  In deciding whether there has been an abuse of process which means the case should be stopped, the panel will consider whether the alleged abuse of process (such as delay, or a failure to disclose evidence) has caused serious prejudice or unfairness to the nurse, midwife or nursing associate.

  In accordance with its overarching public protection objective, the panel will also consider whether there are ways of putting right the serious prejudice or unfairness, so that the nurse, midwife or nursing associate can have a fair hearing without stopping the case.'

Ms Simpson submitted that due to the drafting of the charges, it is not possible for you to have a fair hearing as the NMC has failed to provide you with sufficient information to be able to adequately understand and therefore respond to the case against you. In particular, she referred to the lack of dates and any other specific information which might enable you to identify what the specific concern is that is

raised in each charge. Ms Simpson submitted that both limbs of the NMC guidance are engaged.

In relation to charge 1, Ms Simpson submitted that the stem relates to allegations between November 2014 and July 2019, a five-year period during which time the alleged events may have happened on one or more occasions. She submitted that the sub charges that follow the stem do not assist you any further in identifying the concerns. Referring to charges 1a and 1c, Ms Simpson stated that you were Colleague A's direct line manager and would have undertaken countless meetings over the five-year period. Further, that Colleague A's statement is no more specific on the time frame either, and that the patient being referred to is not identified in any way.

In relation to charge 1d, Ms Simpson submitted that there would have been countless incident forms that yourself and Colleague A, would have discussed over the five-year period so it would be difficult for you to understand which particular form is being referred to in the charge. She further submitted that this difficulty is also highlighted by charge 1f as it reads the same as charge 1d and it is unclear to you whether these two charges refer to the same or two separate incidents.

Ms Simpson referred the panel to charge 1k which refers to ticking boxes on a theatre list on an unknown date over the same five-year period in relation to unknown patients. She stated that there is nothing else to assist you in identifying the situation in order to allow you to defend on yourself. Ms Simpson submitted that charges 4, 6 and 9 suffer from the same issues.

Ms Simpson submitted that the potential double charging and lack of clarity over each alleged incident highlights why continuing with the case in these circumstances would be unjust as a fair hearing would not be able to take place. She stated that the panel may consider whether something else may be done to rectify the problem instead of staying the proceedings. In the alternative, she submitted that it would be unjust for the specific charges identified to proceed and invited the panel to narrow the case down by excluding those charges.

Mr Radley referred to the case of *The Council for the Regulation of Healthcare Professionals v General Medical Council and Saluja* [2006] EWHC 2784 (Admin). He stated that there are two grounds for a stay to be granted, firstly where it would be impossible to give the accused a fair trial and secondly where it offends the panel's sense of justice and propriety.

Mr Radley acknowledged that limb two is not appropriate. In terms of limb one, Mr Radley submitted that as time passes, it is more difficult for individuals to remember specifics in relation to dates and times. Further, that in a five-year period it would be difficult for you to understand exactly when something occurred but added that when witnesses give their evidence, they will be able to elaborate where there is a lack of specificity.

Mr Radley stated that the duty of the regulator is protect the public, uphold standards and maintain public confidence in the profession. He submitted the best way to do this is for the matter to be heard fully by the panel and an for an informed decision to be made based on the evidence. Further, that these charges can be heard by the panel and can be defended by an explanation from you.

Decision and reasons on abuse of process application

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

The panel considered the submissions made by Ms Simpson and Mr Radley. In doing so it reminded itself of the need to have regard to the overarching objective.

The main ground for the application is the submission that the NMC had failed to adequately particularise the charges made against you. The panel determined that the absence of specificity around dates at the moment may resolve itself through clarification questions to live witnesses. There is also other evidence the panel may consider in determining whether the alleged incidents occurred or not on the balance of probabilities.

The panel considered the requirement that '*serious prejudice'* is required for a stay to be granted, and it determined that in this case this panel is able to review the evidence at the end of the facts stage which ensures fairness. Further, the evidence will be tested through cross-examination and panel questions. The panel determined that a fair hearing could take place.

The panel therefore determined to reject the application for a stay in proceedings on the basis of an abuse process and to allow the charges as currently amended to proceed.

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

Ms Simpson made a request that this case be held in private on the basis that proper exploration of your case involves making reference to your private family and health matters. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Radley did not oppose the application.

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

Having heard that there will be reference to private family and health matters, the panel determined to go into private session as and when such issues are raised in order to protect your privacy.

Background

You were entered into the NMC register in August 1991. Your employment at the Cardiff and Vale University Health Board (the UHB) commenced in 2007.

It is alleged that your behaviour towards colleagues included shouting, inappropriate comments and unnecessary management interventions which amounted to bullying / harassment / creating an intimidating and/or hostile environment between 2014/15 to 2019.

During this time, you were employed as the Electro Convulsive Therapy (ECT) Clinic Manager by the UHB. As such, you were line manager for a number of staff members including registered nurses and healthcare assistants.

Application to admit additional evidence

During Colleague A's live witness evidence, she made significant reference to a fact-finding document (the fact-finding document) and some screenshots of emails which were not initially included in the NMC exhibit bundle but were generated during the UHB's own internal investigation (the UHB's investigation).

Mr Radley made an application to admit this additional evidence into the record as Colleague A had made multiple references to it, and it would go to the credibility of their evidence. Mr Radley informed the panel that the fact-finding document had been produced by Colleague A, and that he and Ms Simpson had read through it together and reached an agreement on appropriate redactions for the panel's attention. He submitted that both representatives agree that there is some merit in the documents being admitted into evidence so that the panel could be fully appraised of the answers given by Colleague A in their live evidence.

Ms Simpson did not oppose the application to include the additional evidence.

Decision and reasons on application to admit additional evidence

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 considered the application to admit the fact-finding document and four email screenshots into evidence. The panel noted that the document is clearly relevant as it was mentioned often during Colleague A's live evidence and cross-examination.

With regards to fairness, the panel considered that both Mr Radley and Ms Simpson have been through the additional material and agreed on redactions. The panel therefore determined that it would be a reasonable assumption that the content is fair to admit into evidence.

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

Second application to amend the charge

The panel heard an application made by Mr Radley to amend the wording of charge 8. He submitted that the proposed amendment was to change the wording from '*January 2015*' to '*July 2013*', in order to reflect the evidence in this case more accurately. He stated that Colleague B clarified the dates relating to charge 8 during oral evidence and confirmed that the actual date to be referred to was July 2013, not January 2015.

Mr Radley submitted that the issue of the incorrect date in this charge was only brought to light during the oral evidence of Colleague B. He stated that this application was raised at the earliest opportunity, which is why it is being made at this stage.

Mr Radley acknowledged that to change the date in the charge would mean that you have not had opportunity to produce documentary evidence relating to the date of July 2013. However, he submitted that any issues you are caused can be properly managed. He stated that Ms Simpson can, on your behalf, at the next stage of her legal application, comment about the nature of the way Colleague B gave evidence and whether it provided for a charge that is sufficiently safe to consider.

Original charge:

8) *On or around January 2015, you did not help Colleague B when she requested your help, or at all.*

Proposed charge:

8) *On or around ~~January 2015~~ **July 2013**, you did not help Colleague B when she requested your help, or at all.*

Ms Simpson opposed the application. She referred to Article 6(3) (a) of the European Convention of Human Rights in respect of the right to be informed promptly and in detail of the nature of the case, and to have adequate time to prepare. She also referred to the case of *Professional Standards Authority and (1) The Health and Care Professions Council (2) Benedict Doree [2015] EWHC 822 (Admin)*. In respect of this case, she outlined the ruling that amending a charge retrospectively after the evidence had been heard and considered, in order to secure a guilty finding was viewed as a gross breach of fair hearing procedure. She submitted that whilst there are some differences in the nature of this amendment application to the that case, notwithstanding this, amending the date in charge 8 after the evidence has been heard would cause significant injustice and unfairness to you.

Ms Simpson submitted that there is nothing prompt about the notification of the change in the details of charge 8. She stated that the NMC has finished its case with no more live witnesses left to call and so this puts your defence at a disadvantage. She highlighted that you provided substantial evidence of your own in respect of one charge, which included four spreadsheets and screenshots. She stated that the

evidence you provided in relation to charge 8 related to the date of January 2015. She submitted that you did not have the necessary information available to be able to question Colleague B on the July 2013 date, neither was Colleague B entirely clear on what the correct date was.

Ms Simpson submitted that the only cure to the injustice that would be caused by such an amendment at this stage, would be to allow time for you to obtain the necessary information from the UHB in relation to this charge. She submitted that this could potentially result in an application to adjourn as it could not be said how long it would take to obtain the necessary information.

Decision and reasons on application to amend the charge

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

The panel assessed the potential consequences of allowing the amendment and decided not to grant the application. It approached its decision by considering the overall interests of justice and fairness to all parties.

The panel noted Colleague B only clarified dates in relation to charge 8 during oral evidence. Therefore, this application was made at the earliest opportunity.

However, the panel acknowledged that the nature of charge 8 was reliant on the account of Colleague B against yours. It noted that you have provided substantial information, in order to challenge the evidence in respect of this charge. It considered that the information you have provided, in the form of spreadsheets, would be significantly impacted by an amended change to the date which charge 8 relates to. As you have provided information relating to January 2015, the panel found that it would be unfair to you to change the date at this stage as it would limit your ability to obtain the best evidence, namely contemporaneous evidence, in support of your account.

In these circumstances the panel was not satisfied that it would be fair and in the interest of justice to allow such an amendment, as applied for. Accordingly, the panel did not grant the amendment to charge 8.

Application for no case to answer

The panel considered an application from Ms Simpson under section 24(7)(1) of the Rules that there is no case to answer in respect of charges 1a, 1c-f, 1g(i), 1h-i, 1k-l, 2 (in part), 4a-b, 5 (in part), 6a-h, 6i (re: Colleagues E/F), 7, 8, 9c, 10 (in part).

Ms Simpson referred the panel to the test set out in *R v Galbraith* [1981] 1 WLR 1039.

Ms Simpson and Mr Radley provided written submissions in relation to each charge and expanded on them through oral submissions.

Charge 1a

In relation to this charge Ms Simpson submitted the following:

> *'Read with the stem, in order for this Charge to be proven the Panel must find not only that the Registrant endeavoured to have a meeting with Colleague A (as requested by [them]) without prior notice to [them], but that this was inappropriate and/or undermining and/or interfering towards or with Colleague A. In my submission the evidence as to this charge is not sufficiently satisfactory to enable a panel to properly find the allegations proven – the evidence is tenuous, vague and inconsistent.*
>
> *…*
>
> *As [their] direct line manager and clinical lead nurse, the Registrant will have had countless meetings with [Colleague A] – some with notice, some without.*

There is no evidence which suggests a meeting between them ought to have been with prior notice. [Colleague A] requested the meeting, and the Registrant organised it. [Colleague A] accepted in cross examination that [they] had received messages from the Registrant indicating the meeting would be held at some point that week, including one [p.85 Reg Bundle] where the Registrant said to [them] "let's meet up on Monday and discuss this in work". Further on [Colleague A]'s own evidence, when [Colleague G] came in, the Registrant asked [them] if [they] wanted to attend the meeting / have the discussion. It was not a direction, and [Colleague A] could have refused if [they] considered it inappropriate, just as [they] refused to do a number of other things the Registrant asked of [them], which has been borne out in [their] evidence (for example, when [they] disagreed over a patient's capacity, or over whether an incident report ought to have completed, by who and including what detail).

It is submitted there is insufficient satisfactory evidence to allow this Charge to proceed. The only evidence is tenuous, vague and inconsistent as has been pointed out.'

Mr Radley submitted the following in response:

'The Registrants practice is being called into question. It is alleged in the case that 'KH' used tactics of surprise and wrong footing the staff member. This is a 'subtle' approach reported in fact, by the witness's '[Colleague E].

This is not the exercise of good practice or management style.

There is evidence from the witnesses to demonstrate the management of for example, the diary, to execute this strategy.

Witnesses [Colleague D], [Colleague A] and [Colleague B] said this

There is evidence before the panel and as such there is a case to answer.'

In oral submissions expanding on this, Mr Radley said that the evidence matrix and exhibits before the panel allow it to conclude under the *Galbraith* test that there is sufficient evidence for a properly directed panel to find proved every charge that has been challenged by Ms Simpson.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision on the application, the panel made an assessment of the evidence that presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could potentially find the facts proved and whether you have a case to answer in relation to each sub charge subject of this application.

The panel determined that there is evidence, which taken at its highest, could lead to this charge being found proved. It considered that there is evidence in the form of Colleague A's witness statement which is supported by their oral evidence. The panel noted that any difference in accounts between the written and oral evidence of Colleague A should be seen in the context that a period of time had passed since the initial statement and it may be that a witnesses' memory could be affected by the passage of time.

The panel determined that Colleague A was consistent about this meeting in that Colleague G came to the ECT department to attend the meeting without warning. It considered that there is evidence that can be explored including that of Colleague A who appeared before the panel as a live witness and was cross-examined.

The panel was of the view that sufficient evidence has been presented to support the charge at this stage and, as such it was not prepared, to accede to an application of no case to answer. What weight the panel gives to the evidence remains to be determined at the conclusion of all the evidence.

<u>Charge 1c</u>

Ms Simpson submitted the following in relation to this charge:

> *'There is insufficient and unsatisfactory evidence in respect of this charge and the Panel could not properly find the allegations proven. The evidence is inherently weak and vague.*
>
> *The Charge is that the Registrant shouted at Colleague A in regard to an unknown patient's capacity, on one or more occasions over a five year period between November 2014 and July 2019 (and that this was inappropriate and/or undermining and/or interfering towards or with Colleague A). There is no further detail given within the NMC evidence as to which patient this Charge relates to, what narrower time period it is alleged to have occurred in, or any other information which might allow the Registrant to properly identify the issue and respond accordingly. In particular, when [Colleague A] was asked about the incident in cross examination and taken to the patient's capacity report document which the Registrant has had to assume the complaint relates to based on the little information she does have, [Colleague A] was unable to confirm whether that was the patient and capacity report which the Charge related to. The evidence is too vague to permit a proper defence or to allow the allegation to proceed.*
>
> *In any event, the evidence there is, is not sufficient. [Colleague A]'s statement is inconsistent with [their] earlier accounts of the incident. [Colleague A] claims this was "shouted for all to hear" but the NMC produces no witness statements to corroborate this allegation.'*

Mr Radley submitted the following in response:

> *'There is evidence before the panel which has been expanded upon by the witness [Colleague A] in [their] evidence. The statement is the starting point and questions of expansion and elaboration give more detail to the allegation.*
>
> *In this charge the witness gave evidence to the extent that there had been a patient taken to them from another department by a Doctor away from the*

ECT site. Ultimately, [Dr 1] stepped in to make an assessment and direct a course of treatment

The challenge is again related to the Registrants management of the situation and raising her voice to the witness. There is evidence that the panel could rely upon in this charge.

The witness [Colleague A] was consistent in [their] case while giving evidence over four days.

The evidence is a factual issue for the panel and as such for them alone to determine. This matter related to a number of practitioners involved in the patients care. There was a question raised over capacity and the professor stepped in to resolve the doubt.

This is a factual interpretation and not a question for no case to answer.'

The panel determined that there is evidence, which taken at its highest, could lead to this charge being found proved. It considered that there is evidence in the form of the Trust's investigation report, Colleague A's evidence which includes their oral evidence and supplementary statement. In both of these accounts, the panel noted that Colleague A mentioned you '*shouting'*. Also, there appeared to be some consistency between Colleague A's allegation in the contemporaneous fact-finding report and their oral evidence.

The panel was of the view that sufficient evidence has been presented to support the charge at this stage and that this evidence is not vague or tenuous. As such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 1d/e/f

Ms Simpson submitted the following in relation to these charges:

‘There is insufficient and unsatisfactory evidence in respect of these charges and the Panel could not properly find the allegations proven. The evidence is inherently weak and vague.

The Charges are that the Registrant (d) berated or shouted at Colleague A loudly, in regards to an incident form, (e) stated ‘I was just being nice when I said you had completed the incident report correctly as it needed lots of things changed’, and (f) shouted at Colleague A in regards to a Datix report, on one or more occasions in a five year period between November 2014 to July 2019 (and that this was inappropriate and/or undermining and/or interfering towards or with Colleague A).

There will have been numerous potential incident forms this Charge could relate to, and there is no clarity borne out in this Charge, nor from the evidence which is said to relate to it. The evidence is inherently vague and the Registrant is unable to properly respond to it and defend the Charge. [Colleague A] has confirmed an incident form and a Datix report are the same thing. A number of different incident forms / Datix reports have been referred to in evidence, and the Registrant and Panel have no clarity over which are being referred to at each Charge, and what is being alleged to have occurred on the different occasions (let alone when, or in relation to what).

Further, the evidence which there is, is inherently weak in its inconsistency. It is referred to within the internal investigation [pp. 128-9] and there is a lengthy discussion and description as to what is alleged to have happened. Nowhere there does it say the Registrant shouted, berated, or even said any of this loudly. The Registrant is described as having “said” various things. The fact finding document, which is the closest in time to the alleged incidents, refers to incident reports on pp. 5, 8 and 23. Again, there is no reference to the Registrant shouting, anywhere. These inconsistencies are particularly noteworthy because the fact finding document was produced at a later date than the other NMC evidence, and after I had cross examined [Colleague A] as to why the reference to shouting did not appear within her other evidence –

she stated it appeared in the fact finding document. The evidence is therefore so inherently weak as to be unsatisfactory and disclose no case for the Registrant to answer.'

Mr Radley submitted the following in response:

'There is evidence in respect of these charges. A properly directed Panel could properly find the allegations proven. The test, the panel are reminded, "is there evidence……. The panel Could find proven.

In this case there is evidence. It is a factual matter for the panel and if that is the case the law demands that the case is placed before the panel (JURY).

The evidence is not so unreliable as to cause the Panel to decide there is no case to answer at this stage.

[Colleague A] gave evidence to these charges'

The panel determined that there is evidence, which taken at its highest, could lead to this charge being found proved. It considered that there is evidence in the form of Colleague A's witness statement, however in relation to charge 1d this statement does not make mention of '*shouting'*. The panel considered that there is also evidence in the form of Colleague D's witness statement which makes mention of some shouting. The panel considered that Colleague D's evidence was not inherently weak, vague or inconsistent with other evidence.

In relation to charge 1e, the panel determined that there is also evidence to support this charge in the form of Colleague A's written and oral evidence and in the fact-finding document. The panel also saw an incident report which precedes Colleague A's statement and makes mention of this allegation.

In relation to charge 1f the panel considered that there is evidence in Colleague A's oral statement which relates to the DATIX form. There is also supporting evidence from Colleague C's written statement.

The panel therefore determined that in relation to charges 1d/e/f, there is sufficient evidence presented to support the charge at this stage and that this evidence is not vague or tenuous. As such, it was not prepared, based on the evidence before it, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 1g(i)

Ms Simpson submitted the following in relation to this charge:

> *'The only evidence to support this Charge comes from [Colleague D], and [their] evidence as a whole was so unsatisfactory, in that it was so tenuous and inherently weak, vague and inconsistent with other evidence, that it would not be proper for the Panel to continue with this Charge.*
>
> *The issues with relying on Colleague D's evidence are:*
>
> *[Colleague D] confirmed [they were] "not very good with dates, times, lengths of time…".*
>
> *…*
>
> *On a number of occasions [Colleague D] was blatantly giving evidence which was designed to support the allegations made by [Colleague A] against the Registrant, and was inconsistent with other key evidence.*
>
> *…*
>
> *[Colleague D] made rash assumptions in [their] evidence, without proper evidence to support the same position. [They] did not take (and give) a rational, reasoned and balanced view.*
>
> *…*

These issues demonstrate [Colleague D]'s evidence as a whole was so unreliable and incredible the Panel cannot safely allow a Charge to proceed which is based on [their] evidence, due to its inherent weakness, vagueness and inconsistencies.'

Mr Radley submitted the following in response:

'There is evidence in the case before the Panel.

The evidence comes from [PRIVATE]. There is clearly evidence available to the panel. The evidence has not been so discredited by cross examination.

To that end the case should be before the panel at the next stage of the case.

[PRIVATE].

The descriptions of friends can be considered by the panel in the context of considering the evidence as a whole, this is another factual issue.'

The panel determined that there is evidence, which taken at its highest, could lead to this charge being found proved. There is evidence in the form of witness statements from Colleague D, Colleague A and Colleague B and in the fact finding document. It was said in the statements that the comments were made to Colleagues B and D. The panel determined that Colleague D's evidence was not so unreliable as to prevent this charge from proceeding.

The panel determined that there is sufficient evidence presented to support the charge at this stage and that this evidence is not vague or tenuous. As such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

<u>Charge 1h</u>

Ms Simpson submitted the following in relation to this charge:

> *'The evidence in support of this Charge is from [Colleague E]. [Their] evidence is so inherently weak in its vagueness that it is insufficient and unsatisfactory and the Panel should find there is no case to answer. [Colleague E]'s evidence identifies no detail whatsoever in respect of a single allegation [they make]. [They are] unable to recall dates, patient details, or any other useful information which would enable the Registrant to properly respond or the Panel to properly rely on [their] evidence.'*

Mr Radley submitted the following in response:

> *'The evidence in support of this Charge is from '[Colleague A]', '[Colleague B]' and '[Colleague E]'.*
>
> *Taken together the evidence of the witnesses is acceptable of supporting the case and is capable of answering the test, Could a properly directed Jury convict….*
>
> *[colleague A] said [they] followed this up and there was no issue from the Doctor.*
>
> *The call in public was another attempt at undermining the witness'*

The panel considered the evidence in support of this charge which included Colleague E's detailed account in their witness statement and oral evidence which is consistent with notes taken in the UHB internal investigation. The panel also noted that there is also some evidence from Colleague A.

The panel determined that there is sufficient evidence presented to support the charge at this stage and that this evidence is not vague or tenuous. As such, it was not prepared, to accede to an application of no case to answer. What weight the

panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 1i

Ms Simpson submitted the following in relation to this charge:

> *'The evidence in relation to this Charge is seriously insufficient. [Colleague A]'s own statement (at paragraph 27) says that the mediation invitation was "put in the diary so everyone could see", and [their] supplementary statement says (paras 7-8) that there was "an entry in the diary, which was visible to other colleagues, for when Kara and I would be meeting with the HR officer". However, in [Colleague A]'s oral evidence [they] stated it was "meeting" and not "mediation" which was inputted into the diary, and said it read "[Colleague A] & Kara meet up", without any reference to HR. Factually, it cannot be found proven the Registrant put a mediation appointment in the diary at all – that is not [Colleague A]'s evidence. Further, it cannot properly be proved that this behaviour was inappropriate, undermining or interfering towards or with Colleague A – as [their] line manager, it would be entirely appropriate for meetings to take place between the Registrant and Colleague A and to be recorded in the team diary. There is nothing inappropriate about colleagues seeing from the team diary that the two of them would be meeting. This was also a mediation appointment which [Colleague A] says [they] had requested [themself].'*

Mr Radley submitted the following in response:

> *'The evidence is that the diary was used by the Registrant to create concern to staff and to put them on edge.*
>
> *It is not denied that a meeting was put in the dairy.*
>
> *There is therefore evidence of this from [Colleague A] and others about the use of the diary*

It is a matter for the panel if this evidence is another act in the series of tactics deployed by the Registrant.

There is a case to answer'

The panel determined that there is evidence in Colleague A's witness statement to support the charge, which is consistent with the oral evidence. Although there was some issue with whether the word '*mediation'* was used, the panel determined that the evidence in support of this charge includes that an entry was allegedly made in the diary which caused Colleague A sufficient concern to call Human Resources (HR).

The panel determined that there is sufficient evidence presented to support the charge at this stage and that this evidence is not vague or tenuous. As such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 1k-l

Ms Simpson submitted the following in relation to these charges:

'The Charges are that on one or more occasions spanning a five year period, the Registrant (k) ticked box/es on the theatre list when Colleague A was carrying out treatment to unknown patient/s, and (l) said 'it is such a bloody issue can't you just put another tick in the box' (and that this was inappropriate and/or undermining and/or interfering towards or with Colleague A). The Registrant and Colleague A spent countless days together in the treatment room and treated countless patients. There is no specificity to the Charge, nor in the evidence which is said to support it, to enable the Registrant to fairly respond to the Charge beyond a bare denial. With detail, the Registrant would be able to identify the particular patient or treatment, confirm whether she did in fact tick a box or not, and (if she did) provide

justification and explanation for having done so. Without that detail the Registrant is at a real disadvantage and unable to properly defend herself against these Charges. The evidence is insufficient because it is tenuous and inherently vague and weak so as to mean the Panel could not properly and safely find it proven.'

Mr Radley submitted the following in response:

'The charges relate to the process of managing the patient and completion of a check list by the nurse in charge of that patient.

There is evidence from [Colleague A] that this took place, how it took place and where.

This was another example of the process

The Panel therefore have evidence before them, which has not been so discredited by cross examination that applying the test there is a case to answer'

The panel noted that the evidence in support of this charge includes the supplementary witness statement of Colleague A, their oral evidence and the report from the UHB internal investigation. Therefore, the panel determined that there is sufficient evidence for there to be a case to answer in relation to these charges which is not so vague, tenuous or inherently unreliable. As such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 2 (in relation to 1g(ii))

Ms Simpson submitted the following in relation to this charge:

'There has been no submission of no case to answer in respect of Charge 1(g)(ii) itself, however it is submitted that there is no case to answer in respect of Charge 2 as it relates to Charge 1(g)(ii).

Charge 1(g)(ii) is that the Registrant said, with regard to a tree of patient experience created by Colleague A, "why [have they] done this, it's a waste of time". This is alleged to have been said to [Colleague B], when one considers the evidence put forward by the NMC on this Charge (paragraph 21 [Colleague D]). There is no evidence put forward by the NMC that [Colleague A] was present when this comment was allegedly made. Therefore there is no sufficient evidence that the comment had the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A. If one is not aware of the 'unwanted conduct', it is not possible to be harassed or bullied by it.'

Mr Radley submitted the following in response:

'The NMC say that based on the test not being made out in relation to charges at 1 et sec there is a case to answer in relation to Charge 2.'

The panel first considered the evidence before it in support of this charge. This included Colleagues A and D's oral evidence, as well as page four of the fact-finding document which included evidence of how Colleague A was allegedly impacted. The panel determined that therefore, there was sufficient evidence before it in support of this charge which was not vague or tenuous.

The panel then considered Ms Simpson's submission that if Colleague A was unaware of the alleged comment made, then they could not be said to have been harassed or bullied by it. However, the panel determined that there is evidence of Colleague A eventually being made aware of the alleged comment and that therefore, there is a case to answer in relation to the alleged harassment or bullying at the point that Colleague A was made aware.

As such, the panel was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 2 (in relation to 1g(i))

Ms Simpson submitted the following in relation to this charge:

> *'The same submissions are made in respect of Charge 1(g)(i), even if the Panel do not agree with my submission that there is no case to answer in respect of the Charge itself, it is further submitted that in any event there is no case to answer in respect of Charge 2 as it relates to Charge 1(g)(i) – because there is no evidence [Colleague A] was present when this comment was allegedly made, therefore it cannot have had the purpose or effect of creating such an environment for her.*

Mr Radley made the same submission for both this charge and the one above which was as follows:

> *'The NMC say that based on the test not being made out in relation to charges at 1 et sec there is a case to answer in relation to Charge 2.'*

The panel determined that there is evidence, which taken at its highest, could lead to this charge being found proved. Even if Colleague A was not present when the alleged comment was made, this charge is still capable of being proved.

Therefore, the panel determined that there is sufficient evidence for there to be a case to answer in relation to these charges which is not so vague, tenuous or inherently unreliable. As such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 2 as it relates to 1i

Ms Simpson submitted the following in relation to this charge:

> *'In respect of Charge 1i in particular, too, it is submitted that even if the Panel does not agree with my submission there is no case to answer in respect of the Charge itself, there is no case to answer in respect of Charge 2 as it relates to it. There is not sufficient evidence to enable the Panel to safely find the Charge proven. It cannot be said to be reasonable that the conduct alleged (inputting a meeting into a team diary) had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A. The Panel must take into account the fact this was a mediation meting – which in fact has a positive connotation – and the fact that Colleague A had in fact requested the meeting take place. Further, the diary entry (on Colleague A's own evidence) recorded a 'meeting', and not 'mediation'. The behaviour cannot properly be said to possibly amount to offensive, intimidating, malicious or insulting behaviour on any account and the Charge should not be allowed to proceed.'*

Mr Radley submitted that the panel has determined in relation to the substantive charge (charge 1i), there remains a case to answer in that it could amount to bullying and harassment.

In relation to charge as it relates to charge 1i, the panel determined that there is evidence capable of showing that the behaviour alleged in charge 1i could amount to bullying and/or harassment. As such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

<u>Charge 4a/4b</u>

Ms Simpson submitted the following in relation to these charges:

> *'The evidence relied on in respect of these Charges is the witness statement of [Colleague H] at paragraphs 4-5. [Colleague H]'s evidence (at paragraph 4) is that "when [Colleague A] would be in charge of the treatment room and*

Kara would change things…like changing the ECT treatment plan. But it would be in front of other team members which made it awkward for everyone involved and was unprofessional". [They] also states (at paragraph 5) "there were times where there were appointments which would be changed without [Colleague A] knowing".

In cross examination, [Colleague H] accepted that if there were clinical decisions to be made around the treatment plan, for example, it would be normal and appropriate for the Registrant to make any necessary changes. [They] also agreed there would be a whole host of very good reasons why appointments would change. Therefore, without any more specifics to the Charges, which allege the Registrant re-wrote a list of appointments without informing Colleague A, or amended treatment plans, on one or more occasions over a three year period May 2016 to July 2019, the Registrant is unable to identify the alleged incident and properly defend herself by identifying what the proper clinical justification for any amendment to the list or treatment plan may have been. [Colleague H] also accepted in cross examination that the appointments list would be updated on the main computer which everyone has access to, and printed copies included in the treatment room, recovery and reception. In this regard the allegation that the Registrant did not inform Colleague A or that it was inappropriate, undermining or interfering with or towards Colleague A not to inform her, cannot safely be proven.'

Mr Radley submitted the following in response:

'The evidence for this count comes from [Colleague A], [Colleague B] and [Colleague H]

This is not good management practice

There was not a supervisor's discussion about the action taken.

This follows the reported comments by all of the NMC witness that if KH had it in for you, "you could not do right for doing wrong".

This charge is about bullying and harassment making a point to the staff under her.

It could also be noted that [Colleague H] is also currently being 'sponsored' by KH to take on [their] training, is that why [their] position has softened? However, [they] stood by the comments in [their] statement and confirmed they were true in re-examination.

The test is made out for the panel to proceed with the charge'

In relation to charge 4a, the panel determined that there is supporting evidence in the form of Colleagues H, A and B's witness statements and the report from the UHB internal investigation, none of which are inherently contradictory, vague or tenuous. The panel therefore determined that there is a case to answer in relation to this charge.

In relation to charge 4b, the panel considered that the evidence comes from Colleagues A, B and H's statements, and the record of the investigation interview with Colleague H during the UHB's internal investigation. The panel determined that there is sufficient evidence which can be weighed in the balance which is not inherently unsafe or contradicted. As such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 5 as it relates to charges 4a and 4b

Ms Simpson submitted the following in relation to this charge:

'If the Panel accept my submission there is no case to answer with respect to Charges 4a and/or 4b, it must follow there is no case to answer with respect to Charge 5 as it relates to those Charges. Even if the Panel do not accept

that first submission, it is further submitted that there is no case to answer with respect to Charge 5 as it relates to Charges 4a and 4b, because [Colleague A themself] gives no evidence as to the fact of appointment lists being re-written or ECT treatment plans being changed, and the effect of that on [them]. Further, there is no evidence that in all the circumstances it would be reasonable for the amendment of appointment lists or treatment plans to violate Colleague A's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for [them].'

Mr Radley did not provide submissions in relation to this charge.

The panel considered the evidence in support of this charge. This included Colleague A's statement and oral evidence in which they detailed how your alleged behaviour affected and undermined them. The panel also considered that there is evidence in the fact-finding document and in the UHB internal investigation report dated 17 February 2020.

The panel determined that there is some evidence of your alleged general undermining behaviour towards Colleague A which is not vague or tenuous and can be weighed in the balance at the facts stage. As such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 6a

Ms Simpson submitted the following in relation to this charge:

'The Charge is that the Registrant publicly discussed Colleague B's personal affairs, on one or more occasions over a five year period between November 2014 to July 2019. This is too broadly alleged to enable the Registrant to properly respond and defend the Charge. There is no specificity to the drafted Charge, let alone the date itself. It is not clear in what respects the Registrant is alleged to have discussed [their] personal affairs, nor what personal affairs are said to have been discussed – nor when, or in front of whom. This Charge

and any evidence supporting it is unacceptably tenuous and inherently weak and vague. The Panel cannot properly and safely find it proven. Whilst there is some further detail at paragraph 31 of [Colleague A]'s witness statement, which is said to be relied on, this is still insufficient. [Colleague A] says "they publicly discussed her (Colleague B's) [PRIVATE]". There is still no specifying what it is the Registrant is alleged to have said, to whom and when. The Registrant therefore cannot properly defend this Charge and provide any explanation which there could be in the face of those allegations, or proper denial with reasons and justification. Further and in any event, it is right that the particularisation of Charges must appear within the text of the Charge itself and not in subsequent evidence. There is also said to be supporting evidence at paragraph 20 of [Colleague D]'s witness statement, and I refer to the submissions at paragraph 30 above in respect of the inherent weakness and inconsistencies with her evidence such that it cannot safely be relied upon.'

Mr Radley submitted the following in response:

'The NMC say that the Charge can safely proceed here.

The evidence is from [Colleague A] and others who all say that KH was indiscrete in sharing information about others. [Colleague B] is not the only member of staff affected in this regard.

It is noted that [they were] timider and more vulnerable, member of staff ([Colleague A] Para 31).

Evidence was given in writing and orally to this charge

Evidence was also given from [Colleague D] para 20

There is therefore evidence before the Panel that could be relied upon to satisfy the test in Galbraith here. Considering the direction a Panel could find the case proven.'

The panel determined that there is evidence in the form of Colleagues A and D's statements and oral evidence which is consistent and not vague, tenuous or inherently unreliable to support this charge. As such, it was not prepared to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 6b

Ms Simpson submitted the following in relation to this charge:

> *'This Charge is, again, too broadly drafted to enable the Registrant to properly put forward any defence. There is no particularity given to the date range which spans five years. Only [Colleague A]'s evidence is relied on in support, and [they] accepted in cross examination that many people, including the Registrant, would comment positively that if anyone else organised the drugs cupboard while [Colleague B] was away, they weren't as good at keeping it as neat and tidy as her, and [they] wouldn't be pleased if they messed up her cupboard. Without more detailed knowledge of the Charge alleged, including when this was said, to whom and in what context, the Registrant can only respond with a bare denial. The evidence is of too tenuous a character because of its inherent weaknesses and vagueness, and should not be permitted to proceed further.'*

Mr Radley submitted the following in response:

> *'This Charge is not to widely drafted. The act is described, and the suggestion is that is on more than one occasion.*
>
> *[Colleague B] stated [they] recognised this happening but believed it was simply people making a mess.*
>
> *The evidence is from [Colleague A] and is specific about the claim that KH told [Colleague A] that she went into the drug cupboard and messed it up.*

This is a factual situation for you to consider and in my submission, satisfies the test in Galbraith.

It is a simple denial from the Registrant – I cannot think of any time when a manager would do this so why does it need to be more specific?'

The panel determined that there is evidence, which taken at its highest, could lead to this charge being found proved. The evidence in support of this charge comes from Colleague A's written statement and in their oral evidence which were both consistent and not vague or tenuous.

The panel was of the opinion that sufficient evidence has been presented to support the charge at this stage and, as such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 6c

Ms Simpson submitted the following in relation to this charge:

'Once again there is little to no clarity whatsoever around the detail of this Charge. As [their] direct line manager, the Registrant would have held countless meetings with Colleague B and many of these would have been recorded in the daily diary. Without more detail – and whilst there is none in the Charge, there is still none in the evidence – the Registrant is unable to properly defend herself by identifying what the reason for the meeting as alleged was. It cannot be proper or safe for the Panel to proceed with this Charge in those circumstances. All witnesses relevant to this point accepted in cross examination that there would be numerous meetings held between the Registrant and Colleague B, that this is a normal managerial requirement, and that sometimes meetings would be cancelled or rearranged for clinical or personnel reasons. The Registrant must have the opportunity of identifying the situation in order to put forward her defence as to what the reason for the

meeting was and/or what the reason for any cancellation was. Without the same, the evidence in respect of this charge is of too tenuous a character because of its inherent weaknesses and vagueness, and should not be permitted to proceed further. Further, the only evidence relied on in respect of this Charge is that from [Colleague D], and I repeat the submissions at paragraph 30 above in respect of the inherent weakness and inconsistencies with her evidence such that it cannot safely be relied upon.'

Mr Radley submitted the following in response:

'The mischief is that a senior manager put a meeting in the diary to make the HCA nervous.

[Colleague B] told KH that by putting a meeting in the diary [they] became nervous and [they] would rather be told. In the knowledge the meeting was put in the diary

[Colleague B] said KH would then cancel the meeting

The cumulative effect of the behaviour is what has turned this action into a charge.

Again, the test is compliant and the NMC ask that the case proceed to the next stage.'

The panel determined that there is evidence in support of this charge in Colleague D's written statement and oral evidence in which they state that you allegedly told them that you would put dates in the diary to illicit a reaction. There is also evidence from Colleague B which is not contradicted.

The panel determined that there is sufficient evidence presented to support the charge at this stage and that this evidence is not vague or tenuous. As such, it was not prepared, to accede to an application of no case to answer. What weight the

panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 6d

Ms Simpson submitted the following in relation to this charge:

> *'There is again insufficient particularisation to enable the Registrant to respond to this Charge beyond a bare denial. No further detail can be gleaned from the witness evidence, even. All the NMC presents to rely upon is [Colleague A]'s witness statement at paragraph 34, where [they say] "she informed us that [they] had [PRIVATE]". There is no detail as to when this was apparently said, where, to or in the hearing of whom, nor in what context. The Charge spans a five year period, some ten years ago. The Registrant cannot properly identify the allegation in order to respond and defend herself, and in my submission the evidence in respect of this charge is of too tenuous a character because of its inherent weaknesses and vagueness, and should not be permitted to proceed further.'*

Mr Radley submitted the following in response:

> *'This is a matter of fact for the panel to consider the evidence of [Colleague A]. If the evidence is before the Panel and it has not been discredited through cross examination, then the charge has to proceed to the next stage of the case*
>
> *NMC say the test is made out and there is a case to answer.'*

The panel considered that the evidence in support of this charge comes from Colleague A's oral evidence which is supported by their written statement. Colleague B also provided written and oral evidence in support of this charge in which they stated that they were informed by you about alleged [PRIVATE] relating to Colleague C.

The panel determined that there is sufficient evidence presented to support the charge at this stage and that this evidence is not vague or tenuous. As such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 6e

Ms Simpson submitted the following in relation to this charge:

> *'There is again insufficient particularisation to enable the Registrant to respond to this Charge beyond a bare denial. No further detail can be gleaned from the witness evidence, even. The only evidence said to be in support of this Charge is the witness statement of [Colleague B] at paragraph 24. This is not an actual description of an occasion when the Registrant apparently said this to [them], it is a suggestion that the Registrant "would say things like", which the Registrant is unable to properly respond to. The evidence in respect of this charge is of too tenuous a character because of its inherent weaknesses and vagueness, and should not be permitted to proceed further.'*

Mr Radley submitted the following in response to the application for charges 6e, 6f and 6g together:

> *'There is evidence before the Panel that this conversation took place.*
>
> *See the Matrix and the oral evidence*
>
> *These are simple allegations where a simple denial may be all that is required. This is not a case of, 'I didn't speak about a staff member on this occasion but I did on that'.*
>
> *The mischief is that the Registrant was speaking about staff behind their back. This can be denied or accepted.*

In this and other cases often harassment, bullying and this type of behaviour takes place over a period of time and often it is impossible to pinpoint the exact times and dates of a charge. In this case the Nurses and HCA's have consistently stated that the Registrant has behaved in this way. There is consistency in their evidence, credibility and evidence on oath that has been given which can all be relied upon.

Why would they put themselves through this?

The test is made out in all cases.'

The panel determined that there is evidence in support of this charge from Colleague B's witness statement. The panel was of the view that this evidence is not weak, vague, tenuous or inherently unreliable and there is a case to answer.

The panel determined that there is sufficient evidence presented to support the charge at this stage and that this evidence is not vague or tenuous. As such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 6f

Ms Simpson submitted the following in relation to this charge:

'There is, again, insufficient particularisation to enable the registrant to properly respond to this Charge. Without detail as to the occasion on which this happened (rather, it is alleged to have occurred on one or more occasions over a broad five year period), the Registrant cannot provide the information necessary to defend the Charge – namely, the reason for potentially amending details on the unit computer, and whether or not (or in what way) colleagues were informed. There is no information as to what the details said to have been changed are, on what software, when, or any other information

which could assist. All NMC witnesses accepted that the unit computer was accessible to all, so the allegation that colleagues were not informed cannot safely proceed in any event. Further, only witness [Colleague D]'s evidence is relied on in respect of this Charge, and I repeat the earlier submissions in respect of [their] inherently weak and problematic evidence.'

Mr Radley submitted the following in response:

'In this case there is evidence from [Colleague D]

Good management would demand an explanation

The test is complete'

The panel noted that there is evidence from Colleague D in support of this charge which she maintained in cross-examination.

The panel determined that there is sufficient evidence presented to support the charge at this stage and that this evidence is not vague or tenuous. As such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 6g

Ms Simpson submitted the following in relation to this charge:

'This Charge suffers from the same problems in that it is insufficiently particularised to enable the Registrant to fairly defend it. It is also based entirely on [Colleague D]'s evidence – no other witness speaks to this Charge. Beyond the inherent weakness, inconsistencies and other difficulties already highlighted with [Colleague D]'s evidence (which are repeated in respect of this Charge), there is also the issue that [their] evidence in respect of this Charge in particular is also based on unidentified hearsay. [Colleague D] says

(at paragraph 32 of her witness statement) "I found out from colleagues that she was saying I was lying about my previous two years of working in theatre". Not only is the Registrant and Panel unaware of what it is the Registrant is alleged to have said, to whom, in front of whom, on what occasion and in what context, on what date – there is not even clarity over exactly where [Colleague D] gained this information from, just "colleagues". The only element of this Charge which is not hearsay, is the fact that [Colleague D] alleges the Registrant admitted it to [them]. In respect of that, it is submitted [Colleague D]'s evidence as a whole is so tenuous and inherently vague and inconsistent as to be too weak to enable the Panel to properly and safely proceed with this Charge, and those earlier submissions as to [their] evidence are repeated.'

Mr Radley submitted the following in response:

'The witness gave evidence and relied upon a process of elimination to reach [their] conclusion.

It is a matter for the panel to consider [their] evidence and determine if the Galbraith test is satisfied.

In reaching the decision. Why would [Colleague D] lie? [They were] a friend of KH? [They were] in the unit a very long time working with KH and arguably knew her well and could report accurately on the events in the ECT.

It is a matter for the panel if [they were] credible, the NMC say [they were]. If a witness cant' recall events or was vague on parts after a long period this is not unusual but [they] adopted [their] statement and that in its self provides evidence.'

The panel considered that the evidence in support of this charge comes from Colleague D's statement and that it was not inherently, weak, vague or tenuous. As to any aspect of hearsay in her evidence, this would be matter for the panel as to what weight to give to this. As such, it was not prepared, to accede to an application

of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 6h

Ms Simpson submitted the following in relation to this charge:

> *'This Charge is, again, insufficiently particularised to enable the Registrant to properly respond. There is no detail as to what was said, to whom and when, in what context, etc. to enable the Registrant to properly defend herself and identify the alleged comment and, if appropriate, explain whether it was made and if so why and in what context. There is a further serious issue with the evidence in respect of this charge, which is that it is based entirely on assumption from [Colleague D], and [they] accepted as such in [their] cross examination. [They] cannot provide evidence that the Registrant in fact told anyone of [their] possible retirement – [they have] drawn that conclusion by making an assumption because [they were] asked about [their] retirement after having discussed it with the Registrant. [Their] evidence can go no further than that. There is no evidence on which the Panel could properly find the Charge proven. [Colleague D] in fact confirmed [they] hadn't in fact even told the Registrant in their meeting that [they] had been thinking of retiring. Further, [their] evidence is that [they were] "asked when" [they were] retiring, and not told something along the lines of "I've heard you're retiring". [Colleague D] also confirmed [they] had in fact already retired and that because of [their] age [they were] constantly asked about when [they] would be leaving. The Panel cannot properly proceed with such unsatisfactory, inconsistent and insufficient evidence.'*

Mr Radley submitted the following in relation to both charges 6h and 6i:

> *'The two charges rely upon the evidence of the two witnesses [Colleague B] and [Colleague D]*

They were able to tell the panel in evidence that on a number of occasions they witnessed this sort of behaviour.

This is again a case where a simple denial can be advanced.

Why is there a need for specific dates/ particular incidents times are relevant? KH is a senior manager and would not be expected to speak about private matters.

The charges are sufficiently particularised – in line with cases of this nature.

The test is made out in Galbraith.'

The panel considered that the evidence in support of this charge comes from Colleague D's written and oral evidence which was not inherently inconsistent vague or tenuous. As such, it was not prepared, based on the evidence before it, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 6i (re: Colleagues E/F)

Ms Simpson submitted the following in relation to this charge:

'In respect of Colleague E's [PRIVATE], there is no evidence whatsoever to support the Charge, and so the Panel should find no difficulty in finding there is no case for the Registrant to answer. The only evidence in respect of Colleague F's [PRIVATE] is paragraphs 23-24 [Colleague D]'s witness statement. The submissions already made in respect of [Colleague D]'s evidence are repeated and apply here in respect of this Charge, such that the evidence is so unsatisfactory the Panel cannot properly proceed with the Charge.

Mr Radley used the same submissions for this charge as those made above in charge 6h.

The panel considered that the evidence in support of this charge comes from Colleague D's written and oral evidence statement. In relation to Colleague F there is also evidence in Colleague B's statement to support this charge.

The panel determined that there is sufficient evidence presented to support the charge at this stage and that this evidence is not vague or tenuous. As such, it was not prepared, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Charge 7

Ms Simpson submitted the following:

> *'Because it is submitted, above, that there is no case to answer in respect of Charges 6(a)-(i), leaving only Charge 6(i) in respect of Colleague C alone, it follows that there can be no case to answer in respect of Charge 7 as it relates back to Charges 6(a)-(i) – in respect of those Charges the Panel accept my earlier submissions on.*
>
> *Even if the Panel do not accept my submission that there is no case to answer in respect of Charge 6(a) itself, it is submitted there can be no case to answer in respect of Charge 7 as it relates to Charge 6(a). There is no evidence to suggest Colleague B's personal affairs were ever discussed in front of [them]. Therefore there is no evidence it had the purpose or effect of creating an intimidating and/or hostile environment for Colleague B.*
>
> *The same submissions are made in respect of Charge 6(b).*
>
> *If the Panel do not accept my submission that there is no case to answer in respect of charge 1(c) itself, it is further submitted there is no case to answer in respect of Charge 7 as it relates to Charge 1(c). In determining whether the conduct had the charged effect, the Panel should consider whether it is*

reasonable for the conduct to have that effect. It cannot be reasonable in all the circumstances of the case for a meeting with [their] line manager being put in a diary to create an intimidating and/or hostile environment for Colleague B, that is normal and required managerial action.

As to Charges 6(d) and (e), there is no evidence that either comment was ever made in Colleague C's presence, and no evidence as to what the impact of the alleged behaviour on Colleague C was. Therefore it is submitted that for both those reasons there is also no case to answer in respect of Charge 7 as it relates to Charges 6(d) and (e).

As to Charge 6(f), the only evidence of this Charge is from [Colleague D]. There is no evidence as to what the impact of this alleged behaviour was on Colleagues A and B, because they do not in fact make this allegation themselves. Therefore, there is no evidence on which the Panel could find Charge 7 proved as it relates to Charge 6(f).

In respect of Charges 6(g) and (h), there is no evidence these were ever discussed in front of Colleague D. Colleague D's own evidence was that [they] heard about these alleged comments from other colleagues. Therefore there is no evidence this had the purpose or effect as charged, and Charge 7 as it relates to Charge 6(g) should not proceed either. Further, Colleague D did not give evidence that this created an intimidating and/or hostile environment for [them], and it is not charged that such an environment was created for Colleague D. It is submitted that comments about Colleague D's previous experience and possible retirement cannot have created an intimidating or hostile environment for Colleagues A, B or C (due to their lack of involvement), and further there is no evidence that it did. Therefore Charge 7 as it relates to Charges 6(g) and (h) cannot safely proceed.

As to Charge 6(i), there is no evidence the alleged information was ever disclosed in front of Colleagues C/E/F, therefore there is no evidence it can have had the charged purpose or effect. Further, there is no evidence as to the impact of the alleged conduct on Colleagues E and F. Therefore there

cannot be a case to answer in respect of Charge 7 as it relates to Charge 6(i) and Colleagues E or F. Further, it is submitted that there is simply no evidence that Charge 7 can be made out in respect of Charge 6(i) relating to Colleague C alone, as there is no evidence as to the effect the alleged behaviour had on Colleague C. Further, there is no evidence this comment was ever made in front of Colleague C, and so it is submitted it cannot have had the purpose or effect of creating an intimidating and/or hostile environment for [them].'

Mr Radley submitted the following in response:

'All of the evidence placed before the panel in the form of written statements/exhibits and oral evidence are available to the panel.

If the panel find the above to have sufficient evidence that a properly directed Panel could convict the case must proceed to the next stage of the case.'

The panel considered whether there is a case to answer for this charge as it relates to each of sub charges 6(a)-(i), as applied for, individually.

In considering charge 7 as it relates to the sub charges of charge 6, the panel considered that had Colleagues A, B, or C been unaware of your alleged conduct directed towards them, this does not necessarily prevent the creation of an intimidating and/or hostile environment. If the panel decides ultimately that your conduct had the purpose (as opposed to effect) of creating such an environment for Colleague A, B, or C, regardless of who your conduct was aimed at, then charge 7 can be made out.

Charge 7 as it relates to charge 6a

The panel determined that there is evidence of your actions potentially creating an intimidating or having the effect of creating an intimidating and/or hostile environment for Colleague A and/or Colleague B and/or Colleague C. The panel will determine what weight to give this evidence at the facts stage.

Charge 7 as it relates to charge 6b

The panel first noted that there is no evidence to suggest that this comment was said directly to Colleague B. The evidence before the panel, from Colleague B's oral statement, indicates that Colleague B eventually became aware after being informed by other colleagues. Colleague A also confirmed in oral evidence that they informed you of this comment being made. The panel determined that there is sufficient evidence in support of this charge which is not vague or tenuous that there was the potential for your alleged actions to create an intimidating and/or hostile environment for Colleague B as well as Colleague A. The weight of this evidence will be determined at the facts stage.

Charge 7 as it relates to charge 6c

The panel considered that the evidence in support of this charge comes from Colleague B's oral and written evidence in which they state that they found it '*stressful'* when you allegedly put meetings in the diary. The panel also noted that there is evidence from Colleagues A and D stating that you would allegedly do this to provoke staff and would get pleasure out of doing so. The panel determined that there is sufficient evidence which suggests that your actions had the potential purpose or effect of creating an intimidating and/or hostile environment for Colleague B. What weight the panel gives this evidence will be determined at the facts stage.

Charge 7 as it relates to charge 6d/e

The panel considered that whilst there is no evidence of Colleague C being made aware of these comments. This charge requires that there was the purpose or effect of creating an intimidating and/or hostile environment for Colleagues A, B or C. The panel determined that there is evidence from Colleague A that she was aware of Colleague C being bullied and that this potentially created an intimidating and/or hostile environment for Colleague A. The panel also noted that there is evidence to support this charge in the fact-finding document. Therefore the panel determined that there is sufficient evidence to find there is a case to answer in relation to this charge.

Charge 7 as it relates to charge 6f

The panel was not satisfied that there is any evidence as to the information that you allegedly asked Colleagues A and/or B to enter into the unit computer and the changes you allegedly later made to it. As such, there was no evidence as to the purpose or effect of your actions such that a hostile and/or an intimidating environment could be created.

Therefore the panel determined that there is no evidence to support this charge and that there is no case to answer in relation to it.

Charge 7 as it relates to charge 6g/h

The panel considered that the evidence in support of this charge comes from Colleague D's written and oral evidence that your actions created a negative environment in the unit. The panel determined that there was sufficient evidence to support this charge. What weight the panel gives this evidence will be determined at the facts stage.

Charge 7 as it relates to charge 6i

The panel noted that this charge relates to the hostile and/or intimidating environment being made for Colleagues A, B or C, and not C, E or F as in charge 6i. Therefore the panel only considered whether there is a case to answer in relation to the effect of the incident at charge 6i in relation to charge 7.

The panel found no evidence of Colleague C being made aware of this alleged conversation. However the panel noted that there is evidence in Colleague B's witness statement that they were informed of Colleague C's [PRIVATE] and describes that there was a somewhat hostile environment which made them anxious in the workplace. There is also evidence in the fact finding document and in Colleague A's witness statement to support this charge that there was potential for there to be a hostile environment. The panel determined that there is sufficient

evidence for this charge which is not vague or tenuous. What weight the panel gives this evidence will be determined at the facts stage.

Charge 8

Ms Simpson submitted the following in relation to this charge:

> *'There is no evidence which can support Charge 8. The Charged date the Registrant is said not to have helped Colleague B when requested was January 2015, and the Registrant provided evidence to dispute that allegation. In actual fact, Colleague B's evidence significantly changed during cross examination and [they] stated it was not in January 2015 that this occurred, but in July or August 2013. No other Charge relates to any period in 2013 and the Registrant has been unable, because of the change of evidence late in the day, to properly respond to and defend that allegation. There is no evidence, on the NMC's own case, that the Registrant did not help Colleague B when requested in January 2015, and so the Panel ought to find there is no case to answer without difficulty.'*

Mr Radley did not make any submissions in relation to this charge.

The panel noted that Colleague B stated during their cross-examination that this incident occurred in July or August, rather than January 205. There is therefore no evidence to support this charge due to the incorrect date in the charge. The panel noted that there is also no evidence to support an incident occurring in January 2015. Therefore the panel determined that there is no evidence to support this charge and accepted Ms Simpson's application that there is no case to answer in relation to it.

Charge 9c

Ms Simpson submitted the following in relation to this charge:

'The NMC relies on [Colleague B]'s evidence at paragraph 15 of [their] witness statement in respect of this Charge, however [Colleague B] accepted in cross examination that a risk assessment and action plan was created and produced by the Registrant in respect of managing the ECT clinic in low staffing situations. In my submission, therefore, the evidence there is, is so inherently tenuous, weak and inconsistent as to make it improper to proceed with the Charge.'

Mr Radley submitted the following in response:

'The NMC relies on [Colleague B]'s evidence at paragraph 15 and that of [Colleague A].

This is a serious position for the HCA ([Colleague B]) as low staffing is a risk and the staff are raising concerns here.

It is a potential high risk and even if a risk assessment is in place situations may determine it is dealt with differently. I.e more staff / better quality

[They] reported the policy had been drawn up after the event

It is a case where there is evidence from the staff and a case is therefore made out at this stage sufficient for the test'

The panel determined that there is evidence in support of this charge from Colleague B's oral and written statements. This evidence is consistent, and not vague or tenuous. As such, it was not prepared, based on the evidence before it, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

<u>Charge 10 as it relates to charge 8</u>

Ms Simpson submitted the following:

'It is submitted that the Panel should have no difficulty finding there is no case no answer in respect of Charge 10, as it relates to Charge 8.'

Mr Radley did not make submissions in relation to this charge as it relates to charge 8.

The panel accepted Ms Simpson's application of no case to answer in relation to charge 10 as it relates to charge 8, having found no case to answer in relation to all of charge 8.

Charge 10 as is relates to charges 9a-9c

Ms Simpson submitted the following:

'As to Charge 10 as it relates to Charges 9(a)-(c), it is submitted the Panel should consider whether it is reasonable for the alleged conduct to have the effect of creating an intimidating and/or hostile environment for Colleagues A and B. It cannot be reasonable in all the circumstances of the case for comments regarding the pronunciation of a word, and (in particular) accusations that a Christmas tree was broken, to create that environment for Colleague B. It cannot be reasonable in all the circumstances of the case for a dispute between the Registrant and Colleagues A and B over staffing levels, to create an intimidating and/or hostile environment for them.'

Mr Radley submitted the following in response:

'There is a case to answer under the test.

The evidence has been placed before you by the witnesses and has not been discredited by cross examination.

The NMC say there is a case to answer.'

The panel considered that there is evidence in support of this charge from Colleague B's oral and written statements. This evidence supports the charge in that it suggests that your alleged actions had the potential to create an intimidating and/or hostile environment. The panel also noted that there is evidence from Colleague A's written and oral statements of the same.

The panel determined that there is sufficient evidence presented to support the charge at this stage and that this evidence is not vague or tenuous. As such, it was not prepared, based on the evidence before it, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Application to admit statements of Colleague G and Dr 1 into evidence

Ms Simpson made two applications to admit the statements of Colleague G and Dr 1 into evidence. The first application arose due to Colleague G's inability to attend the hearing as a result of [PRIVATE] that arose towards the end of your witnesses' evidence.

In relation to the statement of Dr 1, Ms Simpson submitted that this is a short statement which is relevant as Dr 1 states that they were present on the particular date of 5 July 2019 when you were alleged to have shouted at Colleague A in front of everybody. Ms Simpson submitted that this statement details what Dr 1 saw and heard at the time. She informed the panel that this statement was missed from the original bundle due to an administrative error, and that a full statement was not obtained from Dr 1 as they spoke to the same issue as Dr 2 did in their statement. In terms of fairness, Ms Simpson submitted that nothing further would have been put to witnesses if this statement was provided earlier, so this does not cause undue hardship or unfairness to the NMC.

Ms Simpson made the following joint submissions for the application to admit these statements. She stated that the relevance of these statements is not disputed, neither is the sole or decisive evidence in respect of any serious charge and so there

is less risk of including the hearsay evidence at this stage. She submitted that the panel will be able to place appropriate weight on the evidence as it sees fit, considering that it has not been tested in the same way as other evidence where witnesses have been able to attend and be questioned by the NMC. However, she submitted that this does not mean the statements should not be admitted at all.

Ms Simpson submitted that to rule out this evidence altogether would be grossly unfair to you given all of the circumstances of the case. Further, that these are not key witnesses and nor are they central to the charges or case as a whole, but their evidence is still relevant.

Mr Radley submitted that in relation to Colleague G, he had planned his cross-examination on the basis that she was a served witness with a proper signed statement with a statement of truth on it.

Mr Radley set out the relevant principles in *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin). He submitted the following:

1. Sole or decisive: The evidence contained in Colleague G's statement does cover some of the charges before the panel.

2. Nature and extent of challenge to the content of the statement: There would be a number of challenged that the NMC would have put forward in relation to the evidence of Colleague G. Mr Radley identified the challenged he would have made in relation to each relevant paragraph of Colleague G's statement. In addition to the challenges in their statement, he submitted that he would have challenged Colleague G on behalf of other witness statements provided by the NMC.

3. Reasons to fabricate evidence: Mr Radley submitted that he would have questioned the relationship between Colleague G and yourself.

4. Seriousness: These charges relate to harassment and bullying, so are serious.

5. Good reason for non-attendance of the witness: No medical notes have been provided to the panel, but Mr Radley did not challenge the reason for Colleague G's non attendance.

6. Whether reasonable steps have been taken to secure the attendance of the witness: This is not relevant as Colleague G is not an NMC witness.

7. In the circumstances, Mr Radley was not aware of Colleague G's non-attendance before today so could not have asked additional questions to other witnesses.

Mr Radley submitted that under these circumstances, he objected to the admission of Colleague G's statement into evidence on the basis of *Thorneycroft* and that they are a crucial witness.

In relation to the statement from Dr 1, Mr Radley submitted that this is effectively a letter, not a written statement with a statement of truth attached. Further, that there is no formality of a signature and the document is incorrectly dated. Mr Radley submitted that it would be unreliable to admit a letter or statement of this type into evidence in a case of such serious nature. He therefore objected to both of these statements being admitted into evidence.

Decision and reasons on admissibility of statement of Colleague G

The panel noted that this witness was lined up to give oral evidence at 11am on day 12 of the hearing but it was told subsequently that they could not attend due to serious medical issues.

The panel considered this application using the following relevant principles of *Thorneycroft*. It determined that:

1. There are elements of this evidence which although not sole to the charges, are potentially decisive.

2. There is significant challenge to the content of Colleague G's statement. The panel took account of the extent to which Mr Radley intended to challenge Colleague G's statement during cross-examination.

3. There may be potential reasons for Colleague G to fabricate their allegations, which was a key area of challenge from Mr Radley. The connection between various witnesses has been explored during cross-examination of other witnesses by Ms Simpson, and Colleague G allegedly had a closer, friendship based relationship with you than the rest. The panel considered that this may need to be explored to deal with the question of fabrication or collusion.

4. The charges are extremely serious taken both individually and together. They include allegations of bullying and harassment by a senior member of staff towards junior staff. The panel considered the potential consequences you may face, which could potentially have a negative impact on you reputationally and from an employment perspective. The panel recognise the seriousness of this impact but determined that it does not tip the balance in terms of fairness to the NMC case. Since this case is so serious, it is more important that witnesses are properly examined on their evidence.

5. There is a good reason for the non-attendance of Colleague G. The panel had no reason to believe the reason is untrue although no medical certificate has been presented to it as this is a live and ongoing issue for the witness.

6. The RCN has taken reasonable steps to secure the attendance of the witness.

7. The NMC has not had prior notice of Colleague G's non-attendance due to the nature of the issue. Whilst the panel accept the reason for this non-

attendance, it is against the backdrop of Mr Radley's prepared cross-examination.

The panel determined that to admit this statement into evidence would be unfair to the NMC and would place it at a disadvantage as the evidence cannot be tested or challenged. The panel therefore rejected Ms Simpson's application to admit Colleague G's statement into evidence.

Decision and reasons on admissibility of statement of Dr 1

The panel had sight of this document and noted that it was incorrectly dated in 2014 instead of 2024 and was unsigned. Further, it was not in the format of a statement, and did not include a statement of truth. The panel also noted that it purports to be in the form of a letter but is not on letter-headed paper. Instead, it appears to be a standard Word-processed piece of text in standard format.
The panel considered this application using the following relevant principles of *Thorneycroft*. It determined that:

1. It is not the sole or decisive evidence in support of the charges.
2. There would be some level of challenge to this as Dr 1 states that they needed to check if they were on duty, and then also strongly asserted what allegedly took place.
3. There is no indication of any reason for Dr 1 to fabricate their evidence.
4. The charges are serious.
5. The panel has not been given a reason as to why Dr 1 was not called to attend the hearing and is not aware of any steps taken to secure their attendance. The panel accepted that this evidence was not included in your bundle as a result of an administrative error, but there is no basis on which (without the attendance of this witness) the NMC can question the validity of the statement made, examine its contents or check on oath the truth in the absence of a statement of truth.

The panel determined that to admit this statement into evidence would be unfair to the NMC and would place it at a disadvantage as the evidence cannot be tested or challenged. The panel therefore rejected Ms Simpson's application to admit Dr 1's statement into evidence.

Decision and reasons on facts

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

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

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

- Colleague A: Band 5 nurse in the ECT Clinic at the time.
- Colleague B: Band 5 nurse in the ECT clinic at the time.
- Colleague D: Band 2 Health Care Support Worker in the ECT Clinic at the time.
- Colleague E: Health Care Support Worker in the ECT clinic at the time.

- Colleague H: Health Care Support Worker in the ECT clinic at the time

- Dr 2: Lead Psychiatrist for the ECT Clinic at the time.

The panel also heard evidence from you under oath/affirmation.

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

At the outset of its deliberations on the facts stage, the panel recognised that these events allegedly occurred some time ago and that this lapse in time will have affected some recollections in relation to all of the witnesses. The panel gave due consideration to this in its findings.

The panel also considered the case of *Hutchinson v General Dental Council* [2008] EWHC 2896 (Admin). The panel recognised the need to carefully consider any potential prejudice caused by any lack of specificity in the charges.

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

Charge 1a

"That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:
    a) Endeavoured to have a meeting with Colleague A, as requested by them, without prior notice to Colleague A;"

This charge is found proved.

In reaching this decision, the panel took into account the written and oral evidence of Colleague A, as well as your own evidence.

The panel first considered paragraph seven of Colleague A's written statement in which they state the following:

> *'I requested that a meeting be arranged so that we could discuss what the problem was. Kara said that she was busy in her new post so this might not be possible but would find out. Without any warning sometime after mentioning this, [[Colleague G] turned up at the clinic .I was sat in the office having lunch and [Colleague G] walked into the office, Kara stood up and said, [Colleague A], [Colleague G] is here for the chat you wanted with us. I was completely taken aback, as I had not received any warning, and there was no offer of support. This was held in one of the empty waiting rooms within the clinic, it was horrendous.'*

You stated the following in your written statement:

> *'I deny this charge. I accept that I attempted to have a meeting with [Colleague A] at [their] request. [They] requested the meeting be held with [Colleague G], to informally discuss some issues between them. [Colleague G] worked in another clinic and because of the nature of [their] work, could not provide a concrete time, so I suggested [they] come to the ECT clinic when [they were] available. I told [Colleague A] I would organise the meeting and that we would speak when back at work. [Colleague G] came to the clinic and I asked [Colleague A] if [they] wanted to come and join us for a meeting. It was not inappropriate or undermining or interfering for me to have arranged the meeting that [Colleague A] requested in this way.'*

The panel also noted the text message evidence in your bundle, which confirms that Colleague A did request this meeting.

The panel could infer from the evidence that the meeting was to deal with the breakdown of relationships within the workplace. The panel noted that whilst you claimed this meeting was informal and did not require minutes, you also stated that you took minutes for yourself which the panel did not have sight of. The panel concluded that this indicates a degree of formality. Consequently, the panel determined that it would be reasonable to assume that some arrangement would have been made for this meeting to take place.

Therefore, the panel concluded that on the balance of probabilities, it can be deduced that the meeting was of such importance that it should have been arranged at a more formal footing and that it was consequently inappropriate for you to have had this meeting without Colleague A being given prior notice.

Charge 1b

"That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:

    a) Informed Colleague A:
        i. that "it's a good job she did tell me about your [PRIVATE] as this won't go against you on your sickness" or words to that effect;
        ii. Your words at charge 1b)i. above, were said with a smile or a smirk on your face."

This charge is found NOT proved in its entirety.

In reaching this decision, the panel took into account the evidence of Colleague A on page seven of the fact finding document as well as your own evidence.

The panel considered the evidence in the fact-finding document in which Colleague A states that they informed Colleague I of their [PRIVATE] and asked that you were not informed. Colleague A also states the following:

> *'When I returned to work, Kara took me into her office and with great pleasure said, "I know you asked [Colleague I] not to tell me but well, [they] did" -Kara had a sly grin when saying it. She went on to say luckily for you I do know as your sickness record won't be affected due to the reason, so it's a good job [Colleague I] did tell me…'*

You denied this allegation and stated that you would *'never speak about something as personal and sensitive as a [PRIVATE] with anybody in this way.'*

The panel determined that there is some level of agreement between your account and Colleague A's in relation to the words spoken being to the effect of *"it's a good job she did tell me about your [PRIVATE] as this won't go against you on your sickness*". The difference in accounts is in relation to how the conversation about the [PRIVATE] came about. Whilst you say that you were informed about it by Colleague I but that Colleague A brought it up in your conversation, Colleague A states that you mentioned it. The panel preferred the account of Colleague A in terms of how the conversation came about, as the evidence shows that given the state of your relationship with Colleague A at the time, it is unlikely that they would want to confide such a personal detail with you.

The panel therefore determined that you became aware of Colleague A's [PRIVATE] as a result of Colleague I informing you about it and that it is more likely than not on the balance of probabilities that you used this information to prompt the conversation with Colleague A about it. However, the panel concluded that it is reasonable, as Colleague A's manager, that you would raise the issue as you were under an obligation to do something about it in relation to the return-to-work meeting.

The panel concluded that whilst, on the balance of probabilities, these words are more likely than not to have been said by you, it determined that the NMC has not discharged its burden of proof in showing that your actions were inappropriate,

undermining or interfering with Colleague A. The panel therefore found this charge not proved in relation to charge 1b(i).

In relation to charge 1b(ii), the panel considered the accounts given by yourself and Colleague A.

Colleague A stated that you said the words at charge 1b(i) with a '*smirk'* or '*smile'* on your face. The panel considered that the evidence for this charge relies entirely on Colleague A's interpretation of your facial expression. There was no other evidence to support this charge. The panel was therefore not satisfied that the NMC had discharged its burden of proof in relation to this charge and therefore found it not proved.

Charge 1c

"That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:

   c) Shouted at Colleague A in regards to an unknown patient's capacity;"

This charge is found NOT proved.

In reaching this decision, the panel took into account the witness evidence, the Trust's incident report and your own evidence.

The panel considered Colleague A's witness evidence in which they stated that you '*shouted, 'no she hasn't''* in relation to the patient's capacity. The panel also had sight of the incident report where Colleague A was being interviewed about this incident and they stated that they had gone to your office and explained that the patient had regained capacity. You allegedly 'said, "N*o she hasn't" and shouted this*

out for everyone to hear'. The panel determined that this is a consistent account, having regard to the fact that Colleague A said the same thing in their oral evidence.

The panel also noted your statement in which you denied shouting at Colleague A about this incident. The panel also had sight of your responses during the Trust's investigative interview in which you stated that you felt the matter should be referred to Dr 2 for a professional opinion as a senior clinician. You also stated that *'an atmosphere was building up as [Colleague A was getting irate so I said "can we lower the heat please?" I then left the room'.*

The panel had sight of an email from the Recovery Practitioner (RP) for ECT patients at the time. This confirmed that they were working at the clinic on 5 July 2019. They stated that *'the day passed without incident'* and that they *'did not witness any raised voices or any other occurrence that would indicate conflict in the suite.'*

The panel also had regard to the evidence of Dr 2 who stated that:

> *'Kara Hannigan did not shout at [Colleague A] during this exchange as she has alleged to the NMC. I am of the view that [Colleague A] misinterpreted what took place.'*

The panel was satisfied that there was a heated conversation of some sort involving you and Colleague A based on the evidence before it. As such the panel gave little weight to [PRIVATE] Dr 2 because whilst they say that they did not witness you shouting, they are unable to confirm that this incident did not take place. The panel therefore determined that there are two opposing views without supporting evidence of what occurred as there are no other witnesses to the allegation or to your assertion that Colleague A became irate.

The panel determined that the NMC has not discharged its burden of proof in relation to this charge and therefore found it not proved.

Charge 1d

“That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:

   d) Berated/Shouted at Colleague A loudly, in regards to an incident form;”

This charge is found NOT proved.

In reaching this decision, the panel took into account the witness evidence and the investigation report. The panel noted the lack of specificity and broad time frame involved in this allegation but from the evidence before it, the panel deduced that this incident took place on the same day as that in charge 1c, namely 5 July 2019.

The panel had regard to Colleague A’s written and oral evidence including the fact finding document and internal investigation report. Whilst this evidence refers to the incident, it does not make reference to Colleague A being berated or shouted at by you.

The panel noted that the only reference to you shouting at Colleague A in relation to this event, comes from Colleague D’s statement in which they state the following:

> *‘On one occasion, I recall Kara berated Sam really loudly about completing an incident form. Kara raised her voice and had the doors of her office open. Instead of calmly correcting any oversights, she made a really big deal of it. We were a small team in a small unit and you couldn’t help but overhear everything especially as her office doors were usually open.’*

The panel noted that whilst Colleague D was consistent in their account during oral evidence, the issue remains that there is a lack of detail in relation to narrowing down the incident to which they were referring, including any dates or times.

The panel determined that the NMC has not discharged its burden of proof in relation to this charge, and therefore found it not proved.

Charge 1e

"That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:

   e) stated "I was just being nice when I said you had completed the incident report correctly as it needed lots of things changed" or words to that effect."

This charge is found NOT proved.

In reaching this decision, the panel took into account the witness evidence and the internal investigation report. The panel noted the lack of specificity in this charge in relation to the Datix report.

The panel considered Colleague A's supplementary statement in which they stated:

> *'I can't remember how long after I had submitted the incident report, but Kara pulled me in to say that she wasn't happy with the form. She asked me to rewrite the incident form, and to include something that I didn't agree with. I asked her what was wrong with the form, as my previous one was fine and explained that the only thing, I was unsure of was the restraint information, and I had the manager for the restraint team sit with me to go through it together … When I said I don't understand as you said my previous form was fine, this was when she said, "she was just being nice" when she had said that and that she had had to make lots of changes. I then said, "I don't believe you Kara". I asked her to show me what changes she had made to the original form, so I can learn from them, and she refused.'*

Colleague A maintained this position in their oral evidence. The panel noted that the allegation refers to a previous, unidentified Datix report but drew the inference that the report was in some way similar to the one that was being discussed during your above conversation with Colleague A.

You denied having said these words to Colleague A.

The panel determined that there is no independent or documentary evidence to demonstrate that the first Datix report had been amended without Colleague A being made aware which would give rise to you making this comment.

On this basis, the panel determined that it had two opposing and unreconcilable versions of this conversation, and on balance it was unable to find this charge proved in the absence of any other contemporaneous or independent information. The panel concluded that the NMC had not discharged its burden of proof in relation to this charge and therefore found it not proved.

Charge 1f

"That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:

    f) Shouted at Colleague A in regards to a Datix report;"

This charge is found NOT proved.

In reaching this decision, the first noted that this charge lacks specificity with regards to which incident it refers to. The panel had regard to the witness statements, fact finding document, and the internal investigation interview.

The panel was unclear and unable to deduce from the evidence put forward which Datix incident is being referred to. The panel has previously inferred that there were two Datix incidents, Datix Incident 1 (DI1) which occurred first, and DI2 which is referred to in charge 1e and occurred second. If this charge is in relation to DI1, then this would be a duplicate of charge 1e and would automatically be found not proved as a result.

If this charge relates to DI2, the only evidence indicating that you shouted at Colleague A comes from Colleague B's statement in which they stated the following:

> *'[Colleague A] said [they were] going to do a DATEX report as a staff member had left the unit. Kara began to query the entry and why we were saying [Colleague D] had become gradually unwell throughout the day. She wanted us to change the way we entered the information so it wouldn't make her look bad as it could have implied that she had ignored our concerns. [Colleague A] said [they were] not going to lie on the report and Kara began shouting at [them]. [Colleague A] told to her "Well you do it then". Kara was really angry and it escalated into a shouting match between them. [Colleague A] then reported this to the senior nurse the next day. Kara said to me "[Colleague A] never listens", I said I didn't want to get involved and that [Colleague A] was just trying to capture the facts accurately but Kara didn't want [them] to do that.'*

However, the panel noted that Colleague B did not mention this when interviewed in the Trust investigation dated 17 February 2020. The above statement was made on 12 January 2024, which the panel considered was a significant amount of time between the two inconsistent accounts. The panel therefore placed more weight on the Trust investigation report as it was closer to the time of the incident.

The panel also noted that Colleague A did not make reference to being shouted at in relation to this.

On the basis of the uncertainty as to which incident is being referred to in this charge, and that the only evidence in support of it comes from Colleague B's second

witness statement the panel determined that the NMC has not discharged its burden of proof and therefore found this charge not proved.

Charge 1g

"That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:

   g) In regards to a tree of patient experience, created by Colleague A said:

      i. "look what a mess she's made" or words to that effect;
      ii. "why has she done this, it's a waste of time"."

This charge is found NOT proved in its entirety.

In reaching this decision, the panel took into account Colleagues B and D's witness evidence, as well as the fact finding document and photographic evidence.

In relation to charge 1g(i), Colleague D stated the following in their written statement:

> *'I recall one incident, it was some sort of staff initiative, where [Colleague A] spent ages doing a drawing of a tree of patient experiences with names on it and patient comments for everyone to see. But when I came in the next day, Kara was there and said "look at the mess [they've] made". Most of it had been taken down. I knew that's not how [Colleague A] had left it. That's when I knew Kara had gone too far. She had sabotaged the work to make [Colleague A] look bad. I was incredulous about how cruel she was.'*

Colleague D maintained their position in oral evidence. Colleague A also made reference to this incident in the fact-finding document and in their oral evidence.

The panel also had sight of photographic evidence which showed the positioning of the tree and what it looked like.

You denied this charge. You stated that:

> *'…In reality, I moved the poster to the adjacent display board in order to better display it in the patient waiting room. Where [Colleague A] had placed it, the door divide and lock obscured some it the poster. It remained in position without any alterations until approximately 2022…'*

The panel determined that there is no evidence to support that, apart from moving the tree, you made any changes to the poster in such a way that it may suggest you were unhappy with or did not like it.

Whilst accepting that the witnesses gave very clear evidence, the panel determined that the NMC had not discharged its burden of proof in relation to this charge and therefore could not find it proved.

In relation to charge 1g(ii), the panel considered that the evidence comes from Colleague B's statement in which they state:

> *'I remember we were doing information boards for the new clinic, we wanted different topics up on each one. [Colleague A] made a beautiful large tree compilation from card on a large message board. [They] came in on [their] day off and put it up. Kara saw [them] putting it up and didn't say anything but when [Colleague A] left for the day, Kara questioned "why has she done this, it's a waste of time". It was so disheartening. She was so dismissive.'*

The panel determined that the NMC had not discharged its burden of proof in relation to this charge for the same reasons as those in charge 1g(i). Therefore it did not find this charge proved.

Charge 1h

“That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:

   h) Called a Doctor in the presence of Colleague A/E/other colleagues, and apologised for Colleague A organising treatment for an unknown patient;”

This charge is found NOT proved in relation to the stem.

In reaching this decision, the panel took into account the witness evidence and the fact finding document.

The panel considered the witness evidence of Dr 2 in which they stated the following:

> *‘I recall the incident that I believe led to this charge. I cannot recall the date. A patient was referred to me by another Consultant. I saw the patient and concluded that they should have ECT, and I left it there. [Colleague A] booked this patient in for ECT. The other Consultant was annoyed that their patient had been booked in for ECT, when they had only requested an opinion, and called to complain. Kara Hannigan and I both apologised to the Consultant as their patient should not have been booked in for treatment by [Colleague A], and I could understand why they were angry as it was their patient. Whilst it was wrong that [Colleague A] booked the patient in for ECT, it was not a big mistake, and I did not personally blame [them]. I had to take responsibility for it because I did not specify that [they] should not book the patient and we should wait for the Consultant to make a formal referral...’*

The panel had sight of the fact finding document but noted that whilst Colleague A made reference to this incident it does not appear that they were present when the phone call was made.

The panel also had regard for the witness evidence of Colleague E in which they stated that:

> *'…She (you) then went onto the phone in the communal office, rather than in her private in office, and started apologising to the Dr about how [Colleague A] shouldn't have started organising the treatment. It made me feel very uncomfortable, listening to the exchange. It seemed that it had been done deliberately to embarrass [Colleague A], because [Colleague A] was there, I and another Health Care Support Worker were also there. It felt to me that Kara was very aggressive in her manner towards [Colleague A] at the time, it was the tone she used.'*

The panel determined that all of the evidence indicates that the conversation between you and the Doctor did take place, and that there was a breach of procedure such that an apology was necessary, so it was reasonable for you to have done so.

The panel determined that the NMC had not discharged its burden of proof in showing that your actions during this event were inappropriate towards Colleague A. therefore the panel could not find this charge proved in relation to the stem.

Charge 1i

"That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:

i) Put a mediation appointment with Colleague A in the diary which was visible to other colleagues;"

This charge is found NOT proved.

In reaching this decision, the panel took into account the witness evidence, the photo evidence of the diary as well as your witness evidence.

The panel considered Colleague A's statement in which they state the following:

> *'I requested mediation…The whole process was awful. Kara put the diary invitation for everyone in the diary so everyone could see this. This shouldn't have happened. The diary is something Kara used to provoke anxiety amongst staff.'*

The panel also had sight of an email chain between you and the Assistant Human Resource Manager (AHRM) where you were requesting confirmation of the mediation. The panel also considered the photo of the diary entries for 5 August 2019 which were made up of three listed meetings. However, the panel noted that whilst these may have been referring to the mediation meeting, there was no specific mention of the word '*mediation'*.

The panel determined that as mediation was not specifically mentioned in the diary, the stem of this charge could not be met as the NMC has not discharged its burden of proof in relation to showing that your actions were inappropriate, undermining or interfering with Colleague A.

Charge 1j

"That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:

    j) Said to Colleague A “it’s something like prostitutes would wear” or words to that effect, when commenting on Colleague A’s appearance.”

This charge is found proved.

In reaching this decision, the panel took into account the contemporaneous fact-finding document, witness evidence and the internal investigation report.

The panel first considered the witness statement of Colleague A in which they state the following:

> *‘…. [Colleague B] … was present for when this was said. Kara always commented on my appearance, in general. I would always do my hair, have some makeup on, and clean clothes, … Kara said to me “I have never seen anyone who puts the effort into coming into work as you do”, she then said you remind me of a blue mascara girl, all dolled up, or something to that effect (it so long ago now it’s hard to remember). I asked her what that meant, Kara said “it’s something prostitutes would wear 30 years ago”. I remember getting up and walking out into the treatment room, as I was upset and a bit tearful. Colleague B came after me check on if I was ok and said don’t let her see that this upset you, as that is what she wants. It’s not worth it.’*

The panel noted that this account was supported by the fact-finding document in which Colleague A gives an almost identical, consistent account of the incident. The fact-finding document pre-dated Colleague A’s NMC witness statement by around five years, so the panel gave more weight to Colleague A’s evidence. additionally, the panel had sight of the investigation report in which Colleague A again maintains their position and is consistent in their account.

The panel had sight of Colleague D's statement where they stated that they recalled you '*commenting in front of everyone on Sam's blue eye shadow implying only prostitutes wear blue eye-shadow*.'

The panel also had sight of Colleague B's statement in which they stated the following:

> *'Kara said "You look like the blue mascara ladies" and we were puzzled by this and queried it, and she said "Oh you know, like ladies of the night". It was a horrible thing to say. [Colleague A] replied "I don't sleep around". Kara just laughed. [Colleague A] was visibly upset and left the room.'*

You denied this charge and gave an explanation in your oral evidence. You stated that this comment was made as part of a '*self-deprecating'* story about yourself when you were younger. The panel did not find your account plausible.

The panel considered that across the witness evidence, there were slight variations of the exact wording used by you. However, the panel noted the effect of the passage of time since the incidents on witnesses' memory and noted that the evidence remained consistent and was corroborated and substantial. The panel concluded that all of the variations can be construed as being to the effect of '*something prostitutes would wear'*.

Therefore the panel determined that this charge is proved on the balance of probabilities.

Charges 1k and 1l

"That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:

k) Ticked box/es on the theatre list when Colleague A was carrying out treatment to unknown patient/s;
l) Said “is it such a bloody issue and can’t you just put another tick in the box/put another tick box” or words to that effect;”

These charges are found NOT proved.

The panel considered these two sub charges together.

In reaching this decision, the panel took into account the witness evidence and the investigation report.

The panel considered the written and oral evidence of Colleague A. In their supplementary statement they stated the following:

> *‘This refers to the theatre check list. There is a WHO checklist which is carried out on anyone having anaesthetics by the nurse in charge of the treatment room…On the day that I was in charge of the treatment room, where I tick things as I go, I picked up the booklets and found that everything had already been ticketed off. I asked who had checked off the theatre lists and Kara said that she had. When I asked why she had done that, … she replied very aggressively saying “I don’t see what your bloody problem is. Why don’t you just draw some extra boxes”. I raised this as an issue as something could have been left out, but as she had completed the checklist I would not have known. I felt at the time that she was setting me up for failure by interfering and undermining me constantly.’*

Colleague A also gave a similar account in the investigation report.

You denied this charge and stated the list was a ‘*joint working document’* and that it was ‘*not inappropriate or interfering or undermining for me to do this, it was usual practice.*’

The panel noted that the lack of specificity about particular patients, times and dates. Without these details the panel could only draw the conclusion that this was all part of the normal working practice in a busy ECT clinic.

The panel determined that the NMC had not discharged its burden of proof in relation to this charge as there was no basis on which to find the alleged words you said proved, or to show that you undermined or interfered with Colleague A.

Charge 1m

"That you, a registered Band 7 nurse:

1. Between November 2014 to July 2019 on one or more occasions behaved inappropriately and/or undermined and/or interfered towards or with Colleague A, in that you:

    m) Erased the allocations that Colleague A had written on the allocations board, moments after Colleague A had completed it;"

This charge is found NOT proved.

In reaching this decision, the panel took into account the witness evidence, investigation report and your evidence. the panel noted that this charge does not refer to a specific incident or date, and there was consequently a lack of specificity in the charge.

The panel had sight of Colleague A's witness statement where they stated that you had asked them to '*delegate more'* and that they had put allocations next to each person's name. They alleged that you '*wiped down the entire board and re-allocated everyone in front of all the nursing staff*' and that this made them '*feel deflated'*.

In the investigation report, Colleague D stated that '*it was almost like Kara enjoyed embarrassing [Colleague A].*' The panel noted that this was a generalised comment

and not relating to a specific incident so gave the evidence less weight in relation to this charge.

The panel also had sight of Colleague D's written statement in which they stated the following:

> *'…[Colleague A] would write the duties on the board. Kara would come in, not say anything and then wipe the board, change it all and walk back out again without saying anything. It was humiliating for [Colleague A] as their work was being undermined and undone. This happened on more than one occasion...'*

The panel also had regard to your statement, where you deny the charge and explain that you 'may have erased the board on occasion if it was incorrect, as this was [your] job'. You maintained this position in your oral evidence.

The panel concluded that Colleague A's evidence refers to one specific incident, whereas Colleague D's indicates more of a series of incidents. Further, that in the absence of specific references to dates or the number of occasions this happened, the panel determined that your explanation is plausible. The panel noted that you conceded that erasing the board may have been a mistaken thing for you to do on occasion.

Consequently, the panel concluded that the NMC had not discharged its burden of proof in relation to this charge and therefore found it not proved.

Charge 2a

"That you, a registered Band 7 nurse:

2. Your actions at one or more of the charges at 1(a) to 1(m) above amounted to bullying and/or harassment of Colleague A in that:
    a. Your conduct was unwanted;"

This charge is found proved in relation to charges 1a and 1j ONLY.

The panel considered this charge in relation to charges 1a and 1j only, as those were the only ones found proved. The panel looked at these charges cumulatively.

In reaching this decision, the panel took into account the same evidence on which it found these charges initially proved.

In relation to charge 1a, the panel determined that based on the evidence, you were aware of the adverse situation between Colleague A and Colleague G, so it would have been good practice to arrange the meeting formally. It was apparent from the witness evidence of Colleague A that they expected the meeting to have been pre-arranged so they could prepare themselves for it and be on a more formal footing. Therefore, the panel determined that on the balance of probabilities, this charge is proved as it relates to charge 1a.

In relation to charge 1j, the panel concluded that your conduct was unwanted as evidenced by Colleague A's reaction after the comment was made. Further, the evidence of Colleagues B and D also demonstrates that Colleague A was upset and took time to themselves as a result. The panel therefore concluded that this charge is also found proved on the balance of probabilities as it relates to charge 1j.

Charge 2b

"That you, a registered Band 7 nurse:

2. Your actions at one or more of the charges at 1(a) to 1(m) above amounted to bullying and/or harassment of Colleague A in that:

b. Your conduct had the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A."

This charge is found proved in relation to charges 1a and 1j ONLY.

The panel considered this charge in relation to charges 1a and 1j only, as those were the only ones found proved. The panel had regard to section 26 Equality Act 2010.

The panel first considered this charge as it relates to charge 1a. It had regard to the three criteria set out in the Equality Act which include the perception of the victim, the other circumstances of the case and whether it is reasonable for the conduct to have the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the victim.

The panel considered that Colleague A was called into a meeting they were not made aware of. It concluded that your conduct did have the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A in that they were invited to an important meeting dealing with interpersonal disputes in the workplace without any notice or formality. The panel had sight of Colleague A's statement in which they stated that:

> *'I was completely taken aback, as I had not received any warning, and there was no offer of support. This was held in one of the empty waiting rooms within the clinic, it was horrendous.'*

In terms of Colleague A's perception, the panel noted their position in the above statement which they maintained in oral evidence. By the time this meeting took place it was apparent that there were difficulties in terms of the relationships within the workplace, and according to your own evidence, matters of Colleague A's capability were to be raised during the meeting. Consequently, the panel was of the view that the circumstances called for a more formal approach in organising the meeting, and that it was reasonable for your conduct to have had the effect described by Colleague A.

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

The panel then went on to consider this charge in relation to charge 1j. Having considered the evidence, the panel could not see any plausible or reasonable

explanation for you using those words to Colleague A in the circumstances other than for them to have the purpose of creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.

The panel considered whether your words could have amounted to a throwaway comment made with little thought or intention, however the panel had regard to your denial of using those words and consequently was unable to take into account other such explanations. Additionally, there was no evidence of any attempt by you to apologise or explain your position, or to offer comfort to Colleague A in the immediate aftermath of the comment being made despite their clear upset which was noticed by other witnesses. The evidence of Colleague A being evidently upset comes from the investigation report and Colleague B's witness statement which were consistent.

Having had regard to the circumstances of the working relationship as it stood, the panel concluded that there was no plausible explanation for you making these comments to Colleague A. As this charge has been made out on the purpose limb of the Equality Act, the panel did not go on to consider the reasonableness. Therefore, the panel found this charge proved on the balance of probabilities in relation to charge 1j.

Charge 3

"That you, a registered Band 7 nurse:

> 3. On or after 17 September 2015 you inappropriately placed Colleague A on an informal stage of the capability policy."

This charge is found proved.

In reaching this decision, the panel took into account the witness evidence, contemporaneous documents including the Performance Appraisal & Development Review (PADR) and the letter sent from Colleague A to you dated 17 September 2015. The panel also considered your own evidence.

The panel first considered the witness evidence of Colleague A. It heard evidence of the need for Colleague A to build a series of competencies over a period of time, which was seen in their PADR conducted in May 2015 (which was seven months after they commenced work).

The panel also had regard to the written and oral evidence of Colleague D and yourself.

The panel paid particular attention to the contemporaneous documents, including the PADR and the letter from Colleague A to you dated 17 September 2015 which gave notice that Colleague A was to be placed on the informal stage of the Trust's capability policy for a period of five weeks. The panel did not see any other evidence by of a PADR or other documentation which commented on Colleague A's capability between November 2014 and 17 September 2015.

The panel noted that Colleague A said this came '*as a shock'* to them. Colleague D stated that you had informed them you were going to place Colleague A on the capability procedure before they went off sick.

The panel had regard to the evidence of a phone call made by Colleague A to you on 16 September 2015, in which they stated that they had been to the doctor and self-referred to Occupation Health (OH). They stated that they would try to remain in work until the OH appointment. The next day you produced the letter notifying Colleague A that they would be placed on the capability procedure.

Your explanation was that from day one, you had concerns about Colleague A's capability. You stated that you have records of dates and contemporaneous notes of meetings, none of which were shown to the panel so it consequently could not give any weight in its consideration of this evidence. The panel also noted that there was nothing in the PADR to alert to any capability issues other than ordinary personal objectives. There were '*areas for improvement'* but nothing to suggest any failures. The panel also noted that in your evidence, you stated that you had a meeting with Colleague A and 'ga*ve [them] a year to gain the competencies [they] required to*

progress'. When questioned by the panel, you agreed that this must have been done after the PADR in May. The capability procedure was therefore only invoked four months later, which contradicts your statement in oral evidence that you gave Colleague A one year to deal with their competencies.

The panel concluded that there is no evidence of there being any prior issues with Colleague A's capability, and that on balance it is more likely than not that them being placed on the capability procedure on 17 September 2015 was linked to the telephone call the previous day and that this was inappropriate.

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

Charge 4a

"That you, a registered Band 7 nurse:

4. Between May 2016 and July 2019, on one or more occasions you:
    a) Re-wrote a list of appointments without informing Colleague A;"

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague H where they stated:

> *'I remember there were times where there were appointments which would be changed without [Colleague A] knowing. For example, [Colleague A] would write up a list of appointment, and Kara would redo the list and appointments would be changed. Then people wouldn't turn up on the day and it would turn out that their appointment had been changed but this hadn't been communicated to the team. This caused confusion and it appeared, to me, that the way it was done came across as undermining towards [Colleague A].'*

Your evidence was that you deny the charge but stated that appointments would be changed by everyone '*including me'*. You stated that the list was a document you all had access to.

The panel concluded that, on the balance of probabilities, you (and others) did amend the list without always informing Colleague A, so this charge is proved factually.

Charge 4b

"That you, a registered Band 7 nurse:

4. Between May 2016 and July 2019, on one or more occasions you:
   b) Would undermine Colleague A by changing ECT treatment plans"

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Colleague H, Dr 2 and your own evidence.

The panel had sight of Colleague H's statement in which they said the following:

> *'… When I was reading my local interview statement it reminded me that there were times when Kara would undermine [Colleague A]. When [Colleague A] would be in charge of the treatment room and Kara would change things. For example, like changing the ECT treatment plan. But it would be in front of other team members which made it awkward for everyone involved and was unprofessional.'*

You denied this charge and stated:

> *'As the clinic manager, it was my job to ensure that ECT treatment plans were correct. It was often the doctors who would change the treatment plans. If I*

noticed something was incorrect in someone's treatment plan then it was my responsibility to ensure it was amended so that it was correct. I am responsible for the nursing care and interventions for a patient at any point in their treatment journey, so may well alter these as clinical needs change. This was not ever done to undermine [Colleague A], but to ensure that all patient treatment plans were accurate. In doing so I was not being inappropriate or undermining or interfering towards [Colleague A].'

The panel also had sight of Dr 2 statement who supported your account. They stated that '*As clinic manager, if Kara Hannigan had noticed something incorrect in the plan then it was her responsibility to update or correct it*.'

Therefore, the panel concluded that whilst the evidence indicates you did make changes to the ECT treatment plan, this was in line with changing clinical requirements. Without further evidence the panel was unable to deduce that this, in any way undermined Colleague A. Consequently, the panel concluded that the NMC has not discharged its burden of proof in relation to this charge and therefore found it not proved.

Charge 5a

"That you, a registered Band 7 nurse

5. Your action/s at charge 3 and/or charge 4a) and/or charge 4b) above amounted to bullying and/or harassment of Colleague A in that:

a. your conduct had the purpose or effect of:

i. violating Colleague A's dignity, or

ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.."

This charge is found proved in relation to charge 3 ONLY.

The panel noted that it did not find charge 4b proved, so that falls away and was not considered. The panel only considered this charge as it relates to charges 3 and 4a.

In relation to charge 3, the panel determined that your actions in inappropriately placing Colleague A on the informal stage of the capability policy did violate their dignity. Colleague A was in distress, went to their GP, was placed on medication and told you they '*could not cope anymore'*. Further, as a result of the surrounding circumstances your actions did have the purpose of violating their dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for them. Your actions also evidently had the effect of creating this environment as Colleague A went off sick straight away.

The panel had sight of the Trust's investigation report where Colleague A was asked if they felt pressured into signing the capability policy, and they replied that they were '*so upset and deflated I signed it as I just wanted to get home and get away from Kara*.'

The panel considered the absence of evidence that capability was raised with Colleague A between November 2014 and September 2015, as well as the absence of any reference to capability in the PADR prior to this incident. The panel also noted the evidence around the timing of the telephone call made by Colleague A to you, and the subsequent timing of a follow-on email to Colleague I outlining your concerns with Colleague A. Additionally, there was your own evidence of a long conversation between you and HR running to two hours. The panel could only draw the conclusion that matters were prompted to be brought to a head due to the initial telephone call from Colleague A to you, which led to the hurried process of them being placed on the capability policy.

The panel concluded that on the balance of probabilities, this had the purpose of intimidating Colleague A because of the sequence of events. There was clearly the intention and purpose of violating Colleague A's dignity as well as creating an intimidating, hostile, degrading, humiliating or offensive environment for them. The panel therefore found this charge proved in relation to charge 3.

The panel then considered this charge as it relates to charge 4a. It noted its initial finding that this charge was factually proved.

Having had regard to all of the evidence, the panel concluded that your actions were in line with your role as the manager, and that yourself and others did change the ECT plans without always informing Colleague A for plausible reason. Consequently, the panel was of the view that the NMC had not discharged its burden of proving that your actions had the purpose or effect of violating Colleague A's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. This charge was found not proved as it relates to charge 4a.

Charge 6a

"That you, a registered Band 7 nurse

6. Between November 2014 to July 2019 on one or more occasions:
    a. Publicly discussed Colleague B's personal affairs;"

This charge is found NOT proved.

In reaching this decision, the panel took into account the witness evidence, investigation report and fact finding document.

The panel first considered Colleague D's evidence in which they stated:

> *'I recall her talking to me about [Colleague B]'s personal problems. [Colleague B] would have shared these with Kara in confidence but Kara then mentioned it to me…'*

The panel noted that this account was consistent with Colleague D's evidence within the investigation report. The panel also had sight of Colleague A's statement where they state that you publicly discussed Colleague B's [PRIVATE] that they had. This is consistent with Colleague A's statement in the contemporaneous fact finding

document where they stated that you spoke '*horribly'* about Colleague B and that you said [PRIVATE].

Whilst the panel accepted the evidence, it considered the case of Hutchinson. The panel bore in mind that this is a vague charge which spans over a wide time range and refers to 'personal affairs' which could have a broad application. The panel determined that it was not specific as to who the parties were to the conversations when they took place, and there was a lack of detail about when the conversations occurred.

Having regard to the lack of any detail about the frequency or dates, the panel determined that the NMC has not discharged its burden of proof in relation to this charge and therefore found it not proved.

Charge 6b

"That you, a registered Band 7 nurse

6. Between November 2014 to July 2019 on one or more occasions:
    b. Stated that you would "go into the drugs cupboard and mess it all up", or words to that effect;"

This charge is found NOT proved.

In reaching this decision, the panel took into account the witness evidence, the fact finding document and your own evidence.

The panel considered the fact finding document which predates the NMC witness statements by four years. The fact finding document refers to you saying '*we go in and mess it all up'* and Colleague A's witness statement says '*they said they would go into the drugs cupboard and mess it all up on the days that Colleague B was off to see [their] reaction when coming back in*.' The panel was of the view that this implies you and another person would be doing so.

You denied this charge.

The panel concluded that whilst there is evidence of this charge, it refers to an event over a five-year period without narrowing down the date range and no evidence as to the general circumstances these comments were alleged to have been made. The panel took into account the case of Hutchinson. It considered the nature of the charge and anything else which may allow the panel to draw conclusion as to the likelihood of this charge occurring on the balance of probabilities, but in the absence of any contextual evidence and having had regard to your potential explanation in your witness statement, the panel determined that the NMC had not discharged its burden of proof. Therefore, the panel could not find this charge proved.

Charge 6c

"That you, a registered Band 7 nurse

6. Between November 2014 to July 2019 on one or more occasions:
    c. Put a meeting in the daily diary between yourself and Colleague B, for no reason;"

This charge is found proved.

In reaching this decision, the panel took into account the witness evidence, the fact finding document and your own evidence.

The panel first considered the statement of Colleague D where they stated the following:

> *'She (you) would put meetings for no reason in the daily diary to worry people, such as "[Colleague B] meet Kara at 10 am". She knew this would worry [Colleague B]. I know this as a fact because Kara had told me of the pleasure she got out of doing this.'*

The panel also had sight of Colleague B's witness statement where they stated:

‘Kara would do little things like put a meeting in the calendar to see me and, as we were usually called to the office because she thought we’d done something wrong, she knew I would be worried. She’d then cancel the appointment, it was like she was playing mind games with me.’

During Colleague B’s cross-examination, they agreed that managers need to have meetings with staff and put these into the diary, however they stated that it was not routine for meetings to be cancelled. They also said that they spoke to you about how they felt about this, that it ‘*provoked [their] anxiety’* but that you *‘just laughed it off’*.

The panel had regard to the fact finding document where Colleague A states that they recall you saying:

‘… When I put, “Kara and [Colleague B] -meeting” in the diary, I know it stresses [Colleague B] out and I enjoy watching [their] face when [they] read it in the diary.’

You denied this charge and stated that:

‘…Sometimes, a meeting would be rearranged or cancelled if there was no longer a need for it or we were not able to meet at the arranged time. I deny ever making the alleged comment that I knew this provoked anxiety in [Colleague B] and would do it to get a reaction from [them].’

The panel concluded that there is sufficient corroborated and consistent evidence in Colleagues D and B’s witness statements, as well as in the fact finding document, to find this charge proved on the balance of probabilities.

Charge 6d

“That you, a registered Band 7 nurse

6. Between November 2014 to July 2019 on one or more occasions:
    d. Said to Colleague A that Colleague C had a “[PRIVATE] issue”, or words to that effect.”

This charge is found proved.

In reaching this decision, the panel took into account the witness evidence, fact finding document, Trust investigation report and your own evidence.

The panel considered the statement of Colleague A where they stated:

‘[PRIVATE].’

The panel also heard Colleague A’s oral evidence on this account. The panel determined that Colleague A’s evidence was solid and that their recollections appeared secure as they remembered the impact of being relieved that Colleague C was being bullied instead of them and they felt guilty. This was a consistent account given in both their oral and written statements.

The panel noted that Colleague B’s oral evidence supported Colleague A’s account. However, the panel attached little weight to this evidence as Colleague B had not mentioned this incident before their oral evidence.

The panel also had regard to the witness statement of Colleague D where they stated that you ‘*often breached the confidentiality of some of the staff*.’

You denied this charge and stated that Colleague C and their mother ‘*would discuss these issues openly with many members of the team*.’

Taking all of the evidence into account, the panel determined that on the balance of probabilities, it is more likely than not that you did share this information with Colleague A given that the evidence shows you had a propensity to share inappropriate confidential information.

Charge 6e

"That you, a registered Band 7 nurse

6. Between November 2014 to July 2019 on one or more occasions:
    e. Said to Colleague B, "look at the way he's done his notes, that's disgusting, I need to have a word with him" or words to that effect, in regards to Colleague C;"

This charge is found proved.

In reaching this decision, the panel took into account the witness evidence, the NMC exhibit bundle, the fact finding document and your evidence.

The panel considered the statement of Colleague B where they stated the following:

'…Kara was not nice to [Colleague C] or about [them]. She would say to me and [Colleague A] things like "look at the way [they've] done [their] notes, that's disgusting, I need to have a word with [them]". She'd nit-pick [them] about [their] work. She would say things to me about [their] documentation and record-keeping. She wasn't respectful or nice to [them]...'

The panel noted that Colleague B maintained this position in oral evidence.

The panel also had sight of the fact finding document where Colleague A stated the following:

'[PRIVATE].'

The panel also had regard to Colleague A's witness evidence where they stated that you informed them of Colleague C's [PRIVATE], [PRIVATE] and that they '*couldn't write case notes*.' The panel determined that whilst this evidence does not go specifically to the charge, it was relevant as it demonstrated your propensity to talk about such matters in an indiscreet way. The panel also had sight of the consistent

evidence of Colleague D who stated that you often breached the confidentiality of some of the staff.

Whilst these events occurred some time ago, the panel bore in mind that they were in relation to a particular individual and consequently, the panel determined that it was more likely than not that words to this effect were spoken by you. Therefore, the panel found this charge proved on the balance of probabilities.

Charge 6f

"That you, a registered Band 7 nurse

6. Between November 2014 to July 2019 on one or more occasions:
    f. Told Colleague A/B to put details on the unit computer which you then changed without informing colleagues;"

This charge is found NOT proved.

In reaching this decision, the panel took into account the witness evidence, investigation report and your evidence.

The panel noted that Colleague D mentioned this incident in their NMC witness statement, but there was no mention of it in the initial investigation report. Further, this was not referred to by Colleague A or B.

You denied this charge.

The panel noted that this charge lacks specificity in relation to the date, and that it is too vague of a charge. The panel considered the case of *Hutchinson* and determined that the evidence as presented does not help to particularise the charge. The NMC has therefore not discharged its burden of proof in relation to this charge and the panel could not find it proved.

Charge 6g

“That you, a registered Band 7 nurse

6. Between November 2014 to July 2019 on one or more occasions:
    g. Informed colleagues that Colleague D was lying about their previous 2 years of working in theatre;”

This charge is found NOT proved.

In reaching this decision, the panel took into account the witness evidence, NMC exhibit bundle and your own evidence.

The panel first considered the witness statement of Colleague D in which they state the following:

> *‘I remember confronting Kara and having a row with her. I found out from colleagues that she was saying I was lying about my previous two years of working in theatre. I questioned her about it, and she initially denied it. She then admitted it but brushed it off and said “let’s move on”.’*

You denied this charge and said that you *‘adhere to my responsibility of confidentiality towards anyone in my team.’*

The panel considered that the only reference to this charge comes from Colleague D’s witness statement, which was essentially hearsay and therefore the panel gave it the appropriate less weight. There were no other witnesses to this incident. The panel therefore determined that the NMC has not discharged its burden of proof in relation to this charge and could not find it proved.

Charge 6h

“That you, a registered Band 7 nurse

6. Between November 2014 to July 2019 on one or more occasions:

h. Disclosed information about Colleague D's possible retirement to colleague/s;"

This charge is found NOT proved.

In reaching this decision, the panel took into account the witness evidence from yourself and Colleague D.

The panel had sight of Colleague D's witness statement where they stated that someone had '*stopped me in the corridor and asked when I was retiring.'* In their oral evidence, Colleague D stated that they had discussed retirement with you, but that they made it clear that they were not thinking about it at the time. Beyond this, the panel noted that there is no obvious connection between Colleague D's conversation with you and their being stopped in the corridor by another colleague.

The panel preferred your evidence in relation to this charge and determined that the NMC has not discharged its burden of proof. Therefore, the panel could not find this charge proved.

Charge 6i

"That you, a registered Band 7 nurse

6. Between November 2014 to July 2019 on one or more occasions:
   i. Disclosed information about Colleague C/E/F's [PRIVATE];"

This charge is found proved in relation to Colleagues C and F ONLY.

In reaching this decision, the panel considered this charge in relation to each colleague.

<u>Colleague F</u>

The panel considered the witness statement of Colleague D where they stated the following:

'[Private]'.

Colleague D maintained their position in oral evidence that you had disclosed this information. The panel determined that although this was the only reference to this charge in relation to Colleague F, based on its previous findings on your propensity to disclose confidential information, it is more likely than not on the balance of probabilities that you did disclose this information. The panel therefore found this charge proved.

Colleague C

The panel had regard to Colleague B's witness statement where they stated the following:

'…It was Kara who told me the reason for [PRIVATE] [PRIVATE] which should have been kept confidential from other members of staff.'

The panel also had sight of Colleague D's statement where they stated that:

'[PRIVATE].'

The panel had regard to Colleague A's witness statement who corroborated this evidence and stated the following:

'[PRIVATE].'

The panel noted that Colleague A's account was consistent with their statement in the fact finding document.

You denied this charge and stated that Colleague C's mother had disclosed the reason for Colleague C's [PRIVATE].

Having had regard to the evidence of three corroborated and consistent witnesses who maintained their position in oral evidence, and noting your denials, the panel determined that it was more likely than not that you did share information about Colleague C's [PRIVATE] and therefore found this charge proved on the balance of probabilities.

Colleague E

The panel did not have sight of any evidence relating to Colleague E's [PRIVATE]. It determined that the NMC has not discharged its burden of proof in relation to this charge and therefore found it not proved in relation to Colleague E.

Fitness to practise

Having reached its determination on the facts of this case, the panel moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

In reaching its decision, the panel 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 therefore exercised its own professional judgement.

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

Submissions on misconduct

Mr Radley identified the specific, relevant paragraphs of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) which your actions he submitted breached and amount to misconduct.

Mr Radley submitted that your conduct in relation to integrity, confidentiality, sharing sensitive information about staff members, failing to identify boundaries and lack of consideration of and cooperation with other colleagues was sufficiently serious to amount to misconduct. Mr Radley submitted that your conduct amounts to serious departures from the expected standards of a registered nurse and fell far short of what would be proper conduct.

Mr Radley referred to:

- FTP-12c - Commitment 3: We'll always carefully consider evidence of discrimination, victimisation, bullying or harassment last updated on 1 August 2023;
- FTP3 - How we determine seriousness last updated on 27 February 2024; and
- FTP3a - Serious concerns which are more difficult to put right last updated on 27 February 2024

Mr Radley submitted the following:

> *'…The NMC say these are serious concerns at the heart of a caring profession.*
>
> *a. Confidentiality*
> *b. Professionalism with other staff*
> *c. Harassment and bullying of colleagues*
>
> *They can be described as serious professional misconduct because these issues relate to a senior nurses, role as a registered professional (A senior / experienced Nurse in practice)*

and the impact on their area of practice, colleagues and the workplace. such as Bullying [sic] and lack of confidentiality which could affect patient trust and the nursing teams whom the nurse is working with…'

Mr Radley submitted that an informed member of the public would be concerned to learn of your serious and repeated behaviour and suggested that the misconduct is so serious that it could meet the public interest test alone.

Mr Radley added that in all circumstances of this case, your acts and omissions in the charges proved were a departure from good and safe professional practice and are sufficiently serious to constitute serious misconduct.

Mr Radley invited the panel to take the view that the facts found proved amount to misconduct.

Ms Simpson submitted that you accept and acknowledge that your conduct found proved in charges 1a, 1j, 2, 3, 5, 6c and 7 fell seriously short of the standards expected of a registered nurse and amount to serious misconduct. However, you dispute that charges 4a, 6d, 6e, 6i, 9b, and 9d amount to misconduct.

Ms Simpson submitted that your conduct in charges 6d, 6e or 6i was in line with your role as a manager. She submitted that your conduct in these charges would not be regarded as deplorable by fellow practitioners and did not depart from such that acceptable professional standards that it amounts to serious misconduct. Also, the charges did not amount to bullying or harassment.

Ms Simpson submitted that as the panel found that there was no untoward intention in relation to charge 9b and 9d. She submitted that the charges do not represent deplorable behaviour which fell well below the standards expected of a nurse and did not amount to bullying or harassment. Therefore, charges 9b and 9d do not meet the required level to amount to serious misconduct.

Submissions on impairment

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

Mr Radley outlined the following test in the *Grant* case for considering whether a registrant's practice is currently impaired:

> a) *Has in the past acted and/or is liable in the future to act as so 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 profession into disrepute; and/or*
> c) *Has in the past committed a breach of one of the fundamental tenets of the profession and/or is liable to do so in the future and/or*
> d) *Has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

Mr Radley submitted that, in this case, at least limbs b and c above are engaged.

Mr Radley submitted that your misconduct went on for five years, from 2014 to 2019. He submitted that during this time your behaviour was repeated which demonstrates a deep-seated attitudinal concern, which is difficult to remediate. Therefore, there is a real risk of repetition. Mr Radley submitted that the attitudinal issues would impact your ability to practise kindly, safely and professionally.

Mr Radley submitted that a finding of impairment is required to maintain public confidence in the profession and to uphold proper professional standards. He submitted that public confidence in the profession and the NMC as its regulator would be undermined if such behaviour were not marked as unacceptable.

Mr Radley invited the panel to find that your fitness to practise is currently impaired by reason of your misconduct.

Ms Simpson submitted that there is no suggestion that you put any patients at an unwarranted risk of harm or would do so in the future and there is also no dishonesty in this case. She submitted that the tenet relating to professionalism and trust is the most relevant tenet in this case and you accept that limb b and c of the *Grant* test are engaged.

Ms Simpson submitted that you have had an unblemished career since 1991 and began your management career as a Band 7 manager of the ECT clinic at the Cardiff and UHB in September 2009. You were a line manager and were responsible for the junior members of staff at the UHB for 10 years before these allegations were raised. Ms Simpson told the panel that since the allegations were raised in 2019 you have continued to work in the same role with the Health Board. She told the panel that the latest of the charges arose around six years ago and some of them up to eight to 10 years ago.

Ms Simpson submitted that you acknowledge your faults and have been very remorseful and self-critical. She submitted that you have reflected on the witness evidence from the NMC regarding your behaviour and felt that at the time and you did not understand or appreciate the situation as it was occurring. You have identified what you could have done differently, such as seeking more assistance from a manager to help facilitate any issues, learning to communicate better, and providing and receiving better support. Ms Simpson submitted that in the past you struggled to ask for help, but now you have regular meetings and management supervision where you openly explore different options for supporting staff. You have also expressed genuine empathy and compassion towards colleagues A and B in particular.

Ms Simpson submitted that you have undertaken courses, training, and learning in relation to:

- Emotional intelligence

- Communication skills
- Interpersonal skills
- Inclusive management and leadership skills
- Noticing and challenging microaggressions
- Capability processes by having well-being conversations
- Ethical and compassionate leadership
- Leadership styles leading with kindness and compassion
- Bullying
- Reflecting organisational culture and understanding attitudes.

Ms Simpson submitted that there are a number of positive testimonials before the panel today. The testimonials describe you as a '*compassionate, sensitive, and respectful towards colleagues and patients'* and '*a valued member of the nursing family.*' You have also been described as '*positive, reassuring, treating everybody with dignity, respect and kindness*' and you have '*dealt with matters confidentially and sensitively.'*

Ms Simpson pointed out that the testimonials come from a range of people including your peers, your line managers and those you have managed.

Ms Simpson submitted that Colleague H stated the following in her evidence, which has been accepted by the panel:

> '…*now she's become a better manager from it. She's not the same as when this was all happening...*'

Ms Simpson submitted that there have been no further concerns regarding your conduct and the risk of repetition is very low. Therefore, a finding of impairment is not required on the ground of public protection.

Ms Simpson submitted that it is a matter for the panel to consider whether or not a finding of impairment is required to maintain public confidence in the profession and to uphold proper professional standards. However, she added that a well-informed

member of the public would know of the circumstance of this case, along with your reflections and remediation and in all of the circumstances would consider a finding of impairment on public interest grounds unnecessary.

Ms Simpson invited the panel to find that your practice is not currently impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'* It also had regard to the case of *Nandi v General Medical Council [2004] EWHC 2317 (Admin).*

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. Having regard to the facts found proved the panel considered whether each charge/ sub-charge is sufficiently serious as to amount to misconduct.

The panel appreciates that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the charges found proved amounts to misconduct, the panel considered the charges individually amount to serious misconduct. The panel also considered the circumstances of the case.

The panel was satisfied that the following charges found proved individually amount to serious misconduct:

Charge 1a

The panel had regard to its finding of fact in relation to charge 1a and considers that the facts found proved amount to serious misconduct. You were aware of the importance of the meeting to be held and the reasons for it. The meeting called for a degree of preparation and formality in the circumstances, yet you did not give prior notice to Colleague A. The panel concludes that your actions fell short of what would have been proper in the circumstances of this meeting and included breaches of the code and therefore amount to misconduct.

Charge 1j

The panel found that you, as a senior manager, used inappropriate and offensive language towards a junior member of staff, Colleague A, in front of peers and colleagues in the workplace. You likened her appearance to that of a prostitute. The panel was of the view that your conduct was disrespectful to a junior colleague and fell below the expected standards of a registered nurse. The panel concluded that your conduct amounts to misconduct.

Charge 2a and 2b in relation to charge 1a

The panel has found that your conduct in relation to charge 1a amounted to bullying and harassment and that you had the effect and purpose of creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A, which was unwanted. The panel concluded therefore that having bullied or harassed Colleague A it was driven to the conclusion that charge 2a and 2b amounted to misconduct.

Charge 2a and 2b in relation to charge 1j

The panel has found that your conduct in relation to charge 1j amounted to bullying and harassment and that you had the effect and purpose of creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A, which was unwanted. The panel concluded therefore that your conduct in harassing Colleague A by using words to the effect of '*it's something a prostitute would wear*' amounted to misconduct.

Charge 3

The panel found that you used a process to manage performance in the workplace in an inappropriate way. Your conduct inappropriately placing Colleague A on the capability policy not only amounted to serious breaches of the Code but also the UHB local capability policy and the UHB dignity at work process with which you would have been familiar. The panel found no justification for your actions and being placed on the capability policy came as a shock to Colleague A. Therefore, the panel concluded that your actions in charge 3 amounted to misconduct.

Charge 5 in relation to charge 3

The panel found that your conduct in charge 3 was aimed at deflecting a potential allegation of bullying and/or criticism against yourself from Colleague A. In finding charge 5 proved the panel considered that you had bullied and harassed Colleague A and therefore, in the context of this charge, concluded that these actions amounted to serious misconduct.

Charge 6c

The panel found that you created diary meetings between yourself and Colleague B for no good work related reason. The panel previously heard and accepted evidence that this would elicit a reaction from Colleague B and that your conduct was aimed at creating that reaction. The use of work-related processes in ways that are not directed towards effective care of patients and management of staff is in this way plainly inappropriate. Consequently, the panel finds that your conduct in charge 6c amounts to misconduct.

Charge 6d, e and i

The panel was of the view that these charges all refer to your disclosure of information that you had as part of your role as a manager In the ECT clinic. In one charge, you expressed your opinion on a performance matter in relation to the

competence of a colleague. Each of the disclosures referred to in these charges were made to more junior members of staff. The panel determined that the information disclosed was sensitive and not such that it should have found its way into open conversation. Your conduct in relation to each of these charges breached the Code and the panel concluded that each amount to serious misconduct.

Charge 7 in relation to charge 6c

The panel found that your conduct in charge 6 was done with the purpose of creating an intimidating and hostile environment and thus in the circumstances of this charge your conduct was a significant departed from the standards expected of a registered nurse and amounted to misconduct.

Having regard to the Code, the panel was of the view that your conduct did fall significantly short of the standards expected of a registered nurse. Specifically:

> ***'…1 Treat people as individuals and uphold their dignity***
> *To achieve this, you must:*
> ***1.1*** *treat people with kindness, respect*
> *and compassion*
> ***1.5*** *respect and uphold people's human rights*
> ***2 Listen to people and respond to their preferences***
> ***and concerns***
> *To achieve this, you must:*
> ***2.1*** *work in partnership with people to make sure you*
> *deliver care effectively*
> ***2.6*** *recognise when people are anxious or in distress and respond*
> *compassionately and politely*
> ***8*** *Work co-operatively*
> *To achieve this, you must:*
> ***8.1*** *respect the skills, expertise and contributions*
> *of your colleagues, referring matters to them*
> *when appropriate*
> ***8.2*** *maintain effective communication with colleagues*

8.7 *be supportive of colleagues who are encountering health or performance problems. However, this support must never compromise or be at the expense of patient or public safety*

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

To achieve this, you must:

9.1 *provide honest, accurate and constructive feedback to colleagues*

9.2 *gather and reflect on feedback from a variety of sources, using it to improve your practice and performance*

9.3 *deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times*

9.4 *support students' and colleagues' learning to help them develop their professional competence and confidence*

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

20.8 *act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*

20.10 *use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times'*

The panel was not satisfied that the following charges found proved amount to serious misconduct:

Charge 4

The panel was of the view that charge 4 did not amount to misconduct as simply re-writing a list of appointment could be within a nurse's normal role.

Charge 9b

The panel was of the view that simply accusing a colleague of breaking a Christmas tree is not sufficient did not on its own amount to misconduct.

Charge 9di and ii

The panel found that the evidence indicates that this conversation took place in private. The panel could not conclude that these conversations and the words used by you are sufficient to amount to misconduct. It appears that these exchanges took place in the course of your normal managerial responsibilities for Colleague B and was of the view that the comments you made were reasonable statements to be made in a managerial role.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 February 2024, which states:

‘The question that will help decide whether a professional’s fitness to practise is impaired is:

“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”
If the answer to this question is yes, then the likelihood is that the professional’s fitness to practise is not impaired.’

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must make sure that their conduct at all times justifies both their patients’ and the public’s trust in the profession.

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

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

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

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

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

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

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

d) […]*'*

The panel noted the submissions by Mr Radley that *"at least limbs b and c"* are engaged in this case. The panel also noted Ms Simpson's submissions that there are no public protection aspects to this case. The panel acknowledge that a difficult and hostile work environment can impact patient care. The UHB's own *'Dignity at Work Process'* acknowledges this:

> *'Behaviour which may be described as bullying and/or harassment is not conducive to the provision of effective healthcare services.* […] *The effects of poor relations between individuals can be felt across the NHS organisation and ultimately can have an impact on the care provided to patients.'*

In this case however, and having regard to all the circumstances, the panel saw no evidence of direct risk to patients from your behaviour and therefore determined that limb A is not engaged in this case.

In relation to limb B, the panel considered that your behaviour significantly impacted the reputation of the nursing profession. You inappropriately misused the UHB capability policy for your own ends and did so at the expense of a subordinate, Colleague A, who you knew to be vulnerable, whilst you were in a senior position. Separately, and in a group scenario, you likened the same colleague's appearance to that of a prostitute. You mistreated another subordinate, Colleague B,

inappropriately by using an appointments diary to elicit reactions from her. You also disclosed sensitive information about colleagues. Your behaviour breached tenets of the nursing profession relating to prioritising people, promoting professionalism and trust, and practicing effectively. Therefore, the panel determined that as to the past, your behaviour engages limbs B and C of the grant test

The panel then went on to consider whether your misconduct is capable of being addressed, whether it has been addressed, and whether it is highly unlikely to be repeated. In doing so, the panel took account of submissions made on your behalf and the five key areas identified by Ms Simpson during her submissions:

- Your unblemished record in the nursing profession;
- Your work record since these concerns emerged;
- Your reflections;
- The courses you have undertaken;
- Testimonials made in support of you.

In terms of whether your misconduct is capable of being addressed, the panel took into account the NMC guidance, FTP-3 in considering its seriousness. This guidance identifies some behaviours which are particularly serious and identifies harassment as one such behaviour. The guidance also identifies by reference to the Code, the seriousness of bullying and harassment and states:

> *'the NMC takes concerns about bullying, harassment […] and discrimination very seriously.'*

The panel also had regard to the NMC guidance FTP-3a which identifies serious concerns which are more difficult to put right. According to this guidance, these include harassment, and breaching the professional duty of candour, which includes covering up. In this case, the panel took the view that placing Colleague A on the capability policy was an attempt on your part to deflect from and cover up your behaviour towards her. Therefore, by definition, according to NMC guidance, the panel determined that your misconduct is serious and includes concerns which are

more difficult to put right. However, in all of the circumstances, including your previous nursing service and conduct since these concerns were raised, the panel determined that your misconduct may be capable of being addressed, although in a case such as this, this may not be easy.

The panel then turned to the question of whether your misconduct has been addressed. Again, the panel noted and accepted Ms Simpson's submissions that you had an unblemished nursing career previously and no concerns raised subsequent to these matters being raised.

The panel then considered your updated reflective piece which you provided. The panel noted that the reflective piece extends to 34 pages covering each of the charges found proved. The panel noted that your reflections draw heavily on standards, policy, and procedures, including the Code along with your reassurances as to how you will comply with such guidance going forward. A theme of your reflections is that you have developed as a manager and would now do things differently and the panel found this encouraging. However, the panel was of the view that at the time you commenced the conduct subject of this hearing in 2015/2016, you were already an experienced registered nurse and line manager. The panel acknowledged submissions made on your behalf that you have worked since 1991 with various line management responsibilities, ultimately becoming a band 7 nurse in 2009.

The panel determined that none of the behaviours found proved in this case are either complex or capable of misunderstanding. The panel noted your assertion in your reflections that *'I was relatively inexperienced in people management at that time. I was too quick to try to resolve the situation myself.'* The panel determined that at that time you were already an experienced line manager who, in that capacity, and as a registered nurse, must have known that bullying and harassment and inappropriate disclosure of information are serious breaches of the Code.

The panel accept and respect your right to meet and defend the allegations raised against you in this case and recognises that the way in which you do that may impact your overall reflections. However, it determined that your reflections do not

convincingly touch upon the detail of your misconduct and what it was that brought you to act in the way you did. Specifically, in relation to charge 3 and charge 5 (in so far as it relates to charge 3), the panel determined that you placed Colleague A on the UHB capability policy in the absence of any cogent evidence justifying that. Indeed, your PADR assessment of Colleague A only four months earlier had been favourable.

The panel determined that whilst your reflections address the process of how you would handle capability in the future, you have not considered how and why you came to act in this way. It determined that your reflections follow a similar pattern for other areas of your misconduct.

Consequently, whilst the panel found some elements of your reflective piece encouraging, it concluded that it fell short in terms of understanding the underlying processes and your attitude that led you to bully and harass Colleagues A and B.

The panel is encouraged that you have sought to develop your nursing skills and knowledge by attending a range of courses all of which appear relevant to your general role as a nurse, and that of a line manager in a fast-moving NHS environment. However, the panel would have benefited on some reflections explaining how these courses have impacted on your practise and influenced your learning.

The panel read through the considerable testimonial evidence produced on your behalf and was encouraged by the positive comments made. It determined that these testimonials attest to your ability as a nurse, the development in your skills base, and other key aspects such as your honesty and integrity. The panel noted that, as submitted by Ms Simpson, the testimonials come from your line managers, peers, subordinates, and others, and therefore come from employees of varying skill sets and responsibilities.

The panel observed the difference between the descriptions given of you and your nursing practise in the testimonials compared to that revealed by its findings in this case. The panel gave significant weight to your testimonials and balanced these with

its own conclusions and findings in this case. It noted that the testimonial providers have not been party to the full evidence or the detailed findings in this case and that only four testimonials post-date the panel's finding of facts in this case. It concluded that whilst taking into account, and giving weight to your testimonials, and the behaviours attested to in them, the panel must nonetheless address the significant failings identified during the course of this hearing.

Having regard to all of the circumstances and evidence in this case, including your previous and subsequent record, reflections, strengthening of practise, and testimonials, the panel concluded that you have not yet remediated your misconduct in this case. This is based on the significant gaps in your reflections described above. Consequently, the panel determined that there remains a risk of repetition of your behaviour.

The panel considered that, in the circumstances, a finding of impairment in this case is not necessary on the ground of public protection as it determined that none of the evidence goes to your clinical capabilities as a registered nurse.

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

The panel considered that a well-informed member of the public would be highly concerned at your use of the capability policy to deflect potential criticism of your behaviour from a vulnerable colleague, colleague A. It determined that such a member of the public would be equally concerned by your treatment of Colleague B in using diary meetings simply to provoke an adverse reaction from her and, on the evidence, deriving pleasure from that process. Additionally, a member of the public would be concerned about your failure to observe appropriate boundaries by sharing sensitive information about colleagues with others.

The panel further determined that a member of the public would not expect nurses to act in this way with peers, let alone such behaviour being displayed by an experienced senior manager in your position.

The comments above also go to describe the way in which nursing professionals generally would view your behaviour. Consequently, the panel concluded that there is a significant public interest in this case and that a finding of impairment is needed to uphold proper professional standard of conduct and to maintain public confidence in the nursing profession, and the NMC as the regulator. As such, the panel finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Application to admit Colleague A's impact statement into evidence

Mr Radley made an application to admit an impact statement submitted by Colleague A into evidence. He told the panel that the statement illustrated the impact of your actions upon Colleague A. He submitted that whilst impact statements were usually provided in criminal proceedings, as opposed to regulatory proceedings such as these, the public interest in this case would be served by the statement being admitted and considered by the panel.

Ms Simpson disputed that the evidence was admissible. She submitted that the impact statement was not relevant as Colleague A had already given oral evidence to the panel. She also told the panel that although the impact statement was dated 5 March 2025, she had seen it for the first time on 12 March 2025, and therefore neither Ms Simpson or you had had sufficient time to consider and respond it.

The panel accepted the advice of the legal assessor who stated that the impact statement may be considered by the panel so long as it is deemed to be relevant and fair, as required by Rule 31 of the Rules.

The panel had sight of Colleague A's witness statement in order to consider it relevance and fairness.

The panel considered the impact statement to be relevant because it spoke to some of the issues in your case and the impact upon Colleague A. However, the document raised some broad effects which the panel would not be able to connect to specific instances of conduct in your case. Colleague A gave extensive oral evidence, of which the panel has the transcripts and is able to refer to.

The panel noted that although the impact statement was dated 5 March 2025, Ms Simpson and you did not see it until much later, on 12 and 13 March 2025. Therefore, neither Ms Simpson or you had had sufficient time to consider and respond it.

Given that the panel have heard extensive oral evidence from Colleague A, and also that neither Ms Simpson or you had had sufficient time to consider and respond to the impact statement, whilst it may be relevant, the panel decided that it would not be fair to admit it into evidence.

The panel therefore decided to put Colleague A's impact statement out of its mind when considering sanction.

Sanction

The panel considered this case and decided to make a suspension order for a period of 12 months, with a review thereafter. The effect of this order is that the NMC register will show that your registration has been suspended.

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

Submissions on sanction

Mr Radley highlighted that your misconduct is serious and, in view of that, he submitted that the appropriate sanction is that of a striking-off order. He submitted that the following featured as aggravating factors in your case:

- Registered nurses occupy a position of privilege and trust in the community and must maintain a professional approach
- You demonstrated a lack of insight into your failings
- Impact on the profession based on the panel finding of significant failings on your part
- Two limbs of the Grant test are engaged
- You breached fundamental tenets of the profession
- Lack of focus on the understanding of the seriousness of her actions
- Lack of relevant understanding of the mischief
- Public interest concerns are engaged
- Attitudinal concerns towards staff and colleagues.
- Bullying behaviour found
- Serious effect on staff, particularly Colleague A
- Effects on the workplace, culture and on individuals
- Sharing of sensitive information
- Treatment of colleague B

Mr Radley also identified the following mitigating features:

- No previous regulatory or disciplinary findings
- No patient harm
- Age and experience
- Recent positive references and testimonials

Ms Simpson invited the panel to consider both proportionality and purpose in respect of any sanction. She submitted that the sanction stage is about finding a fair balance between your rights and protecting the public. She also referred the panel to the NMC's guidance on sanctions (SAN-2) and highlighted that a panel is guided to impose the least restrictive sanction to address the issues in any case.

Ms Simpson informed the panel that you have no previous regulatory findings against you. You have had a long and accomplished career with an exemplary record, and the issues identified in your case relate to a short period in your long career. She referred the panel to the extensive positive testimonials previously submitted.

Ms Simpson submitted that there is no evidence of deep-seated or harmful personality or attitudinal issues in your case. In reference to the guidance on seriousness (FTP-3A), she highlighted that bullying and harassment are only serious when they sit alongside discrimination, and discrimination has not been identified in your case. Therefore, the misconduct in your case is not at the more serious end of the spectrum.

In the circumstances of your case, and in view of the panel's earlier finding of current impairment on public interest grounds alone, Ms Simpson submitted the panel may decide that a caution order is sufficient in your case. However, if the panel is not with her, then she proposed a conditions of practice order and suggested the following specific conditions: that you work for a single employer, undertake regular appraisals, and provide the NMC with regular reports from your line manager.

Ms Simpson concluded by submitting that the misconduct identified in your case is not fundamentally incompatible with your remaining on the register, and that there is no need for a future review of any sanction imposed.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel bore 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 regard to the Sanctions Guidance (SG). The decision on sanction is a matter for the panel independently, exercising its own judgement.

The panel identified the following aggravating features:

- Your misconduct is characterised by a power imbalance between you and the individuals whom your behaviour was directed towards – they were junior and less experienced colleagues. The panel considered this to demonstrate an abuse of your position of trust.
- Your misconduct included deliberate actions of bullying and harassment perpetrated against junior colleagues.
- Your conduct, in likening the appearance of Colleague A to a prostitute was carried out in front of an audience of junior staff.
- Charge three specifically stands out and includes the following aggravating features in itself:
    - Your proven behaviour in charge three, and the associated charge five, was calculated and deliberate.
    - It included misuse of the capability policy, which is intended to support staff performance, but which you used to bully and harass a junior and inexperienced colleague.
    - Your actions were intended to deflect criticism about you potentially coming from Colleague A. In that context, you attempted to cover up your behaviour.
    - Placing Collegue A on the capability policy was a response to your concern that she may raise a complaint of bullying against you and was done without any cogent evidence that use of the capability policy was in any way justified.

    - You were aware at the time you placed Colleague A on the capability procedure, that she was in some distress and vulnerable, but nevertheless continued.
    - You demonstrated confidence in your position and felt it unlikely that you would be challenged so much so that you felt able to share with another member of staff how you intended to place Colleague A on the capability plan before she had the opportunity to report sickness or allege bullying against you.

- In relation to another junior colleague, you continued putting meetings in the work diary with Colleague B despite being aware of the distress and it caused colleague B.
- On the evidence, this was done to provoke an emotional reaction from Colleague B. Again, you were sufficiently confident in your position and considered challenge unlikely such that you felt able to tell another member of staff of the enjoyment that you derived from this process.

The panel also identified the following mitigating features:

- You have reflected and demonstrated some developing insight into the issues which led to these regulatory proceedings. You have also undertaken some training and made efforts to strengthen your practice. However, the panel was of the view that you do not have insight into what triggered or caused you to act in such a way towards your colleagues.
- There is evidence that your management style has improved. In Colleague H's witness statement dated 4 December 2023, she said *"I think, to be honest, that since this has happened Kara is different now. It is like she has become a better manager from it, as she is not the same as when all this was happening. I don't know if this is because of lessons learned or if she has been doing some courses but she is a different manager and there is a good working environment now."*

- There is no evidence of repetition of the misconduct, and you have continued to practice throughout the NMC's investigation and these regulatory proceedings.
- Excellent and extensive testimonials from respected doctors and nurses who have worked with you.
- There is no evidence of patient harm.

The panel spent considerable time reading and assessing the lengthy and positive testimonials you provided from accomplished colleagues and other professionals in the field of nursing. In your case, there is a striking difference between the way you are depicted in the testimonials you provided, together with your ECT expertise, compared to the proven findings of the panel. The panel sought to balance all of these factors and consider the extent and seriousness of the misconduct in your case, alongside your professional record and reputation, to ensure that any sanction is proportionate given the public interest in this case.

The panel concluded that your behaviour overall risked creating a workplace culture which was not conducive to good working relations. Your disclosure of sensitive information about colleagues to other colleagues, also underlined those concerns.

Your actions have been found to be calculated and deliberate and your behaviour indicates a significant and concerning attitude towards junior members of staff.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the nature and seriousness of the misconduct identified. The panel was of the view that the issues in your case must be addressed in order to satisfy the public interest and send a clear message about the standards expected of a professional, registered nurse. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the nature and seriousness of your misconduct, a caution order would not sufficiently address the high public interest in your case. The SG states that a caution order may

be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your deliberate and calculated, bullying and harassing behaviour was not at the lower end of the spectrum and that a caution order would be wholly inappropriate, particularly given your incomplete insight. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*

The panel noted that conditions of practice are useful in responding to clinical issues or concerns. In your case, the issues do not relate to your clinical nursing practice, but instead to your behaviour and conduct towards colleagues. The panel reached the view that there are no practical or workable conditions that could be formulated, given behavioural and attitudinal concerns in your case. The panel concluded that placing conditions on your registration would not adequately address the seriousness of this case or sufficiently address the high public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It bore in mind that you are an expert in your field. There was extensive evidence before the panel of your otherwise excellent work record and your work ethic. In a long and otherwise impressive career, the panel found that you fell significantly short of the standards expected from a nurse.

The panel still had concerns in respect of your attitude, and it found that you have limited insight into key areas of this case, including what triggered/caused you to behave the way that you did.

Balancing your excellent work record before and after these events, your standing as an expert in your field, along with its conclusions about your attitude and insight, the panel concluded that a period of suspension would be the appropriate sanction in this case.

In coming to this decision, the panel had regard to NMC guidance SAN-3D. it concluded that this case is sufficiently serious that at least a temporary removal from the register is needed. The panel notes the significant public interest in this case and in all of the circumstances concludes that a suspension order will be sufficient to maintain public confidence in the nursing profession and to maintain professional standards.

Whilst not a single incident, your misconduct took place over a relatively short period of your career. However, the panel concluded that it was so serious that a lesser sanction would not be appropriate. The panel concludes that your reflections do not adequately address the attitudinal aspects of your case and weighed this in the balance with your work record, career history and testimonials in making its decision. There is no evidence of you repeating your misconduct since these concerns came to light. The panel is satisfied that your insight is developing, but there remains a risk of you repeating your earlier behaviour.

The panel went on to consider the length of the suspension order. It reached the view that a suspension order for a period of 12 months, with a review, would provide you time to further reflect, establish what caused you to act the way that you did and fully develop your insight. Moreover, the panel was satisfied that a period of suspension would sufficiently address the high public interest concerns in your case. A suspension for a period of 12 months, with a review, will send a clear message that deliberate and calculated, bullying and harassing behaviour will not be tolerated.

The panel considered whether a striking-off order would be proportionate but, taking account of all the information before it, particularly your clinical nursing practice, the panel concluded that it would be disproportionate, and unduly punitive in this case.

The panel is also satisfied that your misconduct is not fundamentally incompatible with remaining on the register.

Carefully balancing all of the factors in your case the panel has concluded that a suspension order for a period of 12 months, with a review, is the appropriate and proportionate sanction.

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

The panel considered that this order is necessary to maintain public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

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

Any future panel reviewing this case would be assisted by:

1. An updated reflective statement encompassing your thoughts on your behaviour and attitudes which led to these events and an understanding of the effects of this behaviour on other people.
2. Evidence of how you have kept your nursing knowledge up-to-date.
3. Updated testimonials.
4. Any further information which may assist the panel at a review.

This will be confirmed to you in writing.

Decision and reasons on interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

The panel took account of the submissions made by both Mr Radley and Ms Simpson.

The panel was satisfied that an interim order is not necessary for the protection of the public but however is required in the public interest. The panel had regard to the nature and seriousness of the facts found proved and the reasons set out in its decision for the substantive order. The panel considers that this case engages significant public interest and that a well-informed member of the public would be concerned if you were to practise unrestricted or under conditions when a substantive order of suspension has been imposed as a consequence of your significant departures from appropriate standards.

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 due to allow for any potential appeal period.

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

That concludes this determination.