

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

**18 – 29 March 2019
and
28 – 30 May 2019**

Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

Name of registrant: Hazel Margaret Dinnie

NMC PIN: 95J0022S

Part(s) of the register: Registered Nurse - Sub part 1
Adult Nurse (27 September 1998)

Area of Registered Address: Scotland

Type of Case: Misconduct

Panel Members: Tim Mann (Chair, Lay member)
Pamela Campbell (Registrant member)
Richard Bayly (Lay member)

Legal Assessor: Mike Bell

Panel Secretary: Tara Hoole

Miss Dinnie: Present and represented by Ann-Marie
Chalmers, Anderson Strathern 18, 20-29
March 2019, 28 – 30 May 2019
Represented by Tom Docherty, Anderson
Strathern on 19 March 2019

Nursing and Midwifery Council: Represented by Yusuf Segovia, NMC Case
Presenter

Facts proved: 1 and 2

	Schedule 1: 1, 2, 3, 5, 8, 9 and 10, Schedule 2: 2, 3 (in full) and 4
Facts proved by admission:	Schedule 1: 4, 7, 11 and 12. Schedule 2: 1, 3 (in part) and 4
Facts not proved:	Schedule 1: 6
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Interim suspension order

Details of charge (as amended):

That you, a registered nurse, whilst working as Director of Nursing at BMI Albyn hospital:

1. On one or more occasions as set out in Schedule 1, acted in a manner which was aggressive and ~~or~~ intimidating and ~~or~~ bullying towards colleagues. **Found proved**
2. For one or more of the reasons as set out in Schedule 2, failed to act appropriately and ~~or~~ professionally in your position of leadership. **Found proved**

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

SCHEDULE 1

- 1) On 22 March 2016, shouted at Colleague A for logging two clinical incidents on Sentinel before she reported them to you. **Found proved**
- 2) On an unknown date in September or October 2016, shouted at Colleague B for spelling your name with a lower case 'h' in an email. **Found proved**
- 3) On 12 September 2016, shouted at Colleague C on the telephone, using words to the effect of 'you fucking listen' and 'I'm just telling you to fucking watch it'. **Found proved**
- 4) In the summer of 2016, accused Colleague D of meeting Colleague E, a former colleague, 'in secret'. **Proved by admission**
- 5) On an unknown date, aggressively shook your fist at Colleague F in front of other colleagues. **Found proved**
- 6) On an unknown date, acted inappropriately and undermined the previous Director of Nursing in a meeting in front of others. **Found not proved**
- 7) On an unknown date, shouted at a Consultant in front of Colleague B. **Proved by admission**
- 8) On an unknown date, shouted at Colleague G. **Found proved**
- 9) On more than one unknown dates, shouted at Colleague H. **Found proved**

- 10) On more than one unknown dates, displayed aggressive behaviour towards staff at meetings. **Found proved**
- 11) On more than one unknown dates, were short when responding to questions raised by members of staff. **Proved by admission**
- 12) On an unknown date in early 2016, were aggressive towards external trainers when they provided training at the hospital. **Proved by admission**

SCHEDULE 2

- 1) Failed to respond adequately, **on occasions**, when staff members raised questions or issues with you. **Proved by admission**
- 2) Failed to encourage a positive culture of reporting incidents. **Found proved**
- 3) Failed to work collaboratively with the heads of department and/or failed to ensure that the heads of department worked together as a team. **Found proved**
- 4) Failed to manage the heads of department appropriately. **Proved by admission**
- 5) Hindered the heads of department in carrying out their roles effectively. **Found proved**

Amendments and admissions to charges

Following the reading of the charges on Day 1 and prior to any admissions, the legal assessor, having discussed the issues with Mr Segovia and Ms Chalmers, with their agreement provided guidance regarding the interpretation of the charges, which are written in the alternative. He next advised, by reference to the Oxford English Dictionary, the everyday definitions of key words within the charges (namely aggressive, intimidating, bullying, appropriately and professionally).

He advised that you should be aware of these definitions prior to any admissions to charges being made. He further advised that the panel keep these definitions in mind during the course of hearing evidence in these matters given the alternative nature of the charges.

The chair next invited Ms Chalmers, on your behalf, to make any admissions to the charges.

Ms Chalmers took the panel through Schedule 1 and told the panel that you admit to two of the allegations and to a further two with qualifications or amendments. She then took the panel through Schedule 2 in which, she said, you admit to one of the allegations with an amendment and admit to a further one in part.

Ms Chalmers told the panel that you admit to charge 1, insofar as it relates to your admissions in Schedule 1, in the alternative of your behaviour was aggressive but that you do not admit to intimidating or bullying behaviour. She then told the panel that you admit to charge 2, insofar as it relates to your admissions in Schedule 2, in the alternative of your failure to act appropriately but that you do not admit to a failure to act professionally.

Ms Chalmers submitted that it was open to the NMC to amend the charges in light of your admissions or alternatively for the panel to amend these charges under Rule 28 of the Rules.

Mr Segovia told the panel that he had no objection to amending Schedule 2 in respect of allegation 1 which currently reads:

- 1) Failed to respond adequately when staff members raised questions or issues with you.

To

- 1) Failed to respond adequately, **on occasion**, when staff members raised questions or issues with you.

However, in respect of the partial or qualified admissions, Mr Segovia submitted to the panel that the charges were clear and he would not be making an application to amend the charges to reflect your admissions. He told the panel that in his view it would be unfair to amend the charges at this stage of the proceedings to what could be viewed as a lesser charge. He submitted that it was for the panel to take into account your partial or qualified admissions during its findings of the facts in this case.

The panel noted the advice of the legal assessor.

The panel considered amending Schedule 2 allegation 1 as above. Given that there were no objections the panel determined to allow this amendment.

The panel then moved on to consider the partial or qualified admissions to Schedule 1, allegations 7 and 12 and Schedule 2 allegation 3, as detailed below.

- 7) On an unknown date, shouted **back** at a Consultant in front of Colleague B.

- 12) On an unknown date in early 2016, were **aggressive challenging** towards external trainers when they provided training at the hospital.
- 3) ~~Failed to work collaboratively with the heads of department and/or~~ failed to ensure that the heads of department worked together as a team.

The panel noted that the NMC had not moved to amend the charges to reflect these admissions. The panel considered that there were only partial admissions to these charges and as such the panel could not announce these as found proved. The panel determined it would therefore have to make a findings of facts in respect of these charges.

The panel went on to consider the further admissions made by Ms Chalmers on your behalf namely:

Schedule 1

- 4) In the summer of 2016, accused Colleague D of meeting Colleague E, a former colleague, 'in secret'.
- 11) On more than one unknown dates, were short when responding to questions raised by members of staff.

Schedule 2 (as amended)

- 1) Failed to respond adequately, **on occasions**, when staff members raised questions or issues with you.

These charges were therefore announced as proved by way of your admission. However, the panel noted that these admissions are based in the context of your partial admissions to charge 1, relating to Schedule 1, and charge 2, relating to Schedule 2. If,

during its findings on facts, the panel determines that the alternatives for these charges are also proved it will make this clear in its determination.

On Day 9, prior to Ms Chalmers closing submissions, Ms Chalmers informed the panel that you had further admissions to the charges. Ms Chalmers told the panel that you are now admitting allegations 7 and 12 in Schedule 1 without the previous qualifiers:

7) On an unknown date, shouted at a Consultant in front of Colleague B.

12) On an unknown date in early 2016, were aggressive towards external trainers when they provided training at the hospital.

Ms Chalmers told the panel that you also now admit allegation 4 of Schedule 2.

4) Failed to manage the heads of department appropriately.

These charges were therefore announced as proved in addition to the previous admissions.

Decision and reasons on application for an adjournment for Day 2

Following admissions to the charges on Day 1, Mr Segovia advised the panel of discussions between himself and Ms Chalmers regarding Day 2 of the hearing. He advised the panel that, due to unforeseen personal circumstances, Ms Chalmers was now unable to attend on Day 2 of the hearing to represent you.

Mr Segovia told the panel that it had taken considerable organisation to schedule the witnesses in this case and that this had been completed several weeks ago. He advised the panel that the NMC was now working on rescheduling the witnesses to

accommodate Ms Chalmers' absence on Day 2. However Colleague F was only available to give her evidence this day. He therefore submitted that the panel should hear Colleague F's evidence on Day 2 but that the other witnesses be rescheduled.

Ms Chalmers apologised to the panel for the inconvenience this had caused and told the panel she was grateful to the NMC for accommodating this short notice request. She told the panel that her colleague would be available tomorrow to enable Colleague F's evidence to go ahead as planned but requested the remaining witnesses be rearranged to other days.

The panel considered that this would be a preferred course of action in order to avoid significant delays in the hearing process. It determined to hear evidence from Colleague F on Day 2 as scheduled with Ms Chalmers' colleague representing you and to hear the remaining witnesses as and when they could be rescheduled.

Decisions and reasons on applications pursuant to Rule 31 to admit the hearsay evidence of Mr 2 and Ms 3

On Day 1 of the hearing Mr Segovia made an application to admit the written hearsay evidence of Mr 2 and Ms 3 under Rule 31 of the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) (the Rules).

Mr 2 was the Executive Director (ED) at BMI The Park Hospital at the time of the allegations and conducted an investigation in relation to the allegations raised in order to decide whether there was a case to answer and whether a disciplinary hearing would be required.

Ms 3 was the Regional Director of Clinical Services for the North of England at BMI. Ms 3 speaks to the role and standards expected of a Director of Nursing (DoN).

Mr Segovia explained that the witness statements of Mr 2 and Ms 3 had been agreed by both parties in advance of the hearing and neither party sought to call these individuals to give live evidence. As such no arrangements had been made for Mr 2 and Ms 3 to attend the hearing.

Ms Chalmers, on your behalf, confirmed there were no objections to admitting the written witness statements of Mr 2 and Ms 3.

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 of the Rules 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 and made reference to the case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin)*.

The panel gave the application in regard to Mr 2 and Ms 3 serious consideration. The panel noted that both witnesses' statements had been prepared in anticipation of being used in these proceedings and contained the paragraph 'This statement ... is true to the best of my information, knowledge and belief' and was signed by the author.

The panel noted that both parties had agreed in advance that these witnesses were not required to provide live evidence. Further, the panel noted that these witnesses are not witnesses to the matters in the charges but provide relevant information. The panel noted that both Mr 2 and Ms 3 indicated that they would be willing to attend this hearing if required but there had been no arrangements for these individuals to attend.

The panel considered that, in these circumstances, there would be no unfairness to either party and the panel would benefit from having the information contained in these witness statements before it.

In these circumstances, the panel determined it would be fair and relevant to accept into evidence the written statement of Mr 2 and Ms 3 but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decisions and reasons on applications to admit further evidence pursuant to Rule 31

Day 1

On Day 1 of the hearing Ms Chalmers, on your behalf, made an application to admit further documentation. This documentation (Exhibit 3 and Exhibit 4) comprised in total five witness statements taken from staff in the Hospital which formed part of the investigation conducted by Ms 1.

Ms Chalmers submitted these documents were relevant to your case, specifically to the evidence of the first witness, Ms 1, and therefore, out of fairness to you, she was making an application for these to be admitted. She submitted that these had only recently become available which is why the documents had not already been agreed with the NMC at the case management meetings and therefore had not formed part of the NMC exhibit bundle already before the panel.

Mr Segovia did not object to these documents being admitted.

The panel accepted the advice of the legal assessor. He referred the panel to Rule 31 (1) and advised that the panel required first to consider whether the documents were relevant and then whether, in the particular circumstances, it was fair to admit them. He also told the panel that it was a matter for the panel to determine that it had before it all relevant information.

The panel determined to allow the application to admit the further evidence on the basis that these were relevant to your case, and there had been no objection from the NMC.

Day 3

On Day 3 Ms Chalmers made an application to admit further documentation. This comprised an anonymous letter [PRIVATE] (Exhibit 5) but as it had not been signed there was no way to tell who the author was. Ms Chalmers submitted that this was a document which was relevant to the overall proceedings and to the demeanour of the witnesses who raised the grievance. She submitted that it gives context to the matters before the panel and speaks to a lack of transparency and bias in the process.

Mr Segovia objected to the application. He told the panel that it was an assumption that the letter was sent [PRIVATE] but as it had not been signed there was no way to tell. He told the panel that he failed to see the relevance of the document and that saying it is relevant to the case does not mean it is relevant to the witnesses.

Ms Chalmers submitted that this letter would be put to you when you give evidence and therefore it was as a matter of fairness that it be put to the other witnesses in the case.

The panel accepted the legal assessor's advice as before.

The panel considered there was no unfairness to either party to admit this documentation however, it would be potentially unfair to the NMC if witnesses are not questioned on documentation which is later relied on.

The panel determined to allow the application to admit the further evidence and deemed it would give it what weight it considered appropriate.

Prior to hearing evidence from Colleague B, Ms Chalmers made a further application to admit further documentation. This comprised an incomplete copy of your revalidation confirmation form on which it states that the "Date of Confirmation discussion" was

29/08/16, with accompanying testimonials (Exhibit 6). Ms Chalmers submitted that this was relevant documentation which would form part of your case and as a matter of fairness she wished to put it before Colleague B. She told the panel that, again, these papers had not been available at the time of the case management meeting which was the reason for the application today.

Mr Segovia submitted that he had concerns regarding some of the documents contained within this application given that they appear to be testimonials provided for your revalidation in 2016 the authors of which, with one exception, are not appearing to provide evidence before the panel. However, if the context is only that the documents were provided in support of the revalidation application he did not object subject to one redaction.

The panel accepted the legal assessor's advice as before.

The panel determined to allow the application to admit the further evidence, subject to the agreed redaction, on the same basis as before and again deemed it would give the document what weight it considered appropriate.

Day 4

The panel, of its own volition, requested document "GB1" referred to in the witness statement of Colleague C. Mr Segovia agreed to put this document before the panel at the appropriate time, once Ms Chalmers had concluded her cross-examination of Colleague C.

Mr Segovia submitted that it was a legitimate request of the panel to see "GB1" (Exhibit 9) as the witness confirmed that this is her evidence of a text message which she sent.

Day 5

On Day 5 of the hearing, prior to Ms 6 giving evidence, Ms Chalmers made a further application to admit further evidence. This comprised screenshots of text messages between you and Ms 6 (Exhibit 7) and you and Colleague C (Exhibit 8).

Mr Segovia submitted the NMC's position was that the texts in the NMC bundle were disclosed to the NMC by Mr 2 as they formed part of his investigation. He told the panel that these were included in the bundle because you had requested they be included and that they had been provided to Mr 2 by you. He submitted there had been plenty of time available for this to have been decided before the hearing had commenced.

Mr Segovia objected to these further documents being admitted into evidence. He submitted this application came too late in the day and questioned what value and relevance they had to the charges in this case. He further submitted that the proper way to produce this type of evidence is for a mobile telephone to be examined by an expert and for an independent report to be produced detailing what is on the telephone and the provenance of any messages.

Ms Chalmers submitted that she was not seeking to admit anything new only to confirm the date that the text messages in the bundle related to.

Mr Segovia submitted that the panel should attach little weight to this evidence and told the panel it could not have any confidence in any assertion that a text displayed on a following page related to a specific date.

The panel accepted the advice of the legal assessor who referred them to Rule 31 (1) and reminded them of his previous advice on this matter. He further advised the panel to use caution in attaching weight to text messages which had not been subject to any forensic examination.

The panel had concerns over the validity of the evidence and considered that this evidence should have been provided, along with any expert report, to the NMC prior to the finalisation of the NMC exhibit bundle.

On the basis of Ms Chalmers' assurance to the panel that she was not seeking to add any additional content to the text messages contained in the bundle before the panel, the panel concluded that the evidence was relevant. In these particular circumstances, insofar as to simply clarify the dates upon which the texts in the bundle before it had been sent, the panel concluded that it would be fair to grant the application. The panel considered that it was competent to deal with the issue of weight which should be attached to this evidence and would treat it with caution.

Day 6

On Day 6, prior to you giving evidence, Ms Chalmers made another application to admit further evidence. This comprised three documents, two related to your notes on the mediation between Colleague E and you, and a further document in relation to further text message evidence between yourself and one of your colleagues. Ms Chalmers told the panel that the documents relating to mediation would be put to you during your evidence in chief. She told the panel that the further texts were also important to your case and you would speak to them during your evidence.

Mr Segovia told the panel that he had no objections to the mediation related documentation, it had been produced to him at the end of Day 5 of the hearing, and he had no issues if you wished to speak to them in your evidence.

However, Mr Segovia objected in relation to the document comprising further text message evidence between you and a colleague. He submitted that the only fair way to do this would be to recall the relevant witness who could then be afforded the opportunity to speak to this further evidence. He submitted that the text message

evidence has been largely irrelevant and questioned where it would lead. Mr Segovia told the panel that, in fairness to the witness, given that her credibility is potentially being called into question by Ms Chalmers with this further evidence, she would need to be recalled to speak to it. He submitted that recalling the witness would be the only fair way to admit the evidence and reminded the panel that the witness had already been questioned on the point being raised. He submitted that, in fairness to the NMC as well as to the witness, this evidence should not be allowed to be admitted. He reminded the panel of the previous applications to admit text messages and the time afforded to Ms Chalmers to produce these. He questioned why this new evidence was not produced along with the previous evidence which could have been put to the witness at the relevant time.

The panel accepted the advice of the legal assessor who referred them to Rule 31 (1) and reminded them of his previous advice on this matter including his previous advice regarding uncorroborated text message evidence.

The panel determined to allow the admission of the further documentation relating to mediation (Exhibit 11 and Exhibit 12). The panel determined to allow the application to admit the further evidence in relation to these documents on the basis that these were relevant to your case and there had been no objection from the NMC.

However, the panel determined to refuse the application to allow documentation relating to further text messages. The panel considered that this documentation should have been produced during the previous application to admit text messages and, if this had been done, the evidence could have been put to the relevant witness during her evidence. The panel considered the advice it has received in relation to the origin of the text message evidence and has borne in mind the lack of independent, dependable, verifiable evidence as to the manner in which this documentation has been provided. Further the panel considered that the documentation relating to text messages have been available for a long time, the panel has previously allowed this evidence and witnesses have been questioned on it. The panel determined it was not proportionate or

fair to allow this further documentation or to recall a witness at this stage of proceedings. Therefore, the panel determined it would be unfair to allow the further documentation relating to text messages and refused this application.

Decisions and reasons on applications to hear evidence from witnesses via video link pursuant to Rule 31

During the course of days 1 to 5 of the hearing Mr Segovia made several applications under Rule 31 of the Rules to allow witnesses to give evidence via video link.

Day 1

On Day 1, subsequent to the application for an adjournment of proceedings after hearing evidence from Colleague F, Mr Segovia made an application to hear evidence from the following witnesses via video link: Colleague A, Colleague C and Colleague F.

Mr Segovia submitted that Colleague F was willing to engage with proceedings but, due to prior engagements during the course of this week, was only available for a short period of time and only via video link.

Mr Segovia informed the panel that Colleague A was also willing to engage with proceedings. Colleague A had originally been scheduled to give her evidence in person on Day 2 of the hearing but, as this has now had to be rearranged to accommodate Ms Chalmers, she is only available to give evidence via video link.

Mr Segovia informed the panel of difficulties that had been encountered in rearranging some of the other witnesses. He told the panel that Colleague C had originally been scheduled to give her evidence on Day 4 in person. However the only way to accommodate the rescheduling of other witnesses and to limit the number of witnesses

attending each day to a maximum of three was to hear Colleague C's evidence via video link on Day 5.

Mr Segovia told the panel that it had been difficult to reorganise the witnesses at such short notice and that due to the nature of the case the NMC's witness liaison service had been involved. He reassured the panel that the request to limit the number of witnesses to three per day was with good reason and submitted this was the best way to accommodate these requirements.

Mr Segovia submitted that it would be fair to allow Colleague A, Colleague C and Colleague F to give evidence via video link, as the panel would still be able to see them give evidence, question them, and assess their demeanour.

Ms Chalmers told the panel that she had no objection to Colleague A and Colleague F giving their evidence via video link. However, she objected to Colleague C giving her evidence via this method. She told the panel that Colleague C had not required to be rescheduled to accommodate the adjournment of proceedings on Day 2. Further, Ms Chalmers submitted that Colleague C provided key evidence in this case, in particular regarding charge 3 of Schedule 1. She submitted that video evidence was second best and requested that Colleague C attend in person on Day 4 as originally scheduled. Ms Chalmers told the panel she did not envisage any difficulty in concluding all four scheduled witnesses on Day 4. She submitted that, in fairness to you, Colleague C should be required to attend and give evidence in person.

The panel accepted the advice of the legal assessor, who referred the panel to Rule 31 (1). He reminded the panel that it was first required to consider whether the proposed evidence was relevant and, if so, whether in all the circumstances it would be fair to allow the evidence by video link. He further reminded the panel that whilst the witnesses would not be in attendance in person that they would still be able to view the witnesses via the video link.

The panel decided to allow the application in respect of Colleague A and Colleague F. It noted that Colleague A's evidence goes directly to Schedule 1, charge 1 and Colleague F's evidence goes directly to Schedule 1, charge 5 and was therefore satisfied that their evidence is relevant. It also considered that no unfairness would be caused by allowing the application. The panel will be able to see and hear their evidence in a similar way as if they were physically present in the room, and their evidence can still be tested by cross-examination. The panel noted that Colleague A and Colleague F had indicated their willingness to attend in person.

In these circumstances, the panel was satisfied that it would be fair to allow Colleague A and Colleague F to give evidence by video link.

It therefore allowed the application in respect of Colleague A and Colleague F.

The panel noted Ms Chalmers' objection to Colleague C providing evidence via video link. It noted that Colleague C's evidence goes directly to Schedule 1, charge 3. Further, it noted that Colleague C was available to give evidence in person on Day 4 and Ms Chalmers' assurance that four witnesses could be heard in one day.

In these circumstances the panel requested that Mr Segovia ask Colleague C to attend and give evidence in person on Day 4. The panel considered that if Colleague C was no longer available to attend in person on Day 4 it would determine at that point whether to allow Colleague C to give evidence via video link.

Day 2

Following the evidence of Colleague F Mr Segovia informed the panel that Colleague C would be available to attend and give evidence in person on Day 4. He therefore withdrew his application in respect of Colleague C giving evidence via video link.

Day 4

During the course of Colleague C's evidence Ms Chalmers requested time to gather further documents relevant to the cross-examination of this witness. Ms Chalmers was afforded several hours to produce these documents. Due to time constraints of Colleague C's attendance in person these documents were not available to be put before her. At this stage, all parties agreed that Colleague C could conclude her evidence via video link the following day and the further documentation, subject to a successful application, would be put to her at that point.

Due to the delay it became apparent that it would be unfeasible to hear from all four witnesses scheduled to give evidence. Under the circumstances, it was agreed by all parties that Ms 6's evidence could be heard by video link the following morning.

Due to Ms 6's evidence being moved to Day 5 the witness schedule for Day 5 then required to be re-arranged. As such Colleague H was contacted and, although she was unable to rearrange commitments and travel to the hearing in person at such short notice, agreed to attend and give evidence via video link on Day 7.

In determining to hear from Ms 6 and Colleague H via video link the panel gave due consideration to the legal assessor's previous advice. The panel was satisfied that, under the circumstances, balancing fairness to the NMC with fairness to you and to the witnesses, that it was fair to allow Ms 6 and Colleague H to give evidence by video link. The panel noted that both had been willing to attend to give evidence in person, indeed Ms 6 had attended the hearing in person on Day 4, and it was through no fault of their own that their evidence was not heard when scheduled. Further the panel noted that these witnesses had already reorganised their previously scheduled attendance in light of Ms Chalmers' absence from Day 2 of proceedings.

Decision and reasons on Application under Rule 19

During the course of the evidence of Colleague B and Colleague C and during your evidence applications were made in relation to evidence relating to personal, familial or health matters that these should be heard in private.

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.

Rule 19 states:

- 19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.
- (2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private.
- (2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—
 - (a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and
 - (b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.
- (3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—

- (a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
 - (b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.
- (4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Having considered the nature of the issues being addressed the panel was satisfied that they should be heard in private and granted the applications with regard to these discreet issues.

Background

The charges arose whilst you were employed as Director of Nursing (DoN) at BMI Albyn Hospital, Aberdeen (The Hospital).

You joined BMI Healthcare (BMI) in 2005 in the position of Registered Nurse. You became deputy Theatre Manager and then Theatre Manager in July 2006 working at several different BMI Hospitals.

You first joined the Hospital in July 2014 as Theatre Manager. From December 2014, you were in post as Interim DoN at the hospital. You were interviewed for the substantive post in June 2015 and you became the DoN in July 2015.

It is alleged that, whilst in this post, you were unacceptably aggressive and intimidating towards the Heads of Department (HoD) and other staff at the hospital. It is also alleged

that there were a number of incidents where the HoD's and other staff felt bullied by you.

You were seconded to BMI Highfield Hospital in August 2016 but remained in your position as DoN at the Hospital during this secondment.

The HoD's at the Hospital raised a joint formal grievance against you on 1 November 2016.

You were suspended from the Hospital on 2 November 2016 and were dismissed from BMI at the end of May 2017.

Mr Segovia's submissions on behalf of the NMC

At the outset of the hearing Mr Segovia outlined the background of your case and provided some context to the allegations.

Mr Segovia submitted that the evidence supporting the allegations was contained in the NMC witnesses' statements and their supplementary oral evidence. He said in considering whether you had acted in a bullying manner, as alleged at charge 1, the panel should consider the subjective perception of the individuals' concerned whilst also looking objectively at your alleged behaviour. Mr Segovia took the panel through each allegation of Schedule 1 and Schedule 2 by referring the panel to his evidence matrix (Exhibit 13 and Exhibit 14) which he said set out the various sections of evidence which the NMC relied upon for each of the allegations.

Mr Segovia accepted that the panel might not find Schedule 1: 6 proved as the evidence showed the alleged incident, if it occurred, took place when you were theatre manager and not DoN.

With regard to Charge 2 and Schedule 2 Mr Segovia made reference to answers given by witnesses in answer to panel questions in that individuals had felt hindered in their roles, had been kept isolated and that collaboration had been inconsistent. He further referred the panel to witnesses' responses to panel questions where he said, they were fearful to report incidents. Mr Segovia submitted that evidence given by witnesses in this hearing was consistent with earlier contemporaneous statements given during the internal investigation and that there had been no embellishment of their evidence in this hearing. He questioned what the witnesses would have to gain from appearing in front of the NMC and lying. He submitted that witnesses sitting in during investigation interviews or making a "group complaint" was not evidence of collusion.

Mr Segovia submitted that, given the lack of any independent corroboration of the text messages, this evidence was irrelevant and could be given no weight in the panel's considerations. He further submitted that the evidence relating to a breakdown in your relationship with Colleague E was also irrelevant to the charges and should be disregarded.

Ms Chalmers' submissions on your behalf

Ms Chalmers took the panel through the charges and your position in respect of these. She made various submissions that your evidence should be preferred to that of the NMC's witnesses.

Ms Chalmers submitted that the panel should accept your position that the incidents either did not occur or the witnesses were embellishing the effect that any interaction with you had had upon them. By reference to the text messages Ms Chalmers further submitted that there was no basis for the suggestion that there was a culture of fear at the Hospital. Ms Chalmers submitted that at the time of the allegations there was a "gossip culture" in the Hospital. She also stated that it was disturbing that a number of witnesses used the word "groomed".

Ms Chalmers also stated that the witnesses had not escalated any concerns at the time at which the incidents were said to have taken place and that no concerns were raised until the joint grievance. Given this, she submitted that the NMC witnesses' evidence was "wholly incredulous".

Ms Chalmers submitted that you accepted that you could have been assertive and forceful to get the job done efficiently but that you were not intimidating or bullying. Ms Chalmers provided the panel with further everyday definitions of the words intimidating and bullying. She urged the panel, in particular, to be cautious in their approach to bullying behaviour. She told the panel that bullying had not been referred to in any of the witnesses statements and that, in her opinion, any behaviour exhibited by you did not amount to bullying. She also submitted that the panel should not rely on any of the witnesses' subjective evidence that they felt bullied. She submitted that the evidence did not amount to a habitual intent to intimidate a vulnerable individual.

With regard to charge 2 Ms Chalmers said that, whilst you accepted you may have failed to act appropriately in relation to the charges admitted by you, you had at all times acted professionally, doing what was required in your role.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel considered all the evidence adduced in this case together with the submissions made by Mr Segovia, on behalf of the NMC, and those made by Ms Chalmers on your behalf.

The panel heard and accepted the advice of the legal assessor. He specifically drew the panel's attention to the case of *Suddock v NMC [2015] EWHC 3612 (Admin)* in regard to witness demeanour.

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 the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

The panel heard oral evidence from eleven witnesses tendered on behalf of the NMC. In addition, the panel heard oral evidence from you under oath.

Witness assessment

The panel first considered the overall credibility and reliability of all of the witnesses it had heard from, including you.

Witnesses called on behalf of the NMC were:

Colleague A – Pharmacy Lead (HoD) at The Hospital at the time of the allegations. The panel considered Colleague A to be a credible and reliable witness. She said when she could not recall and did not hesitate in her answers. The panel concluded she exhibited a genuine reaction to the incident which was further demonstrated by her becoming tearful when recalling these events. Her evidence was consistent and the panel had no reason to doubt her evidence.

Colleague B – Theatre Manager (HoD) at The Hospital at the time of the allegations. The panel considered Colleague B to be a credible, believable and reliable witness. The panel considered she had a good recall of events and appeared to be still affected by them. During her evidence the panel noted she turned away from you and appeared to be frightened. Her evidence was consistent and the panel had no reason to doubt her evidence.

Colleague C – Quality and Risk Manager (HoD) at The Hospital at the time of the allegations. The panel considered Colleague C to be a credible and reliable witness.

The panel considered her account of events was consistent and believable. The panel considered she maintained her position robustly under extensive cross-examination and remained professional. It was evident to the panel that she had been significantly affected by the events she described. Her evidence was consistent and the panel had no reason to doubt her evidence.

Colleague D – Clinical Services Manager for Outpatients (HoD) at The Hospital at the time of the allegations. The panel considered Colleague D to be a credible, believable and reliable witness. Her evidence was consistent and the panel had no reason to doubt her evidence.

Colleague F – Patient Administration Manager (HoD) at The Hospital at the time of the allegations. The panel considered Colleague F to be a credible and reliable witness who was resilient under cross-examination and said when she could not remember things. Her evidence was consistent and the panel had no reason to doubt her evidence.

Colleague G – Staff Nurse at The Hospital at the time of the allegations. The panel considered Colleague G to be a credible, believable and reliable witness. Her evidence was compelling and consistent and she expressed herself calmly and clearly. The panel had no reason to doubt her evidence.

Colleague H – Ward Sister at The Hospital at the time of the allegations. The panel considered Colleague H to be a credible witness. Whilst the panel considered her evidence lacked clarity in relation to certain peripheral matters it considered her evidence was clear in relation to the allegations.

Ms 1 – Executive Director of BMI Woodlands Hospital, Darlington. Ms 1 conducted the investigation into the grievance raised by the seven HoDs at The Hospital. The panel considered Ms 1 to be a credible and reliable witness. She gave her evidence in a professional manner in relation to the investigation process she undertook and did her best to assist the panel.

Mr 4 – Deputy Director of Human Resources (HR) Operations at BMI Healthcare at the time of the allegations (now Head of HR). The panel considered Mr 4 to be a credible and reliable witness. He gave his evidence in a calm, professional manner in relation to the review he carried out and did his best to assist the panel.

Ms 5 – Imaging Manager (HoD) at The Hospital at the time of the allegations. The panel considered Ms 5 to be a credible and reliable witness. The panel considered her account of events was consistent and believable and the panel had no reason to doubt her evidence. The panel considered she maintained her position under extensive cross-examination and remained professional throughout.

Ms 6 – Physiotherapy Manager (HoD) at The Hospital at the time of the allegations. The panel considered Ms 6 to be a credible, believable and reliable witness. Her evidence was clear, consistent and the panel had no reason to doubt her evidence.

You gave evidence to the panel. The panel considered you to be an assertive and articulate witness with an ability to remember details. The panel considered you were well prepared to give your evidence and it was to your credit that you had attended this hearing. However, the panel did not consider your explanations in relation to the allegations to be wholly credible, reliable or believable. The panel considered that, at times, your answers to questions during your evidence appeared rehearsed. Whilst the panel had no reason to question your recollection of matters which were peripheral to the charges, on balance, it preferred the evidence of the NMC witnesses to yours when considering the charges.

The panel considered the professional positions and senior roles occupied by many of the witnesses, noting that several had now moved away from BMI Healthcare. The panel could not see what these witnesses would have to gain from telling untruths about your behaviour at this stage knowing that you had been removed from your post at BMI for some considerable time.

Panel's findings on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case.

The panel recognised that a significant part of its findings revolved around whether it accepted the evidence of the NMC witnesses or you. It therefore, as a preliminary matter, considered this issue. The panel was satisfied that the witness statements and supplementary oral evidence of all the NMC witnesses was consistent with earlier, contemporaneous statements provided to Ms 1 during the investigation of the initial grievance. It further noted that a number of the NMC witnesses provided corroboration to evidence given by others, both in answer to direct questioning and at times unwittingly.

The panel considered Ms Chalmers submissions regarding various witnesses "sitting in" on each other's interviews and the concerted nature of the grievance made on 1 November 2016 and her assertion that this showed collusion between the witnesses. The panel considered Ms 1's evidence who said that she had questioned this process prior to taking the interviews and had been approved by the HR department. Ms 1 told the panel that her assessment was that there was no collusion between the witnesses.

Further Mr 4, in his oral evidence, told the panel that having had the rationale explained he was wholly satisfied and "didn't think it was a problem". The panel also took into account the explanation provided by the witnesses with regard to the group grievance, namely to provide support to each other in the group grievance and to maintain confidentiality.

The panel considered that the explanations provided for the witnesses "sitting in" were realistic. The panel noted it was a small hospital and a small team. The witnesses all expressed that they had not been willing to raise a grievance on their own due to their impression that you were "protected" within BMI. The panel considered that, on the

balance of probabilities, it was more likely than not that the witnesses sat in on each other's interviews to give confidence and for mutual support in order to take the grievance forward rather than the suggested collusion. Whilst the panel considered it was unusual, it was content with the explanation provided and confident that the witnesses had not influenced each other's recollection of events.

The panel next considered Ms Chalmers assertion that the use of the word "grooming" by three of witnesses was indicative of some form of collusion. The panel noted the term was used by three witnesses, who had been directly under your management. However it was satisfied that this did not indicate that there was any attempt by these witnesses to collude. The panel considered that, given that these witnesses worked closely together and were directly managed by you, it was probable that at some point there had been discussion amongst them, which it did not deem as unreasonable or inappropriate. Further the panel noted that whilst the three witnesses' evidence raised similar issues, each gave disparate and different accounts of your behaviour towards them as individuals. The panel considered that it did not indicate that these witnesses' evidence was in any way contaminated, unreliable or fabricated. The panel further noted that various witnesses had been asked directly whether they had colluded and all had confirmed this was not the case. The panel noted that BMI had undertaken a comprehensive investigation in response to the joint grievance raised against you.

The panel accepted the evidence of the various witnesses that it was only when issues were discussed amongst them, on 6 October 2016, that it became apparent to them all the full nature and extent of their concerns. The panel therefore determined that neither the sitting in on interviews nor the collective grievance could be considered collusion by the witnesses. The panel noted that a number of the witnesses indicated that raising the grievance was a difficult decision and one which had not been taken lightly. The panel also considered Ms Chalmers' assertion that the witnesses had been pushed into making a grievance either by Colleague E (who was Executive Director (ED) at The Hospital at the time of the allegations) and/or the new ED, Mr 7, of the Hospital (who took over when Colleague E resigned and received the grievance). The panel noted this

was consistently denied by the witnesses under cross-examination and that it was consistently said that Mr 7 had encouraged them to fully consider the issues before proceeding with any grievance procedure. The panel further noted that Ms Chalmers' assertions were based solely on your uncorroborated evidence that Colleague E had pushed the witnesses into making a grievance as a result of the breakdown in the relationship between her and you. Having considered all the evidence before it the panel found your assertions that Colleague E had in some way engineered the grievance procedure to be implausible.

The panel reminded itself of the assessment it had made of the various NMC witnesses, that there was consistent similarity in their evidence regarding the behaviour exhibited by you and that there was nothing for the witnesses to gain by either fabricating the original grievance or the evidence given at this hearing. Further the panel noted the evidence of various witnesses that they had been reluctant to raise the grievance given the potential consequences to all parties of any such action. The panel also noted that many of the witnesses spoke positively of certain aspects of your professional performance.

The panel also reminded itself of its assessment of your witness evidence. It noted that your assertions regarding collusion between the witnesses and the involvement of Colleague E and Mr 7 were not corroborated and that you had provided no reasonable and cogent justification as to why any individual would act in the manner suggested by you. The panel therefore found these assertions to be inherently implausible and improbable.

The panel noted that there was a general suggestion from you that there was bad feeling against you on the part of all the witnesses. In particular, the witnesses were asked about the anonymous letter lodged by you (Exhibit 5). When asked about this letter the witnesses consistently stated that they had never seen it before, had not written it and did not know who might have written it. The panel therefore attributed no

weight to the anonymous letter or your suggestion that it reflected personal ill feeling towards you on the part of any witness.

The panel went on to consider Ms Chalmers submission that the contents of the text messages exchanged between certain witnesses and you showed that these witnesses were your friends shortly before and at the time of the grievance and that they were therefore, not in fear of you and that this undermined their credibility. Further Ms Chalmers told the panel that the texts show a culture of swearing and bad language used by the witnesses as well as yourself.

The panel noted that the copies of the text messages were provided by you, at a late stage of proceedings, and that there was no forensic evidence in relation to the provenance of these messages. The only evidence before the panel as to the provenance of the texts was that given by yourself. Given the lack of any independent forensic evidence as to when these messages were sent or confirmation that the content was correct, the panel therefore concluded that it could attach no weight to the copies of the text messages alleged to have been sent by the witnesses.

The panel also noted that when cross-examined on this issue the witnesses indicated they simply continued to engage in “normal” text communication with you in the hope that this would “keep you sweet” and avoid confrontation. The panel found this explanation to be plausible and considered that even if these texts had been sent from these witnesses on the dates suggested by you that it did not show that these witnesses were not in fear of you and had not been subjected to the behaviour that they allege they had.

Ms Chalmers also asserted that, as the witnesses had not individually escalated concerns about your behaviour at the time it was alleged to have occurred, it undermined the credibility of these witnesses. On examination of the statements and subsequent oral evidence of the NMC witnesses the panel noted that a number of witnesses gave evidence that they had, in various manners, individually escalated

concerns. For example the panel noted that Colleague A and Colleague F gave clear evidence that they had individually escalated concerns prior to the collective grievance. Colleague A told the panel, in her oral evidence, that Colleague E offered her mediation with you but she declined this as she was too frightened and thought you were “protected”. She also told the panel that management knew how she was being treated. Colleague F told the panel that she followed the correct process after the incident at allegation 5 of Schedule 1 and informed her line manager but she did not know what happened about it. Colleague C’s statement referenced two incidents which she had been made aware of involving her staff and you, namely the incidents at allegations 8 and 9 of Schedule 1. The panel was therefore satisfied that some of the witnesses had individually raised concerns regarding your behaviour and accepted the evidence of witnesses who said they were too scared to raise issues because they were under the impression that you were somehow “protected” and any issues raised may be ignored.

In light of its foregoing conclusions the panel determined that where there was a divergence in the evidence between your and the witnesses evidence that it preferred the evidence of the NMC witnesses.

The panel reminded itself of your admissions during the course of the hearing. It then went on to consider the remaining charges.

The panel considered the appropriate way to approach the charges and the schedules. It determined that it was required to reach conclusions on the remaining individual allegations listed in the schedules before addressing the stem of the charges.

First of all the panel went on to consider the remaining limbs of Schedule 1.

Schedule 1

- 1) On 22 March 2016, shouted at Colleague A for logging two clinical incidents on Sentinel before she reported them to you.

The panel found this allegation proved

In reaching this decision, the panel took into account Colleague A's witness statement, oral evidence and contemporaneous interview along with Ms 5's witness statement and oral evidence.

The panel noted the evidence of Colleague A that on 22 March 2016 she had logged two clinical incidents in relation to medication errors in the Hospital's electronic incident reporting system, Sentinel. Colleague A, in her oral evidence, told the panel that later that day you asked her to provide a statement in relation to these incidents. Prior to her being able to provide this to you, Colleague A told the panel that you angrily confronted her in the photocopier room and physically prevented her from leaving the room by obstructing the only exit. Colleague A told the panel that she felt trapped in a small space and felt she was not free to leave. She found this intimidating.

Colleague A told the panel that when she delivered the statement to your office later that day you "went into an absolute rage". She told the panel that you got close up to her face, pointed your finger in her face and invaded her personal space to the extent that Colleague A "really thought she [you] was going to hit [her]". Colleague A told the panel that your aggressive behaviour continued, you reduced her to tears, showed no remorse or humility and that you continued to chastise and berate her and showed no compassion even when she was visibly upset. Colleague A told the panel "it was almost like she wanted to reduce me to that state and she was happy she'd achieved it".

When questioned by Ms Chalmers as to whether she had misinterpreted your behaviour, that you were being firm and assertive not aggressive, Colleague A said "she [you] was aggressive and hostile and was shouting". The panel noted that the evidence Colleague A gave at the hearing was consistent with both her NMC statement and the contemporaneous statement during the internal investigation.

Ms 5 also told the panel that a member of her staff had reported to her that you had been seen shouting aggressively at Colleague A and invading her personal space in an aggressive manner. Ms 5 further told the panel that Colleague A had personally reported this incident to her but that she had been too frightened to take it forward.

You told the panel that you refuted Colleague A's evidence, you were not told about the medication errors until a week after it had occurred and that you had overheard this information from a discussion between staff in a corridor. You said this caused you to be concerned regarding patient safety and that you had asked to discuss the issue with Colleague A. You accepted that you may have been blunt in your discussion with Colleague A but that you had not shouted at her. You told the panel that you had told Colleague A that if there was an incident relating to medicines management or patient safety she should let you know and discuss it with you. You told the panel that you had been concerned that Colleague A had been downplaying the incident. You further said that you could not recall meeting Colleague A in the photocopier room and that was not your style to discuss such events in the corridor.

For the reasons set out in the panel's evaluation of witnesses it preferred the evidence of the NMC's witnesses to yours. The panel was satisfied that on the balance of probabilities that on the 22 March 2016 you had shouted at Colleague A and your reason for doing so related to her logging two clinical incidents on Sentinel before she had reported them to you. The panel therefore found this allegation proved.

- 2) On an unknown date in September or October 2016, shouted at Colleague B for spelling your name with a lower case 'h' in an email.

The panel found this allegation proved

In reaching this decision, the panel took into account Colleague B's witness statement, oral evidence and contemporaneous interview along with Colleague F's witness statement.

Colleague B told the panel that around September or October 2016, when you were seconded to Highfield, that she had sent you an email in a rush. Colleague B told the panel that as soon as she had sent the email you telephoned her and said "you have spelt my name with a small h rather than a capital H and that she [Colleague B] was subconsciously undermining me [you] and that it should not happen again". Colleague B told the panel that she had said she did not do this intentionally, she was sorry and did not mean anything by it. Colleague B said that you said "[you] wouldn't have it" that your tone was abrupt and that you were clearly unhappy with her. When questioned by the panel Colleague B confirmed that you had shouted at her during this telephone conversation. She also said that she had felt like crying and made to feel entirely demoralised. The panel considered that Colleague B was evidently distressed when recollecting this incident at the hearing. The panel noted that the evidence Colleague B gave at the hearing was consistent with both her NMC statement and the contemporaneous statement during the internal investigation.

The panel also noted that Colleague F told the panel that Colleague B had told her that you had called her saying that she had not put a capital h in an email to you and that Colleague B had looked "shocked" during this conversation and expressed disbelief at being pulled up on it.

You accept that you did have a conversation regarding your name not being spelt with a capital h in an email from Colleague B, however you disputed shouting at Colleague B telling the panel you had no reason to shout. You explained to the panel that you had been told by your mentor that using a lower case letter in someone's name was disrespectful, not consistent with email etiquette, and as you were Colleague B's mentor you felt that you had to speak with her about it.

The panel found your explanation implausible. Again for the reasons set out in the panel's evaluation of witnesses it preferred the evidence of the NMC's witnesses to yours. The panel was satisfied that on the balance of probabilities that in September or October 2016 you had shouted at Colleague B because she had spelt your name in lower case h in an email. The panel therefore found this allegation proved.

- 3) On 12 September 2016, shouted at Colleague C on the telephone, using words to the effect of 'you fucking listen' and 'I'm just telling you to fucking watch it'.

The panel found this allegation proved

In reaching this decision, the panel took into account Colleague C's witness statement, oral evidence and contemporaneous interview along with Colleague B's evidence.

Colleague C told the panel that in the autumn of 2016 a vacancy arose within the hospital for a Quality and Risk Manager. She applied for this post in "an attempt to escape the direct line management" of you. She said that she had met with Colleague E on a few occasions to discuss this application, this must have been fed back to you as she received a lot of calls and messages from you telling her to stay away from Colleague E and asking about "cosy meetings". Colleague C said that you told her that Ms 6 had been telling you "things".

The panel noted that Colleague C told it that there had been various text exchanges between Colleague C and you during the weekend of 10/11 September 2016. She said she then received a text from you on Monday 12 September asking her to call you when she got into work. Colleague C said that this was the week of her interview for the Quality and Risk Manager position. She said that the tone of the message she received that morning made her think that you were in a bad mood, that she could not have a conversation with you in her office as she shared it with other staff and therefore went to Colleague B's office to call you as Colleague B was not in that morning. Colleague C

further told the panel that during the phone call you were insinuating “all kinds of wrongdoings” against her in relation to information you had received from Ms 6. Colleague C said that it was a very hostile conversation in which you said things like “you fucking listen” and “I’m just telling you to fucking watch it”. Colleague C said she was so upset that she waited for Colleague B to come in and told her she was considering leaving the hospital. Colleague C told the panel that she knew something was seriously wrong when you were 200 miles away and were still able to have this effect on her and she told the panel that she sent you a text message (GB1) saying that she no longer wanted to be a part of any game playing or innuendos of wrongdoing.

The panel also heard from Colleague B who told it that in September 2016 Colleague C came to her in tears as you had accused her of having “secret meetings” with Colleague E. Colleague B said that this was not the case as Colleague C was simply seeking advice from Colleague E regarding your application for the Quality and Risk Manager post. Colleague B said that having spoken to Colleague C she called you to ask what was going on and that you told her that under no circumstances should Colleague C speak to Ms 6 as you were “not there to protect her”. The panel considered that the incident referred to by Colleague B was more likely than not the incident referred to by Colleague C on 12 September 2016. The panel noted that the evidence Colleague C gave at the hearing was consistent with both her NMC statement and the contemporaneous statement during the internal investigation.

You told the panel that you did recall having a conversation with Colleague C and that it related to what you termed was a conflict between Colleague C and Ms 6. You told the panel that you did tell Colleague C not to speak to Ms 6 in order to avoid conflict between them. You told the panel that you “wanted to keep the peace”, that “enough was enough” and you wanted to escalate the situation. You did not accept that you swore or shouted in this conversation. You told the panel that you would not have done so as you were in an airport lounge during this conversation and were surrounded by people.

The panel noted that Colleague C was visibly shaken when giving evidence. Again for the reasons set out in the panel's evaluation of witnesses it preferred the evidence of the NMC's witnesses to yours. The panel was satisfied that on the balance of probabilities that on 12 September 2016 you had shouted at Colleague C on the telephone using words to the effect of "you fucking listen" and "I'm just telling you to fucking watch it". The panel therefore found this allegation proved.

- 5) On an unknown date, aggressively shook your fist at Colleague F in front of other colleagues.

The panel found this allegation proved

In reaching this decision, the panel took into account Colleague F's witness statement, oral evidence and contemporaneous interview along with Ms 5's evidence.

The panel heard evidence from Colleague F that, on a date she could not be sure of, there was a corporate visit to the hospital. She told the panel that the executives arrived separately and were attended to by the reception staff. She told the panel that the reception staff were speaking to the executive when Colleague B saw that the executive had arrived and went to alert you. Colleague F said that you then arrived and took the executive to get a coffee and Colleague E's personal assistant then escorted him to another part of the building. Colleague F then told the panel that you walked past her office window and as you did so shook your fist at her in front of everyone in the reception area. Colleague F said you shook your fist aggressively and your facial expressions showed you were annoyed and angry. She told the panel that she felt belittled by your behaviour. She thought you were angry because the executive had been standing at reception. Colleague F told the panel that after the incident, reception staff came into her office and asked if they had done anything wrong.

Ms 5 told the panel that she recalled the incident where you had shaken your fist aggressively at colleague F in front of reception staff, patients and herself. She said that she was in her office and saw you shake your fist at her through the window. Ms 5 said you appeared annoyed and aggressive and she could see the impact it had on Colleague F who became shaky, red and nervous. Ms 5 said it was her understanding that you shook your fist at Colleague F because you were not happy with the way in which an executive had been greeted. Ms 5 told the panel that whilst she could not recall the exact date this occurred it was prior to May 2016.

The panel noted that the evidence Colleague F and Ms 5 gave at the hearing was consistent with both their NMC statement and the contemporaneous statements during the internal investigation.

You told the panel that an executive who attended at the hospital had been standing at reception and that you had been made aware of this. You told the panel that the reason the executives were attending was to “tell the HoDs that they should be proud working alongside me [you]”. You told the panel that you were “incredulous” as to why an executive was left waiting in reception. You told the panel that you had to go and deal with it as no one was at reception and that Colleague F was “just sat there looking through the window at him”. You told the panel that once you had dealt with the matter you shrugged, with an open palm gesture, at Colleague F and that shaking a fist at someone is not something you would do. You also told the panel that Ms 5 was on annual leave on this particular date and therefore could not have witnessed this event.

The panel noted that there was no evidence before it other than your assertion that Ms 5 was on leave when it is alleged this incident occurred. The panel further noted that when questioned by Ms Chalmers Ms 5 was clear that she was not on leave. The panel also noted that, when questioned, Colleague F was clear that you did not shrug at her stating she “knew the difference between a shrug and a shaken fist”.

Again for the reasons set out in the panel's evaluation of witnesses it preferred the evidence of the NMC's witnesses to yours. The panel was satisfied that on the balance of probabilities that on an unknown date you aggressively shook your fist at Colleague F in front of other colleagues. The panel therefore found this allegation proved.

- 6) On an unknown date, acted inappropriately and undermined the previous Director of Nursing in a meeting in front of others.

The panel found this allegation not proved

The panel noted Mr Segovia and Ms Chalmers submissions that the evidence indicated that if the allegation occurred as narrated, it occurred when you were in post as Theatre Manager rather than whilst you were in your position as DoN. Both Ms Segovia and Ms Chalmers directed the panel to the overall stem of the charges which narrates that all the allegations occurred when you were "working as Director of Nursing" at the Hospital. There being no evidence before the panel to indicate that the events set out in allegation 6 occurred when you were DoN on the balance of probabilities the panel found this allegation not proved.

- 8) On an unknown date, shouted at Colleague G.

The panel found this allegation proved

In reaching this decision, the panel took into account Colleague G's witness statement, oral evidence and contemporaneous interview along with Colleague C's evidence.

Colleague G told the panel that she could not recollect when this incident occurred but was clear that it took place when she was walking back into the ward after her lunch break. She said that she walked past you as she went towards the ward but did not hear

you say anything. She said that you then said words to the effect of “Excuse me I was talking to you”. Colleague G told the panel she was very confused and did not understand the issue. She told the panel that you did not let her explain and said “my office” indicating that she should accompany you to your office immediately. Colleague G said you were speaking loudly, could be heard by everyone in the reception area, that she was very embarrassed and she felt like you were making a scene in public to humiliate her. She told the panel that she was shocked that a misunderstanding had escalated to such a level, especially one which could have been remedied very quickly.

Colleague G told the panel that when she got to your office, you shut the door and got very close to her which she found intimidating. Colleague G explain that she was shocked and confused and said to you “what’s up?” which in hindsight she thought may not have been the best thing to have said. Colleague G said that you then went “mad” and said “I will tell you what’s up, what does that say” whilst pointing to your name badge. Colleague G said you told her “I would never dream of speaking to my DoN like that”. Colleague G said you were very close to her space, your voice was raised, you were intimidating, demanding eye contact and “made her feel like a child”. Colleague G told the panel that she tried to explain to you that she had not heard you but that you would not listen. Colleague G told the panel that she felt your reaction was completely unjustified and over the top, that it continued for several minutes and was very belittling and aggressive. She told the panel that she felt the conversation was one-sided saying she felt it was “I shall speak and you shall listen”. She further told the panel that she found your behaviour unacceptable and felt it was a bullying type of behaviour.

Colleague C told the panel that she recollected a specific incident where Colleague G had told her that you said she had disrespected her and shouted at her pointing to your badge saying “I am Director of Nursing”. Colleague C told the panel that Colleague G was mortified, made reference to you being hostile and felt your behaviour could have been reported. Colleague C said she attempted to diffuse the situation and told the panel that Colleague G was “a very quiet person [who] would never do anything intentionally disrespectful”.

The panel noted that the evidence Colleague G and Colleague C gave at the hearing was consistent with both their NMC statement and the contemporaneous statements during the internal investigation.

You told the panel that there was an incident where you had to speak with Colleague G around an issue of how she addressed people and her ignoring Colleague E and you. You told the panel that you dispute Colleague G's evidence and that the incident did not occur as alleged. When asked, you told the panel that Colleague G was not telling the truth. You further asserted that had the incident occurred as alleged that Colleague G would not have provided a reference for your revalidation.

The panel noted that Colleague G was clear in her recollection of events even under extensive cross examination. She disputed that you were with Colleague E as you asserted. Colleague G explained to the panel that when asked to provide a reference for your revalidation she did not feel that she could refuse to do so and that there were positive elements to your practice. The panel accepted this explanation.

Again for the reasons set out in the panel's evaluation of witnesses it preferred the evidence of the NMC's witnesses to yours. The panel was satisfied that on the balance of probabilities that on an unknown date you had shouted at Colleague G. The panel therefore found this allegation proved.

9) On more than one unknown dates, shouted at Colleague H.

The panel found this allegation proved

In reaching this decision, the panel took into account Colleague H's witness statement, oral evidence and contemporaneous interview along with Colleague C's and Colleague A's evidence.

Colleague H told the panel of two incidents where you shouted at her. Specifically she told the panel that one incident occurred when a member of staff scheduled to work the night shift had called in sick. Colleague H told the panel that she could not find anyone else to cover the shift and “popped” her head around your door with the intention of approaching you about the staffing problem. Colleague H told the panel when she did this you aggressively said “I can see you have a problem, you better have a solution as I am sick of this place”. Colleague H also told the panel about a particular weekend where a number of incidents had occurred. She said that on the Monday following this weekend a complaint had been received from a patient and that she had called you to let you know about it. Colleague H told the panel that when she called you, you “shouted down the phone” at her “I will see you in my own time” that this was said very aggressively and upset her. Colleague H said she was called to your office later that day along with Colleague B and that you “ripped” her apart blaming her for all the shortcomings over the weekend. Colleague H said that you were extremely angry, shouting and aggressive throughout this meeting.

Colleague C told the panel that she could remember an incident in October 2015 where you had shouted at Colleague H. She accepted that she could not remember if she actually witnessed the incident, but Colleague H had come up to her afterwards was extremely upset and crying and told Colleague C that you had shouted at her.

Colleague A told the panel of an incident in October 2016 where she had found Colleague F crying. When Colleague A has asked Colleague F what was wrong, she explained that she had been told off by you. She told the panel that Colleague F was really upset to the extent that she could barely speak.

You told the panel that, in your position as DoN, you were required to deal with issues like this. You told the panel that you spoke to Colleague H about the incidents and that you accepted you may have been forceful and assertive, but that you did not shout at Colleague H. You disputed that this incident occurred as alleged.

For the reasons set out in the panel's evaluation of witnesses it preferred the evidence of the NMC's witnesses to yours. The panel was satisfied that on the balance of probabilities that on more than one unknown dates you had shouted at Colleague H. The panel therefore found this allegation proved.

- 10) On more than one unknown dates, displayed aggressive behaviour towards staff at meetings.

The panel found this allegation proved

In reaching this decision, the panel took into account the evidence of Colleague A, Colleague C, Colleague F, Ms 5 and Ms 6 who spoke about your aggressive behaviour in meetings.

Ms 5 told the panel that in clinical governance meetings you would be forceful and aggressive to anyone who had not informed you of something they wished to raise during the meeting. Ms 5 also told the panel that you would "shut down" people if they tried to raise something you were not aware of, that you would raise your voice and your whole demeanour would be aggressive. Colleague A and Colleague C also referenced witnessing aggressive behaviour during clinical governance team meetings.

Ms 5, in her oral evidence told the panel that in meetings you would bang papers down on the table, you would have closed body language and would be pointing your finger at people. She told the panel that your behaviour was very different to other managers.

Colleague F told the panel that you were always very aggressive in your manner of speech during meetings. Colleague F said this affected her resulting in her not wishing to raise questions in meetings because of a fear of your response. Further, Colleague F said you spoke over people and "butted in" during meetings.

Colleague A, in her oral evidence told the panel that there were issues she would have wanted to raise in meetings but that you had told her not to speak about some things.

Ms 6 said that during clinical effectiveness meetings you would have your own agenda and make people very uncomfortable about contributing to the meeting by shooting them aggressive looks. In her oral evidence Ms 6 told the panel “she swore at me directly in one of those meetings”.

You told the panel that you did not accept that you behaved in an aggressive manner in meetings. You accepted that you may have appeared forceful in meetings. You told the panel that you were clear in your mind that you behaved in an assertive manner which you defined as being a display of self-motivation, undertaking tasks efficiently, robotically and methodically and being able to react to certain situations. You suggested to the panel that the witnesses were mistaken in their recollection but provided no explanation for this assertion.

The panel also noted your admission to displaying aggressive behaviour to external trainers in training meetings in early 2016. The panel also considered the evidence from witnesses of this aggressive behaviour in this specific meeting.

For the reasons set out in the panel’s evaluation of witnesses it preferred the evidence of the NMC’s witnesses to yours. In particular the panel did not accept your perception of your behaviour at meetings being assertive rather than aggressive and was satisfied from the evidence of the NMC’s witnesses that you did behave in an aggressive manner at meetings. The panel was satisfied that on the balance of probabilities that on more than one unknown dates you displayed aggressive behaviour towards staff at meetings. The panel therefore found this allegation proved.

Charge 1

1. On one or more occasions as set out in Schedule 1, acted in a manner which was aggressive and/or intimidating and/or bullying towards colleagues.

The panel found this charge proved

The panel went on to consider whether the allegations under Schedule 1 admitted and found proved amounted to you acting in a manner which was aggressive and/or intimidating and/or bullying towards colleagues.

In reaching this decision, the panel took into account the evidence of all the NMC witnesses and your evidence along with the definitions provided of aggressive, intimidation and bullying.

The panel noted that you had accepted that you had acted in an aggressive manner and therefore restricted its consideration to whether your actions were intimidating and/or bullying.

The panel therefore first considered whether your actions in respect of one or more of the allegations found proved amounted to acting in an intimidating manner. It reminded itself of the evidence of Colleague A, Colleague B, Colleague C, Colleague D, Colleague F, Colleague G, Colleague H, Ms 5 and Ms 6 all of whom had told the panel that on one or more occasion they had felt frightened or threatened by behaviour exhibited by you. The panel noted that a number of witnesses appeared distressed when giving their evidence at this hearing. In light of the fact that these incidents occurred around three years ago this indicated to the panel that these incidents have had a significant impact on these witnesses. The panel noted that during your evidence you admitted you were shocked by the clear impact your behaviour had had on the witnesses which you had been able to see during their evidence.

The panel heard evidence from all of the witnesses that there was a general feeling of uncertainty and fear of you within the hospital and that staff would endeavour to avoid or limit their interactions with you. Many of the witnesses referred to a “horrible working atmosphere” which was oppressive and uncomfortable.

The panel took into account your evidence that, whilst you accepted that you may have had an assertive managerial style, you did not behave in an intimidating manner. The panel also took into account your evidence that you considered that different people may have a different perception of what constitutes intimidating behaviour. You explained to the panel that in hindsight you now accept that the breakdown of your working relationship with Colleague E may have adversely affected the way in which you behaved to other staff members. However, you told the panel that you did not consider it amounted to acting in an intimidating manner.

The panel reminded itself of the submissions of Mr Segovia and Ms Chalmers. In particular, it reminded itself of Ms Chalmers submission that in order for behaviour to be intimidating that there has to be a deliberate intent to intimidate. The panel considered that intimidating behaviour can be determined both subjectively by the person experiencing the behaviour, in this case the witnesses, and objectively by a person observing the behaviour. The panel determined that intimidating behaviour need not necessarily require an intent to intimidate.

The panel noted that, apart from allegation 6, all of the allegations under Schedule 1 had either been found proved or admitted and found proved.

For the reasons stated in the panel’s evaluation of witnesses and as further set out in the panel’s determination in the allegations of Schedule 1, the panel accepts the evidence of the NMC witnesses and has determined that you exhibited a course of conduct over an extended period of time. It was satisfied that this behaviour had a frightening and threatening effect on the NMC witnesses who were working with you. It did not accept your assertion that this was simply their individual perception of your

behaviour and did not properly reflect the nature and extent of your actions as found proved by the panel under Schedule 1. Having considered the number and variety of behaviours exhibited the panel determined that there was a subjective intention on your part to behave in this manner.

Having reached these conclusions the panel determined that on more than one occasions in terms of the allegations under Schedule 1 (which had either been found proved or admitted) you acted in a manner which was intimidating.

The panel next considered whether your actions in respect of one or more of the allegations found proved amounted to acting in a bullying manner. It reminded itself of the evidence of Colleague A, Colleague B, Colleague C, Colleague D, Colleague F, Colleague G, Colleague H, Ms 5 and Ms 6. In particular, when directly asked, Colleague A, Colleague D, Colleague G and Colleague H confirmed that they had felt your behaviour to be bullying. The panel noted that whilst Colleague B, Colleague C, Colleague F, Ms 5 and Ms 6 may not have specifically stated that they felt bullied that all the witnesses gave evidence that they had exhibited fear and felt threatened and manipulated by your behaviour.

The panel also took into account your position with regard to the allegation of bullying which in essence is the same as the position stated by you in relation to the allegation that you acted in an intimidating manner as set out above. The panel also noted your own evidence as to what would constitute bullying behaviour in particular that some of the behaviour set out in Schedule 1, if it had occurred, would constitute bullying behaviour.

The panel reminded itself of the everyday definition of bullying provided by the legal assessor at the outset of this hearing. It also took into account the further definition suggested by Ms Chalmers. She told the panel that the Cambridge Dictionary defines bullying as a person who habitually seeks to harm those they perceive as vulnerable and the Oxford Dictionary is similar, bullying is to seek to harm or coerce, hurt or

frighten others and makes them do something they do not want to do. The panel also reminded itself of the definition of bullying contained within the BMI Bullying and Harassment Policy that “bullying is the misuse of power or position that undermines a persons ability or leaves them feeling hurt, frightened, angry or powerless” it further states “bullying and harassment are not only determined by the intention of the person who has caused offence, but by the effect it has on the recipient. It is up to that person to decide if they are being bullied or harassed because they find the behaviour unacceptable”.

The panel next reminded itself of the submissions of Mr Segovia and Ms Chalmers. In particular, it reminded itself of Ms Chalmers submission that in order for behaviour to be bullying that there has to be a deliberate intent to bully.

The panel noted that, apart from 6, all of the allegations under Schedule 1 had either been found proved or admitted and found proved.

For the reasons set out in the panel’s evaluation of witnesses, and as further set out in the panel’s determination in the allegations of Schedule 1, the panel accepts the evidence of those NMC witnesses who specifically stated that they felt bullied. It also accepts the evidence of those NMC witnesses who, whilst not explicitly stating they were bullied, all stated they exhibited fear and felt threatened in relation to your behaviour.

The panel considered all the various definitions of bullying which were before it and noted your evidence as to what you considered would constitute bullying behaviour. As set out above the panel is satisfied that you deliberately exhibited a course of conduct to people in less senior positions than you over a significant period of time. It was satisfied that this behaviour was intentional and that you habitually sought to frighten, threaten, harm or intimidate those below you in the managerial structure. It did not accept your assertion that this was simply their individual perception of your behaviour and considered your explanation did not properly reflect the nature and extent of your

actions. It further noted the number of witnesses who were subjected to this behaviour. The panel considered the number and variety of behaviours exhibited and the fact that this behaviour was exhibited to those in less senior positions to yourself and, due to the differentiation in the power structure, they could be considered vulnerable. The panel therefore determined that there was a subjective intention on your part to behave in a bullying manner over an extended period of time.

Having reached these conclusions the panel determined that on more than one occasion, in terms of the allegations found proved or admitted under Schedule 1, you acted in a manner which was bullying. This charge is therefore found proved in its entirety.

The panel next went on to consider the remaining limbs of Schedule 2.

Schedule 2

- 2) Failed to encourage a positive culture of reporting incidents.

The panel found this allegation proved

The panel reminded itself of the evidence of Ms 1. In particular the panel reminded itself that Ms 1 stated that she would expect a DoN to “encourage a positive culture around incident reporting in the hospital and not reprimand staff for honestly reporting incidents”. Ms 1 also told the panel that she would “expect a DoN to deal with staff appropriately when incidents were reported so that they are encouraged to report in the future. This is very important in a hospital in order to improve patient care”. The panel therefore considered that encouraging a positive culture of reporting was part of your role as DoN.

The panel considered its findings in relation to allegation 1 under Schedule 1. It reminded itself that Colleague A's evidence that as a result of your behaviour found proved in respect of allegation 1 she was "scared to log anything on Sentinel again" whilst you were DoN.

Further the panel noted Colleague A's evidence that she recalled a clinical effectiveness team meeting at which she said you encouraged the HoDs to "downplay the risk" which she took to mean downplay the risk of incidents when reporting them.

Colleague A also told the panel that, apparently in relation to paper incident forms, you had told Colleague C "if you put one more fucking form through my door I will shut the hospital down". The panel noted Colleague C, in her oral evidence, told the panel of an incident with the old Sentinel forms which made her "nervous to report any incidents or issues".

The panel noted Ms 5's evidence that whenever she tried to alert you to an incident or concern she felt you were very dismissive.

The panel noted your evidence that you had not told the HoDs to "downplay the risk" when reporting incidents but rather, if they were unsure, to mark it as low risk until an investigation had been undertaken. Further you denied creating a culture of being fearful to report incidents and told the panel that you encouraged reporting at clinical effectiveness meetings.

The panel accepted the evidence of Colleague A and Colleague C with regard to issues that had arisen when they had sought to report incidents. For the reasons set out in the panel's evaluation of witnesses it preferred the evidence of the NMC's witnesses to yours. The panel did not accept your evidence that at clinical effectiveness meetings you sought to encourage reporting of incidents. The panel also determined that the evidence you gave that if an individual was not sure of a risk level to be attributed to an incident it should be noted as low risk until investigated did not correspond with your

seeking to encouraging reporting incidents. The panel accepted the evidence of Ms 1 in respect of what was expected of a DoN when encouraging a positive culture of reporting incidents. In light of the evidence of the NMC witnesses the panel was satisfied that you had failed to encourage a positive culture of reporting incidents. The panel therefore found this allegation proved.

- 3) Failed to work collaboratively with the heads of department and/or failed to ensure that the heads of department worked together as a team.

The panel found this allegation proved

In reaching this decision, the panel took into account the evidence of Colleague A, Colleague B, Colleague C, Ms 5 and Ms 6. Further the panel noted that you admit to the second part of this charge. It therefore restricted itself to determining whether you had failed to work collaboratively with the HoDs.

The panel noted the evidence of Ms 1 who told it that she would have expected you “to manage her [your] team effectively by communicating well with all colleagues and ensuring her working relationships were professional”.

The panel noted the evidence of Colleague A who in her oral evidence told the panel that she did not think that there was collaborative working. She told the panel that people were scared to speak and that they very much worked on their own.

Colleague B, when questioned, told the panel that your behaviour was inconsistent and it would depend on your mood as to whether the HoDs worked collaboratively or not.

Colleague C told the panel that your regular phone calls became “completely draining” because of the volume of questions many of which were unrelated to the Hospital.

Colleague C told the panel that you told her to be careful of Ms 6 and indicated she

should avoid speaking with her. This was backed up by Colleague B telling the panel of an incident in which you had told her to ensure Colleague C did not talk to Ms 6.

When questioned as to whether there was collaborative working Ms 6 told the panel “absolutely not”, she told the panel it was horrible to live with and that you kept the HoDs isolated and caused mistrust amongst them. Ms 5 also told the panel that she was made to feel isolated and that the HoDs were not able to work as a team.

Colleague D, when questioned, told the panel that your behaviour “limited” and “undermined” collaborative working.

You told the panel that you were working off-site at Highfield but that you were still responsible for running the Hospital from a nursing point of view. You told the panel that you only had responsibility for the clinical HoDs and that Colleague E was responsible for the other HoDs. You asserted in your evidence to the panel that you had worked collaboratively with the HoDs and disputed the evidence of the NMC witnesses above.

The panel accepted the evidence of the NMC witnesses with regard to difficulties that had arisen in respect of interactions with you and collaborative working. For the reasons set out in the panel’s evaluation of witnesses it preferred the evidence of the NMC’s witnesses to yours. In particular the panel accepted the evidence of various witnesses that the HoDs were not encouraged to work collaboratively, that the approach to collaborative working was inconsistent and that they felt that they were kept isolated and were afraid to speak to other HoDs. The panel did not accept your evidence that you had sought to work collaboratively with the HoDs during your time as DoN. The panel accepted the evidence of Ms 1 of what was expected of a DoN when working collaboratively with HoDs. Further the panel noted that whilst you had extensive contact with the HoDs it appeared to hamper rather than aid collaborative working.

In light of the evidence of the NMC witnesses the panel was satisfied that you had a duty to encourage collaborative working with the HoDs and that there was a clear failure

to work collaboratively with the HoDs. This is in addition to your admission that you had failed to ensure that the HoDs worked together as part of a team. The panel therefore found this allegation proved.

5) Hindered the heads of department in carrying out their roles effectively.

The panel found this allegation proved

In reaching this decision, the panel took into account the evidence of all of the HoDs who attended as NMC witnesses, namely Colleague A, Colleague B, Colleague C, Colleague D, Colleague F, Ms 5 and Ms 6.

The panel noted general themes in these witnesses evidence where they spoke of a lack of autonomy in their roles and a feeling of being micromanaged by you. The panel heard evidence of “excessive” phone calls from you, a requirement to copy you into every email sent.

Colleague A told the panel you were “very controlling and wanted to be involved in every incident, decision and communication in the Hospital. Therefore I ran everything past her to keep her off my back... it made my job harder because I could not get anything done without [your] approval” Colleague A told the panel that she and other staff would try and suss out your mood before approaching you with any queries and that if you were in a “bad mood” they would know not to approach you and wait until another day. She told the panel of your “terrible temper” and “volatile moods” telling it that she was scared of approaching you as were others.

Colleague B told the panel that your mood was unpredictable and she felt she could not disagree with any of your decisions or challenge you. She told the panel that certain things could have been dealt with more quickly as she sometimes held back when she needed to ask you something because you were in a bad mood and spoke of a low

morale within the hospital. She told the panel that you wanted to be copied into every email that the HoDs sent, she felt that you had become obsessed with Colleague E and that you had to know everything that was going on. Colleague B told the panel that, whilst she was still able to carry out her role, you made it more difficult by micromanaging her and requiring to be involved in every aspect of any decision that was made. She told the panel that she felt suffocated and hindered by your behaviour.

The panel noted Colleague C's evidence that you had told her to be careful of Ms 6. She told the panel that this made her wary and doubtful of Ms 6 which made it difficult for Colleague C to do her job as she had a lot of contact and was required to work closely with Ms 6. She further told the panel that once everything came out it felt as though you had been "playing us all" referring to the HoDs. Colleague C told the panel that she had a stark realisation that she was scared at work as she did not know what to expect on any given day and she felt she could not act with autonomy in her role. When questioned she told the panel she felt as though you hindered her in carrying out her role.

Colleague D told the panel that she felt micromanaged by you and restricted in her work as she constantly had to run actions past you which prevented her from carrying out her role effectively and removed her autonomy. She told the panel of having to liaise between you and Colleague E due to the breakdown in the working relationship which took up a lot of her time. She told the panel that you expected to be copied in to every email that she sent which she felt was unnecessary. She spoke of lengthy meetings which took up valuable time which the HoDs did not have. Colleague D told the panel of staff's attempts to assess your mood and how she would try and have as little contact with you as possible if you were not in a good mood and would delay discussions until the following day.

Colleague F told the panel that you tried to stop the HoDs from talking to each other. She told the panel that whilst you did not specifically say that they could not speak with each other you made it clear through your behaviour and by requiring an explanation of

any meetings which did take place. She told the panel that she felt you were restricting her autonomy and that she felt unable to speak to another HoD without it “raising suspicions” and that she felt she had to justify if colleagues were in her office. Colleague F told the panel that she found it difficult to carry out her duties by your compartmentalising her role, requiring her to tell you about everything and by not allowing her to discuss queries with other HoDs.

The panel noted Ms 5’s evidence that when she tried to bring any concerns to your attention you would say “you have four seconds to tell me what you need to tell me”. She indicated that this was the nature of her working relationship with you which she felt restricted her role and made it very difficult for her to alert you to any incidents. Ms 5 spoke about a specific incident in which she felt you hindered her ability to carry out her role. She told the panel that she felt apprehensive about asking you for approval because of the dismissive way in which you dealt with her and she felt that you weren’t interested in radiology. She told the panel that this made the interactions she had with you very challenging. Ms 5 said that staff felt unable to speak up, were guarded in what they would say and would choose not to raise a concern rather than risk upsetting you. She told the panel this meant people were not able to work transparently with each other.

Ms 6 told the panel that your behaviour affected the dynamics of the team. She spoke of your erratic behaviour and mood swings and told the panel that at times it was easier to go along with things rather than fight you. Ms 6 told the panel of a meeting, whilst you were offsite, where “everything unravelled”. She told the panel that it all came out that each of the HoDs were feeling a similar way. She spoke of a realisation between the HoDs that they were being manipulated by you and pitted against each other. She told the panel that it was at this point that she realised how much your behaviour had seriously affected the staff and working environment. Ms 6 told the panel that people would isolate themselves and she felt your behaviour hindered her in carrying out her role effectively.

In your evidence you told the panel that the work was done, meetings continued and that there were no “flags” or indications to you that you had hindered them in their duties. You reminded the panel of your evidence on the impact the breakdown in your relationship with Colleague E had on you [PRIVATE]. You told the panel that you were not aware that the HoDs felt your behaviour hindered them, you said that “patient satisfaction was in the 90s” and there were no patient or staff complaints. You told the panel that you disputed that you were controlling or micromanaging, rather that you were acting responsibly in your role as DoN whilst working offsite at Highfield and conversely it showed that you were interested in the Hospital and were responsible and accountable. You told the panel that to not have had daily contact with the HoDs and been copied in on their emails would not have been responsible.

The panel considered that each of the witnesses above was a HoD and as such was in a senior role within the Hospital. The panel considered that all of the witnesses exhibited a nervousness which is unusual to observe in witnesses employed in senior positions.

The panel considered there was a general theme running through the witnesses’ evidence of a fear to approach you with requests or concerns, micromanagement by you and a lack of autonomy to carry out their roles. Several of the witnesses specifically told the panel that they felt hindered in their roles.

For the reasons set out in the panel’s evaluation of witnesses it preferred the evidence of the NMC’s witnesses to yours. The panel was satisfied that on the balance of probabilities that you had hindered the HoDs in carrying out their roles effectively. The panel therefore found this allegation proved.

Charge 2

2. For one or more of the reasons as set out in Schedule 2, failed to act appropriately and/or professionally in your position of leadership.

This charge is found proved

The panel went on to consider whether the allegations under Schedule 2 admitted and found proved amounted to a failure to act appropriately and/or professionally in your position of leadership.

The panel noted that you had accepted that you had failed to act appropriately and therefore restricted its consideration to whether you had failed to act professionally.

The panel reminded itself of the views expressed by Ms 1 as to what constituted appropriate and professional behaviour for a DoN. In addition, the panel considered the everyday definition provided by the legal assessor of “professionally”.

The panel further reminded itself of its findings in regards to the allegations found proved or admitted under Schedule 2 and the nature of these allegations. Having regard to the views expressed by Ms 1, which were accepted by the panel, it considered that its findings in respect of Schedule 2 clearly demonstrated a failure to act in a manner worthy of, or appropriate to, the position of Director of Nursing. The panel therefore determined that you had failed to act professionally in your position of leadership in addition to failing to act appropriately. This charge is therefore found proved in its entirety.

The hearing adjourned part heard on 29 March 2019 prior to handing down the determination on facts.

The hearing resumed on 28 May 2019 and facts were handed down.

Submissions on misconduct and impairment:

Having announced its finding on all the facts, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Ms Chalmers, on your behalf, submitted further documentation which included:

- a reflective journal piece dated April 2019, produced as part of a postgraduate certificate in leadership (PG Cert);
- 21 testimonials provided by 17 colleagues dated between 22 April 2018 and 25 March 2019;
- various certificates dated between 27 November 2017 and 6 March 2019 relating to completed training courses and certificates of recognition based on staff nominations;
- enrolment and course details relating to your PG Cert training and details of two other training events;
- [PRIVATE].

You gave further evidence to the panel under oath. You took the panel through the documentation lodged on your behalf. You told the panel that you respected its findings of fact, you understand the seriousness and that you have reflected since the hearing in March 2019. You said that seeing the panel's decision was really upsetting. You apologised to the witnesses, saying you felt ashamed and humiliated that you had made people feel the way the witnesses had described and you attributed this to your preoccupation with your own situation with Colleague E. You said when you received the witness statements in advance of this case that you did not recognise yourself in

them and you did not hitherto believe you had done anything wrong. You told the panel you had taken a long time to reflect on and assess this experience and that you now understand and recognise the impact of your behaviour on the witnesses and your inappropriate management of the HoD's. You told the panel that, whilst you accepted its findings, you did not consider your behaviour was intentional or pre-meditated. You said someone should have made you aware that there were issues with your behaviour to allow you to change it but that you did not know that anything was wrong until the joint grievance was raised. When questioned as to how you did not realise that your behaviour in reducing a colleague to tears was inappropriate of a nurse you maintained that some of the incidents in Schedule 1 did not happen. You told the panel it was difficult for you to provide insight into something that did not happen.

You told the panel of your work history since your dismissal from Albyn Hospital. You now work at The Holly Private Hospital (The Holly), you joined as a band 5 bank nurse in theatre before being promoted to deputy theatre manager for two consecutive three-month appointments. You explained that you were then approached and asked to work in Governance, your current role, which involves supporting the Director of Nursing, working collaboratively with the HoDs and project management at The Holly. You told the panel that you do not wish to take on any managerial responsibilities at any time in the future. Further, you reflect daily and ask for feedback at every opportunity. You told the panel you now shy away from any conflict and if any were to arise you would involve a manager or HR.

You told the panel that the testimonials you have provided are from people you worked with in BMI and from people you currently work with, in a variety of roles both senior and junior to your position, and they have no negative things to say about you.

You advised the panel that you felt the breakdown in your relationship with Colleague E had a significant impact on you at this time. [PRIVATE]

You took the panel through your reflective piece. You said you had chosen to reflect on the NMC hearing as you wanted to learn from this experience and understand it. You said you needed to evaluate your leadership style and your opinion is that you have found yourself in this position due to your leadership style, which you have sought to change in order to be a better version of yourself.

You told the panel that you consider it to be an absolute privilege to be a nurse. You said that your career journey had been corporate and because you were results driven you lost the essence of what nursing means.

In his submissions Mr Segovia invited the panel to take the view that your actions amount to a breach of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) (the Code). He then directed the panel to specific paragraphs and identified where, in the NMC's view, your actions amounted to misconduct, in particular the paragraphs which deal with promoting professionalism and trust and upholding the reputation of the profession. Mr Segovia referred the panel to the case of *Roylance v GMC (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.'

He then 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. Mr Segovia referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* and *GMC v Khetyar [2018] EWHC 813 (Admin)*.

Mr Segovia submitted that you continue to deny the behaviours identified by the panel and that this makes it much more difficult to show insight and a depth of understanding. He submitted the panel may find it difficult to see where, in the evidence that has been

provided, you have shown a depth of understanding which would allow you to properly address your misconduct.

Mr Segovia submitted that the case of Khetyer makes it clear at paragraph 49 of the judgement that “insight requires that motivations and triggers be identified and understood, and if that is possible at all without there first being an acceptance that what happened did happen it will be very rare, and any assessment of ongoing risk must play close attention to the doctor’s current understanding of and attitude towards what he has done”. It goes on to state “His apologies had nothing to say as to insight or risk or even as remorse in relation to the sexual assaults found proved by the Tribunal”. Mr Segovia noted that the behaviour in this case is significantly different to Khetyer however he submitted that this case was relevant to the panel’s assessment of insight in your case.

Mr Segovia submitted the panel should look to your past behaviour and critically evaluate this along with the evidence provided and the facts found proved to inform its decision regarding your insight and any risk of repetition of this behaviour in future.

Ms Chalmers, on your behalf, submitted that misconduct was a matter for the panel and that you accept it is clear from the panel’s findings that these are serious issues.

Ms Chalmers submitted that you accept you were impaired at the time the matters took place and that at this time you were consumed by the breakdown of your relationship with Colleague E which impacted on your behaviour. [PRIVATE]. Whilst you accept you were impaired at the time of the incidents there were extenuating circumstances at the time, you have a previous unblemished career and have not sought to blame others and there have been no issues in your practice in dealing with individuals since. Ms Chalmers submitted that you do not accept that you are currently impaired.

Regarding your insight, Ms Chalmers submitted that you made early admissions to some of the charges and that you have accepted the panel’s findings. She submitted

that you accepted that the description of the behaviour attributed to you, if it occurred, was not appropriate, you do not seek to condone such behaviour and have shown insight into how things could have been done differently. Ms Chalmers submitted that you have given clear consideration to these matters particularly in relation to your course work and reflective journal. She pointed out that you said you were shocked having seen witnesses give their evidence, and the fact that you have removed yourself from any managerial role to avoid the risk of repetition shows insight. She submitted that the “glowing” testimonials indicate you are of good character.

Ms Chalmers drew the panels attention to the cases of *PSA v GMC Uppal [2015] EWHC 1304 (Admin)*, *PSA v NMC (SM) [2017] CSIH 29* and *Cheatle v GMC [2009] EWHC 645 (Admin)*.

Ms Chalmers submitted that the panel are required to look at the level of risk and that in her opinion this was low. She stated that there was no patient harm or clinical failings in this case and it relates solely to your relations with other staff and your managerial style. She submitted that a finding of impairment was not necessary in terms of public protection. Ms Chalmers asked the panel to give careful consideration as to whether it was in the public interest to find impairment of a nurse at band 7 or 8 who continues to practice unrestricted without conditions and she submitted, given the passage of time, the panel should make a finding of no current impairment. Further, she submitted that you have already been through a rigorous procedure at a local level.

The panel has accepted the advice of the legal assessor which included reference to a number of judgments which are relevant, these included: *Roylance v General Medical Council (No 2) [2000] 1 A.C. 311* and *PSA v HCPC Doree [2017] EWHC 319* as well as to the aforementioned cases of *Khetyer, Uphall, NMC (SM)* and *Cheatle*.

The panel adopted a two-stage process in its consideration, as advised. 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.

Decision on misconduct

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of the Code.

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

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
- 8.5 work with colleagues to preserve the safety of those receiving care

20 Uphold the reputation of your profession at all times

To achieve this, you must:

- 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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However the panel reminded itself that it had determined you deliberately exhibited a course of conduct to people in less senior positions than you over a significant period of time, that this behaviour was intentional and that you habitually sought to frighten, threaten and bully those below you in the managerial structure. The panel was of the view that a nurse behaving in this manner was completely unacceptable of a registered professional, let alone a nurse in such a senior position as a DoN.

The panel therefore found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision on impairment

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

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

profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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.”

Mrs Justice Cox went on to say in Paragraph 76:

“I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor’s fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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 he/she:

- 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 determined that the nature and extent of your misconduct is such that limbs a, b and c of the “Grant test” are engaged in this case.

The panel gave careful consideration to limb a above as to whether patients had been put at unwarranted risk of harm in the past or were likely to be put in such a position in the future. The panel noted that the witnesses did not indicate any instances where patients came to harm. Further the panel noted this case did not involve your direct clinical care of patients. However, the panel reminded itself of its findings in regards to schedule 2, charge 2. The panel reminded itself that many of the witnesses reported being “terrified” to raise any issues with you and that you had, on occasion, encouraged the HoDs to initially mark incidents as minor. The panel considered your failure to encourage a positive culture of reporting coupled with the downplaying of risk gave rise to the potentiality of a risk of harm to patients which may have resulted in matters relating to patient safety not being addressed. The panel therefore considered that you did put patients at a risk of harm.

As regards to limbs b and c, again the panel reminded itself of its findings. The panel found that you deliberately exhibited a course of conduct to people in less senior positions than you over a significant period of time. The panel determined that this behaviour was intentional and although you said you demonstrated commitment to your team, describing your relationship as “like the mother of the team; I look after them”, nevertheless you habitually sought to frighten, threaten and bully those below you in the

managerial structure. The panel considered you had not recognised your abuse of power in behaving like this. In the panel's view this behaviour breached a fundamental tenet of the profession and your actions brought the profession into disrepute.

The panel then went on to consider the issue of future conduct based upon the information before it today. The panel took into account Ms Chalmers submission that the particular circumstances of your misconduct did not require a finding of current impairment.

With regards to Ms Chalmers submissions, the panel reminded itself of the comments of Mr Justice Cranston at paragraph 22 in *Cheatle v GMC [2009] EWHC 645 (Admin)*, referred to and accepted by Mrs Justice Lang at paragraph 28 of *Uppal*:

“In my judgment this means that the context of the doctor's behaviour must be examined. In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor's behaviour both before the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired. The doctor's misconduct at a particular time may be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe at all. On the other hand, the doctor's misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practise Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct.”

The panel also noted the comments made by Mrs Justice Lang at paragraph 29 of *Uppal* that “the Panel was correct to assess whether or not Dr Uppal's fitness to practise was currently impaired, having regard to her conduct since the misconduct occurred, as well as the nature and extent of her misconduct. Thus, her apology, insight and remediation were all relevant to that assessment, as was the extremely low risk of

recurrence.” and paragraph 34 where Mrs Justice Lang stated that in “exceptional cases” a panel may conclude that an “isolated lapse in an otherwise unblemished career” where “the risk of repetition was extremely low” might not give rise to a finding of current impairment.

The panel further noted the comments of Lord Malcolm in the case of *PSA v NMC (SM)* at paragraph 27 where he stated “Not every case of misconduct will result in a finding of impairment. An example might be an isolated error of judgment which is unlikely to recur, and the misconduct is not so serious as to render a finding of impairment plainly necessary. On the other hand, misconduct may be so egregious that, whatever mitigatory factors arise in respect of insight, remediation, unlikelihood of repetition, and the like, any reasonable person would conclude that the registrant should not be allowed to practise on an unrestricted basis, or at all. In such a case, to have been guilty of misconduct of such a nature is itself clear evidence that the practitioner should not be allowed to practise, or to practise unrestricted; and the public interest will point to a finding of impairment, and the imposition of an appropriate sanction. On the other hand, as one judge observed “the (practitioner’s) misconduct may be such that, seen within the context of an otherwise unblemished record, a fitness to practise panel could conclude that, looking forward, his/her fitness to practise is not impaired, despite the misconduct – *Cheatle v GMC [2009] EWHC 645 (Admin) Cranston J at paragraph 20.*”

Having reminded itself of the foregoing judicial guidance the panel went on to consider firstly the issue of insight. The panel reviewed the evidence you gave at the findings of fact and the evidence you gave at the impairment stage. Despite your assertions that you accept the panel’s findings, the panel noted that in reply to a question from the panel regarding conduct found proved you simply stated that it had not happened. The panel also noted that Ms Chalmers on more than one occasion submitted that, if the behaviour had occurred as alleged, it would be unacceptable. The panel did not consider that this was consistent with a full and unfettered acceptance of its decision on facts. The panel also noted that you have failed to provide any tangible evidence reflecting on the panel’s findings that your behaviour was intimidating and bullying.

Further, the panel noted that in your “reflective journal” under the heading conclusions, you state that when “working as a new Director of Nursing I was not given a mentor/buddy and I was not afforded any leadership training so I continued in the same style utilised as theatre manager. The relationship breakdown with my hospital director [PRIVATE] affected my ability to undertake my duties, direct my team appropriately which led to my dismissal and my referral to the Nursing and Midwifery Council. The organisation was not supportive and did not understand organisational culture was pivotal to healthcare quality improvement and staff wellbeing and that my hospital director being non-communicative with me would have such a huge impact on my professional [PRIVATE] life”.

The panel considered although this seeks to explain your behaviour it appears to apportion blame to others rather than your taking ownership of your own actions, failures and the consequences of them. The panel considered that the reflections failed to analyse the abuse of power despite three years having lapsed since the incidents occurred.

The panel next reminded itself of its findings regarding the breakdown in the relationship between you and Colleague E and noted that you continue to seek to use this to justify your behaviour.

The panel therefore considered that you have extremely limited insight.

The panel took into account your evidence in relation to your health and your position that this had adversely impacted on the nature of your interaction with colleagues.
[PRIVATE]

The panel noted you have expressed remorse during the course of your evidence indicating that you were sorry for the impact your behaviour had upon your colleagues. However, the panel also noted that during your evidence both at the findings of facts

stage and at the impairment stage you expressed remorse about the effect that the internal proceedings and the regulatory proceedings have had upon you. The panel was not satisfied that you have displayed a full understanding of the nature and extent of your actions and the consequences of them on your colleagues and the reputation of the profession. The panel noted that you do not appear to have appreciated the impact of your behaviour on people both outside work as well as at work or that your behaviour could be considered manipulative. The panel therefore determined that your expression of remorse was, at this stage limited and directed towards your own discomfort at the situation you find yourself in.

Your statement that you received no feedback about the inappropriateness of your behaviour further highlights your lack of insight given the nature of the charges found proved and the obvious unacceptability of those behaviours.

In its consideration of whether you have remedied your practice the panel is required to determine whether your conduct was remediable and next, whether it has been remedied. The panel considered, in principle, almost all conduct is remediable and that in your case your conduct is remediable. The panel reminded itself of its conclusions regarding insight and remorse. The panel determined that without sufficient insight into the full nature and extent of your misconduct and its consequences and appropriate remorse, that it was not possible for you to demonstrate that you have remediated your failings.

The panel took into account the large number of testimonials before it, but noted that these did not appear in general to comment on you when acting in a senior managerial capacity, such as DoN. The panel therefore determined that they were of limited assistance, particularly when considered alongside your extremely limited insight into your misconduct.

The panel is of the view that there is a risk of repetition based on your lack of insight or remediation of the conduct found proved. The panel considered your evidence at the

impairment stage of this hearing. The panel considered your assertion that you would remove yourself from any conflict situation in future to be extremely naïve. The panel considered your evidence that you have removed yourself from managing people and your assertion that you do not wish to return to managing people to be a further example of your poor insight. The panel noted that you have stated that you have no intention of working in a managerial position again. Whilst the panel does not challenge that this is your current position, it reminded itself that there is always the possibility that you may change your views in the future and accept a managerial position again. If this were to occur, the panel considered that there would exist a risk of repetition unless you have developed insight into the need to change the way you behave.

Further, the panel considered that the areas of concern which it has identified arise in any interaction between two colleagues where one holds a more senior position. The panel noted that whilst you are not managing people you work at a high level within a large hospital setting and work closely with the Executive Director of The Holly. The panel therefore determined that your assertion that you have no intention of undertaking a managerial position does not result in there being no risk of repetition of similar behaviour to that found to have occurred.

In light of the panel's findings regarding insight, remediation, remorse and risk of repetition the panel determined that your case bore no similarity to the position in *Uppal* and *PSA v NMC (SM)* and therefore rejected Ms Chalmers' submissions that there should be no finding of current impairment.

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

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper

professional standards for members of those professions. The panel determined that, in this case, a finding of impairment on public interest grounds was also required. The panel reminded itself of its findings that the conduct found proved in Schedule 1 was also found to be aggressive, intimidating and bullying by an individual holding a senior position who should act as a role model for those junior to her. The panel was fully satisfied that public confidence in the profession and the NMC as regulator would be undermined if a finding of current impairment were not found in these circumstances.

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

Determination on sanction:

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

In submissions on sanction Mr Segovia advised the panel that the NMC's sanction bid in this case is that of removal of your name from the register in the form of either a suspension or a striking off order. Mr Segovia acknowledged that this sanction bid has changed from the sanction bid contained within the notice of hearing, which was that of a caution. He submitted that the sanction bid was now amended in light of the evidence adduced in this hearing and the panel's determinations at findings of facts, misconduct and impairment. He stated that he had made Ms Chalmers aware of the change to the sanction bid prior to these submissions. He submitted that the NMC has serious concerns regarding your name remaining on the NMC register.

Mr Segovia reminded the panel that it had identified, at the impairment stage of this hearing, issues with your insight, remediation as well as a risk of repetition. He submitted the panel clearly determined that you had exhibited a pattern of behaviour

which had not been remediated despite you having had three years since these events with no restriction on your practice by way of any interim order. Further he reminded the panel that it had found impairment on the grounds of public protection as well as public interest, indicating a risk of harm to patients.

Mr Segovia submitted that a caution and a conditions of practice order were wholly inappropriate given the panel's findings and re-iterated the NMC's concern of your name remaining on the register.

Ms Chalmers, on your behalf, submitted that the initial sanction bid of a caution order was the appropriate and proportionate order in your case. She submitted that a caution order, of up to five years, would mark the behaviour found as unacceptable and must not happen again as well as sending a clear message to the profession.

She submitted that there was no patient harm, despite the panel's finding that there was a risk of harm, and that there are no other linked cases or previous referrals to the NMC involving you. She highlighted the positive testimonials and that there have been no concerns raised prior to, or since, the incidents forming this case.

Ms Chalmers submitted, if the panel was not with her on a caution being the most appropriate sanction, that a conditions of practice order could be formulated to deal with the issues of insight and remediation. She accepted that conditions of practice may be more appropriate in cases relating to clinical practice but suggested several conditions which may be appropriate including: further reflection including a reflective piece for the reviewing panel; a requirement to meet and discuss with your line manager on a quarterly basis your behaviour, reflection and insight along with a report from your line manager; attendance on a course to address your behaviour and interpersonal skills. She submitted the conditions would be in addition to your voluntary study. Ms Chalmers submitted that you did not exhibit a deep seated attitudinal problem, reminding the panel that you had previously worked as a theatre manager for ten years without issues. She submitted it was simply in your position as DoN that issues arose and suggested

the panel may be minded to put a condition in place restricting you from a DoN role, however, in her opinion, this was a step too far.

Finally, Ms Chalmers submitted if the panel were not minded to impose a conditions of practice order then a short suspension would mark its disapproval and send a strong message. She submitted that a striking-off order was far too excessive in the circumstances and that this was a case where you can, could and should be allowed to demonstrate insight and be afforded an opportunity to remedy your practice. She reminded the panel that sanction should not be excessive or punish a registrant and should not go further than required. She submitted, in her opinion, that a striking-off order would be excessive and disproportionate given the panel's previous findings.

In reaching this decision, the panel has had regard to all the evidence that has been presented in this case, as well as the submissions by Mr Segovia and by Ms Chalmers on your behalf along with its prior determinations. The panel accepted the advice of the legal assessor.

The panel acknowledged the NMC Sanction Bid of a suspension order/ striking-off order, but was not bound by such a bid, and has exercised its independent judgement. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the Sanctions Guidance (SG) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel has also taken account of the aggravating and mitigating factors in this case.

The panel identified several aggravating factors in this case. First, you were in a senior position of power, which you abused. Second, you have demonstrated extremely limited insight, no remediation and have not shown an understanding of the impact of your actions on your colleagues or the reputation of the nursing profession as a whole. Third,

the panel previously determined that your behaviour was an intentional pattern of conduct, namely to frighten, threaten and bully those below you in the managerial structure, which continued over an extended period of time. Fourth, this conduct could have put patients at a risk of harm where patient safety matters could not be raised by staff who were afraid to raise any concerns.

The panel went on to identify the mitigating factors in this case. First, there is no evidence of actual patient harm. Second, you have produced a range of positive testimonials in relation to your clinical practice albeit outwith the identified areas of concern. Third, you have undertaken a range of pertinent training opportunities. Fourth, you have engaged with these proceedings.

The panel noted that the SG states:

“The fact that a nurse or midwife does not have a past fitness to practise history is not generally a relevant consideration to the decision on sanction... there will be usually be only extremely limited circumstances where the concept of a ‘previously unblemished career’ will be a relevant consideration...”

The panel considered that no such extremely limited circumstances existed in your case.

The panel is aware that it can impose any of the following sanctions; take no further action, make a caution order for a period of one to five years, make a conditions of practice order for no more than three years, make a suspension order for a maximum of one year, or make a striking-off order.

The panel considered the potential sanctions in ascending order of restrictiveness.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel has already found that

your fitness to practise is impaired on the grounds of public interest as well as on public protection grounds. The panel noted its determination that you were responsible for conduct that undermined the public's trust in nurses and breached fundamental tenets of the profession. The panel determined that in order to secure public trust in nurses and midwives, or to promote and maintain proper professional standards and conduct that to take no further action would be neither proportionate nor in the public interest.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where "the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again". The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. In addition, having found your fitness to practise is impaired on public protection grounds a caution order would provide no restriction on your practice. 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, which states:

Conditions may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- 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
- conditions can be created that can be monitored and assessed.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel did not consider that there was “no evidence of harmful deep-seated personality or attitudinal problems”. The panel also considered that the areas of its concern related to your behavioural patterns rather than identifiable areas of the nurse or midwife’s practice in need of assessment and/or retraining. The misconduct identified in this case, whilst theoretically remediable, is not something which can be addressed through the imposition of conditions such as those suggested by Ms Chalmers, especially in light of the panel’s findings regarding your lack of insight and remediation.

Furthermore the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not meet the public interest identified in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a suspension order would be appropriate where (but not limited to):

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

The panel took into account that this was not a single incident of misconduct, but a pattern of deliberate behaviour which you exhibited over an extended period of time, involving a number of your colleagues. The panel reminded itself of its finding that you had displayed extremely limited insight and lacked a full understanding of the nature and extent of your actions and the consequences of them on you colleagues and the reputation of the profession. The panel also took into account that you do not appear to have appreciated the impact of your behaviour on people both at work and outside work or that your behaviour could be considered manipulative. In light of its prior findings the

panel determined that there is a significant risk of repetition given your extremely limited insight.

The panel noted it has been your position, throughout these proceedings, that you did not realise you were acting in an inappropriate way and that no one had told you your behaviour was unacceptable. The panel reminded itself of the incidents in schedule 1 which were found proved. It considered that the type of behaviour exhibited towards those below you in the management structure, not only those people you directly managed but staff at all levels within the hospital, was so clearly a departure from fundamentally acceptable behaviour that you should not have needed to be told that your behaviour was inappropriate.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel considered that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with your remaining on the register.

Balancing all of these factors, in this particular case, the panel has determined that a suspension order would not be an appropriate or proportionate sanction.

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

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

The panel considered that your actions, over an extended period of time as a senior manager in the health service, who deliberately bullied her staff to the point where they

did not want to report concerns or near misses and who frightened her staff to the extent that they considered leaving their roles, were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were so serious that to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel recognises the impact that a striking-off order will have on you. However, it concluded the public interest outweighed yours in this regard.

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

Determination on Interim Order

The panel considered the submissions made by Mr Segovia that an interim suspension order should be made to cover the 28 day appeal period. He submitted it was necessary, given the panel's earlier findings and the risk of repetition identified, in order to protect the public and is otherwise in the public interest to protect the reputation of the profession. He submitted that this was appropriate given the panel's findings on

impairment. He submitted that an 18 months interim suspension order would be appropriate as it is not possible to know how long an appeal would take to resolve.

The panel took account of the submissions made by Ms Chalmers on your behalf. She opposed the application for an interim order on the grounds that there was no significant risk should your practice not be restricted at this stage.

The panel heard and accepted the advice of the legal assessor and took account of the guidance issued to panels by the NMC when considering interim orders and the appropriate test as set out at Article 31 of The Nursing and Midwifery Order 2001. It may only make an interim order if it is satisfied that it is necessary for the protection of members of the public, is otherwise in the public interest or is in your own interests.

The panel considered that an interim order is required for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order. It concluded that to not make such an order would be incompatible with the panel's earlier findings and with the substantive sanction that it has imposed.

The panel decided to impose an interim suspension order for the same reasons as it imposed the substantive order and to do so for a period of 18 months in light of the likely length of time that an appeal would take to be heard if one was lodged.

The panel recognises the impact that an interim suspension order may have on you. However, it concluded the public interest outweighed yours in this regard.

The effect of this order is that, if no appeal is lodged, the substantive striking off order will come into effect 28 days after notice of the decision has been served on you and the interim suspension order will lapse. If an appeal is lodged then the interim suspension order will continue until the appeal is determined.

The panel's decisions will be sent to you in writing.

That concludes this determination.