

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

**Substantive Hearing
Monday 12 – Thursday 15 December 2022**

Virtual Hearing

Name of Registrant: Kathleen Ellen Carey

NMC PIN 86Y0161W

Part(s) of the register: Nursing – Sub part 2
RN4: Registered Nurse - Mental Health (Level 2)
(11 April 1988)

Relevant Location: Bridgend

Type of case: Misconduct

Panel members: Simon Banton (Chair, Lay member)
Susan Field (Registrant member)
Rachel Barber (Lay member)

Legal Assessor: Fiona Moore

Hearings Coordinator: Sharmilla Nanan

Nursing and Midwifery Council: Represented by Alastair Kennedy, Case
Presenter

Mrs Carey: Not present and not represented at the hearing

Facts proved: Charges 1, 2, 3 and 4

Fitness to practise: Impaired

Sanction: **Striking off order**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Carey was not in attendance and that the Notice of Hearing letter had been sent to Mrs Carey's registered email address by secure email on 3 November 2022.

Mr Kennedy, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and a link to the hearing and, amongst other things, information about Mrs Carey's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

Decision and reasons on proceeding in the absence of Mrs Carey

The panel next considered whether it should proceed in the absence of Mrs Carey. It had regard to Rule 21 and heard the submissions of Mr Kennedy who invited the panel to continue in the absence of Mrs Carey. He submitted that Mrs Carey had voluntarily absented herself.

Mr Kennedy referred the panel to the cases of *R v Jones (Anthony William) (No.2)* [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162. He referred the panel to the email correspondence sent to Mrs Carey on 7 and 21 November 2022

reminding her of the hearing and asking whether she intended to attend. He noted that no response had been forthcoming from Mrs Carey nor had she returned a completed case management form.

Mr Kennedy advised that there had been no engagement at all by Mrs Carey with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion. He reminded the panel of the witnesses who were scheduled to attend the hearing and that if this hearing were to be adjourned it could cause an inconvenience to them. He also reminded the panel that hearings are not cost neutral and that if the hearing was adjourned this would result in wasted costs.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)*.

The panel has decided to proceed in the absence of Mrs Carey. In reaching this decision, the panel has considered the submissions of Mr Kennedy, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Mrs Carey has not engaged with the NMC and has not responded to any of the letters sent to her about this hearing;
- No application for an adjournment has been made by Mrs Carey;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Four witnesses are scheduled to attend to give live evidence during the course of the hearing;

- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2019;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Carey in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered email address, she will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Carey's decision to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Carey. The panel will draw no adverse inference from Mrs Carey's absence in its findings of fact.

Details of charge

That you, a registered nurse:

During the night shift of 19-20 June 2019, in relation to Patient A

1) Said words to the effect of:

- a) "You haven't got a wife, she is dead";
 - b) "You are a fucking widower";
 - c) "If I wanted a man I'd look for one younger and less wrinkly than you";
- 2) Failed to maintain Patient A's dignity by undertaking personal care and/or other intimate procedures in a non-clinical area and without privacy screens or curtains;
 - 3) Were unnecessarily rough with Patient A when undertaking personal care and/or other intimate procedures.
 - 4) Failed to preserve patient safety by using incorrect manual handling techniques.

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

Background

The NMC received the referral from Cwm Taf Morgannwg University Health Board (Health Board) on 12 November 2020. Mrs Carey began employment at the Health Board on 21 April 1985 and the charges arose whilst during her employment at the Health Board as a registered nurse on the nightshift of 19-20 June 2019, when she was the nurse in charge on Ward 15.

Ward 15 is an admissions ward for mental health patients over the age of 65 who could have any of the following mental health diagnoses including dementia, schizophrenia, anxiety or depression.

Patient A was admitted to Ward 15 at the Princess of Wales Hospital, on 19 June 2019. Patient A had advanced vascular dementia and required one to one care. Patient A was being cared for in the Ward's dining room, in a bed, by a health care support worker, Witness 1 during the night shift in question.

As Patient A had been incontinent, Witness 1 had asked Mrs Carey for assistance and went to collect bed linen. Two staff members were required to give personal care to Patient A, as he was immobile and required full assistance with his personal hygiene. When Witness 1 returned, he noted that the bedding had been had removed in a communal area and where no measures had been taken to preserve Patient A's dignity. Patient A was allegedly confused and upset. Patient A allegedly said to Mrs Carey, while she was cleaning his genital area with dry wipes, *"don't touch me, don't do that to me, I'm a married man"*. Mrs Carey allegedly replied to Patient A, *"you have not got a fucking wife, you're a fucking widower"* and *"If I wanted a man, I would look for one younger and much less wrinkly than you"*. Witness 2, another health care support worker, was also present at the time of this interaction.

It is alleged that Mrs Carey stated to Witness 1 that Patient A required an enema. Witness 1 went to get an incontinence pad and when he returned Witness 2 informed him that Mrs Carey had administered the enema. Witness 2 alleged that whilst Witness 1 had gone to collect linen, Mrs Carey started stripping Patient's A bedding, where the sheets were half on the bed and half off. It is alleged that Mrs Carey started to administer an enema and had one hand on Patient's A back pushing him against the bed railing and her other hand was administering the enema. Patient A is alleged to have tried to break free during this treatment. Further, this treatment was conducted in the Ward's dining area, a communal area, and no measures had been taken to preserve Patient A's dignity.

Subsequently, an investigation was carried out by the Health Board, however during the investigation Mrs Carey retired from the Health Board. Mrs Carey was informed by the Health Board that it would not conduct a hearing in her absence and would refer the matter to the NMC.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Kennedy on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Mrs Carey.

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

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

- Witness 1: Agency health care support worker providing assistance for Ward 15 on the nightshift of 19-20 June 2019. This shift was the first time he had worked with Mrs Carey.
- Witness 2: Bank health care support worker providing assistance on Ward 15 on the nightshift of 19-20 June 2019. She previously worked with Mrs Carey and knew her only in a professional capacity.
- Witness 3: Deputy Ward Manager for Ward 15 at the relevant time. She spoke to Witness 1 following the nightshift on 19-20 June 2019. She had a professional relationship with Mrs Carey.
- Witness 4: Employed as a senior nurse to cover the Older Adults units across a

number of sites at the relevant time for Cym Taf Morgannwg. She was the case investigator, who was tasked with conducting the Health Board's fact-finding exercise regarding the alleged incidents. She had not previously met Mrs Casey before the investigation.

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

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

Charge 1

"That you, a registered nurse:

During the night shift of 19-20 June 2019, in relation to Patient A

1) Said words to the effect of:

- a) "You haven't got a wife, she is dead";*
- b) "You are a fucking widower";*
- c) "If I wanted a man I'd look for one younger and less wrinkly than you"*

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the evidence of Witness 1, Witness 2 and documentary evidence of Witness 4.

The panel bore in mind that Patient A had advanced vascular dementia and required one to one care as he could not mobilise on his own and required full assistance with his hygiene needs. This is evident from the patient notes and oral testimony provided.

The panel considered Witness 1's NMC statement which stated: *"The Patient then made the comment, "don't touch me there, I've got a wife". She made the comment back, "you haven't got a wife, she's dead, you've got a widow [sic]". She said this in aggressive way, she sounded as if she was mocking the Patient and I would say that her tone of voice was hostile. I recall the exact words as I was mortified when she said them. The Patient started crying and the Registrant walked off."* The panel also took into account the investigation interview held on 10 January 2020 with Witness 4 and that it clarified the language and expletive used by Mrs Carey to Patient A during the shift. The panel bore in mind that Witness 1's oral evidence account was consistent with his NMC statement and investigation interview notes.

The panel next considered the evidence of Witness 2. In her NMC statement, she stated *"The Patient said to the Registrant, "don't touch me, don't do that to me, I'm a married man." The Registrant then said back to the Patient. "You have not got a fucking wife, you're a fucking widower." She added "if I wanted a man, I would look for one younger and less wrinkly than you."* The panel took into consideration the investigation interview held on 4 March 2020 with Witness 4, was consistent with her NMC statement and oral evidence.

The panel also took into consideration Mrs Carey's investigation interview held on 2 January 2020 in which she denied that she had said this and she stated, *"I know I wouldn't have said that because ask anyone, I'm like the grammar police. I wasn't reluctant to help, I was really ill and had strep throat... I don't think I would have said such a long speech because of my throat."*

The panel also bore in mind Mrs Carey's investigation interview held on 14 February 2020 which states:

"[Witness 4] – Did you have a good relationship with the Patient?

KC – Yes, he was a sweetheart.

[Witness 4] – According to the records the patient only arrived on the ward that day?

KC – Sorry, I thought he had been in the ward before. He was very similar to a previous patient. He was the moral [sic] of him. It is 8 months down the line, my recollection is poor. It was poor the day after. I am answering as honestly as I can. I am an honest person and we all make mistakes. If you say he was only admitted that day, he must have been."

It noted that Mrs Carey could not properly recall the patient with whom this interaction had occurred.

The panel noted that Witness 2 had previously worked some shifts with Mrs Carey but that this particular shift was Witness 1's first shift on the ward and with Mrs Carey. It also took into consideration the respective experience that Witness 1 and Witness 2 hold as health care support workers. It noted that Witness 1 and Witness 2 had not worked together before this shift and that it had no information or any reason as to why these individuals would collude with each other in relation to the statements made. The panel determined Witness 1 and Witness 2s' evidence was credible and reliable.

The panel therefore found the charge proved.

Charge 2

"2) Failed to maintain Patient A's dignity by undertaking personal care and/or other intimate procedures in a non-clinical area and without privacy screens or curtains."

This charge is found PROVED.

In reaching this decision, the panel took into account evidence of Witness 1, Witness 2 and documentary evidence of Witness 4.

The panel took into consideration Witness 1's NMC statement, which stated, *"After the Registrant came to help the Patient in the Day Room, where there were patients coming in and out of there throughout the night, she said that she wanted to clean and change the Patient in that room. This was after I suggested wheeling the Patient to his own room in order to change him. She said no, we will do it here. There were no privacy screens or curtains in the day room. I said ok, I felt it was her decision. I said to her I will go and get what is needed which included cleaning pads."* The panel also took into consideration the investigation interview held on 10 January 2020 and Witness 1's oral evidence, both of which were consistent with his NMC witness statement.

The panel noted that Witness 2 described that Mrs Carey had administered an enema to Patient A. She stated in her NMC statement, *"The Registrant had one hand on the Patient's back pushing him against the bed railing and her other hand was administering the enema. The Patient was squirming, trying to break free. The Patient was clearly confused and upset and did not know what was happening....Further this was being carried out in the dining room, which was not regular practice. Any toiletry [sic] needs would normally be done in the bedroom or the bathroom. I would never carry out an enema in a communal area, there is no privacy, and in this situation, there were no curtains or sheets protecting the Patient's dignity."* The panel also took into consideration that Witness 2's account in the investigation interview held on 4 March 2020 and her oral evidence. The panel considered her accounts to be consistent.

The panel also bore in mind Mrs Carey's investigation interview held on 14 February 2020 which contained partial admissions:

“[Witness 4] – If you were to give an enema in the lounge / conservatory area can you talk me through how that would work?”

KC – If in the lounge area – I mentioned privacy previously. Patients would be in different parts of the lounge area. They wouldn’t be able to see each other. If you go through the dining room they would be placed in the corner up against the door – no-one could walk in and see them...

I haven’t lied, I have tried to protect colleagues. It is the culture on the ward to nurse in that way. I have been going along with it, so I have condoned it. The patient was compromised and we couldn’t protect the patient’s dignity fully. I apologise. I cannot remember if the patient was in the lounge before I came on shift.”

The panel considered all of the evidence before it and determined that Mrs Carey failed to protect Patient A’s dignity and privacy. The panel therefore found this charge proved.

Charge 3

“3) Were unnecessarily rough with Patient A when undertaking personal care and/or other intimate procedures.”

This charge is found PROVED.

In reaching this decision, the panel took into account the evidence of Witness 1 and Witness 2.

The panel took into consideration Witness 1’s NMC statement, which stated, *“I said to her I will go and get what is needed which included cleaning pads. The Registrant waited until I got back and then we proceeded with changing the Patient, removing and replacing their incontinence pad. I felt this changing was inappropriate as the Registrant was really rough in cleaning him, when wiping their legs. She had dry wipes, the Patient was placed on*

their back and she was cleaning their testicle area.” The panel also took into consideration the investigation interview held on 10 January 2020 and Witness 1’s oral evidence which were consistent with his account. It noted that in his oral evidence, Witness 1 said that Patient A was whimpering and that he was saying ‘ow’ when she was cleaning him. The panel determined that Witness 1’s evidence was credible and reliable.

Witness 1 referred to another incident which took place during the shift in his statement, *“[Witness 2] told me that the Registrant had conducted the enema on her own. She said “the nurse only went and gave the enema on her own”. She was shocked by what she had witnessed. She did not tell me what the Patient’s response was and she was the only one who witnessed it.”*

The panel took into consideration Witness 2’s NMC statement which stated, *“The Registrant had one hand on the Patient’s back pushing him against the bed railing and her other hand was administering the enema. The Patient was squirming, trying to break free. The Patient was clearly confused and upset and did not know what was happening... I observed the struggle between the Registrant and the Patient, and went over to try to reassure the Patient and try to diffuse the incident, as well as to try and support the Registrant in carrying out the enema.”* The panel also took into consideration that Witness 2’s account in the investigation interview held on 4 March 2020 and her oral evidence. It noted that in her oral evidence, Witness 2 said that Mrs Carey had ‘*manhandled*’ Patient A and that he was shouting. The panel took into account that her accounts were consistent.

The panel concluded that Mrs Carey had been unnecessarily rough with Patient A when undertaking personal care and /or intimate procedures. It therefore found this charge proved on the balance of probabilities.

Charge 4

“4) Failed to preserve patient safety by using incorrect manual handling techniques.”

This charge is found PROVED.

In reaching this decision, the panel took into account the evidence of Witness 2, Witness 3 and Witness 4.

The panel considered the documentary evidence of Witness 4. It took into account the ‘Older Adult Mental Health Service: Enhanced Risk Assessment’ which stated that Patient A *“Required full assistance with personal hygiene needs”*. It also considered the ‘Patient Handling Risk Assessment and Safer Handling Plan’ which stated that Patient A required assistance with ‘moving in bed’ and ‘out onto and from edge into bed’ through the use of sliding sheets with two members of staff. The panel bore in mind that the risk assessments for Patient A were completed on 19 June 2019, the date of his admission to Ward 15.

The panel bore in mind Patient A’s vascular dementia diagnosis and the oral evidence of Witness 3 who stated that Patient A did not have mental capacity or capability to manage his own personal hygiene or to move unassisted.

The panel took into consideration Witness 2’s NMC statement which stated, *“The Registrant had one hand on the Patient’s back pushing him against the bed railing and her other hand was administering the enema. The Patient was squirming, trying to break free. The Patient was clearly confused and upset and did not know what was happening...”* It noted that her evidence was consistent with the investigation interview held on 4 March 2020 and her oral evidence. It also took into consideration that there was no mention of the use of a ‘sliding sheet’.

The panel considered the oral evidence of Witness 4 who indicated that the appropriate manual handling techniques would be required to ensure the safety of the patient and also for the staff who were attending to the care of the patient. The panel was satisfied that

there was a duty on Mrs Carey, as the nurse in charge of the shift, to review Patient A's risk assessments in order to ensure his safety and to provide the appropriate care.

The panel noted that Mrs Carey did not remember giving the enema but did acknowledge her signature on the patient's MAR (medication administration record) as having administered it.

The panel was of the view that Patient A was distressed during the administration of the enema by Mrs Carey as the appropriate manual handling techniques had not been followed. The panel was satisfied that Mrs Carey failed to preserve Patient A's safety and therefore found this charge proved.

Fitness to practise

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

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

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

Submissions on misconduct

Mr Kennedy referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a ‘*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*’

Mr Kenney invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015)’ (the Code) in making its decision.

Mr Kennedy identified the specific, relevant standards where Mrs Carey’s actions amounted to misconduct. He submitted that Mrs Carey’s behaviour must be serious for it to be considered as misconduct. He acknowledged that not all breaches of the Code will amount to a finding of misconduct but submitted the panel should consider whether Mrs Carey’s conduct fell below the standard expected of a registered nurse. He submitted that the charges found proved relate to verbal abuse and manhandling of a patient as well as a disregard to a patient’s dignity and privacy. He submitted that these were significant departures from the standards expected of a registered nurse and that Mrs Carey’s behaviour amounts to misconduct.

Submissions on impairment

Mr Kennedy moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. He submitted that Mrs Carey had broken the bond of the patient and nurse relationship which may have affected the way her patients, colleagues, employer, and members of the public perceive her. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Mr Kennedy noted Mrs Carey's lack of engagement with the NMC and that she has not provided any substantive response to the charges which have been found proved. He noted Mrs Carey has not provided any reflection, insight or information regarding any steps taken to strengthen her practice in relation to the charges without which there remains a risk of repetition. He noted that there was no physical harm to Patient A but that there was scope for psychological harm. He invited the panel to make a finding of current impairment but reminded it that a finding of impairment is a matter for the panel's own professional judgment.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

The panel considered the seriousness of the conduct in the charges found proved. The panel had regard to the vulnerability of Patient A and that Witness 2 felt that she had to intervene whilst Patient A was under Mrs Carey's care to reassure and protect the patient.

The panel took into account that patients were being cared for in their beds in the Ward's dining room. The panel considered personal care to be provided in the dining room with regard to infection control, hygiene, patient's privacy and dignity to be unacceptable. The panel bore in mind that there were other options available for the care of these patients beyond the dining room which were disregarded.

The panel took into consideration that there was no evidence that Patient A suffered any physical harm. The panel found however, that Patient A was put at an unwarranted risk of

harm when Mrs Carey was administering the enema and moving him without using the appropriate means and had her hand on his back forcing him into the rails of the bed. The panel took into consideration Witness 1's evidence that Patient A was shouting and crying during and after his interactions with Mrs Carey. It also took into consideration that Witness 2 had to intervene when Mrs Carey administered the enema to Patient A. It found that Patient A was distressed as a result of Mrs Carey's misconduct.

The panel took into consideration that Mrs Carey was the nurse in charge of the shift however she did not show any leadership and used her position to override the suggestions of Witness 1 to protect the privacy and dignity of Patient A. It noted Mrs Carey's comments in her investigation interview held on 14 February 2020, where she stated: *"If we are nursing with a good team – they can sort themselves out and get on with what they need to do"*. The panel was of the view that Mrs Carey failed to work in partnership with her staff members and did not take any accountability for staff or patients on the shift in question.

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

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

- 1.1 *treat people with kindness, respect and compassion*
- 1.2 *make sure you deliver the fundamentals of care effectively*

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

- 2.1 *work in partnership with people to make sure you deliver care effectively*
- 2.6 *recognise when people are anxious or in distress and respond compassionately and politely*

5 Respect people's right to privacy and confidentiality

To achieve this, you must:

5.1 respect a person's right to privacy in all aspects of their care

8 Work co-operatively

To achieve this, you must:

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

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

19.3 keep to and promote recommended practice in relation to controlling and preventing infection

19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that other health care professionals would find Mrs Carey's actions deplorable, and this was demonstrated by the evidence of Witness 1 and Witness 2.

The panel found that Mrs Carey's actions did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...'*

The panel found limbs a, b and c of the *Grant* test are engaged.

The panel noted that Mrs Carey's conduct resulted in the generation of a Protection of Vulnerable Adults referral. Mrs Carey's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Mrs Carey had not engaged with the NMC and she has not provided a reflective piece demonstrating her insight into how her conduct has affected Patient A, her colleagues, the nursing profession or public confidence in the nursing profession. The panel noted in the Health Board's investigation interviews Mrs Carey noted that she had condoned a poor practice of providing patients with personal care in the Ward's dining room. The panel has no information before it, as to how Mrs

Carey would handle similar circumstances in the future if she were to return to nursing practice.

The panel took into consideration that Mrs Carey stated in the Health Board's investigation interviews that she was unwell during the shift of the 19-20 June 2019. However, the panel bore in mind that it has had no independent medical evidence to verify this position.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Carey has taken steps to strengthen her practice. The panel bore in mind that it had no evidence of Mrs Carey's strengthened practice and she has not engaged with the NMC. The panel noted that during her interviews for the Health Board's investigation, Mrs Carey did not admit the charges other than to accept that she shouldn't have condoned the use of the day room for Patient A's personal care and did not take any responsibility for the issues outlined.

Therefore, despite the conduct being able to be remedied, the panel is of the view that there is a real risk of repetition based on the lack of Mrs Carey's insight and the absence any evidence of strengthened practice. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required. It concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Carey's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel determined that Mrs Carey's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to remove Mrs Carey from the register. The effect of this order is that the NMC register will show that Mrs Carey has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case, together with the submissions of Mr Kennedy and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Kennedy informed the panel that in the Notice of Hearing, dated 3 November 2022, the NMC had advised Mrs Carey that it would seek the imposition of a 9–12-month suspension with a review if the panel found her fitness to practise currently impaired. He submitted that sanction is a matter for the panel but that it must balance the interests of the public and Mrs Carey by working its way up from the least restrictive sanction to satisfy the public interest and public protection concerns.

Decision and reasons on sanction

Having found Mrs Carey's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful

regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Mrs Carey's lack of insight into failings.
- Mrs Carey's lack of remorse.
- No evidence that Mrs Carey has attempted to strengthen her practice.
- Conduct which put Patient A at risk of suffering harm.
- Patient A suffered psychological distress.
- During Mrs Carey's investigation interviews with the Health Board she attempted to shifted the blame to other staff members.

The panel also took into account the following mitigating features:

- The incidents took place over a single shift.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Carey's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Carey's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Carey's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel bore in mind that Mrs Carey has not engaged with the NMC therefore the panel has no information whether she would engage with a conditions of practice order. Furthermore, the panel concluded that the placing of conditions on Mrs Carey's NMC registration would not adequately address the seriousness of this case and would not reflect the impact that her actions would have on public confidence in the profession.

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

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

The panel took into consideration that Mrs Carey's conduct was repeated throughout the shift. It took into account Mrs Carey's interactions with her colleagues and Patient A, a vulnerable adult, during the shift in question and was of the view that she demonstrated significant attitudinal concerns. The panel bore in mind that it had no information that Mrs Carey has been working as a registered nurse since retiring from the Health Board and it therefore had no information that she has reflected on or addressed the concerns outlined in the charges. The panel also noted that Mrs Carey has had the opportunity to respond to the charges and provide evidence of any insight or remediation and she has chosen not to. The panel was therefore of the view that Mrs Carey was highly likely to repeat the misconduct in this case.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction due to the seriousness of the charges found proved.

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

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

Taking account of the above, the panel determined that Mrs Carey's misconduct was a significant departure from the standards expected of a registered nurse, and a serious breach of the fundamental tenets of the profession and fundamentally incompatible with remaining on the register.

Having identified that the risk of repetition of Mrs Carey's conduct is high and the deplorable nature of this conduct towards an extremely vulnerable patient, the panel determined that a strike off order is necessary on the grounds of public protection.

In making this decision, the panel carefully considered the submissions of Mr Kennedy in relation to the sanction that the NMC was seeking in this case. However, the panel considered that the public interest in this case is high and that a strike off order is required and permanent removal from the NMC register is necessary to address this, to maintain public confidence in the profession and to mark the seriousness of the case.

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

This will be confirmed to Mrs Carey in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Kennedy. He submitted that the striking off order will not take effect for 28 days until after the panel's decision therefore an interim suspension order is necessary to satisfy public protection and is otherwise in the wider public interest in the event of an appeal. If no interim order is imposed, then Mrs Casey would be able to work as a registered nurse without any restrictions and the public interest would not be satisfied. He invited the panel to make the interim suspension order for 18 months to cover the period for any potential appeal. He noted that if no appeal is made then the interim order will fall away after 28 days.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover any potential period of appeal.

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

That concludes this determination.