

D/18-27/22-23

Decision of the Certification Officer on an application made under Section 108A
of the Trade Union and Labour Relations (Consolidation) Act 1992

Dawes

v

Royal College of Nursing (RCN)

Date of Decision

21 March 2023

Contents

Decision	3
Enforcement Order	5
Reasons.....	5
Findings of fact.....	6
The Relevant Statutory Provisions.....	11
Considerations and Conclusions.....	13
Enforcement	88
Annex 1.....	90
Annex 2.....	98
Annex 3.....	100

Decision

1. Upon application by Mr Dave Dawes (“the applicant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

Complaint 1

I find that the Union did not breach MRP 1.10 when Ms Cullen discussed, on 9 and 12 July 2021, the complaints made against Mr Dawes to Ms Popplestone, Mr Benton or Professor Thomson.

I find that the Union did not breach MRP 1.10 when issuing a statement to union members and posting that statement on the website.

I find that the Union did not breach MRP 1.10 when Ms Cullen discussed the nature of the complaints against Mr Dawes and his impending suspension with Council on 13 July 2021.

Complaint 2

Mr Dawes withdrew his complaint that the Acting Chair did not have the power to call a special meeting of Council under paragraph 3.1 of the policy and process for running meetings.

I find that the meeting on 13 July 2021 was not a formal Council Meeting. It was not, therefore, necessary for the Acting Chair to have complied with Rule 19.1 of Standing Orders and paragraphs 3.1, 3.2 and 3.3 of the policy and process for running meetings.

Complaint 3

I find that the Union breached MRP 4.3.8 because it did not keep Mr Dawes’ suspension under review to ensure that it did not last longer than necessary.

Complaint 4

I find that the Union did not breach MRP 4.3.10 by maintaining Mr Dawes' suspension beyond 60 days.

Complaint 5

I find that the Union did not breach Rule 6.1 by issuing the notice of the Hearing on Monday 18 October 2021.

Complaint 6

I find that the Union did not breach MRP 6.2 by failing to provide the names of the Panel Members, or the date of the Hearing in the Notification of Hearing issued on 18 October 2021.

Complaint 7

I find that Carol Webley-Brown was not conflicted, under MRP 7.3.1 or MRP 7.3.2, from sitting on the first Resolution Panel.

I find that that Lord Victor Adebawale was not conflicted, under MRP 7.3.1 or MRP 7.3.2, from sitting on the first Resolution Panel.

I find that the process followed by Ms Mayhew when considering Mr Dawes' allegations about conflicts of interest did not result in a breach of MRP 7.3.1 or 7.3.2

I find that the Union did not breach the principles of natural justice by denying Mr Dawes a freestanding right of appeal to Ms Mayhew's decision on the composition of the Resolution Panel.

Complaint 8

I find that the Union breached MRP 4.3.8 by failing to keep the second suspension under review to ensure that it did not last longer than necessary.

Complaint 9

I find that the Union did not breach MRP 4.3.10 by maintaining Mr Dawes' second suspension beyond 60 days.

Complaint 10

I find that Mr Dawes waived his right to bring a complaint to me about Mr Carr or Mr Benton having a real, or potential, conflict of interest or lack of independence when considering Mr Dawes' appeal against disciplinary sanctions imposed by the first and second Resolution Panels.

I find that the Appeal Panel did not breach MRP 7.3 by deciding not to consider Mr Dawes' allegations relating to conflict of interest, or bias, at the first Resolution Panel.

Enforcement Order

For the reasons given at paragraphs 242 to 246 below I do not consider it appropriate to make an Enforcement Order, or impose a financial penalty in relation to Complaints 3 and 8.

Reasons

2. Mr Dawes submitted three applications, making 13 complaints. The applications were received on 31 August 2021, 10 January 2022 and 26 September 2022. I struck out two of these complaints and one was withdrawn by Mr Dawes. Those complaints do not form part of this decision.

3. Following correspondence with my office, Mr Dawes confirmed the remaining ten complaints as set out in Annex 1.
4. A hearing took place by Video Conference on 14 ,15 and 24 February 2023. Mr Dawes represented himself. He submitted a combined skeleton argument and evidence. He also submitted witness evidence from Mr Gareth Phillips and Mr Mike Travis both of whom gave oral witness evidence. The Union was represented by Mr Tom Coghlin KC, instructed by Bates Wells Solicitors. The Union submitted a skeleton argument. The Union also submitted witness statements from Ms Carol Popplestone, Ms Nicole Valentinuzzi, Ms Patricia Cullen, Ms Carol Webley-Brown, Lord Victor Adebawale, Mr Bruce Carr KC and Mr Stephen Mason. Ms Cullen and Mr Carr KC gave oral evidence.
5. There was also in evidence two bundles of documents. One consisted of 1073 pages; the second consisted of 81 pages of documents which the Union had provided to Mr Dawes following his data subject request. These bundles contained correspondence and the rules, policies and procedures of the Union for consideration at the hearing. Mr Coghlin submitted a bundle of legal authorities to support the arguments set out in his skeleton argument.

Findings of fact

6. The following facts were agreed at a Case Management Meeting on 8 February 2023.
7. Mr Dawes was a member of the RCN. He was elected as the Council Member for the North-West and as Chair of the Union. His term of office as Chair began in September 2020 and was due to end on 31 December 2022.

First Investigation

8. On 8 July 2021 Pat Cullen, then Acting General Secretary of the Union, received a complaint from a Union officer about the conduct of Mr Dawes. She also received feedback about Mr Dawes' behaviour at an internal RCN

meeting as well as an open letter from two RCN Student Committee Members.

9. Ms Cullen spoke to Mr Dawes by telephone on 9 July 2021. He agreed that the concerns discussed with him should be investigated.
10. Between 9 July and 12 July 2021, Ms Cullen received further feedback about Mr Dawes' conduct and a complaint from the Managing Director and Chair of RCNi. During that period, she sought advice from the Union's Executive Team and from Council Members Professor Rod Thomson, Mr Jeremy Benton and Ms Popplestone, about how the Union should handle the concerns.
11. On 12 July 2021, Mr Dawes met with Ms Cullen, Professor Thomson, and Ms Popplestone. He agreed to stand aside from his role as Chair during the investigation into the concerns. It was agreed that he would remain as a Member of Council and that Ms Popplestone, the Deputy Chair of Council, would act as Chair during the investigation.
12. On 13 July 2021, Ms Cullen received a further complaint which included some concerns about Mr Dawes' recent and historic conduct on social media. Ms Cullen decided that these concerns were sufficient to cause her, as Resolution Owner under the Union's Member Resolution Procedure (MRP), to suspend Mr Dawes from his role as a Council Member and as Chair of Council.
13. Ms Popplestone decided that the issues raised were sufficiently serious for her to call an Emergency Council Meeting. She did not notify Mr Dawes of the meeting which went ahead on 13 July 2021. Council voted to support Ms Cullen's decision to suspend Mr Dawes. Ms Cullen informed Mr Dawes of her decision on 14 July 2021. Following this, Ms Clare Fowler of YESS Law was appointed to investigate the complaints about Mr Dawes.

14. Steve Mason, the Union's Strategic Human Resources Advisor, replaced Ms Cullen as Resolution Owner under the MRP. He informed Mr Dawes, on 31 August 2021, that he had reviewed the need for the suspension and believed that it continued to be necessary and would remain in place until the end of the investigation.
15. Ms Fowler provided her report, on 11 October 2021, to Mr Mason. The report recommended that some of the allegations should be considered at a Resolution Hearing. Mr Mason decided to accept the recommendations and to hold a Hearing. Mr Mason wrote to Mr Dawes to explain this enclosing a copy of the Report. He explained that the Hearing would be likely to take place in mid to late November in the RCN's offices in London and sought details of Mr Dawes' and his representative's availability. Mr Mason also explained that the Panel would be chaired by Alice Mayhew, a barrister, and would include Ms Webley-Brown, the Council Member for London, and a third independent member who would be confirmed in due course. On 10 November 2021, Mr Mason wrote to Mr Dawes to confirm that the Hearing would go ahead on 15 and 16 December 2021 and that Lord Adebawale would be the third panel member.
16. On 12 November 2021, Mr Dawes objected to Ms Webley-Brown and Lord Adebawale acting as Panel members as he believed both had conflicts of interest. On 14 December 2021, Ms Mayhew, Chair of the Resolution Panel, set out the reasons why she did not believe that a conflict of interest arose for either Lord Adebawale or Ms Webley-Brown.
17. The Panel did not meet on 15 and 16 December 2021 but, instead, met on 31 January 2022 and issued its decision on 8 February 2022. Mr Dawes observed the Hearing but did not participate in it. The Panel upheld some of the complaints against Mr Dawes. They decided that one complaint was gross misconduct and that he should be expelled from the Union. A second complaint was found to be serious misconduct and Mr Dawes was given a

final written warning for twelve months. A third complaint was found to be minor misconduct but no sanction was applied.

Second Investigation

18. On 31 August 2021, Mr Dawes made a complaint to my office and a separate complaint to the Information Commissioner. Between 30 August 2021 and 15 September 2021 Mr Dawes shared these complaints, and information about the circumstances leading to the former General Secretary leaving the Union, with journalists.
19. On 22 September 2021, Mr Mason informed Mr Dawes that there would be a second, separate, investigation into alleged breaches of duty, confidence and policy by Mr Dawes when he made disclosures to the press. This investigation would be undertaken by Irwin Mitchell, Solicitors. Mr Mason told Mr Dawes that he was imposing a period of suspension in relation to this second investigation. Mr Dawes was, therefore, subject to two separate suspensions.
20. On 26 January 2022, Irwin Mitchell submitted their investigation report to the Union. Mr Mason wrote to Mr Dawes on 2 February 2022 explaining that Mr Dawes would be subject to a disciplinary procedure specifically relating to the disclosures to the press. The Panel met on 8 February 2022 and found Mr Dawes guilty of gross misconduct. The Panel removed him from his role as a Council Member and prevented him from holding this and other governance roles for five years.

Appeals

21. On 3 March 2022, Mr Dawes appealed the decisions of both disciplinary panels. Each of the suspensions remained in place whilst his Appeals were considered. The sanctions imposed by the two Resolution Panels were not applied pending the outcome of the Appeals.

22. The Appeals were heard by the same Appeal Panel on 17 and 18 March 2022. The Panel members were Mr Carr, Chair, Mr Benton, RCN Council Member and Ms Judith Ellis, an RCN Member.
23. At the beginning of the Appeal Hearing, Mr Carr asked Mr Dawes to confirm that he had been notified of the composition of the Appeal Panel. Mr Dawes replied that he had been notified and that he was very happy with the composition of the Panel.
24. Following discussion with Mr Dawes and Ms Mayhew, who had chaired the first Resolution Panel, the Appeal Panel decided that they should not reach a decision on the allegations of bias against Ms Webley-Brown and Lord Adebawale. Instead, they would consider the two adverse findings against Mr Dawes as a Panel of first instance.
25. When giving their decision, the Appeal Panel acknowledged that they were satisfied that Mr Dawes understood that he would not have a right of appeal against their findings. Mr Dawes asked that a third complaint, which had been found to constitute minor misconduct without the Resolution Panel imposing a sanction, should be considered by the Appeal Panel. The Panel agreed.
26. Mr Dawes acknowledged that he was very comfortable with this approach.
27. The Appeal Panel issued their decision on 4 April 2022. They recorded that they had concluded that they should proceed as a Member Resolution Panel for the three complaints which had been upheld by the first Resolution Panel. The Appeal Panel upheld all three of those complaints; two of which amounted to gross professional misconduct which justified, for each complaint, removal from membership of the Union. The third complaint was found to be minor misconduct with no sanction imposed.
28. The Appeal Panel also upheld the decision of the second Resolution Panel that Mr Dawes was guilty of gross misconduct. They increased the sanction

applied by the second Resolution Panel as they considered that the complaint justified removal from membership of the union.

The Relevant Statutory Provisions

29. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows: -

108A Right to apply to Certification Officer

(1) A person who claims that there has been a breach or threatened breach of the Rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are –

- (a) the appointment or election of a person to, or the removal of a person from, any office;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
- (e) such other matters as may be specified in an order made by the Secretary of State.

108B Declarations and orders

(1) The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

(2) If he accepts an application under section 108A the Certification Officer—

(a) shall make such enquiries as he thinks fit,

(b) shall give the applicant and the union an opportunity to be heard,

(c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,

(d) may make or refuse the declaration asked for, and

(e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—

(a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;

b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

The Relevant Rules of the Union

30. The Rules, policies and procedures of the Union which are relevant for the purposes of this application are the Standing Orders, Members Resolution Procedure and the Policy and process for running meetings of the RCN Council, Boards and Committees are set out in Annex 2.

Considerations and Conclusions

Complaint 1

31. Ms Cullen had taken up her role as Acting General Secretary and Chief Executive in April 2021. She was appointed during the absence of the permanent General Secretary and Chief Executive (the former General Secretary) who left the Union in June 2021. Ms Cullen told me that, at the time she was appointed, Mr Dawes had suggested that, should she need expert advice and assistance, she could approach Professor Thomson, Honorary Treasurer or Mr Benton, Vice Chair of the Audit Committee.
32. Between 8 and 13 July 2021, Ms Cullen, received a number of complaints and some feedback about Mr Dawes' conduct. It is not necessary for me to set out the detail of those complaints at this stage other than to say that they arose from his attendance at a staff meeting on 7 July 2021 and his relationship with staff. Additionally, an open letter was posted on social media which raised concerns about the leadership at the RCN which Ms Cullen believed related to Mr Dawes. To avoid any confusion, I will refer to these as the initial complaints throughout this decision. Mr Dawes' first complaint to me is about the release of information about those initial complaints to Council Members and to Union Members.
33. As the initial complaints were about the Chair of Council, Ms Cullen was the Resolution Owner under the Union's Member Resolution Policy (MRP). Ms Cullen told me that she was aware that the MRP placed an obligation on her to maintain appropriate confidentiality whilst dealing with the complaints. Initially, she sought advice from Ms Jo Galbraith-Marten, then Associate Director of Legal and Governance. Together, they believed that this was an unprecedented situation because, to their knowledge, this was the first time that complaints had been made about a Chair of Council. Ms Cullen and Ms Galbraith-Marten agreed that Ms Cullen should raise the matter with members of Council.

34. Ms Cullen spoke to Mr Dawes on 9 July 2021. She explained how she felt about the escalating concerns about his behaviour at the staff meeting. She told him that she had received a letter from the union representing RCN staff, and that she had also been contacted by the RCN Foundation and RCNi (the Union's publishing arm) who all indicated that they had lost confidence in the leadership of Council. Her recollection is that Mr Dawes believed that the concerns had been raised by staff associated with the former General Secretary and with another former Council Member, Dr A. He told Ms Cullen that he had no issues with her investigating the complaints and that he had no intention of resigning. Ms Cullen advised him that she would be sharing a video of the staff meeting with Professor Thomson and Mr Benton; Mr Dawes did not raise any concerns about this.
35. At this stage it is worth noting that Mr Dawes agrees that Ms Cullen spoke to him on Friday 9 July 2021 and that she had told him about the letter from the Union's staff representative. He is clear, however, that he did not previously advise Ms Cullen to seek advice from Professor Thomson nor Mr Benton. Nor did he agree that it was appropriate for Ms Cullen to speak to either Professor Thomson or Mr Benton on this issue. He told me that, whilst he regarded them as friends, they were political rivals.
36. Ms Cullen told me that she spoke to Professor Thomson later on 9 July 2021. He had watched the video of the staff meeting and took the view that the matter was serious. Professor Thomson then spoke to Mr Benton and arranged a video call with Mr Benton which Ms Popplestone and Ms Cullen joined. Ms Cullen told me that, by this time, she was clear that there would need to be an independent investigation into the initial complaints. Professor Thomson told her that he would try to get Mr Dawes to understand that he would have to step aside whilst the investigation was ongoing.
37. Ms Cullen told me that she was contacted over the weekend by a number of senior Union members who were aware of the issues outlined in the

complaints and wanted to know how the Union was responding. She also spoke again with Professor Thomson who explained that he was trying to speak to Mr Dawes and suggested that she and Ms Popplestone should join the conversation. Before that could be set up, Mr Dawes called her. He had already spoken to Professor Thomson, was angry that she had spoken to Professor Thomson and explained that he did not intend to step down. Ms Cullen reminded him that he had previously advised her that she could speak to Professor Thomson and Mr Dawes did not deny that this was the case.

38. Later on the same day, Ms Cullen arranged a teleconference between herself, Mr Dawes, Professor Thomson and Ms Popplestone. During that call Ms Cullen became reassured that Mr Dawes was listening to Professor Thomson and Ms Popplestone, and that his thinking had moved on. Mr Dawes agreed that he should stand aside from his role of Chair but would remain as a member of Council. The meeting then went on to discuss the terms of a statement. I deal with the statement at paragraphs 42 to 60 below. Mr Dawes is clear that he did not, at any stage, advise Ms Cullen to seek advice from Professor Thomson and Mr Benton. Having heard from both Ms Cullen and Mr Dawes I find Ms Cullen's evidence to be more credible. She was new to her role, having been appointed on a temporary basis to cover the former General Secretary's recovery from an accident which then extended to cover the period after the former General Secretary had left the Union. It seems plausible, therefore, that the Chair might recommend colleagues to offer advice. In addition, Ms Cullen told me that she had advised Mr Dawes of her intention to speak to Professor Thomson and Mr Benton and he had not objected to what she proposed. His objection arose only after he had spoken to Professor Thomson who had indicated that he felt Mr Dawes should stand aside.

39. Even if I am wrong, however, and Mr Dawes had not given such advice it seems reasonable and appropriate for a newly appointed General Secretary to seek advice from Members of Council when dealing with complaints about

the Chair. Mr Dawes was Ms Cullen's line manager and, as Resolution Owner, she was responsible for managing the resolution of those complaints. Additionally, several senior staff had raised concerns about Mr Dawes' conduct at the staff meeting, there had been an open letter on social media and senior members of the Union were raising the issue with Ms Cullen. It seems inconceivable, in those circumstances, that she would not have discussed this with the Vice Chair who would, should Mr Dawes stand aside or be suspended, be expected to act up into the role of Chair.

40. Similarly, by speaking to Professor Thomson and Mr Benton she was seeking the advice of two senior members of Council in their roles as Honorary Treasurer and Vice Chair of the Audit Committee. I am not persuaded that Mr Dawes' view, that Professor Thomson and Mr Benton were his political rivals and potential opponents in any future elections for the role of Chair, should be sufficient to prevent them from giving advice to the Union's General Secretary when dealing with difficult complaints about the Chair of Council. If that were the case, then Ms Cullen would not have been able to seek advice from any Member of Council who was able to stand in a future election for the role of Chair.

41. Mr Dawes has suggested that, if Ms Cullen needed advice from Council, she could have sought advice from one Council Member and that it was inappropriate to involve three people. He has also suggested that she could have sought advice from the RCN's external advisers. He is right, of course; however, the fact that other sources of advice were available, or that she could have approached just one Council Member, does not mean that it was inappropriate for Ms Cullen to engage with Ms Popplestone, Mr Benton and Professor Thomson

Consequently, I find that the Union did not breach MRP 1.10 when Ms Cullen discussed, on 9 and 12 July 2021 the complaints made

against Mr Dawes Ms Popplestone, Mr Benton or Professor Thomson.

42. After Mr Dawes agreed that he would stand aside from the role of Chair, there was a discussion about drafting a statement explaining that he would do so but that he would remain as Council Member for the North West. Nicole Valentinuzzi, then Director of Communications, joined the teleconference to discuss the terms of the statement before leaving to draft it.
43. There is disagreement between the parties about who should have authorised the content of the statement, the accuracy of the resulting statement and whether there was any agreement about its circulation. Mr Dawes' complaint to me relates only to the distribution of the statement which means that I have neither considered its content nor the authorisation process.
44. Mr Dawes told me that he had understood that the statement would be distributed to Council Members and, possibly, some external advisers on RCN Committees as well as a small number of senior staff. He explained that he was committed to transparency but that, in his view, this did not enable the Union to share the fact that complaints had been made about him, or that he had stood aside from his role of Chair, with all members. He explained that members would not have been aware of what has happening at the Union. His role as Chair was primarily to chair Council meetings and to act as line manager for the General Secretary and Chief Executive. He acknowledged that there were a few other "bits and bobs" which he was required to do but explained that his role was largely inward facing. He saw his primary accountability as being to the electorate in the North West, which arose from his role as an elected member. He recognised that he had a "moral and ethical" accountability to the membership of the RCN but explained that he was directly accountable for his role as Chair to the Council itself. He told me that most external engagements were undertaken by the President but that he undertook some discretionary external engagements. He added that he

probably undertook more external work than others who had undertaken the role of Chair. Finally, he told me that most members would not have known that he had stood aside because he would only have missed a few Council meetings and the Union could easily have managed his non-attendance without revealing the reason for his absence.

45. Ms Cullen told me that her understanding was that the statement would be sent to all members by email and posted on the Union website. She explained that this was necessary, in her view, because many active members already knew about the content of some of the complaints and needed to know that the Union was taking urgent action on the issues. Additionally, confidential Union issues were sometimes leaked via social media or the nursing press, and so it was important that members heard and understood the Union position directly from the Union. Ms Cullen believed that Mr Dawes shared that commitment to be open and transparent and understood that the statement would be issued to members.

46. Ms Popplestone's witness statement records that she also understood that the statement would be sent to all members and that Mr Dawes had understood that too.

47. Ms Valentinuzzi recorded in her witness statement that she did not recall whether there was a discussion about the audience for the email and statement. She explained that it was sent to those members who had opted in to receiving Union updates by email. She also recorded that it was standard practice for news items to be posted on the website and so she understood that the statement would have a very broad audience. In her view Mr Dawes would have understood this.

48. Ms Valentinuzzi, who was not present for the whole of the meeting, also explained that:

“After all, the Chair of Council was stepping down. That is an elected role which is directly accountable to the membership. He would have known better than anyone that if we were not transparent on this and he had stepped down and tried to hide that from the members, the RCN could have been subject to severe criticism. During my time at the RCN, I was always clear that, as an organisation, we had a commitment to transparency in our communications with our membership. I definitely would have preferred not to have had sent an email to our members telling them that there had been complaints made about Dave because I knew it might well provoke press interest and unwanted scrutiny, but at the same time we had a commitment to be transparent.”

49. After the meeting ended, and before the Union had agreed or issued a statement, Mr Dawes sent the following email to all Council members, Ms Cullen and Ms Valentinuzzi:

“Dear Council Members

I am aware that a number of complaints have come in about to me from staff and from external stakeholders. I feel that these complaints should be independently investigated in line with the member resolution procedure and that I should stand aside as Chair until the resolution process is complete. This will be with immediate effect.

I have spoken to Carol and she is happy to step up as Chair during this process.

I will remain as Council Member of the North West in the meantime and will continue to maintain an extremely low public profile. I appreciate everyone’s support throughout the process and thanks for all the private messages of support I have had during this week. Nicole will be sending out statements tomorrow.

Best wishes

Dave”

50. Ms Cullen replied to all recipients of the email to remind members that the contents of Mr Dawes’ email was confidential and should not be shared. She explained that they were the only group notified of the issue but that a communications plan was being prepared for the following morning. At 10:29 on 13 July 2021 Ms Valentinuzzi emailed members (including Mr Dawes) with a link to the statement which had been shared on the website. That statement is set out below:

“An important update from the Royal College of Nursing

In the past week, the RCN has received complaints about the conduct of the Chair of Council. We take any such complaints extremely seriously and have a robust member resolution procedure which allows for investigations to be carried out.

An investigation will now take place and Dave Dawes has announced that he will voluntarily step down from his role as Chair of the RCN Council. Our current Vice Chair, Carol Popplestone, who was elected last year, will act into the role with immediate effect. Dave Dawes will remain as Council Member for the North West region.”

51. Mr Dawes first raised questions about the content of the statement at 10:58 on 13 July. He did not, at that stage, raise any question about the circulation of the statement. At 12:40 he told Ms Valentinuzzi that he had had contact from Nursing Times and Nursing Notes and that he had provided a copy of the statement which he believed had been agreed the previous evening. At 22:14 he complained to the President, Denise Chaffer, about a number of issues, including that the RCN had issued a misleading and damaging statement to members when there was no need for members to know that complaints had been made about him.

52. The only issue for me is whether, in issuing the statement to members and posting it on the website, the Union breached MRP 1.10 by not maintaining appropriate confidentiality. In reaching a conclusion on that, I must consider whether Mr Dawes consented to the release of the information within the statement, either explicitly or implicitly and whether the release of the information was appropriate.
53. I have the benefit of copies of the original emails which were exchanged at the time the disclosure was made as well as witness evidence. I have seen no evidence that Mr Dawes explicitly consented to the disclosure. There is, however, significant evidence to suggest that he was aware of the disclosure and did not object to it until he made his complaint at 22:14 on 13 July 2021.
54. Mr Dawes informed Council Members, on the evening of 12 July 2021, that complaints had been made against him, that he had decided to step aside and that he would remain as a Council Member. He also explained that Ms Valentinuzzi would be sending statements the following day. At the Hearing Mr Dawes told me that he had expected those statements to be issued to Council Members, some external advisors and some senior staff. When querying the content of the statement the following morning at 10:58 he did not raise any issue about the circulation of the document. Nor did he express any concern or surprise that he had been contacted by the nursing press when he emailed Ms Valentinuzzi at 12:40. When giving oral evidence, he told me that he had not been able to download the statement for some time after Ms Valentinuzzi emailed it to him, partly because he was using his mobile phone to read the emails. I do not find this credible because his reply to Ms Valentinuzzi was sent about 30 minutes after her email. At that time, he had clearly accessed the statement as he queried its content. In addition, Ms Valentinuzzi had explained, in the body of her email, that the statement had been issued to members. Even if he had not seen that part of the email, however I would have expected his email of 12:40 to express surprise, or frustration, that the press were aware of the statement. In fact, he did not

make a complaint about the circulation of the statement until much later that day at 22:14.

55. I conclude, therefore, that Mr Dawes was aware that the statement would be issued to Members and posted on the website. From the evidence I have seen, I consider that the Union acted appropriately, and reasonably, in believing that Mr Dawes understood that the statement would be released to all Members and included on the website. If Mr Dawes' first communication with the RCN on this issue had been his complaint at 22:14 then I may have reached a different conclusion; however, it seems clear to me, from his emails shortly after the statement had been released and from the evidence of Ms Cullen, Ms Valentinuzzi and Ms Popplestone, that Mr Dawes was aware of the intended circulation of the statement.

56. I have also considered whether it would have been appropriate, within MRP 1.10, for the Union to have issued its statement without Mr Dawes' consent or knowledge. I find the evidence of Ms Cullen and Ms Valentinuzzi very persuasive in this respect. The Chair of Council is a significant role and I was surprised by Mr Dawes' depiction of this role as simply chairing a few Council meetings, line managing the General Secretary and a few other "bits and bobs". I was also surprised by the fact that he did not see his role as Chair as being directly accountable to the membership of the Union.

57. Ms Cullen was clear that there was significant concern about Mr Dawes' conduct within the staff and those who she refers to as Senior Members. That concern was being expressed in public and it seems appropriate that the Union should be able to disclose to its Members and staff the fact of the complaints, the need for an investigation and that Mr Dawes had stood aside. In doing so the Union did not disclose the nature of the complaints which would, in my view, have been inappropriate.

58. I have also taken into account that Mr Dawes shared very similar information with Council Members himself. He told me that he believed that this was his

information to share and that it was understood that he would do so. Ms Cullen told me that she had not expected him to do so. She told me that Council Members had leaked confidential issues in the past and so disclosing information to Council Members was likely to result in that information being shared more widely. Having read the Council WhatsApp messages, following Mr Dawes' email, it is clear that some Council Members also believed that this was the case.

59. It, therefore, seems inconceivable that Mr Dawes did not anticipate that the information he shared on the evening of 12 July 2021 would reach those outside the Union, and that this would necessitate some form of statement from the Union. The exchanges between Members in their WhatsApp group show that the information had become known to the nursing press on the evening of 12 July 2021, and that this had happened previously with other confidential information. It is not surprising, therefore, that Ms Cullen believed that it was necessary for the wider membership to hear directly from the Union.

For these reasons I find that the Union did not breach MRP 1.1 when issuing a statement to union members on 13 July 2021 and posting that statement on the website.

60. In taking this decision, I understand that I am reaching a different conclusion to that taken following Mr Dawes' complaint to the Information Commissioner about the release of information around the initial complaints and subsequent investigation. It is important to note here that my remit is limited to considering whether there has been a breach of the Union Rules; potential breaches of data governance legislation are outside my jurisdiction.

Disclosure to Council Members

61. The final part of Complaint One relates to the disclosure of information to Members of Council when they met on Tuesday 13 July 2021. Ms Popplestone recorded the following in her statement:

“I felt that the situation had become sufficiently serious that we needed to hold an Emergency Council Meeting. Council Members would need to be briefed about the situation and were furious that news seemed to have leaked before Members could be informed and there was general confusion from Members about what was going on.”

62. At that point Mr Dawes had already informed Members that the initial complaints had been received and that he was standing aside from his role as Chair during the investigation. The news had been leaked overnight, the Union had issued a statement on its website and the nursing press was already in touch with Mr Dawes. It is not, therefore, surprising that Ms Popplestone, as Acting Chair, thought that the governing body of the Union should be informed of what happened.

63. During the course of the day, Ms Cullen received further complaints about Mr Dawes' conduct including one from a nursing academic about Mr Dawes' "recent and historic conduct on social media". Ms Cullen found some of that conduct to be shocking and felt that she had little option, as Resolution Owner, other than to suspend Mr Dawes. She briefed Ms Popplestone, who agreed with her. Ms Popplestone advised her that she would ask the Council to hold a vote, at the meeting that evening, as to whether to support the decision to suspend Mr Dawes. Ms Cullen told me that this was because she was acting into her role and would need Council's support when handling the complaints about Mr Dawes.

64. The meeting went ahead on 13 July 2021. Mr Dawes was not present and no notes were taken. I have, however, seen Ms Cullen's speaking notes from which it is clear that she intended to outline the concerns which had been raised and highlight some of the comments he had made at the staff meeting

on 7 July. The notes do not include any reference to the complaints that had been made that day so it is not clear to me whether Council Members were briefed on those. It seems likely, however, that some information had been given as the additional complaints appear to have been the catalyst for the suspension. At the end of the meeting Council unanimously voted to support Ms Cullen's decision to suspend Mr Dawes. Ms Cullen told me that, as Resolution Owner under the MRP, she was responsible for the decision to suspend Mr Dawes and that she would have done so even without the vote of support from Council.

65. I have seen evidence from Ms Cullen and Ms Popplestone about what happened at the Council Meeting on 13 July 2021. Their evidence is consistent that Ms Cullen briefed Council, the governing body of the Union, on the broad nature of the complaints and that Council voted to support Ms Cullen's decision to suspend Mr Dawes. The only other evidence that I have seen with respect to the meeting is a statement made by Mr Benton to a separate investigation. This statement is covered in more detail at paragraphs 203 to 206 below. It records Mr Benton's recollection of the proceedings but, other than a reference to a discussion about possible referral to the police and the Nursing and Midwifery Council, appears to be consistent with Ms Cullen and Ms Popplestone's evidence.

66. The question for me is whether it was appropriate to disclose the broad information, and the decision to suspend Mr Dawes, to Council. It seems to me that it would have been difficult for Ms Cullen and Ms Popplestone to do anything else. Council is the governing body of the Union and Mr Dawes was its Chair. There had been a growing number of concerns expressed both within and outside the Union which threatened the Union's reputation. The situation had moved from one in which Mr Dawes had voluntarily agreed to stand aside from his role, to Ms Cullen feeling obliged to suspend him from his membership of the Union, and consequently Council. There was already interest from the trade press and a suggestion that some information had

been leaked. In my view it was appropriate for Ms Cullen and Ms Popplestone to brief Council; in fact, it seems likely that they would have been criticised had they not done so.

Consequently, I find that the Union did not breach MRP 1.10 when Ms Cullen discussed the nature of the complaints against Mr Dawes and his impending suspension with Council on 13 July 2021.

67. In making his complaints, and in submissions, Mr Dawes has made it clear that information was shared about him, which was not shared about others going through similar processes. He has also drawn to my attention the fact that other Council Members, including another Chair have subsequently been suspended without information about the relevant processes being shared. I do not have the details of those cases and so I cannot draw comparisons between the cases. I was told by Ms Cullen, however, that in each of the cases the Council Member indicated that they would take legal action if any information was shared. She told me that Mr Dawes had engaged with the Union and that she and others understood that he was aware that the information would be shared with Council Members and the wider Membership. I find her evidence to be credible and have taken this into account when reaching my decision.

68. I have also seen evidence from Mr Dawes, Gareth Phillips, his Representative, and Mr Travis, a Union Member, that Members had not been told about any investigations or suspension imposed on the former General Secretary and Dr A. Again, I do not have detailed information or a complaint about the circumstances of their leaving the Union and so I cannot draw any comparisons. It is worth noting, however, that the former General Secretary was employed by the Union and so would have been subject to a different set of procedures. Ms Cullen told me that there was no investigation, under the MRP, in relation to Dr A.

69. Mr Dawes has included a breach of paragraph 7.1 of the Union's Royal Charter as part of this complaint. That paragraph relates to the role of Council as the governing body of the Union. It is not clear how the alleged breaches of confidentiality would sit under that Rule and so I have limited my consideration to breaches of MRP 1.10.

70. Finally, on this complaint the Union asked me to conclude that all, or some of the disclosures identified were made before the Union began formal disciplinary procedures and were not, therefore, within my jurisdiction. I do not accept this point. It is clear that, as early as 9 July 2021, Mr Dawes and Ms Cullen were in agreement that the initial complaints should be investigated and that this would be an independent investigation under the MRP. Consequently, Ms Cullen was making those disclosures as part of the disciplinary procedures set out under the MRP.

Complaint 2

71. This complaint deals with the notice which was given for the Council Meeting on 13 July 2021. During the Hearing Mr Dawes conceded that Ms Popplestone, as Vice Chair and Acting Chair, had the authority to call the meeting and withdrew that part of the complaint. The remaining parts of the complaint relate to the notice that was given for the meeting; in particular, whether it was necessary for 48 hours' notice to be given, whether the notice of the meeting should have included the business of the meeting, and whether Mr Dawes should have been given notice of the meeting.

72. The facts here are clear and, it appears, agreed. Ms Popplestone called the meeting. Her Executive Assistant emailed all Council Members, apart from Mr Dawes, seeking their availability for two possible timeslots. Both of those timeslots were less than 48 hours away. Ms Popplestone did not invite Mr Dawes as she believed that he had a conflict of interest. Nor did she notify him of the meeting.

73. The key issue for me is whether the meeting was a formal Council Meeting at which votes would be taken and decisions would be made. Mr Dawes argued that this was the case. The Union's position is that this was a briefing meeting at which Council Members would be informed of the nature of the complaints which had been made and be asked to offer support to Ms Cullen's decision to suspend Mr Dawes. It was not, in the Union's view, necessary to follow the established policy and procedure for calling Council Meetings.

74. Mr Dawes drew my attention to an email sent by Mr Geoff Earl, the Chair of the Governance Support Committee, and to the record of an interview given by Ms Cullen, in the context of a different investigation. The email relates to the Council procedure for appointing a new Chair part way through a term of office. It was sent to all council Members, including Mr Dawes, on 14 July:

I've been looking through the rules on the election of the Chair of Council.

My interpretation is that we do not need to go through the full election procedure as we would at the start of the year.

A vacancy has occurred for less than half the term of office which means an appointment can be made. Due to urgency Council supported a temporary arrangement on 13/07/21. To ensure absolute clarity I believe Council should formally confirm this at our next full Council meeting, 29/07/21.

If colleagues have no problems, then I will ensure that this is on the coming agenda.

75. Mr Dawes argued that this showed that Council had taken a decision that Ms Popplestone had been appointed as Chair at the meeting on 13 July 2021.

76. I have seen a record of an interview, given by Ms Cullen as part of a separate investigation process. The interview record has been heavily redacted as it was released to Mr Dawes following a Data Subject Access request. It is

clear, however that she discussed the decision to suspend Mr Dawes at the Council meeting.

The decision to suspend was made after he stepped aside – further allegations came in that afternoon. A very serious written complaint was sent in. On that basis there was no doubt [redacted] that this had moved from stepping down to suspend for the protection of DD and the members who made the complaint. Alongside that we were getting numerous emails from members that he had stepped down from Council but remained a Board Member. Then we get additional, serious, serious complaints. At that point I engaged with the [redacted] and [redacted] arranged the confidential meeting that DD says he was asked not to attend. The decision was made at that meeting [redacted] that DD would be suspended from his role.

77. Turning first to the email from Mr Earl, I find it difficult to see how this supports Mr Dawes' position. The email records that Council supported the appointment of a temporary Chair but that this should be formally confirmed at the next full Council meeting. It is clear to me that Mr Earl did not consider that an appointment had been made but that Council had supported a temporary arrangement. He then explains that this would need to be clarified at the next full Council meeting. Whilst not explicit, it is clear to me that Mr Earl felt that a formal Council decision had not been taken.

78. I understand Mr Dawes' concern about the reference, in the interview record, to the Council Meeting having suspended him. Ms Cullen explained, when giving evidence, that this was simply a question of language. The MRP is clear that the Resolution Owner has responsibility for taking a decision on suspension and that, in this case, she was the Resolution Owner. Both Ms Cullen and Ms Popplestone were clear in written evidence that Ms Cullen had taken the decision to suspend Mr Dawes and that Council were asked to support, or approve, that decision. Ms Cullen has also explained that, had

Council not supported her decision, she would have been obligated to move to a suspension. In addition, Ms Cullen's letter, to Mr Dawes, of 14 July 2021 explained that she was responsible for considering whether a suspension should be applied. She also explained the nature of the suspension and the reasons why it had been applied.

79. The only evidence I have seen that Council took the decision to suspend Mr Dawes is the record of Ms Cullen's interview. All other evidence shows that Ms Cullen applied the suspension and that Council voted to support that position. Ms Cullen is also clear that, had she not received Council's support, she would have continued with her decision to suspend Mr Dawes. I have also taken into account the statement made by Mr Benton, described at paragraph 65 above which refers to Ms Cullen having approached Council, as the Union's governors to support her decision making. His statement makes no mention of Council having made any decisions itself.

Consequently, I find that the meeting on 13 July 2021 was not a formal Council Meeting. It was not, therefore, necessary for the Acting Chair to have complied with Rule 19.1 of Standing Orders and paragraphs 3.1, 3.2 and 3.3 of the policy and process for running meetings.

80. It is worth noting here that the Union questioned whether the document setting out the Policy and Process for running meetings was, in fact, part of the Union Rules. They also argued that a custom and practice had developed of calling meetings at less than 48 hours where that meeting was to be held virtually. As I have found that this meeting was not a Council meeting, I do not need to consider either of these points.

Complaint 3

81. This complaint relates to the need for any suspension to be kept under review. Mr Dawes was first suspended on 14 July 2021. The suspension was imposed by Ms Cullen in her role as Resolution Owner. Stephen Mason, the

Union's Strategic Human Resources Advisor became Resolution Owner at some point in July 2021. He formally reviewed the need for the suspension in August 2021 and informed Mr Dawes by email, on 31 August 2021, that the suspension would remain in place until the first investigation had been completed and the report submitted. It is clear from the evidence that Mr Mason took some care when reviewing the suspension. He actively engaged with Mr Dawes and Mr Philips as part of that review and explained the reasons why it should, in his view, remain in place.

82. The first investigation report was submitted on 11 October 2021 and Mr Mason took the decision, on 18 October 2021, to accept the Independent Investigator's recommendation that some of the complaints should proceed to a Resolution Hearing. He informed Mr Dawes of that decision on 18 October 2021.

83. Mr Mason's witness statement records that he considered that the suspension should remain in place until after the Resolution Hearing.

In my email to Dave of 31 August 2021, I had said that his suspension would remain in place until the investigation had been concluded and the report submitted. Now that I had taken the decision to accept the recommendations and proceed to a Resolution Hearing, I considered that the suspension should remain in place until the conclusion of the whole of the disciplinary process. Given that we were now moving to a Resolution Hearing. It would not have made sense to have lifted the suspension, given that the same concerns I had previously still subsisted.

84. Mr Mason did not attend the Hearing to give evidence and I have seen no evidence which contradicts this statement. Nor have I seen, however, any evidence which shows that he contacted Mr Dawes before he reviewed the suspension or communicated this decision to Mr Dawes.

85. Mr Dawes appears, however, to have been aware that his suspension remained in place and was clearly concerned at the progress of the disciplinary case as he raised a number of issues directly with Council Members. I have seen emails which he sent on 14 November 2021 and 8 December 2021 which requested that a sub-group of Council members have oversight of the disciplinary process explaining that this was a similar process used when the former General Secretary left the Union. He also raised a number of specific issues including the length of the suspension. I cannot see, however, that he specifically raised any issues about the need to review his suspension or requested that somebody other than Mr Mason undertake that review.

86. Mr Dawes' complaint to me is that the suspension was not reviewed and was far in excess of the time limits set out in the Rules. I deal with the time limits at paragraphs 102 to 105 below. In terms of the review, however, Mr Dawes now also appears to argue that Council should have reviewed the suspension itself. MRP 4.3.1 is clear that suspension can be invoked by the Resolution Owner. Similarly, MRP 4.3.8 is clear that suspension should be kept under review to ensure it does not last longer than necessary but is silent as to who should undertake that review.

87. Mr Dawes referred to me **Michie vs Manufacturing and Services Union (D/38-24/01)** arguing that an appeal against a suspension must be undertaken by someone other than the person who initially imposed the suspension. He referred me to my predecessors' finding that

“Rules dealing with suspension envisage a right of appeal to a body consisting of lay members. Those members would be better positioned to judge whether, in the context of the union’s overall practice, suspension was a reasonable response.”

88. The decision in Michie makes clear reference to the Rules of the Manufacturing and Services Union which appeared to have offered Ms Michie

a right to an appeal against her suspension to a body of lay members. That is not the case here; the MRP does not confer a right of appeal as to whether suspension was a reasonable response. Instead, the MRP requires that the suspension be kept under review to ensure that it does not last longer than necessary. The finding in Michie does not, therefore, appear to be relevant to Mr Dawes' complaint other than to remind us that it is necessary to refer back to the relevant union Rules.

89. Both Mr Coghlin and Mr Dawes referred me to the ACAS Code of Practice. Mr Dawes was not an employee during the period of the suspension; however, it is helpful to look at the Code to see what has been established as good employment practice.

“In cases where a period of suspension with pay is considered necessary, the period should be as brief as possible, should be kept under review and it should be made clear that the suspension is not a disciplinary sanction.”

90. MRP 4.3.8 appears to mirror this part of the ACAS code. Neither the code nor MRP 4.3.8 requires the involvement of a third party in the review of a suspension. Nor does either give a right of appeal against a suspension.

91. The issue, therefore, is whether Mr Mason had kept the suspension under review to ensure that it did not last longer than necessary. The suspension was originally imposed by Ms Cullen on 14 July 2021 and was formally reviewed by Mr Mason in August 2021. At that time Mr Mason sought involvement from Mr Dawes and his representative and decided that the suspension should remain in place until the independent investigator had provided their report. This was provided on 11 October 2021. Mr Mason's witness statement records that he reviewed the need for the suspension at that time and that it would not have made sense to lift the suspension as his previous concerns still subsisted.

92. Mr Mason's witness statement also records that he reviewed the suspension again after Mr Dawes' email to Council Members on 8 December 2021. He explained that, throughout the period of both suspensions he was aware that, were Mr Dawes to be exonerated, he would need to be reintegrated into Council as Chair and as a member for the North West and was considering how that could be achieved. He explained that he could not see how that could be achieved until the investigations had run their course and whilst the original concerns that motivated the suspension still applied.

93. Mr Mason did not give oral evidence and so I can only rely on his witness statement and the documents in the bundle. His witness statement does not explain how the reviews, which he undertook in October and December 2021, were conducted. Nor does he explain whether he contacted Mr Dawes so that he could take his views into account. And I have no evidence which shows that Mr Dawes was informed of the outcome of the reviews.

94. I understand the reasons why Mr Mason believed that the suspension should remain in place. I am not satisfied, however, that his evidence shows that those reviews complied with MRP 4.3.8. That requires that the review should ensure that the suspension should remain in place for no longer than necessary. I would, therefore, have expected Mr Mason to consider the length of time that might be needed to conclude the Resolution Panel and whether any arrangements could be put in place which might remove the need for a suspension or deal with the remaining concerns. I also would have expected him to take into account the impending expiry of Mr Dawes' term of office as Chair.

95. It is also worth noting that I have not been provided with any contemporaneous notes or email exchanges between Mr Dawes and Mr Mason which show that Mr Dawes was consulted about or informed of, the decision to keep the suspension in place. Nor have I seen any internal

minutes or memos which record that the suspension had been reviewed or the reasons why it had been maintained.

96. Bearing in mind the care that had gone into Mr Mason's initial review of the suspension, in August 2021, I can understand why Mr Dawes may have expected that a review would entail some form of engagement with him and consideration of all of the issues relevant to the investigation. This may, of course, have resulted in the suspension remaining in place. In fact, this seems highly likely bearing in mind the nature of some of the allegations; however, I think it reasonable for Mr Dawes to have been informed of the review, offered the opportunity to contribute, and, at the very least, to have been informed of the outcome of the review and the reasons for the decision. This is not, of course, explicit in the Rules; however, I think most union Members would expect this to be happen especially as that is how Mr Mason's initial review of the suspension was conducted.

97. I cannot, therefore, be satisfied that the Union properly reviewed Mr Dawes' suspension to ensure that it did not remain in place longer than necessary. In reaching this decision, I have also taken into account that Mr Dawes had previously been informed that the suspension would remain in place until the Investigation Report had been submitted. It was, therefore, reasonable for him to expect that there would be a review at that time. Similarly, it was reasonable for him to expect a reply to the issues which he raised with Council about the conduct of the disciplinary procedures. This reply could have included the fact that a review was about to take place and invited Mr Dawes to submit any relevant information. Failing that, it could, at the very least, have informed him of the outcome of the review. Had I seen evidence of this, I may have reached a different conclusion.

For the reasons given above, I find that the Union breached MRP 4.3.8 because it did not keep Mr Dawes' suspension under review to ensure that it did not last longer than necessary.

98. For the avoidance of doubt, I do not agree that Council should, or could, have reviewed the suspension itself. I am satisfied, however, that MRP 4.3.8 requires some form of active review to ensure that the suspension does not remain in place longer than necessary and that it is implicit that this review should be undertaken by the Resolution Owner.
99. It is also worth noting that Mr Dawes' emails to Council Members suggested that the Council form a small group to oversee the progress of the disciplinary procedures being taken against him. He draws a parallel with an apparently similar procedure agreed when the former General Secretary left the Union. The MRP does not require this but, as far as I can see, would not prevent it.
100. I do not know exactly what Mr Dawes had in mind. The MRP does not identify a role for Council Members in decision making around suspensions or managing investigations. I can, however, see the benefit of a small group of Council Members overseeing the process and being able to offer reassurance to Council, senior staff, and Mr Dawes that the process was being managed in accordance with the MRP. Of course, depending on the role of the group, its members may then be unable to participate as Members of a Resolution, or Appeal Panel but, bearing in mind the size of the Council, that need not have been an obstacle in itself. At the very least, it would have been good practice to consider the option and, if it was not considered appropriate, explain the reasons why. I have not seen any evidence that this approach was considered by the Union.
101. Finally, on this complaint, Mr Travis, a Union Member, told me that he believed that Mr Mason was deliberately using extensions, that were in breach of the Union's Rules, to prevent members standing in trade union elections. When giving oral evidence he told me that there were a number of cases where he believed that had happened. He explained that he could not draw my attention to any evidence to support this but had inferred it from Mr Mason's actions. I have not seen any evidence which supports this

position. Nor can I infer, from the extensive documents and evidence before me that any member of the Union's staff acted maliciously, or deviously, in taking forward the disciplinary proceedings against Mr. Dawes.

Complaint 4

102. Mr Dawes' first suspension was imposed on 14 July 2021 and remained in place until the decision of the Appeal Panel on 4 April 2022. Mr Dawes argued that this extended period was in breach of MRP 4.3.10 because that Rule imposes a normal time limit of 60 days unless the period is extended by agreement between the parties or where the suspension relates to financial irregularities. His original position was that this suspension did not relate to financial irregularities and that he had not agreed to extend the time limit. At the Hearing he conceded that, when the suspension was first imposed, one of the allegations related to financial irregularities. He argued that this ceased to be the case on 11 October 2021 when the Independent Investigator submitted her report because, in that report, she was clear that there was no evidence of fraud.

103. I will consider the wording of MRP 4.3.10 in more detail at paragraphs 173 to 176 below when considering Complaint 8. The first issue, however, is simply whether any of the allegations which went forward to the Resolution Panel related to "financial irregularities".

104. One of the issues, the Angelfish allegation, which the first Independent Investigator considered related to a Community Interest Company, Angelfish Community CIC (Angelfish). Mr Dawes is a Director of, and is listed at Companies House as being a person with significant control of, Angelfish. Angelfish sought an arrangement with the Union which would enable them to recoup part of Mr Dawes' salary for the time he spent on Union work. Mr Dawes considered this to be a similar arrangement to that which had been in place for his predecessor who had been employed by a charity and requested that the Union consider it. The Union disagreed that

this was a similar arrangement and were concerned that, if the payments went ahead, the proposed arrangement would fall outside of its Royal Charter. This was because it would involve a payment being made to a company of which Mr Dawes was a Director and would then be used to fund his son's employment with that company. The Union had also taken into account that Mr Dawes was in a close personal relationship with his two Co-Directors. The Independent Investigator recommended that the issue, as set out below, should be considered by a Resolution Hearing.

“Did facilitating the claim by Angelfish for reimbursement of 40% of his salary breach the Code of Conduct by putting the RCN at risk of adverse publicity?”

105. Mr Dawes told me that this allegation was not related to financial irregularities as it was not about fraud. I find that to be a very narrow interpretation and, if Mr Dawes was correct I would expect the MRP to refer to fraud rather than to the more generic phrase “financial irregularities”. The MRP does not define the phrase “financial irregularities” but the normal meaning would, in my view, include any suggestion of financial impropriety which, in turn, would include facilitating a claim which might be seen to be improper because it brought benefits to a close family member in breach of the Union's Royal Charter. I can only conclude, therefore, that this allegation fell outside the normal time limit set out in MRP 4.3.10.

For the reasons given above I find that the Union did not breach MRP 4.3.10 by maintaining Mr Dawes' suspension beyond 60 days.

Complaint 5

106. The first investigation report was provided to the Union on Monday 11 October 2021. Mr Mason told me, in his witness statement, that it was long and complex and that he and Ms Galbraith-Martens needed some time to review and digest it. On Monday 18 October 2021 he decided to accept its

recommendations and prepare for a Resolution Hearing. Mr Mason wrote to Mr Dawes on 18 October explaining his decision and providing a copy of the Report.

MRP 6.1 states:

If it is decided by the Resolution Owner that there is a case to answer the individual should be notified in writing within 5 working days by the Customer Relations Manager that the matter will be heard by at a Resolution Hearing.

107. Mr Dawes' position is that the Resolution Owner, Mr Mason, should have notified him that the matter was to be heard at a Resolution Hearing by close of play on Friday 11 October 2021. I do not agree that this is the relevant deadline. MRP 6.1 applies only to those investigations where the Resolution Owner has decided that there is a case to answer. It is implicit, therefore, that the notification period set out in MRP 6.1 can begin only once that decision has been made. Mr Mason's statement records that the decision was taken on Monday 18 October 2021 and he notified Mr Dawes of that decision on the same day.
108. Even if Mr Dawes is right that the receipt of the Investigation Report should have been the event which triggered the notification period then I do not agree that the Union acted outside the Rules. As Mr Coghlin explained, it is standard practice for deadlines in rules and statute to be calculated such that the relevant period begins on the day (or working day) following the event which triggers that period. If Mr Dawes is right that the relevant event should be the receipt of the Investigation Report then the notification period would have begun on Tuesday 12 October 2021 and concluded on Monday 18 October 2021, the day on which Mr Mason issued the notice of Hearing.

For the reasons set out above, I find that the Union did not breach Rule 6.1 by issuing the notice of the Hearing on Monday 18 October 2021.

Complaint 6

109. In his letter of 18 October 2021 to Mr Dawes, Mr Mason explained that he had received the first Independent Investigator's Report, and that he had accepted her recommendations that some of the allegations should proceed to a Resolution Hearing. The report set out the allegations which would be heard, enclosed the full report and set out some of the arrangements for the Hearing.
110. Mr Mason explained that Ms Mayhew, a barrister, would chair the Hearing and that Ms Webley-Brown, London Council Member, would be a Panel Member and that a third, independent, member would be identified in due course. Mr Mason also explained that he expected the Hearing to take place in "mid to late November", that it could take up to two days and sought Mr Dawes' availability for the Hearing.
111. Mr Dawes' complaint is that MRP 6.2 required that he should also have been provided with the date and time of the Hearing, and a list of panel attendees. Mr Mason's witness statement recorded that, at the time of writing, the Union had only been able to secure two panel members. He, therefore, wrote to Mr Dawes setting out the details that were known to him and seeking dates so that, once a third panel member had been identified, he could set up the Hearing quickly.
112. Mr Coghlin noted that MRP 6.2 set out what the Notification of Hearing "*should*" include which, in his view, indicated that the requirements were discretionary. Mr Mason's letter of 18 October 2021 had included all of the details which were known to the Union at that time and explained that a third panel member had not, at that stage, been identified. Mr Coghlin argued that, the MRP could not be read so as to require the provision of

information which was not known at that time. Mr Dawes' position was that the wording of MRP 6.2 should be read so that each of its requirements was mandatory.

113. I think it is helpful here to read MRP 6.1 and 6.2 together. It is clear, when doing so, that the intention is to notify the member of the allegations which will proceed to a Hearing and the arrangements for that Hearing as soon as possible after the decision to proceed to a Hearing has been made. The intention of those paragraphs must be to enable the Member to have sufficient time to prepare for the Hearing and their case. This seems an entirely reasonable approach.
114. I agree with Mr Coghlin that the use of the word "should" rather than "must" implies that the contents of the Hearing Notice are discretionary rather than mandatory. However, this does not detract from the need to ensure that the Member has sufficient information to enable them to prepare for the Hearing. In most circumstances, I would expect the Union to provide all of the information set out in MRP 6.2 or, where that is not possible, to explain why and to take into account the impact of the missing material when arranging the Hearing.
115. In this case, it is clear that Mr Mason provided all of the information that was available at the time and took steps, by seeking Mr Dawes' availability and giving an estimate of the likely timing, to ensure that a Resolution Panel could be arranged as quickly as possible once the third member had been identified. He could have deferred the notice of the Hearing until the following week without breaching the five working day notice period; however, that would have delayed the provision of the Investigation Report, the allegations and the names of two Panel Members.
116. As I understand the position, Mr Dawes was informed of the identity of the third member of the Panel and the time and date of the Hearing by letter on 10 November 2021. The Hearing was originally arranged for 15 and 16

December 2021 which ensured that he had sufficient time to prepare for the Hearing and was available to attend.

Consequently, I find that the Union did not breach MRP 6.2 by failing to provide the names of the Panel Members or the date of the Hearing in the Notification of Hearing issued on 18 October 2021.

117. In reaching this decision I have taken into account that Mr Dawes was provided with full details of the allegations to be heard and the Investigator's report. In my view, these were crucial to his ability to prepare for the Hearing and I may have taken a different view had he been provided with the arrangements for the Hearing and the names of the Panel Members but not the allegations or the Investigation Report.

118. It is also worth noting that Mr Dawes has suggested that Mr Mason's scheduling of the Hearing was designed to prevent Mr Dawes from standing in the elections for Chair of Council in November 2021. I have seen no evidence that this was the case. Nor have I seen any evidence that Mr Dawes was seeking that the Resolution Hearing should be brought forward so that he could stand in those elections if his suspension was removed.

Complaint 7

119. Mr Dawes' complaint is that two members of the first Resolution Panel, Ms Webley-Brown and Lord Adebawale, had clear conflicts of interest or were biased. He first raised this in his letters, of 14 November 2021 to some Council Members, and then again with the Chair of the Panel, Alice Mayhew, on 23 November 2021.

120. MRP 7.3.1 requires that Resolution Panels have:

“A minimum of three members – one of which will be a member of RCN Council chairing the panel. In the case where a Council member is the respondent the panel will be chaired by an independent person.”

There is also a requirement, at MRP 7.3.2, that panel members shall have no conflict of interest with the allegations to be heard.

121. The allegations which were to be considered by the first Investigation panel are set out at Annex 2. Mr Dawes first raised his objections to the composition of the Panel on 14 November 2021 in his, and Mr Philips’, letter to Council Members. The letter included the following paragraph:

“Panel Members for Dave’s Hearing are being appointed who have direct conflicts of interest, and who maintain personal relationships with key individuals underlying the complaints, meaning they cannot be independent or objective.”

122. He then wrote, on 23 November, to Ms Mayhew, Chair of the Resolution Panel to raise the issue with her. In that email he explained why he believed that Ms Webley-Brown and Lord Adebawale had conflicts of interest:

“At the heart of many of the allegations are the circumstances surrounding the suspension and removal from office of [the former General Secretary] and the suspension and resignation of Dr A [the former RCN Council Member for London].

Carol Webley-Brown (one of the other panel members) has a close personal friendship with the former General Secretary and Dr A. She even tweeted a photo of Dr A and the former General Secretary captioned “three of the best”.

Lord Victor Adebawale (one of the other two panel members) also has a close personal friendship with the former General Secretary.

He was appointed to Chair an RCN Charity Board by the former General Secretary and involved in appointing the former General Secretary to the NHS Race and Health Observatory in 2021. He has served on the board with the former General Secretary and he has also served on the board of Social Enterprise UK with me for 3 years up to 2019.”

123. Ms Mayhew replied to Mr Dawes seeking further information about how the relationships he had identified raised a conflict of interest with the allegations which the Resolution Panel would consider. He provided that information on 1 December 2021 and confirmed that he was happy “to have your decision on the Panel based on the information provided”. During this period, he also corresponded with Ms Mayhew about his other concerns around the conduct of Union staff ahead of the Hearing. Those concerns do not form part of his complaint to me.

124. Around this time the Resolution Panel was adjourned. The only document I have which records the reasons for this is Mr Mason’s statement.

“In the end, the Resolution Hearing was adjourned. I understand from Jo Galbraith-Marten that this was because Dave was keen for both investigations against him to be combined into one Hearing and the RCN agreed to that which caused the dates to be pushed back. However, it ultimately proved impossible to combine the hearings and the Resolution Hearing in respect of the first investigation was held on 31 January and 1 February 2022.”

125. On 14 December 2021 Ms Mayhew issued her decision on the composition of the Resolution Panel. Ms Mayhew noted that the allegations to be heard by the Resolution Panel did not reference the previous General Secretary and that there was, therefore, no need for her to investigate any relationship between the Panel Members and the General Secretary. She did, however,

seek information from Ms Webley-Brown about her relationship with Dr A who was referenced in the allegations.

126. Ms Mayhew concluded that there was insufficient evidence that Ms Webley-Brown had a conflict of interest with the allegations to be heard and could see no convincing reason to conclude that Ms Webley-Brown would not consider the evidence and the policies to be applied to the standard required. She also concluded that the fact that Lord Adebowale had a professional relationship with RCN Council Members, including Mr Dawes, did not mean that he was conflicted from hearing allegations with which he had no prior involvement. She considered that Lord Adebowale was not conflicted from sitting on the Resolution Panel.
127. Mr Dawes emailed Ms Mayhew, and Ms Galbraith Marten, on 14 December 2021, explaining that he “would not take part in any proceedings where there was not an independent panel” and sought to appeal Ms Mayhew’s decision. Ms Galbraith-Marten explained that:

“Alice Mayhew’s decision of the 14 December 2021 does not amount to a sanction imposed under the process; it’s a preliminary decision. That being the case, there is no freestanding right of appeal that can be revoked in respect of that decision and any appeal on this point will have to form part of any appeal that arises following the imposition of a sanction by the Resolution Panel if that follows.”

128. Ms Galbraith-Marten strongly encouraged Mr Dawes to attend the Hearing but explained that, if he did not do so, the Hearing would go ahead without him. The Resolution Hearing went ahead on 31 January and 1 February 2022. Mr Dawes attended and read a preliminary statement. He was invited to ask questions of witnesses and to make submissions but chose not to do so.

129. Mr Dawes' complaint to me is in four parts. The first is that Ms Webley-Brown had a close personal relationship with Dr A, the former member of Council. He explained that there was documentary evidence of their friendship and admiration for each other. The second was that Lord Adebowale was a board colleague of the former General Secretary for several years and that her removal was directly relevant to many of the allegations against Mr Dawes. The third part is that Ms Mayhew did not speak to him in December 2021 when she determined that there were no conflicts of interest which meant that she had failed to take into account the evidence which he had accumulated that both Ms Webley-Brown and Lord Adebowale had conflicts of interest relating to close personal friendships with people at the heart of the case. Finally, Mr Dawes believed that there was a breach of natural justice as he had not been able to exercise his right of appeal against Ms Mayhew's decision. I will deal with each of these issues separately.

Ms Webley-Brown

130. Carol Webley-Brown joined the Council in September 2021 as Council Member for London. She replaced Dr A who had resigned that position earlier in 2021. Ms Webley-Brown did not attend the Hearing to give evidence. Her witness statement explained that she had been a member of the Union since 1980 but had not been active within the Union. Having seen a general message seeking applications to be a Council Member, she applied and was elected unopposed in September 2021. Her witness statement recorded that, at the time, she did not realise that she was replacing Dr A.

131. Ms Webley-Brown explained that, after she had been elected, she was approached by Ms Popplestone and asked whether she could sit on a disciplinary panel. She explained that she had no knowledge of Mr Dawes or the allegations against him. She told me that Ms Popplestone had

explained that it was preferable to have someone on the Panel who did not know anything about the background to the issues. This is consistent with Ms Popplestone's written evidence about Ms Webley-Brown's appointment.

132. Ms Webley-Brown also recorded that, after she joined Council;

"I kept being dis-invited to Council meetings, which I now understand was designed to ensure I did not hear anything that might make me biased against Mr Dawes. It was not a smooth entry to the Council and I felt a bit uncertain about the way I was being treated which felt quite hostile to me. Now I can see that they were trying to protect me but it did unnerve me at the time."

133. This is consistent with Ms Cullen's oral evidence. She explained that the Union was trying to ensure that the Resolution Panel was as independent as possible so that Mr Dawes could have a fair hearing.

134. Mr Dawes clearly believes that Ms Webley-Brown has a personal friendship with Dr A. He refers to this as a close personal friendship in some of the documents. His evidence for this is Ms Webley-Brown's postings and interaction with Dr A on social media and the fact that Ms Webley-Brown was nominated for her position on Council by a close friend of Dr A. That activity appears largely to have been through Facebook and twitter although he also identified that Dr A and Ms Webley-Brown followed each other on Instagram.

135. My first consideration is whether any personal relationship between Dr A and Ms Webley-Brown would be relevant to the allegations to be considered by the Panel in such a way as to render Ms Webley-Brown conflicted before, secondly, considering whether there is evidence that such a friendship exists. If either of those is absent then there can be no question of Ms Webley-Brown having a conflict with the allegations being considered by the Panel.

136. The allegations which had been referred to the Resolution Panel are set out at Annex 2. There are twelve allegations which were listed under the references A to L. Two of those appear to relate to Dr A:

B) GMB complaint under the heading “attack publicly a council member in respect of resignation.

G) RCNi complaint “in addition, social media activity by Council Members, most recently about the resignation of Dr A, demeans an organisation that has a proud heritage as the “Voice of Nursing”

137. Ms Mayhew considered this issue in her Decision dated 14 December 2021. She recorded that:

“There are two allegations relied on by Mr Dawes in which Mr Dawes is accused of behaving in breach of the Policy in the way that he publicly spoke about Dr A and her behaviour after her resignation. Neither charge requires consideration of Dr A’s actual response to Mr Dawes’ purported conduct, but requires consideration of whether the purported conduct breached the RCN’s principles. A conflict of interest may be created if, for instance, Carol Webley-Brown was involved in the events underlying the allegation. However, that is not the case. Carol Webley-Brown joined the RCN Council after the majority of events that form the factual merits to the Allegations”.

138. This reads to me as a very sensible overview of the situation. Ms Webley-Brown was not being asked, as a Panel Member, to consider events in which she had participated or was in some way involved. Nor was she being asked to consider the behaviour of Dr A. The issues before the Panel related only to Mr Dawes’ conduct and there is no evidence to suggest that Ms Webley-Brown had any knowledge of that conduct before she

participated in the Resolution Panel. On the contrary, it appears that the Union took steps to ensure that Ms Webley-Brown was not involved in any of the discussions on this issue. I can understand, however, that Mr Dawes may be concerned that a close friend of Dr A may find it difficult to consider an allegation that he had “publicly attacked” Dr A. I therefore, need to consider whether Ms Webley-Brown and Dr A were personal friends and, if so, whether that friendship was sufficient to create bias or the perception of bias.

139. Mr Dawes’ emails to Ms Mayhew on 23 November and 2 December 2021 identify that the suspension and resignation of Dr A was at the heart of many of the allegations, was mentioned several times in the investigation report and that Ms Webley-Brown and Dr A were close personal friends. He evidenced that friendship with a tweet which showed that Ms Webley-Brown had retweeted a tweet from Dr A showing a photograph of Dr A, the former General Secretary and another former Council Member, with the words “Absolutely Fabulous” and “Three of the Best”.
140. It is not clear why Mr Dawes believed that the suspension and resignation of Dr A was at the heart of many of the allegations. She is referenced in only two of the twelve issues which were to be considered by the Resolution Panel and the Union is clear that Dr A was not suspended before she resigned. Nor did Dr A raise any of the issues which were before the Panel or participate in any of the activity which led to the allegations being made; in fact, I have seen no evidence to suggest that she was aware of the allegations.
141. Ms Mayhew also considered the nature of the relationship between Dr A and Ms Webley-Brown in her decision of 14 December 2021 as follows:

“I have considered the evidence that Mr Dawes has provided including a twitter post of Carol Webley-Brown with the former General Secretary and Dr A on 9 November 2021. I have also

considered Carol Webley-Brown's evidence of her relationship with Dr A. She explains that she has a professional relationship with Dr A where they would occasionally be in the same meetings. She does not have a personal friendship. She posted the twitter post because she considers that Dr A and the former General Secretary are inspirational women from ethnic minority backgrounds in the nursing profession. I understand that Carol Webley-Brown was unaware that she was brought into the RCN Council into the role vacated by Dr A."

142. This is consistent with Ms Webley-Brown's witness statement to me. In that statement she also records that she was not shown in the photograph which she had retweeted, nor was she present when it was taken. She also records that the third person shown was another former Council Member.

143. Mr Dawes has provided me with a number of postings on twitter and Facebook which, in his view show that Ms Webley-Brown and Dr A were friends. The posts appear to have been made between May 2017 and November 2021. He also pointed out that "Dr A" had been one of, in his view, a small number of Ms Webley-Brown's Facebook friends and had been nominated to Council by a mutual friend.

144. He appears to have drawn, from these postings a number of conclusions including:

- a. Ms Webley-Brown and Dr A had held each other in high regard;
- b. Ms Webley-Brown must have been present when the photograph mentioned at paragraphs 138 and 141 was taken and that it was inconceivable that there was not extensive discussion about the issues facing the RCN and Dr A's resignation;
- c. That Ms Webley-Brown was aware of the problems facing the Council in July and, in particular, Dr A's resignation;

d. That Ms Webley-Brown had been nominated for her Council seat by a close friend of Dr A and that it was, therefore, inconceivable that she would not have been fully briefed about the circumstances of Dr A's departure.

145. Ms Webley-Brown dealt with each of these in her witness statement. She acknowledges that she was supported in her application for Council by a good friend who is also a good friend of Dr A. She is clear, however, that she did not know that she was replacing Dr A on Council, only becoming aware of that once she joined Council but that, even then, she was not briefed on the circumstances of Dr A's departure. She is also clear that she was not present when the photograph which she had retweeted was taken.

146. As to her social media contact, Ms Webley-Brown, reflects that she has 89 Facebook friends who are a mixture of personal friends, nurses and others she knows professionally, a lot of whom she does not see very often. She also told me that she and Dr A followed each other on Instagram but that she no longer uses it. She notes that Dr A had liked her posts on only a small number of occasions and that those "likes" related to posts about professional issues.

147. Ms Webley-Brown has been clear that she holds Dr A in high regard and that she considered her to be an inspirational woman from an ethnic minority background. She and Dr A share a mutual friend and she knows someone who attends the same Church as Dr A. However, her only contact with her, outside social media, was through the Chief Nursing Officer's Black and Minority Ethnic Strategic Advisory Group. Ms Webley-Brown joined the group on the late 1980's and Dr A took over as Chair in 2012. By 2012 the group had grown from about 20 people to hundreds of people and met less regularly than the initial four monthly meetings.

148. Mr Dawes has drawn a number of inferences from Ms Webley-Brown's activity on social media. He has not, however, provided me with any evidence from witnesses, or in documents, which shows that there was a personal friendship between Ms Webley-Brown and Dr A, nor any which cast doubt on Ms Webley-Brown's description of her relationship with Dr A. She has clearly had some professional contact with Dr A, has engaged with her on social media and has identified two mutual friends. None of that suggests, however, that there is a close personal friendship, or even a friendship, between the two women. I agree with Ms Mayhew, therefore, that there is no evidence of a friendship, close or otherwise, which would suggest that Ms Webley-Brown was conflicted in considering the allegations against Mr Dawes.

For the reasons given above, I find that Carol Webley-Brown was not conflicted, under MRP 7.3.1 or MRP 7.3.2, from sitting on the first Resolution Panel.

149. I think it worth noting that I have a degree of concern about how Mr Dawes has presented his case here. The first is that, in the absence of any first hand evidence of a friendship, he has analysed Ms Webley-Brown's social media activity to identify any issues which might cast doubt on her descriptions of her relationship with Dr A. The posts he had provided to me were made over a four-year period. None show any evidence of a personal friendship; however, he has used them to cast doubt about her honesty and integrity when describing her relationship with Dr A.

150. My second concern is the evidence he submitted from his representative, Mr Philips, which stated that:

“To believe that 3 people working in the same city, in the same area of profession, high achievers, academically and professionally, involved in the same Royal College and coming from similar ethnic minorities, did not know each other is stretching credibility. Dr A

posted a “Celebrations” meme on Twitter on hearing news of Dave Dawes’ suspension.

Carol Webley-Brown, proposed panel member, took over the Council seat vacated by Dr A following her resignation over breaches of confidentiality related to the case which was being investigated by Dave Dawes. They are both friends, both professionally and socially with the former General Secretary, the person who is the subject of much of the issues which have led to those investigations.”

151. Mr Coghlin questioned Mr Philips closely on this paragraph. Mr Philips could offer no first-hand evidence of a friendship between the three women and could not identify their ethnicity other than that they were all, in his view, from a black or minority ethnic background. He explained that it was simply not conceivable that the three women were not friends and suggested that this was similar to him quickly identifying other Welsh people when working in Vancouver.

152. Taken together, this extract from his statement and his oral evidence to Mr Coghlin, suggests that he believes that three black or minority ethnic, female, high achieving nurses working in London must know each other and must have discussed issues which were relevant to the allegations against Mr Dawes. The implication is that Ms Webley-Brown must be misleading Ms Mayhew and myself about her relationship with Dr A. I do not accept this to be a reasonable conclusion; I have seen no evidence whatsoever to suggest that Ms Webley-Brown acted without integrity

153. I also find the suggestion (in the absence of any evidence) that three black or minority ethnic, female, high achieving nurses working in London who have all worked with, or for, the Union must have been friends and must have discussed this case to be offensive. Mr Philips was asked, but could not answer, whether he knew each woman’s ethnicity. I agree with Mr Coghlin that this suggestion carries racist and, in my view, sexist

undertones. It seems unlikely that a similar accusation would have been made had the three individuals been white or male.

154. In my view the approach taken by Mr Dawes and Mr Philips to Ms Webley-Brown's inclusion on the Resolution Panel casts rather more doubt on their credibility than it does on Ms Webley-Brown.
155. Finally, on this point Mr Dawes and Mr Philips have suggested that Ms Webley-Brown is also a personal friend of the former General Secretary. That does not form part of the complaint before me in relation to Ms Webley-Brown but, for the avoidance of doubt, I have not seen any evidence from Mr Dawes or Mr Philips which would support that view.

Lord Adebowale

156. Lord Adebowale is a business and social enterprise leader. His professional work included Chairing the COVID-19 Healthcare Support Appeal (CHSA), a charity set up by the Union to look after the welfare of nurses during the COVID 19 pandemic. He undertook that role between May 2020 and June 2021. It also included chairing Social Enterprise UK (SEUK).
157. Lord Adebowale did not attend the Hearing to give evidence. His written statement explained that he was appointed to the CHSA role by the Chair of the Board of Trustees of the RCN Foundation. He estimated that he had probably met the former General Secretary about three or four times over the previous ten years. They both sat on the board of the independent NHS Race Observatory Board which, as far as he could recall, had met about three or four times. He explained that Mr Dawes was a member of the Board of SEUK which met about six times a year. His recollection was that Mr Dawes was absent from many of the meetings and that he "barely knew him at all".
158. In his email of 23 November 2021 to Ms Mayhew, Mr Dawes explained that Lord Adebowale was a close personal friend of the former General

Secretary, was involved in appointing her to the NHS Race and Health Observatory and served on that Board with her. His complaint to me is, however, expressed in a more limited way simply stating that Lord Adebowale had been a Board colleague of the former General Secretary. In his statement, however, he also explains that CHSA, the Board chaired by Lord Adebowale, had received funding from the RCN and from a businessman linked to the former General Secretary. Mr Dawes's statement also identifies that Lord Adebowale and Mr Dawes had sat on the Board of SEUK together.

159. In her decision of 23 November Ms Mayhew explained that:

“I considered that the Allegations that were live before the Resolution Panel, and as relied on by Mr Dawes, did not reference [the former General Secretary] and therefore there was no need to investigate any relationship with the former General Secretary.”

160. The allegations which were before the Resolution Panel are at Annex 2. I agree with Ms Mayhew that none of those allegations reference the former General Secretary. Even if they did, however, Lord Adebowale is clear that his contact with the former General Secretary was limited to him serving on a Board with her, chairing, for just over a year, a charity set up by the Union and the occasional “exchanging” of pleasantries. Mr Dawes did not provide any evidence of a personal friendship and nor did he include the suggestion of such a friendship in his complaint to me. I am satisfied, therefore, that Lord Adebowale was not conflicted from sitting on the Resolution Panel because of his involvement in CHSA or because he sat on the NHS Race Observatory Board at the same time as the former General Secretary.

161. Mr Dawes has suggested, in his statement, that Lord Adebowale was also conflicted because CHSA, which he chaired, was a subsidiary of the RCN Foundation which had received a donation from a businessman, who was connected with the former General Secretary. He has also suggested that

the relationship between the General Secretary and the businessman was at the heart of the allegations against him. Neither of these points formed part of his complaint to me; however, for the avoidance of doubt, it is clear, that the allegations which were before the Resolution Panel had no connection to the former General Secretary or to any payments which had been made to the RCN Foundation.

For the reasons given above I find that that Lord Victor Adebowale was not conflicted, under MRP 7.3.1 or MRP 7.3.2, from sitting on the first Resolution Panel.

162. Although it is not part of the complaint to me, Mr Dawes has also suggested that Lord Adebowale was conflicted because he and Mr Dawes sat on the Board of SEUK. Whilst I do not need to reach a decision on this point, I think it worth recording that, for the sake of completion, Ms Mayhew's decision on this point:

“In relation to Lord Victor Adebowale, I do not consider that his professional relationship, as set out by Mr Dawes, gives rise to a conflict with the Allegations to be heard. There is no suggestion or evidence that the professional relationship Mr Dawes relies on creates a conflict of interest with Lord Adebowale hearing the Allegations. (I have considered all the Allegations that are to be decided upon by the Resolution Panel.) The fact that Lord Victor Adebowale has a professional relationship with members of the RCN, including Mr Dawes, does not mean that he is conflicted from hearing allegations with which he has no prior involvement. I consider that Lord Victor Adebowale is not conflicted from sitting as a Panel Member for the Resolution Hearing considering the Allegations.”

Ms Mayhew's Decision Making

163. Mr Dawes complaint includes the following:

“At no stage in December did Alice Mayhew ask for any evidence or speak to me and therefore failed to consider the evidence I had accumulated showing that Lord Victor Adebowale and Carol Webley-Brown were not independent of the case and had conflicts of interest relating to close personal relationships with people at the heart of the case.”

164. The only issue that remains for me to consider in relation to this part of the complaint is whether Ms Mayhew should have spoken to Mr Dawes before making her decision as to whether Ms Webley-Brown and/or Lord Adebowale were conflicted from dealing with the case and whether, by failing to do so, she failed to take into account relevant evidence.

165. The MRP does not, on my reading, set out how a Resolution Panel should consider any suggestions, or complaints, that its members have a conflict of interest or are not sufficiently independent from the allegations to be heard. Mr Dawes first raised his concerns, about Ms Webley-Brown and Lord Adebowale, with Ms Mayhew on 23 November 2023 and sought a meeting with her. She replied on 1 December 2023 seeking further information from him and included the following paragraph:

“Once I have that further information I will consider the allegations, obtain any further information required and, if you agree, decide the issues on the papers. If however you feel that you would like to make oral representations on the matter then we would need to timetable oral submissions at the start of the two day Hearing. I would then make a decision on the issue of the independence of the other members of the panel. Please can you let me know your preference?”

166. Later the same day Mr Dawes replied, providing the information Ms Mayhew had requested by email. At the end of the relevant section of the email Mr Dawes included the following:

“I am happy to have your decision on the panel based on the information provided and would ask that you let us know by the end of Friday so that we can determine our response”.

167. Ms Mayhew’s decision on the composition of the panel, dated 14 December 2021, recorded that Mr Dawes agreed that “I should consider the issue on the papers and make a decision.” She also recorded that she had sought further information from Ms Webley-Brown which had not been provided until 14 December 2021 because she was a nurse working night shifts.

168. In my view Ms Mayhew followed good practice in deciding this issue. In the absence of a formal MRP procedure she sought additional information from Mr Dawes, asked he if agreed to her deciding the issue on papers and offered the opportunity for him to make oral submissions at the start of the Hearing if he did not. Mr Dawes replied quickly to that email, submitted additional information and confirmed that he was happy to have her decision based on the information provided. It is difficult, therefore, for me to understand why Mr Dawes has brought this part of the complaint. Having raised the issue, he was asked to provide additional information and asked whether he was content for Ms Mayhew to reach a decision on the papers or make submissions at the beginning of the Hearing. He provided the information and told Ms Mayhew that he was “happy to have her decision based on the information provided”. He clearly agreed to, and participated in, the process and has provided no evidence that he sought to make oral submissions.

169. Finally, on this point, I note that Mr Dawes had, in his email of 23 November 2021, sought a meeting with Ms Mayhew to discuss the issues he had raised. In my view it was appropriate for her to offer, instead, the

opportunity for Mr Dawes to make oral submissions at the beginning of the Panel Hearing. This reflects good practice and would have enabled the Union to respond to those submissions. I do not agree, therefore that Ms Mayhew's approach denied Mr Dawes the opportunity to submit evidence which might have affected her decision. Nor do I agree, for the reasons set out at above, that her approach resulted in a breach of MRP 7.3. 1 or 7.3.2.

Consequently, I find that the process followed by Ms Mayhew when considering Mr Dawes' allegations about conflicts of interest did not result in a breach of MRP 7.3.1 or 7.3.2

Right of Appeal

170. Mr Dawes emailed Ms Mayhew and Ms Galbraith-Marten, on 14 December 2021, to initiate an appeal, under MRP 6.1, 6.2 and 7.3. Ms Galbraith-Marten responded to this point on 5 January 2022 when she explained that Ms Mayhew's decision was not a sanction and that there was "no free-standing right of appeal". She added that any appeal on this point would need to form part of any appeal that arises following any sanction being imposed by the Resolution Panel.
171. Ms Galbraith-Marten's position is consistent with my reading of the MRP. The right of appeal arises under MRP 10.1 and applies to any sanction applied under the MRP process. At this stage no sanction had been applied and Mr Dawes did not, therefore, have a right to appeal the decision ahead of the Resolution Hearing. The MRP does not set out how a Resolution Panel should deal with preliminary issues such as this; however, this is not unusual and, as I have set out at paragraphs 163 to 169 above, Ms Mayhew followed a process which, in my view, reflects good practice. As Ms Galbraith-Marten explained the proper course of action was to proceed with the Resolution Panel and, should a sanction be applied, Mr Dawes could then include a challenge to the composition of the Panel within any appeal on that sanction. If no sanction was applied then there would, in my

view, be no need for an appeal although it would have remained open for Mr Dawes to bring a complaint to me about the composition of the Panel.

172. Mr Dawes argues that, by denying him a right of appeal the Union acted in breach of the principles of natural justice. The Union did, however, offer him a right of appeal to an independent panel once the allegations had been heard and sanctions applied. He exercised that right when he appealed the decision of the Resolution Panel.

For the reasons given above, I find that the Union did not breach the principles of natural justice by denying Mr Dawes a freestanding right of appeal to Ms Mayhew's decision on the composition of the Resolution Panel.

Complaint 8

173. This complaint is similar in nature to complaint 3. The difference is that it relates to the suspension imposed by Mr Mason, on 22 September 2021. This suspension remained in place until the conclusion of the Appeal Hearing on 4 April 2022. Mr Mason's witness statement records that he reviewed this second suspension after the emails which Mr Dawes sent to Council Members on 8 December 2021. Again, I have seen no evidence as to how Mr Mason undertook the review, whether he sought any involvement from Mr Dawes in that review or informed him of the outcome and the reasons for the suspension remaining in place. His statement does, however, record his reasons for leaving the suspension in place. He explained that, should the suspension be lifted, Mr Dawes would have had significant access to confidential information which, given his defiant attitude when the issue of unauthorised disclosures had been raised, he might choose to disclose to the media. Mr Mason also explained that, given that the first suspension remained in place, lifting the second suspension would have had no practical implications.

174. I understand the relevance of the first point; however, this suspension should have been considered separately on its own merits. If removing the second suspension would have had no real impact then it is difficult to see why it was imposed since, at that stage, the first suspension was already in place.
175. As for the first suspension, I have no evidence that Mr Mason considered the length of the time that the suspension had been in place or might remain in place. Nor do I have any evidence which shows that he considered whether there were other options available which might reduce the need for the suspension.
176. In the absence of such evidence I can only conclude, for similar reasons to those I have set out at Complaint 4 above, that I have insufficient evidence to show that the second suspension was kept under review as required by MRP 4.3.8.

Consequently, I find that the Union breached MRP 4.3.8 by failing to keep the second suspension under review to ensure that it did not last longer than necessary.

177. As for Complaint 4, I think it worth recording that, in my view, it seems unlikely that a formal review of the suspension would have led to a different outcome bearing in mind the seriousness of the allegations made against Mr Dawes.

Complaint 9

178. This complaint is similar to complaint 5 and relates to the second suspension imposed by Mr Mason on 22 September 2021 following his decision to commission a second independent investigation into allegations that Mr Dawes had leaked confidential information to the press. There is no suggestion, however that these allegations relate to financial irregularities.

179. Mr Dawes' position is that the wording of MRP imposes a time limit of 60 days on any suspension unless the period is extended by agreement or there are allegations of financial irregularities. In his view, neither of those applied to the second investigations as the allegations related to the disclosure of documents and he did not agree to an extension.
180. The Union's position is two-fold. The first is that it would be wholly unreal to say that the investigation of financial irregularity should be the relevant to the first suspension but not the second. I do not agree that this a reasonable approach. Mr Mason's letter of 22 September 2021 is clear that the second investigation and suspension were separate to those which were already underway. It was open to Mr Mason, when imposing the second suspension, to conclude that the existing suspension was sufficient and that both sets of allegations could be considered when that suspension was reviewed. He did not do so, however, and applied a second suspension in relation to the disclosure allegations only. Having done so I do not think it reasonable for those issues which led to the first suspension, to be considered relevant to the second suspension.
181. The Union's second point is that MRP 4.3.10 creates a normal time limit which must be read together with the stated purposes of interim suspension as set out in MRP 4.3.2 to MRP 4.3.5. Mr Coghlin told me that that MRP 4.3.10 should not be read as creating an absolute and inflexible time limit as this might create a situation where it became necessary to lift a suspension, on time grounds alone, even though the circumstances which led to the suspension remained in place. He argued that this would be absurd and create an incoherence where a suspension remained necessary for one of the stated purposes but was removed because of the time limit. Mr Dawes did not accept this; his position was that MRP 4.3.10 was clear that there were only two circumstances where the suspension could run beyond 60 days and that neither applied to this suspension.

182. It is a well established principle that union rules should be given a reasonable interpretation, bearing in mind the intent of those who wrote them and their readership. Similarly, they should be read in a way which would be consistent with the reasonable expectations of union members. To do this I believe that it is necessary to read the whole of MRP 4.3 together.

183. For this suspension the relevant provisions are:

MRP 4.3.1 to 4.3.5 which sets out who can impose a suspension and the reasons why.

MRP 4.3.8 which provides for the review of the suspension to ensure that it remains in place no longer than necessary.

MRP 4.3.10 which provides for a normal time limit of 60 days.

184. Mr Dawes told me that he was part of the Committee which drafted the MRP and the Council which approved it. He was clear that the intention was to create a 60 day time limit in all cases except where the Member agreed to an extension or the issues related to financial irregularities. The difficulty with this argument is that it clearly creates a position where, should an investigation by necessity take longer than 60 days, a suspension must be lifted even though the reasons for that suspension remain. It could, for instance, lead to a situation where the Union would need to lift the suspension of a member facing serious criminal charges simply because the time limit of 60 days had been reached. In my view most, if not all, union members would regard that as being unreasonable.

185. I am, therefore, persuaded by Mr Coghlin's argument that MRP 4.3.10 imposes a normal time limit of 60 days for a suspension which could be exceeded in exceptional circumstances where, for instance, an investigation takes longer than 60 days (the MRP does not impose a time limit on the investigation itself). Read together with MRP 4.3.8 this should ensure that

most suspensions are in place for less than 60 days and are reviewed to ensure that they do not last longer than necessary.

For the reasons given above I find that the Union did not breach MRP 4.3.10 by maintaining Mr Dawes' second suspension beyond 60 days.

186. It is worth noting here that, in my view, the fact that the Rules impose a normal time limit rather than an absolute time limit increases the necessity for that suspension to properly reviewed under MRP 4.3.8 to ensure that it does not remain in place any longer than necessary. The review period may vary according to the nature of the allegation and the role of the Union Member; however, the review must take into account the need to ensure that the suspension does not last longer than necessary. This is particularly important where the normal time limit has been exceeded and there is neither an allegation of financial irregularity nor an agreement that the suspension should be extended.

Complaint 10

187. This complaint relates to the Appeal Panel which was chaired by Bruce Carr KC and considered the sanctions applied by both Resolution Panels. There are, however, two issues for me to consider before I reach a decision on the complaint itself. The first is whether Mr Dawes waived his right to object to the composition of the Appeal Panel. The second is whether Mr Dawes' complaint includes the behaviour of two of the Panel Members during the Appeal Hearing.

188. I have set out the chronology of Mr Dawes' complaint, his correspondence with my office, and the key stages of the Union's disciplinary process at Annex 3. Alongside the proceedings before me, Mr Dawes also made an application to the Employment Tribunal on 18 February 2022 and a further application on 20 May 2022. My understanding is that these related to the

Union's disciplinary decisions taken following Mr Dawes' disclosure of confidential material to the press.

189. The Union's position is that Mr Dawes agreed to the composition of the Appeal Panel and, by doing so, waived his rights to bring a complaint to me. Mr Coghlin referred me to the decision in *Locabail v Bayfield Properties Ltd* [2000] QB 451. He referred me to Lord Bingham's comments:

“...a party with an irresistible right to object to a judge continuing to hear a case may, as we will hear in other cases below, waive his right to object. It is however clear that any waiver must be clear and unequivocal, and made with full knowledge of all the facts relevant to the decision to waive or not.”

190. Mr Dawes does not agree that, at any stage, he waived his rights to object to the composition of the Panel. I must, therefore, consider whether his statements, and behaviour, at the time of the Appeal demonstrate that he understood that he had a right to object to the composition of the Panel, that he knew all of the facts which might be relevant to any decision to waive that right and that any waiver he entered into was clear and unequivocal. If all of those elements are in place, then Mr Coghlin is right that Mr Dawes waived his right to question whether this amounted to a waiver, as described by Lord Bingham in *Locabail*.

191. Mr Dawes raised issues about the first Resolution Panel soon after he had the opportunity to do so. He was informed of the composition of the Panel on 10 November 2021 and raised issues, first with Council on 14 November 2021 and then with the Chair on 23 November 2021, before choosing to restrict his participation in the Resolution Hearing to a statement which included this issue. At around the same time he made a complaint to me and raised the issue as part of his Appeal. Consequently, it is clear to me that he understood that he had a right to object to the composition of a Panel and knew how to exercise that right.

192. It is worth noting that, at the Hearing before me, Mr Dawes appeared to conflate the concept of his right to object to the constitution of the panel with a right to a freestanding appeal to a preliminary decision. He appeared to be arguing that there was no point in him raising an objection to the composition of the Appeal Hearing because he had no right to appeal an adverse decision ahead of the Hearing. I am satisfied, however, that Mr Dawes knew that he could make a complaint to me about the composition of the Appeal Panel as he had already done so for the first Resolution Panel. I am satisfied, therefore, that Mr Dawes understood the difference between these two issues and knew that he could have objected to the Appeal Panel. That is clear from the actions he took ahead of the first Resolution Panel and described at paragraph 191 above.
193. Mr Dawes entered into an exchange with the Chair of the Panel, Mr Carr, on 13 March 2022 to discuss a number of issues relating to the upcoming Appeal Hearing. At that stage he was aware of the composition of the Panel. Mr Dawes' complaint to me raises issues about two panel members, Mr Carr and Mr Benton. There is no complaint about the third panel member, Ms Ellis. During the Hearing, and in his written statement, Mr Dawes raised a number of issues relating to Mr Carr and to Mr Benton which had not been set out in his complaint. I can only consider the issues which are set out in his complaint.
194. Before I do so, however, I need to address a point raised by Mr Dawes about the breadth of this complaint. At the Case Management Meeting on 8 February 2022, the Parties and I agreed a number of issues which I would need to resolve to reach a decision on the complaints. One of those issues was that, if I did not agree that Mr Dawes had waived his rights to object to the composition of the Appeal Panel, I would need to identify whether there was any evidence of real or perceived bias by Mr Benton or Mr Carr. Mr Dawes appears to believe that this enabled him to raise issues, at the Hearing, which were not already set out in his complaint. He sought to

introduce evidence, and make submissions, on these issues including, for instance, that during the Appeal Hearing Mr Carr had asked inappropriate questions about Mr Dawes' private life and that Mr Benton had introduced new evidence into the proceedings. The purpose of identifying which issues need to be resolved ahead of a hearing however, is to enable the parties, and me, to focus on the evidence and argument which assist me to address the complaint. It does not, and cannot, widen the scope of the complaint. Had Mr Dawes wished to introduce new elements to his complaint he could and, should, have made an application to do so.

195. Mr Dawes did not, however, agree that the issues he sought to introduce were outside the scope of his complaint. He maintained that the fact that his complaint included the phrase "This Appeal Panel was also not free of conflicts of interest or bias" enabled him to introduce any evidence, or argument, which, in his view, showed bias or conflict. That might have been the case had his complaint not set out the alleged bias. The full text of that part of the complaint is shown in Annex 1 and below:

"This Appeal Panel was also not free of conflicts of interest or bias. Two members of this panel had clear conflicts of interest and potential biases. Bruce Carr had conducted the disciplinary investigation into the former General Secretary which I had whistleblown about and which he had received an estimated £500,000 to conduct. Therefore, in effect Bruce Carr was ruling on the exposure of his own report. Bruce Carr has also been working for the RCN since June 2021 at a rate of £600 per hour, meaning that he has received an estimated £1 million from the RCN. I whistleblow about the cover up of the true nature of much of that work; which could have jeopardised that contract. Jeremy Benton was one of the three Council members who planned my disciplinary process with Pat Cullen in July 2021, had pressured me to resign as Chair of Council "to protect my reputation" and who had also put

himself forward for election as Chair of Council in November. If the Appeal Panel had reinstated me to Council then this would have made it much harder for Jeremy Benton to realise his ambition of becoming Chair of Council.”

196. In my view, Mr Dawes has set out clearly the nature of the bias which he asked me to consider when he agreed the terms of his complaint. He made no application to extend the complaint. I cannot, therefore, consider any issues which are not properly particularised within that complaint.
197. It is also worth noting that Mr Dawes was aware of my powers ahead of the Hearing. My Office routinely spends time with complainants, at the beginning of the process, to ensure that their complaints are set out in a form which identifies the relevant actions and the alleged breach of rule. Once the wording of the complaint has been agreed, my Office discloses the complaint to the Union for their comment before I decide whether it is listed for a Hearing. This was the case for the applications made by Mr Dawes on 31 August 2021 and 10 January 2022. Neither of those complaints raised any issues about the second investigation, suspension or appeal process. Nor did I receive any additional complaints before I listed the complaints for a Hearing and scheduled a Case Management Meeting for 26 September 2022. At that meeting I reminded Mr Dawes that he would need to restrict his evidence and submissions to the complaints before me and that I could not consider any issues relating to the second investigation, second suspension and Appeal Hearing. He expressed surprise at this because he appeared to believe that I would not be limited to hearing the complaint he had set out, but would also be able to include any events which had occurred after he had agreed the terms of his complaint. Nevertheless, he took my direction on the point and, following the Case Management Meeting, made additional complaints which, after correspondence with my Office to agree the wording, were shared with the Union on 27 November 2022.

198. It is somewhat surprising, to say the least, that Mr Dawes has again sought to widen the scope of his complaint and I have found his approach to the scope of his complaints to be somewhat disingenuous. He has been given direction by myself and my Office on this point and should have been aware that he would be limited to the clear terms of complaint which he had agreed. He should have been aware that he would not be able to widen the scope of his complaints at the Hearing without prior notice and making an application in the usual way.

199. I will now turn to whether Mr Dawes was aware of the issues, set out in his complaint, relating to Mr Benton and Mr Dawes at the time of the Appeal Hearing.

Mr Benton

200. Mr Dawes' complaint about Mr Benton is set out below:

“Jeremy Benton was one of the Council members who planned my disciplinary process with Pat Cullen in July 2021, had pressured me to resign as Chair of Council “to protect my reputation” and who had also put himself forward for election as Chair of Council in November. If the Appeal Panel had reinstated me to Council then this would have made it much harder for Jeremy Benton to realise his ambition of becoming Chair of Council.”

201. Mr Dawes appealed both Panel decisions on 3 March 2022 and the Appeal Panel went ahead on 17 and 18 March 2022. I do not appear to have been told the date on which the Union informed Mr Dawes of the composition of the Panel; however, he was definitely aware that Mr Benton would be part of that Panel when he emailed Mr Carr about various issues on 13 March 2022. He also confirmed, at the beginning of the Appeal Hearing as the transcript records the following exchange:

Mr Carr: Can I just confirm Dave that you were notified some time ago about constitution of this Panel

Mr Dawes: Yes and I'm very happy with the constitution of this Panel

202. There is a dispute as to the extent of Mr Benton's involvement in the discussions about the initial investigation. Mr Dawes' view is Mr Benton planned the disciplinary proceedings against him in July 2021 and pressured him to resign. Ms Cullen told me that she had consulted Mr Benton for advice after the initial complaints were received and that, as a Member of Council he would have been briefed on the complaints at a high level. I do not need to resolve that conflict of evidence to decide whether Mr Dawes was aware of the evidence before the Appeal Panel met in March 2022. It is clear that he was aware of that because his evidence is that Mr Benton pressured him to resign in July 2021. It was also included in the email which he and Mr Philips sent to some Council Members on 14 November 2021.

203. It is worth noting that an issue around the extent of Mr Benton's involvement in the July 2021 discussions arose during the Hearing. The Union provided me with an unredacted document of a statement (the investigation statement) which Mr Benton had provided to a separate investigation in August 2021 and which described some of the discussions he and Council had been part of. The redacted version of the document had been provided to Mr Dawes by the Union following a Data Subject Access Request and Mr Benton's name, along with other personal information, had been removed from the document.

204. Mr Benton did not offer written, or oral, evidence to me. His investigation statement, however, recorded that he and Ms Cullen had a relationship "outside of Council", had had discussions about the complaints made about Dawes and that Council were aware of, at that stage, the potential referrals

to the NMC and the police. It also records that it was right for the General Secretary to approach Council for support in her decision making and that it was right that she shared as much information as she could to achieve a consensus and make a decision as openly as possible.

205. Ms Cullen returned to give evidence about this statement on the third day of the Hearing. She disputed some of the contents of Mr Benton's investigation statement; in particular, the wording of the paragraphs around the potential referrals to the NMC and to the police. She could not, explain why Mr Benton had a different recollection of those events. She also explained that her relationship with Mr Benton "outside of Council" arose when Mr Dawes had advised her that she could seek advice from Mr Benton and that the relationship did not extend beyond that role.

206. I understand Mr Dawes' concern that the full version of this document had not been provided to him, or me, ahead of the Hearing and was only provided when it became necessary to do so. I note, however, that it was Mr Dawes who had sought to rely on the document and that he had not, to my knowledge, sought to question its contents or seek an unredacted version of the document from the Union. The document itself is clearly relevant to the case as it gives Mr Benton's description of the events in July 2021. But it does not contain information which falls outside Mr Dawes allegation that Mr Benton was involved in planning the disciplinary procedures. It does not, therefore, add anything new to my consideration as to whether Mr Dawes waived his rights to object to the composition of the Appeal Panel.

207. Mr Dawes also raised an issue about Mr Benton's ambition to stand for Chair of Council at the end of the term of office of the current Chair. My understanding is that the elections were held in November 2021 with the results announced in December 2021. Mr Dawes would, therefore, have

been aware that Mr Benton had stood in those elections at the time of his Appeal Panel in March 2022.

Consequently, I am satisfied that Mr Dawes was aware, at the time of his Appeal, that Mr Benton was a Member of the Panel, that he had been involved in some of the discussions in July 2021 about the initial complaints, and had been briefed about progress on the disciplinary process as a Council Member. I am also satisfied that Mr Dawes was aware that Mr Benton was a candidate in the elections for Council Chair held in November 2021.

Mr Carr

208. Mr Dawes' complaint about Mr Carr is set out below:

“Bruce Carr had conducted the disciplinary investigation into the former General Secretary which I had whistleblown about and which he had received an estimated £500,000 to conduct. Therefore in effect Bruce Carr was ruling on the exposure of his own report. Bruce Carr has also been working for the RCN since June 2021 at a rate of £600 per hour, meaning that he has received an estimated £1 million from the RCN. I whistleblow about the cover up of the true nature of much of that work; which could have jeopardised that contract.”

209. For the reasons given at paragraph 201 in relation to Mr Benton I am satisfied that Mr Dawes knew that Mr Carr was chairing the Appeal Panel. Again, my only consideration here is whether Mr Dawes knew, at the time of his Appeal in March 2022, all of the issues which he has identified as showing that Mr Carr lacked independence or should have been conflicted from hearing the allegations. These issues fall into two categories; those which relate to work undertaken by Mr Carr for the Union and that Mr

Dawes had disclosed information about that work, and what he saw as a cover up of that work, to the press.

210. The fact that Mr Dawes disclosed, on 31 August 2021, the existence of the work which Mr Carr had been commissioned to undertake demonstrates that, at that time, he was aware of the work. Additionally, my understanding is that Mr Dawes was involved in commissioning the work and so he would have been aware that Mr Carr was being paid. Mr Dawes was also interviewed as part of that work and so would have been aware that it was ongoing at the time of his Appeal. There can be no question that he was aware that he had, himself, made disclosures about the existence of the work and the cover up which he alleged. I am, therefore, satisfied that, at the time of his Appeal Hearing in March 2022, Mr Dawes was aware of all of the issues which his complaint identifies as raising an issue of independence, or conflict of interest, in respect of Mr Carr.

211. In relation to the waiver, I am, therefore satisfied that Mr Dawes understood that he had a right to object to the composition of the Appeal Panel, that he was aware that Mr Benton and Mr Carr would consider his appeal along with Ms Ellis, and that Mr Dawes was aware of the issues which he now raises in his complaint. That leaves me to consider whether Mr Dawes gave a clear and unequivocal waiver of his right to object to the composition of the Panel on these grounds.

212. There is a significant amount of evidence, in the documents before me, to assist me to address these points. Turning first to the email exchange between Mr Carr and Mr Dawes ahead of the Appeal Panel:

13 March 2022

Mr Dawes emailed Mr Carr and raised number of issues in relation to his Appeal. This included him explaining that he wished to call Mr Carr and Mr Benton as witnesses to the Appeal Hearing.

15 March 2022

Mr Carr replied to Mr Dawes on each of the issues raised. He explained that the Appeal Panel had a number of observations about the proposal to call Mr Benton and himself as witnesses including that this might amount to them being a judge in their own cause, that the MRP did not enable Mr Dawes to introduce new evidence and that the proposed lines of questioning did not appear to be relevant. He explained that the Panel would listen to any submissions which Mr Dawes wished to make on this point before reaching a decision.

15 March 2022

Mr Dawes replied to Mr Carr. His reply explained that he was happy for the evidence and submissions to be discussed at the Hearing. He did not consider that this was Mr Carr or Mr Benton's case as the charges were not against them and they were not representing the Union. He also explained that he intended to call them as witnesses, and that, as he had indicated ahead of the Resolution Panel, he should be able to present new evidence at the Appeal stage as the first Resolution Panel had not been independent. At the end of the statement he explained that all he wanted was an impartial investigation and an impartial hearing where he could present his defence.

213. Mr Dawes told me that his email of 15 March 2022 showed that he had raised his concerns about the composition of the Appeal Panel. The concerns he expressed, however, relate to his ability to introduce new evidence and his wish to call Mr Benton and Mr Carr to give evidence. This was his opportunity to air any concerns about the composition of the Appeal Panel, but he did not do so. Instead, he appeared to argue that it was reasonable for him to call Mr Benton and Mr Carr as witnesses and that, having done so, they would be able to weigh up their own evidence and reach a finding based on that and other evidence. Consequently, it is hard to reach any conclusion other than that Mr Dawes had no objection to Mr

Carr and Mr Benton forming part of the Panel. In fact, it appears that he had significant confidence in them because he argued that they were capable of weighing up their own evidence alongside that of others.

214. I have seen no other evidence that Mr Dawes, or Mr Philips raised any issues with the Union, or individual panel members, ahead of the Appeal Hearing. This is in contrast to the issues he raised ahead of the first Resolution Panel which are discussed at Complaint 7 above. At that stage he raised the issue with the Panel Chair, Ms Galbraith-Marten, Council and one of the panel members as well as making a complaint to me.

215. Turning to the Hearing itself Mr Dawes and Mr Philips addressed the issue several times.

Mr Dawes

216. I will set out Mr Dawes' comments first. The first extract is at the beginning of the Panel. Mr Dawes states, unprompted, that he is happy with the composition of the Panel.

Mr Carr: Can I just confirm, Dave, that you were notified some time ago about constitution of this Panel

Mr Dawes: Yes and I'm very happy with the composition of the Panel.

217. At the end of the second day of the Hearing Mr Dawes records his thanks to those involved in the Hearing:

Mr Dawes: Yes I'd just like to thank all of you, Jo and the team, especially Gareth and I know it's been difficult for everyone, I think everyone is trying to do the right thing, but I genuinely thank you for your time and all I've said I've wanted all along is a fair hearing I feel I've had a good hearing, I think this has been a fair hearing. I feel

listened to I feel that we have properly explored everything and I just want to thank you for your time.

218. It is hard to reconcile the sentiments expressed by, Mr Dawes, at the Appeal Hearing with the terms of his complaint to me. Taken together with his emails to Mr Carr ahead of the Hearing (paragraphs 212 to 214 above) Mr Dawes gave the impression that he was very happy to proceed with the Hearing, had no concerns at all about the composition of the Panel and felt, at the end of the two day hearing, that he had been listened to, that the Panel had properly explored everything and that he had had a good and a fair hearing.
219. When giving evidence he told me that he had been lying during the Appeal Hearing when he made the comments set out above. He was clear that he did not mean them. He told me that the Union's disciplinary proceedings had left him in a poor state of health, his reputation had been tarnished in the press and that the Union had paid for him to have therapy. He now felt significantly better and wanted to raise the issues with me in a way that he had not previously felt able to do so.

Mr Philips

220. Mr Phillips raised issues about the conduct of the Appeal Hearing with the Appeal Panel. The first issue related to Mr Benton's use of his telephone during the Hearing. I have set out the exchange below.

Mr Philips: With the greatest respect Chair, could you ask Jeremy to please put his phone away. All I can see while you're explaining some very relevant points is Jeremy typing messages on his phone

Mr Benton: No you're not I'm looking at the email from Dave concerning this point.

Mr Phillips: OK, can you have a print off or something Jeremy because it looks really bad, and it it's difficult, I know, to use a mobile phone to type in various whilst listening to what may be a complex argument. The point is, if you are just using it for reference, I understand.

Mr Carr: Yes, nothing unreasonable, Gareth, it seems to me in Jeremy looking at the contents of an email which is directly on the point we are discussing. There has to be a level of trust between all the participants in this hearing, it sets slightly the wrong note to approach Jeremy in that way. There is nothing objectionable at all in using his phone to review that email as it is very much on point.

221. Then, during the discussion about the Angelfish allegation Mr Philips raised concerns about the questions which had been addressed to Mr Dawes. These related to the relationships between Mr Dawes, the other Directors, and those working for Angelfish. Mr Philips drew a comparison between the importance of relationship being considered here and in the Appeal Panel's earlier discussion around Mr Dawes' allegations about the first Resolution Panel's conflicts of interest. He also appears to draw a comparison between the payment which Angelfish had sought so that they could cover Mr Dawes' work whilst he was engaged on Union business.

Mr Philips: Yes so the point I wanted to make is you're getting a bit of a hard time, being questioned closely about your relationships despite taking all the steps needed to ensure it was an independent decision. Relationships didn't seem to be particularly critical when we were talking about the panel earlier on, but you are being examined very carefully on your relationships, so there seems to be a lot of double standards here and also with regard to the

payment to you. It pales into comparison with other parting payments we know of, so I think if anybody if the average Member thought your payment was very concerning, I dread to think what they would think about other payments. I just need to intervene at that point.

Mr Dawes: No, I appreciate that

Mr Carr: Well, let me respond to that. There are two false comparisons here. Relationships that we have been examining, are the relationships which led to this request being made of the RCN, which is an entirely different area from relationships, and I'm not even entirely sure what particular relationships Gareth was talking about, but I don't see any equivalent between our earlier discussions and where we are now. A linked point to that, of course, is we have all agreed that we are starting from scratch and so that will involve a level of scrutiny that's appropriate to this panel, which may or may not have occurred at the previous panel. But we've put the previous panel to one side and, save to the extent that we take the account of the transcript because it is written record of evidence that's been given by other individuals. As far as payments made to other individuals is concerned. Again it's a complete red herring to talk about whether Members would regard there being a conflict of interest in circumstances in which somebody has been paid off for leaving their employment versus somebody in the position as a director of a company which employs their son, who then receives remuneration indirectly from the RCN.

222. Mr Philips returned to the issue of the nature of the questions around Mr Dawes' personal relationships after the end of the first hearing day. He sent an email, overnight, to Ms Galbraith-Marten setting out his concerns which was then discussed when the Panel resumed the following morning.

Mr Carr: At 20:30 last night Gareth emailed Joe [Ms Galbraith-Marten] under a subject heading "Hearing Concerns". I'm assuming that that email has been shared with you?

Mr Carr: OK well let me read it out "*Thank you for setting up the teams meeting, however I have some concerns regarding the conduct of the meeting. Is it absolutely necessary to explore Dave's sexual relations with his partners? What relevance did it have, he had already confirmed he was in a relationship, would the questions have been asked of a female activist, a BAME activist, a gay activist, or even a senior member of staff? I have been in many hearings over the last 40 years and this was up there with the most concerning. I would appreciate your comments.*" Do you share those concerns? If so, I will address them.

Mr Dawes: I think Gareth probably states them a little more strongly than me. I did think there were sometimes yesterday where there was a probing around, there was a kind of a focus on sexual relations and sexual partners and there were times I personally thought we were getting near the edge, but I fully respect Gareth's position.

Mr Carr: Let me explain the relevance of exploring the sexual relationships. The RCN was being presented with an option to backfill a post at Angelfish to the tune of 40% of the salary for the post. What was ostensibly an independent decision may be perceived to be less independent if those

involved in the decision making process are in sexual relationships with a Member of Council who is directly impacted by this. So it seems to me this is entirely relevant to explore the extent of the relationship between yourself and the ostensible independent decision makers around the appointment of your son to backfill whilst you were not at Angelfish. It is for those reasons the questions were asked, as far as the alternatives are concerned, would such questions of been asked of a female activist, BAME, gay or senior member , if there was any question to be investigated or any issue to be investigated around the independence of an ostensibly independent decision that required the panel to look at the proximity of the relationship between the person affected and the decision makers, these questions would have been asked of a female activist, a BAME activist, a gay individual or a senior member of staff.

223. Mr Carr went on to give some additional explanation which related specifically to the Angelfish complaint before adding:

Mr Carr: That's all I can say, I hope that allays your concern. I hope that also allays Gareth's concerns because, you know, it's slightly alarming to read that this is one of the most concerning hearings that Gareth has witnessed in the last 40 years, somewhat surprised by that, but I don't want to gaslight his experience. If he is concerned he is entitled to be concerned but I hope he accepts the explanation I have just given, OK?

Mr Dawes: Yeah, I mean, as I said I hadn't seen that, we hadn't communicated around that and I fully respect Gareth's position as my rep.

Mr Carr: I entirely respect Gareth's entitlement to raise it, that is why I took a little of my time addressing the concerns. We could have just left it and dealt with it in our decision but it seemed to me that it concerned his perception of the hearing going forward and we ought to address it now and that's why I've done that. I think I'm right in saying the views I've expressed, we discussed before you came in, are the collective views of the Panel.

Mr Benton: Yes

Ms Ellis: Yes

224. Finally, once the Hearing had concluded Mr Carr asked Mr Philips whether there was anything he wanted to say in closing. Mr Philips made the following statement:

Mr Philips: I'll just make a couple of points, is that if Members or Council Members asked me what did I learn from these hearings, I would say primarily be very, very, careful with communication. Do not communicate through social media be very, very careful how you communicate with staff. Above all think very, very carefully about whistleblowing in any situation and do not go to Council meetings with staff unless you have preparation and thorough training and the last point, which really, I find it's heartbreaking for this organisation I love it, seems to be that the reputation is far for important than honesty with our Members. All

through this hearing we have heard, very little about the root cause of this issue. We have focused entirely on the whistleblower and his actions. OK thank you very much to you all.

225. There then followed a short exchange between Members of the Panel and Mr Dawes. Mr Benton and Mr Carr commented that they found Mr Philips' views offensive or unfair. Mr Carr was clear, however, that this would not have any impact on the outcome of the Hearing.
226. None of the issues raised by Mr Philips relate to the issues set out in Mr Dawes' complaint to me. Mr Dawes has not complained to me about Mr Benton's use of his telephone during the Hearing nor the nature of the questions about his relationships with colleagues at Angelfish. Nor has Mr Dawes complained that the Appeal Panel considered the RCN's reputation as being more important than honesty with their Members. I have included the extracts here, however, because they demonstrate that Mr Philips felt able to raise issues with the Appeal Panel and that these were addressed by the Appeal Panel at the time. They also demonstrate that it was Mr Philips who raised these issues. Mr Dawes did not pursue these issues at the time and did not raise them with me. His comment that he had had "a good and fair hearing" was made just after Mr Carr had responded to Mr Philips' closing statement.
227. Mr Philips told me, when giving evidence, that he was an experienced union representative. He did not attend the Appeal Hearing in person but joined using video conferencing facilities and that there were at times connection issues. He described his role as Mr Dawes' representative as an advisor who identified issues which Mr Dawes may choose to take forward. He told me that he did raise the issues identified above with Mr Dawes at the time but that Mr Dawes did not pursue them. He explained that he was led by Mr Dawes on which issues should be pursued.

228. Mr Philips explained that he was concerned about Mr Dawes' welfare during the hearing and discussed this with him. Mr Dawes had reassured him that he was coping; however, Mr Philips was not convinced by this reassurance. He told me that when representing nurses, he had observed that they were often significantly traumatised by the proceedings. I have seen no evidence, however, that Mr Philips raised those concerns with the Union or the Appeal Panel. Nor I have seen any evidence to suggest that, had he done so, his concerns would have been ignored.
229. I am satisfied, therefore, that the concerns and comments which Mr Philips raised at the Hearing do not form part of Mr Dawes' complaint to me. They are, however, relevant as they demonstrate that the Appeal Panel were willing to address issues which were raised on the day.
230. The impression given by Mr Dawes in his email exchange with Mr Carr on 13 and 15 March 2022, and at the Appeal Panel, is that Mr Dawes was content with the composition of the Panel and willing to attend and participate in the Appeal Hearing. It is also clear, from the exchanges between Mr Philips and the Appeal Panel that panel members were willing to consider issues which were raised by Mr Philips and Mr Dawes. Whilst Mr Carr may have expressed some frustration with some of the points raised he dealt with them appropriately and explained why the Appeal Panel was taking a particular approach. I have seen no evidence that either Mr Dawes or Mr Philips objected to Mr Carr or Mr Benton sitting on the Panel. They raised no issues about Mr Carr's other work with the Union or Mr Benton's involvement in the early stages of the disciplinary proceedings. The issues that were raised, for instance whether Mr Benton or Mr Carr could be called as witnesses, the nature of questions about Mr Dawes' relationships and Mr Benton's use of his phone, were all addressed in good time by the Appeal Panel. Whilst these issues fall outside Mr Dawes' complaint they demonstrate that the Appeal Panel was willing to consider Mr Dawes' and Mr Philips' concerns.

231. I need to deal with one remaining issue before I decide whether Mr Dawes clearly and unequivocally waived his right to raise these issues. The first relates to Mr Dawes' health at the time. Mr Dawes told me that he had no concerns about the accuracy of the transcript. He acknowledged that he told the Appeal Panel that he was happy with its composition and that he felt that he had a good and fair hearing. He also explained that, when he did so, he was lying. He explained that he was "not in a good place" and that the Union had funded therapy to deal the issues he was facing. He told me that his mental health had now improved and that he now wished to pursue the independence of the Panel. The difficulty I have with this position is that he had several opportunities to raise the issues he has included in his complaint to me, as well as those which he and Mr Philips have attempted to include in the complaint, but I have seen no evidence they did so. Mr Dawes told me that the Union was funding therapy as part of their support for him through the disciplinary process. It seems likely, therefore, that they would have considered a request from him to delay the Appeal Panel until he was recovering. That request may not have been successful; however, they may have offered additional support to him during the Appeal Hearing. It would also have been open to Mr Philips to raise the issue if, as he explained to me, he was concerned about Mr Dawes' health and wellbeing.
232. Throughout this process both Mr Dawes and Mr Philips raised a number of issues to ensure that Mr Dawes received a fair hearing. Those issues ranged from questions about the process being followed, conflicts of interest, and the recording of Hearings. It seems surprising, to say the least, that at the final appeal stage they felt unable to identify to the Union that Mr Dawes was not in a fit condition to raise an issue as significant as his health and wellbeing or that they believed that two members of the Appeal Panel had conflicts of interest. That would be inconsistent with the approach that they had taken at all other stages of the disciplinary proceedings.

233. Returning to the test set out by Lord Bingham in *Locabail* I believe that I have addressed above each limb of that test.
234. Mr Dawes was aware that he had a right to object to the composition of the Appeal Panel. He had already done so when he objected to the composition of the first Resolution Panel. He also understood that he could make a complaint to me should the Union not find in his favour and, by doing so, his Appeal Panel was not properly independent. He had already taken similar action when he made his complaint to me about the first Resolution Panel.
235. Mr Dawes' complaint to me is about specified issues relating to Mr Carr and Mr Benton. Mr Dawes was aware of those issues before the Appeal Panel sat and was aware that Mr Benton and Mr Carr would be sitting on the Appeal Panel.
236. Mr Dawes raised no issues about the composition of the Appeal Panel ahead of the Appeal Hearing. At the start of the Hearing he confirmed that he was content with the composition of the Hearing. At the end of the Hearing he explained that he felt that he had had a good and fair Hearing. His representative, Mr Philips, raised some issues with the Appeal Panel. None of those form part of Mr Dawes' complaint to me but the Appeal Panel dealt with each of those issues and gave reasons for their approach. There is no evidence to suggest that the Appeal Panel would not have dealt with any other concerns, including its composition, had Mr Dawes raised those issues. Similarly, there is no evidence to suggest that the Union would not have considered any application to adjourn the Hearing, or to offer additional support, on the grounds of Mr Dawes' health and wellbeing. The fact that they had funded his treatment suggests that they were mindful of his welfare and I note that many of Mr Mason's letters suggested that Mr Dawes should let him know if he needed additional help or support.
237. The proper time to raise issues about the composition of the Appeal Panel was ahead of the Hearing itself. I find Mr Dawes' reasons for not doing this

to be surprising bearing in mind his knowledge of the Union's disciplinary process and his willingness to raise other issues. He could, and should, have raised these issues with the Union. His failure to do so leaves him open to the accusation, made by Mr Coghlin, that he was acting tactically. Or that he was hedging his bets.

238. It is also relevant that Mr Dawes did not make his complaint to me until the Case Management Meeting on 26 September 2022. At that Hearing I explained that he had not made a complaint to me about the Appeal Hearing. It seems unlikely that someone who had already made several complaints to my Office and engaged in extensive correspondence to set out the terms of those complaints would think it possible for me to consider a complaint which he had not made.

For the reasons set out above I find that Mr Dawes waived his right to bring a complaint to me about Mr Carr or Mr Benton having a real, or potential, conflict of interest or lack of independence when considering Mr Dawes' appeal against disciplinary sanctions imposed by the first and second Resolution Panels.

239. There is one remaining part to this complaint. Mr Dawes' complaint includes the decision, taken by the Appeal Panel, not to consider the issue of bias on the part of the first Resolution Panel and instead to consider the allegations considered by that Panel as if the Appeal Panel was a panel of first instance. It is difficult for me to see, and Mr Dawes has not set out, how this amounts to a breach of MRP 7.3.1 and 7.3.2. Those rules relate to the composition of the panel and to independence. They do not relate to the procedure which the Appeal Panel should follow. Additionally, by taking this decision the Appeal Panel enabled Mr Dawes to submit new evidence, which had not been considered by the original Resolution Panel. I cannot

agree, therefore, that this decision could contribute to a finding that the Appeal Panel lacked independence or that Panel Members were conflicted.

240. It is also clear from the transcript that Mr Dawes agreed to this approach. He told me, at the Hearing, that he had expected that the Panel would adjourn to a later date so that he could present his case. This is not consistent with his statements at the Hearing that:

“I’m not relying on my defence on the striking out of the whole hearing based on bias. I actually have wanted since I was first suspended in the first week of July, I’ve wanted the opportunity to present my defence to an independent panel. I’ve been waiting nine months for that and I’m happy to do that. I understand if the panel want to say that they will not make a ruling on bias. It doesn’t particularly affect my strategy for my defence, that’s fine. It will go to the TUCO round bias and I think there is enough evidence and I’m also aware that we haven’t, you know, I think if the panel is going to make a decision on whether there is bias then I want to be able to go through the evidence, if the panel says that we will not make a ruling on bias then I’m happy to park that with a view to the TUCO will be looking at that in the future, but just to be clear, I’m not relying on my defence that I’m just going to rule the trial as a mistrial. I believe I have a defence and I want to present that defence and have that defence tested.”

241. Nor is it consistent with his email to Mr Carr on 15 March 2022 when he explained that as, in his view, the first Resolution Panel was not independent he would present his defence to the Appeal Panel.

Consequently, I find that the Appeal Panel did not breach MRP 7.3 by deciding not to consider Mr Dawes’ allegations relating to conflict of interest, or bias, at the first Resolution Panel.

Enforcement

242. I must consider whether it is necessary for me to make an enforcement order in relation to Complaints 8 and 3.
243. My powers of enforcement are set out in 108B(3) of the 1992 Act. Those powers are limited to requiring the Union:
- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
 - (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.
244. Mr Dawes argued that, having found this breach, I should strike those suspensions down. Those suspensions have now expired and Mr Dawes has been expelled from the Union following the decision of the Appeal Panel. Consequently, any decision to remove those suspensions would have no effect. Even if the suspensions remained in place my powers would be limited to removing the suspension or to requiring the Union to remove the suspension. It is not the imposition of the suspension which caused the breach but the failure to review it.
245. I also have the power to impose a financial penalty for any breach which occurred after the 31 March 2022. The suspensions remained in place until Mr Dawes was expelled from the Union on 4 April 2022. Whilst, technically, the breach was ongoing after 31 March 2022 I do not believe it would be proportionate to impose a financial penalty where the relevant decision making arose before 1 April 2022 and where the breach was ongoing for just 4 days after 31 March 2022.
246. I do not, therefore, consider it appropriate to make an enforcement order or to impose a financial penalty.

Final Comments

247. Finally, it is worth recording here that I worked at the Nursing and Midwifery Council (NMC) between 2008 and 2011. At that time, I worked with the Royal Council of Nursing (RCN) but did not have any contact with those RCN staff and Council Members involved in Mr Dawes' complaints. I believe that I may have met the former General Secretary, but she would not have been a member of the RCN staff at that time. I also worked with Judith Ellis whilst Ms Ellis was an NMC Council Member and I was a member of the NMC Senior Executive Team. This was a professional relationship and I have had no contact with Ms Ellis since 2011. Bearing in mind the passage of time and that any contact has been in a professional capacity I believe that I was able to consider these complaints. I made Mr Dawes and the RCN aware of my role at the NMC, as described above, ahead of the Hearing. Neither raised any objections to me considering the complaints.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', is written over a horizontal line. The signature is cursive and somewhat stylized.

Sarah Bedwell
The Certification Officer

Annex 1

The complaints

Complaint 1

Rule 1.10 of the Member Resolution Policy

“All individuals involved in the resolution process (including the respondent, witnesses, investigating team, staff members and panel members) are expected to maintain appropriate confidentiality.”

Rule 7.1 in the Royal Charter

“7.1 There shall be a Council of the College which shall have the general control and management of the administration of the College and may exercise all the powers vested in it by law”.

On 18th June 2021, the RCN General Secretary was suspended by RCN Council members and an external investigation was commissioned based entirely on accusations made by her deputy Pat Cullen. On 25th June 2021, RCN Council approved a settlement agreement and on Thursday 1st July 2021, the RCN released a statement saying that after a period of ill health the former General Secretary had taken a decision to step down as General Secretary.

On 30th June 2021, RCN Council met and commissioned an external investigation into Dr A and on 6th July 2021, Dr A resigned from Council with immediate effect.

At no stage were the suspension or either investigations communicated to the membership.

On 12th July 2021 I was informed by Pat Cullen, Rod Thompson and Carol Popplestone that complaints had been received about me regarding social media posts and I was pressured to resign as Chair of Council which I refused to do.

On 13th July 2021, the following was emailed to all 475,000 members:

“In the past week, the RCN has received complaints about the conduct of the Chair of Council. We take any such complaint extremely seriously and have a robust member resolution policy which allows for independent investigations to be carried out.

As investigation will now take place and Dave Dawes has announced that he will voluntarily step down from his role as Chair of RCN Council. Our current Vice Chair, Carol Popplestone, who

was elected last year, will act into the role with immediate effect. Dave Dawes will remain as Council member for the North West region.

The RCN's own internal media company (RCNi) also published false and defamatory material claiming that I "had quit amidst complaints about (his) conduct".

In terms of the breach of confidentiality, there were 5 specific breaches as follows:

- a) the email that was sent on the 13th July to the membership. This is the most serious of the breaches
- b) Pat Cullen (the RCN General Secretary) breached my confidentiality when she discussed the complaints with Rod Thomson on the 9th July. I believe that this conversation was confirmed in the RCN's letter to you of the 2nd November
- c) Pat Cullen (the RCN General Secretary) breached my confidentiality when she discussed the complaints with Carol Popplestone on the 9th July. I believe that this conversation was confirmed in the RCN's letter to you of the 2nd November
- d) Pat Cullen (the RCN General Secretary) breached my confidentiality when she discussed the complaints with Jeremy Benton on the 12th July. I believe that this conversation was confirmed in the RCN's letter to you of the 2nd November.
- e) Pat Cullen (the RCN General Secretary) breached my confidentiality when she discussed the complaints at a Council meeting on the 13th July.

Complaint 2

Breach of rule 19.1 of the Standing Orders

Meetings of the Council shall take place at least three times in every year. Notices of every meeting of the Council stating the purposes for which the meeting is convened shall be sent to every Council Member at least three clear days before the day of the meeting

From the Policy and process for running meetings of the RCN Council, Boards and Committees:

Rule 3.1 A special meeting may be called by the Chair, the Vice Chair (if the Chair is not available) or half of the Members of the Council, Board or Committee by giving notice in writing or by email to the Secretary to the Council, Board or Committee.

3.2 As much notice as is practicable, and at least 48 hours' notice, should be given of the date of a special meeting.

3.3 The business of a special meeting shall be as specified by the person or persons calling it and no other business shall be taken at the meeting. The business must be within the remit of the Council, Board or Committee.

The Vice Chair decided on the morning of the 13th July to call a meeting of Council for later that evening and failed to inform me that the meeting was taking place.

The meeting was not called by the Chair and as the Chair was available, the Vice Chair did not have the authority to call the meeting in breach of rule 3.1.

I was not given notice of the meeting in breach of rule 3.1 and Standing Order 19.1. Less than 12 hours' notice was given in breach of rule 3.2 and Standing Order 19.1. The business of the meeting was not specified in breach of rule 3.3.

Complaint 3

Breach of Rule 4.3.8 of the Member Resolution Policy

“4.3.8. Suspension in these circumstances is not a sanction: and does not involve any prejudgement of the issue in question. It should be kept under review to ensure it does not last longer than necessary.”

I asked for the suspension to be reviewed by Council in November and December (emails 1 and 4) as the length of the suspension was far in excess of the timescales set down in the policy and these requests for a review were ignored.

Complaint 4

Rule 4.3.10 of the Member Resolution Policy

“4.3.10. The normal time limit is 60 days in respect of suspension of a member from office, unless the period is extended by agreement between the parties in circumstances such as failure to comply with the policy time lines. The exception to this is in relation to financial irregularities, in which case the member can be suspended from holding office until the conclusion of the investigation, hearing or appeal.”

The suspension notice was issued on the 14th July 2021 and I remain suspended today (183 days later). None of the charges against me relate to

any financial irregularities and I never agreed to an extension.

Complaint 5

Breach of Rule 6.1 of the Member Resolution Policy

“6.1 If it is decided that there is a case to answer the individual should be notified in writing within 5 working days by the Customer Relations Manager that the matter will be heard at a Resolution Hearing.”

The notification that the matter will be heard at a Resolution Hearing should have been sent by the end of the 15th October and should have included the hearing date.

I was notified by the investigator into the July complaints that she had completed her investigation and the report on the 11th October (email 5) which was 4 months. I should have received a copy within 5 working days (by the end of the 15th October) and I eventually received a copy of the investigation report on the 18th October 2021 (email 3) but with no hearing date. I was informed on the 10th November (email 7) of the hearing date in December.

The notification was not sent within 5 days and did not include the details of the time and venue for the hearing and the attendees at the hearing.

Complaint 6

Breach of Rule 6.2 of the Member Resolution Policy “6.2 The notification should include:

6.2.1 Summary of the case against the member and specific allegations to be dealt with at the hearing

6.2.2 Any written investigation report arising out of the investigation

6.2.3 Any written evidence and witness statements that will be presented at the hearing.

6.2.4 Details of the time and venue for the hearing

6.2.5 Attendees at the hearing

6.2.6 Confirmation that the respondent may submit witness evidence or documentation to be present at the hearing

6.2.7 Confirmation of their right to be accompanied at the hearing. Representation from the RCN will not be available.”

The notification was not sent within 5 days and did not include the details of

the time and venue for the hearing and the attendees at the hearing.

I was notified by the investigator that she had submitted the report on the 11th October (email 5) and I should have received a copy within 5 working days. I eventually received a copy of the investigation report on the 18th October 2021 (email 3) but with no hearing date and no list of panel member attendees. I was only informed on the 10th November that the hearing was now scheduled for the 15th and 16th December (email 7) which is 31 days after the report was received.

Complaint 7

Complaint of Breaches of Rule 7.3.1 and 7.3.2 Introduction to the Member Resolution Policy:

“The aim of this policy is to:

Enable the RCN to remedy any problems of misconduct or behaviour promptly and effectively.

Ensure members are informed of the action that may be taken if they fail to meet the RCN’s standards of conduct and behaviour.

Deal with conduct matters lawfully, fairly and using the principles of natural justice.”

**Rule 7.3 of the Member Resolution
Policy “7.3 Resolution panel members
will have;**

7.3.1 Have a minimum of 3 members – one of which will be a member of RCN Council chairing the panel. In the case where a Council member is the respondent the panel will be chaired by an independent person.

7.3.2 Shall have no conflict of interest with the allegation(s) to be heard.”

Members of the appeal panel have a conflict of interest with the allegations to be heard. The principles of natural justice dictate that a panel to consider charges is independent of the people and the issues involved in these charges. The principles of natural justice would also dictate that any decision can be appealed against and the policy explicitly states that I should be allowed an appeal hearing.

When I was notified that Lord Victor Adebowale and Carol Webley-Brown were to be appointed as panel members, I wrote to Council on the 14th November (email 4) to complain that neither of these were independent of the allegations or people involved in the case and that there were clear conflicts of interest. I made it clear that Carol Webley-Brown is a friend of Dr A (who is the subject of

one of the complaints) and there is documentary evidence of their friendship and their admiration for each other. Lord Victor Adebowale has been a board colleague of mine for several years and has been a board colleague of the previous General Secretary for several years and whose removal is directly relevant to many of the allegations against me.

I received no reply from Council. I then emailed Alice Mayhew on the 1st December pointing out the broad areas where I felt that Lord Victor Adebowale and Carol Webley-Brown were conflicted (email 8). I did not include any of the substantial evidence that we had collected at this stage and Alice Mayhew did not request any evidence or speak to us to seek any clarification.

I received an email from Alice Mayhew on the 14th December (the chair of the panel) saying that she had determined that there were no conflicts of interest even though she had not spoken to us or requested documentary evidence. I then wrote to Jo Galbraith-Marten on the 14th December (email 6) saying that I wished to appeal this decision and to have an appeal hearing. Jo Galbraith-Marten responded on the 5th January 2022 (email 9) to state that she would not allow an appeal against Alice Mayhew's decision.

At no stage in December did Alice Mayhew ask for any evidence from me or speak to me and therefore failed to consider the evidence I had accumulated showing that Lord Victor Adebowale and Carol Webley-Brown were not independent of the case and had conflicts of interest relating to close personal friendships with people at the heart of the case.

Complaint 8

Rule 4.3.8 of the Member Resolution Policy

“4.3.8. Suspension in these circumstances is not a sanction: and does not involve any prejudgement of the issue in question. It should be kept under review to ensure it does not last longer than necessary.”

Breach of Rule 4.3.8 of the Member Resolution Policy - “4.3.8. Suspension in these circumstances is not a sanction: and does not involve any prejudgement of the issue in question. It should be kept under review to ensure it does not last longer than necessary.”

Between the 22nd September 2021 and the 4th April 2022, the union breached this rule, because they failed to keep the suspension under review, as required by that rule.

The arguments for the inclusion of this complaint are exactly the same as the arguments for Complaint 6 which has already been listed. The RCN failed to keep the suspension under review as they were required to do by the policy. It

has been accepted that there is a case for the RCN to answer in regard to failing to review the suspension from the 14th July 2021 until the 4th April 2022, and so logically the same failure to review should apply to the second suspension from the 22nd September 2021 until the 4th April 2022. Neither suspension was reviewed and so the rule was breached in relation to both suspensions.

Complaint 9

Rule 4.3.10 of the Member Resolution Policy

“4.3.10. The normal time limit is 60 days in respect of suspension of a member from office, unless the period is extended by agreement between the parties in circumstances such as failure to comply with the policy time lines. The exception to this is in relation to financial irregularities, in which case the member can be suspended from holding office until the conclusion of the investigation, hearing or appeal.”

Breach of Rule 4.3.10 of the Member Resolution Policy - “4.3.10. The normal time limit is 60 days in respect of suspension of a member from office, unless the period is extended by agreement between the parties in circumstances such as failure to comply with the policy time lines. The exception to this is in relation to financial irregularities, in which case the member can be suspended from holding office until the conclusion of the investigation, hearing or appeal.”

Between the 21st November 2021 and the 4th April 2022, the union breached this rule, because they failed to terminate the suspension, as required by that rule which limits the length of suspension.

The issue here is that the second suspension ran from the 22nd September 2021 until the 4th April 2022 which is a breach of the 60 day limit. The second suspension did not relate to financial irregularities and so the suspension breached the 60 day limit on the 21st November 2021. The rule states “the exception to this is in relation to financial irregularities” but it does not say anything about “in exceptional circumstances”. The use of the singular term “the exception” implies that there is only one exception and that that exception relates specifically to financial irregularities. The rule explicitly states that this is the time limit unless the period is extended by agreement and this was not the case.

Complaint 10

Rule 7.3 of the Member Resolution Policy

“7.3 Resolution panel members will have;

7.3.1 Have a minimum of 3 members – one of which will be a member of RCN Council chairing the panel. In the case where a Council member is the respondent the panel will be chaired by an independent person.

7.3.2 Shall have no conflict of interest with the allegation(s) to be heard.”

The Appeal Panel of 17th March and the 18th March 2022 was held chaired by Bruce Carr with Jeremy Benton (Council member) and Judith Ellis. The panel refused to hear the appeal into the composition of the Mayhew Panel and I was only notified that the Appeal Panel would not hear this appeal on the morning of the appeal hearing. The chair Bruce Carr claimed that they would not hear the appeal into the composition of the Mayhew Panel because they wanted witnesses to give evidence but there was no attempt made to contact these witnesses or request their attendance at the hearing.

This Appeal Panel was also not free of conflicts of interest or bias. Two members of this panel had clear conflicts of interest and potential biases. Bruce Carr had conducted the disciplinary investigation into the former General Secretary which I had whistleblown about and which he had received an estimated £500,000 to conduct. Therefore in effect Bruce Carr was ruling on the exposure of his own report. Bruce Carr has also been working for the RCN since June 2021 at a rate of £600 per hour, meaning that he has received an estimated £1 million from the RCN. I whistleblew about the cover up of the true nature of much of that work; which could have jeopardised that contract. Jeremy Benton was one of the three Council members who planned my disciplinary process with Pat Cullen in July 2021, had pressured me to resign as Chair of Council “to protect my reputation” and who had also put himself forward for election as Chair of Council in November. If the Appeal Panel had reinstated me to Council then this would have made it much harder for Jeremy Benton to realise his ambition of becoming Chair of Council.

The principles of natural justice dictate that a panel to consider charges is independent of the people and the issues involved in these charges. The principles of natural justice would also dictate that any decision can be appealed against and the policy explicitly states that I should be allowed an appeal hearing.

Annex 2

The allegations referred to the Resolution Panel:

- A) GMB complaint under the heading “the literal dismissal of concerns about bullying behaviours” (contrary to s.1.9.1 & s.1.9.9 Member Resolution policy)
- B) GMB complaint under the heading “attack publicly a council member in respect of resignation” (contrary to s.1.9.1 & s.1.9.9 Member Resolution policy)
- C) Students’ complaint under the heading “dismissive defensive and passive aggressive silencing of women” (contrary to s.1.9.1 Member Resolution policy)
- D) Students’ complaint under the heading “white male fragility” (contrary to s.1.9.1 Member Resolution policy)
- E) Students’ complaint under the heading “instead of listening and compassion we saw defend and attack mentality playing out in a public forum” (contrary to s.1.9.1 Member Resolution policy)
- F) RCNi complaint “The Chair’s responses to staff questions on July 7th, in relation to bullying, diversity and inclusion, were perceived by staff as unprofessional, and did not address concerns about RCN culture and accountability” (contrary to s.1.9.1 & s.1.9.9 Member Resolution policy)
- G) RCNi complaint “In addition, social media activity by Council members, most recently about the resignation of Dr A, demeans an organisation that has a proud heritage as the “Voice of Nursing” (contrary to s.1.9.1 & s.1.9.9 Member Resolution policy)
- H) RCN Feminist Network complaint under the heading “Mr Dawes displays open hostility toward women on social media when they challenge the

- lack of diversity within the college and other gender diversity issues. Mr Dawes has not responded well to criticisms regarding lack of diversity on council, often becoming confrontational or dismissive on social media” (contrary to s.1.9.1 & s.1.9.4 Member Resolution Policy)
- I) RCN Feminist Network complaint under the heading “Mr Dawes has been hostile towards members of the RCN feminist network and his comments also suggest they are unlikely to see support for the issues they raise” (contrary to s.1.9.1 & s.1.9.4 Member Resolution Policy)
- J) Laura Jackson complaint under the heading “concern in relation to Mr Dawes’ recent and historic conduct on social media (namely the twitter social media platform) that in Laura’s opinion shows abusive behaviour and brings the RCN into disrepute” (contrary to s.1.9.1, s.1.9.3 & s.1.9.9 Member Resolution Policy)
- K) Helen Whyley complaint “That on the 5th March 2021 on a Microsoft teams meeting call Mr Dawes threatened her that he could ensure that if the TUC took a vote of no confidence in her it would be unanimous.” (contrary to s.1.9.1 & s.1.9.4 Member Resolution Policy)
- L) Angelfish CIC concerns regarding invoice dated 3rd June 2021 (contrary to s.1.9.9 Member Resolution Policy)

Annex 3

Chronology of Mr Dawes' complaint, his correspondence with the Certification Office, and the key stages of the Union's disciplinary process

12 July 2021 Mr Dawes agreed to step aside from his role as Chair pending the conclusion of an independent investigation into the initial allegations.

13 July 2021 Mr Dawes complained to the Union about breaches of confidentiality to Council Members, Members and through the Union's website

14 July 2021 Ms Cullen suspended Mr Dawes from his role on Council and from active membership of the Union.

31 August 2021 Mr Dawes made his first complaints to my office.

31 August 2021 Mr Mason reviewed the suspension which had been applied by Ms Cullen and decided that it should remain in place.

22 September 2021 Mr Mason commissioned a second independent investigation and imposed a second suspension on Mr Dawes.

11 October 2021 The first independent investigator provided her report to the Union and recommended that some of the allegations should proceed to a Hearing.

18 October 2021 Mr Mason informed Mr Dawes of the outcome of the first investigation and explained that he was arranging a Resolution Hearing which would be chaired by Ms Mayhew with Ms Webley-Brown as a Panel Member.

10 November 2021 Mr Mason informed Mr Dawes of the date for the Resolution Hearing and the full composition of the Resolution Panel.

14 November 2021 Mr Dawes, and Mr Philips, wrote to Council Members requesting that a Council sub-group be formed to have oversight of the disciplinary process against him. He raised a number of issues with the process

including the appointment of Panel Members “with direct conflicts of interest and who maintain personal relationships with key individuals underlying the complaints”.

23 November 2021 Mr Dawes wrote to Ms Mayhew requesting a discussion with her on a number of issues including the lack of independence of the other two Panel Members.

1 December 2021 Mr Dawes provided additional evidence to Mayhew and agreed that she should consider the issue of conflicts of interest and independence on paper.

14 December 2021 Mr Dawes emailed Ms Mayhew and informed her that, should she find that there were no conflict of interests in respect of Ms Webley-Brown and Lord Adebawale, he would immediately lodge an appeal.

14 December 2021 Ms Mayhew shared a copy of her decision on the composition of the Review Panel with Mr Dawes.

14 December 2021 Mr Dawes emailed Ms Mayhew and Ms Galbraith-Marten seeking to appeal Ms Mayhew’s decision and indicating that he would not take part in a hearing before a Panel which was not independent.

20 December 2021 My office listed a number of complaints, made to me on 31 August 2021, for a Hearing on 22 February 2022.

5 January 2022 I adjourned the 22 February 2002 Hearing so that the complaints could be clarified.

10 January 2022 Mr Dawes made additional complaints to my office including a complaint about the composition of the Resolution Panel.

14 January 2022 Mr Dawes wrote to Lord Adebawale explaining his reasons for objecting to Lord Adebawale’s role on the Resolution Panel and that he made a

complaint to me about the process. On 26 January 2022, the second Independent Investigator provided their report to the RCN.

31 January 2022 The first Resolution Panel went ahead. Mr Dawes read a statement at the beginning of the Hearing but did not otherwise participate.

8 February 2022 The first Resolution Panel issued their decision.

1 and 2 March 2022 The second Resolution Panel went ahead.

3 March 2022 The second Resolution Panel issued its decision.

3 March 2022 Mr Dawes appealed the decisions of both Panels.

13 – 15 March 2022 Mr Dawes and Mr Carr entered into an email exchange to discuss issues related to the upcoming Appeal Hearing.

17 and 18 March 2022 The Appeal Panel went ahead. During the Hearing the Panel decided not to hear the allegations of bias against the first Resolution Panel and to proceed to consider the appeal from that Panel as if it were a panel of first instance.

4 April 2022 The Appeal Panel issued its decisions on both appeals. Mr Dawes was expelled from the Union.

8 July 2022 I struck out two of the complaints arising from Mr. Dawes' second application which had been made on 10 January 2022.

13 July 2022 My office listed the live complaints to me for a Hearing on 3 and 4 October 2022.

26 September 2022 Case Management Meeting for the Hearing on 3 and 4 October 2022.

26 September 2022 I adjourned the scheduled Hearing pending the resolution of Mr Dawes' employment status by the Employment Tribunal.

26 September 2022 Mr Dawes submitted additional complaints relating to the second suspension and to the Appeal.

10 October 2022 My office listed all live complaints before me for a Hearing on 14 and 15 February 2022.

8 February 2022 Case Management Meeting for the Hearing on 3 and 4 October 2022

14, 15 and 24 February 2022 The Hearing considering Mr Dawes' complaints went ahead.