

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

**Substantive Hearing
Wednesday 26 January 2022**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant: Mamello Patience Herring

NMC PIN: 12F0521E

Part(s) of the register: Registered Mental health nurse, level 1
RNMH (17 January 2013)

Area of registered address: West Yorkshire

Type of case: Conviction

Panel members: Sue Heads (Chair, Lay member)
Beth Maryon (Registrant member)
Suzanna Jacoby (Lay member)

Legal Assessor: Simon Walsh

Hearings Coordinator: Anya Sharma

Nursing and Midwifery Council: Represented by Richard Webb, Case Presenter

Mrs Herring: Not present and not represented at this hearing

Consensual Panel Determination: Accepted

Facts proved: Charge 1

Facts not proved: None

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 Herring was not in attendance and that the Notice of Hearing letter had been sent to Mrs Herring's registered email address on 20 December 2021.

Further, the panel noted that the Notice of Hearing was also sent to Mrs Herring's representative at the Royal College of Nursing (RCN) on 20 December 2021.

Mr Webb, 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 venue of the hearing and, amongst other things, information about Mrs Herring'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 Herring 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 Herring

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

Mr Webb informed the panel that a provisional Consensual Panel Determination (CPD) agreement had been reached and signed by Mrs Herring on 24 January 2022.

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)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mrs Herring because she has engaged with the NMC via her representative at the RCN and has signed a provisional CPD agreement in which it states:

‘Ms Herring is aware of the Consensual Panel Determination (“CPD”) hearing. Ms Herring does not intend to attend the hearing and is content for it to proceed in her and her representative’s absence. Ms Herring will endeavour to be available by telephone should any clarification on any point be required, or should the panel wish to make any amendment to the provisional agreement. Ms Herring understands that if the panel wishes to make amendments to the provisional agreement that she doesn’t agree with, the panel will reject the CPD and refer the matter to a substantive hearing.’

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Herring.

Details of charge

That you, a registered nurse:

1. Were convicted on 20 August 2019 at Bradford Crown Court of care worker ill treatment/wilful neglect of an individual contrary to section 20 of the Criminal Justice and Courts Act 2015;

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

Consensual Panel Determination

At the outset of this hearing, Mr Webb informed the panel that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the NMC and Mrs Herring.

The agreement, which was put before the panel, sets out Mrs Herring's full admission to the conviction alleged in the charge and the facts that led to the conviction. She further admitted that her fitness to practise is currently impaired by reason of her conviction. It is further stated in the agreement that an appropriate sanction in this case would be a striking off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

'The Nursing & Midwifery Council and Mamello Patience Herring, 12F0521E ("the Parties") agree as follows:

1. *Ms Herring is aware of the Consensual Panel Determination ("CPD") hearing. Ms Herring does not intend to attend the hearing and is content for it to proceed in her and her representative's absence. Ms Herring will endeavour to be available by telephone should any clarification on any point be required, or should the panel wish to make any amendment to the provisional agreement. Ms Herring understands that if the panel wishes to*

make amendments to the provisional agreement that she doesn't agree with, the panel will reject the CPD and refer the matter to a substantive hearing.

The charge

2. *Ms Herring admits the following charge:*

That you, a registered nurse:

1. *Were convicted on 20 August 2019 at Bradford Crown Court of care worker ill treatment /wilful neglect of an individual contrary to section 20 of the Criminal Justice and Courts Act 2015;*

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

The facts

3. *Ms Herring appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Registered Nurse [Mental Health] and has been registered with the NMC since January 2013.*
4. *The NMC received a referral about Ms Herring's fitness to practise on 14 December 2018 from the Home Manager for Claremont House Care Home ("the Home"), part of Priory Adult Care ("Priory").*
5. *At the time of the concern raised in the referral, Priory employed Ms Herring as a registered nurse at the Home, having been employed there since July 2014.*
6. *On 5 December 2018, the Local Authority Safeguarding Team ("Safeguarding") contacted the Home and advised that a complaint had been*

made regarding the treatment of Resident A by Ms Herring and a care assistant on the night of 30 November 2018. The incident had been filmed by a covert CCTV camera installed in Resident A's bedroom by a member of her family.

- 7. Resident A had been within the Home for a period of months and was physically frail, had reduced mobility, suffered from dementia, psychosis and was partially blind. Her first language was Italian. Resident A required a walking frame to move to and from her bathroom and the assistance of two members of staff. She also required careful and calm explanations when interventions were taking place.*
- 8. On 6 December 2018, the investigating officer from Safeguarding contacted the Home again and provided further information. They informed the Home that Ms Herring and the care assistant had abused Resident A by drag lifting the resident from the toilet to the bed, a distance of approximately 2 to 3 metres.*
- 9. Ms Herring was subsequently suspended from duty while the allegation was investigated by Safeguarding and the police. Following the police investigation, Ms Herring was charged with a criminal offence.*
- 10. The NMC has obtained the CCTV footage, which also formed part of the criminal investigation. The footage shows Ms Herring and the care assistant drag Resident A across the floor of the bedroom with her underwear down around her legs. The footage then shows Ms Herring and the care assistant lift Resident A by her arms onto the bed. Resident A's distress can be heard on the footage audio.*
- 11. The footage is available for inspection should the panel wish to view it.*
- 12. Ms Herring was convicted on 20 August 2019 and was sentenced on 22 January 2021 at Bradford Crown Court to an 18 month community order, an*

unpaid work requirement of 250 hours and a victim surcharge of £85. The Judge made the following comments in their sentencing remarks:

“I am sure that many right thinking members of the public listening to the facts of this, if they were able to see the footage, brief though it is, might consider a short sentence of imprisonment for... you would be fully deserved. In my judgment you ... deserve to either lose or have lost already your jobs, because this kind of lack of humane treatment has no place whatsoever in any care home setting. However, you are ... of good character, you are likely to, if you have not already, lost your jobs and income from this kind of work, which is partial punishment at least, and I have concluded that this was not wilful or deliberate ill treatment of [Resident A], this was instead grossly negligent behaviour brought about, in my view, by a lazy, sloppy failure on both of your parts to take your time and follow proper caring procedures towards her. It would have taken minutes, not the seconds shown in the video, to talk her down, to explain to her, to give her the chance to go to the toilet as she wanted, to then accompany her on the Zimmer frame, to carefully lift, with the hoist is necessary, her onto the bed, to settle her for the night. It would have taken minutes, possibly fifteen, twenty, even half an hour, but that is what should have happened, because that is the kind of care that... her son, and [Resident A], had the right to expect, but instead you were obviously under pressure to do other jobs elsewhere, or you simply could not be bothered to follow those difficult procedures and you rushed her through and treated her like an object, and got her into bed and left her there knowing, as you must have done, that she had not properly visited the toilet, with the results that Mr [Resident A's son] found the next day, not to mention the distress caused to her during the incident, and the distress caused to him on learning of this and having to watch that footage of his mother being treated in this fashion. I am, nonetheless, going to pass community orders, I cannot justify prison sentences in this case, it would be wrong in principle. They will be of eighteen months duration in each of your cases to allow for COVID

conditions to be relaxed, as I hope and everybody hopes they will be, in the coming months so that you can perform unpaid work in the community by way of punishment for what you both did, and which you both richly deserve. Herring, in your case, you were the senior operative, you pleaded to the more serious offence, you will perform 250 hours of unpaid work.”

13. Herring initially pleaded not guilty in August 2019 but changed her plea to guilty well ahead of the trial date of 9 March 2020 at Bradford Crown Court. Ms Herring accepted the charge and current impairment in the Case Management Form dated 7 July 2021.

14. On 25 March 2021, the Disclosure and Barring Service “DBS” made a decision to place Ms Herring’s name on both the Adult Barred List and the Children Barred List.

Impairment

15. Ms Herring accepts that her fitness to practise is currently impaired by reason of her conviction.

16. The general approach, in establishing what might lead to a finding of impairment, was provided by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin), at paragraph 76 in the following terms:

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. ...

17. *The parties are in agreement that the first three limbs quoted above are engaged in this case.*

18. *Ms Herring's actions caused direct distress and unwarranted harm to Resident A, a vulnerable lady who was treated by Ms Herring without respect and with a disregard for her dignity. Ms Herring's actions also caused distress to the family of Resident A, whose concerns regarding the care Resident A was receiving were confirmed by a covert camera they had felt it necessary to place in her room.*

19. *The conduct carries with it inherent patient safety risks. As identified by Judge 1 in the sentencing remarks, the manner in which Resident A was moved by Ms Herring and the healthcare assistant is excluded as being potentially unsafe. The resultant harm was that Resident A was physically manhandled, whilst moaning and crying in distress, and was then left in her own urine soaked clothing until the following day:*

"You had ... been trained in how to move and handle a resident such as [Resident A], and drag lifting, which is the dragging and pulling of patients from underneath their arms, is specifically excluded as being both potentially unsafe to the resident or patient concerned, never mind the indignity that it

involves, and I totally reject any suggestion that ... you were not sufficiently trained or experienced to understand and appreciate that. Nobody should need training of any sort in how to treat somebody like [Resident A] with dignity and in a caring manner.

...

...to drag a lady as vulnerable as [Resident A] from the toilet, as you did, with her knickers around her ankles, and then to physically manhandle her up and onto and then up the length of her bed while she was moaning and crying in distress is a gross failure by both of you to care for this lady on that night. You left her in that position, laid on her bed, crying out that she wanted the toilet, and her son found her the next day in her own urine soaked clothing, and he had already suspected that the care she was receiving was not all that it should have been, and had installed a secret camera in that room to record just this kind of incident which he suspected may be occurring, and had he not done so you would have got away with it on this occasion, and quite probably on other occasions, because it is hard to believe that this was just a one off having watched the footage as I have.

...

... this kind of lack of humane treatment has no place whatsoever in any care home setting.”

20. Moving a resident in a manner that does not comply with manual handling guidance puts residents at significant risk of unwarranted harm.

21. The nature of the offending is a gross breach of the trust that members of the public place in registered and regulated professionals, in this case a nurse.

22. *The nature of the conviction and the sentence imposed has brought the profession into disrepute in that the public's trust in the nursing profession will have been very seriously undermined.*

23. *Ms Herring has breached the following standards of The Code (2018):-*

1 Treat people as individuals and uphold their dignity

2 Listen to people and respond to their preferences and concerns

To achieve this you must:

2.6 recognise when people are anxious or in distress and respond compassionately and politely

4 Act in the best interests of people at all times

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

20.4 keep to the laws of the country in which you are practising

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

Reflection, insight, remediation and remorse

24. The Parties next direct the panel to the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin), in which the court set out three matters which it described as being 'highly relevant' to the determination of the question of current impairment;

- Whether the conduct that led to the charge(s) is easily remediable.
- Whether it has been remedied.
- Whether it is highly unlikely to be repeated.

25. In relation to remediation, the Parties highlight the following extracts from the NMC guidance on "Serious concerns which are more difficult to put right" (at FTP-3a):

"being directly responsible (such as through management of a service or setting) for exposing patients or service users to harm or neglect, especially where the evidence shows the nurse, midwife or nursing associate putting their own priorities, or those of the organisation they work for, before their professional duty to ensure patient safety and dignity."

26. Similarly, the parties also highlight the guidance on "serious concerns which could result in harm to patients if not put right" (at FTP-3b):

"Prioritise people

The evidence shows that the nurse, midwife or nursing associate has failed to:

- *uphold people's dignity, treat them with kindness, respect and compassion, deliver treatment care or assistance without undue delay, or deliver the fundamentals of care (including hydration, nutrition, bladder and bowel care and ensuring people receiving care are kept in clean and hygienic conditions).*

- *make sure the physical, social and psychological needs of patients are responded to”*

27. *“Ms Herring has provided the NMC with testimonials and numerous training certificates obtained in the past 12 months (Appendix 1). These include:*

- *Dignity and Privacy (online) completed on 26 January 2021*
- *Safeguarding Adults Levels 1, 2, 3 and 4 (online) completed on 28 January 2021*
- *Manual Handling & Moving People (online) completed on 26 January 2021*
- *Work in a Person Centred Way (online) completed on 27 April 2021*
- *Duty of Care (online) completed on 27 April 2021*
- *Communication (online) completed on 28 April 2021*

28. *Although Ms Herring has taken these positive steps, due to the nature of the behaviour which led to Ms Herring’s conviction, it is difficult to remediate such serious failings and updating clinical training and practice is not sufficient in this case. In addition, Ms Herring would have already completed mandatory manual handling training prior to this incident and yet it still occurred.*

29. *Ms Herring accepts that her fitness to practise is impaired by way of her conviction. Ms Herring has provided a reflective response dated 6 May 2021 and a further reflection dated 21 January 2022 (**Appendix 2**).*

30. *In her response to the NMC’s investigation dated 6 May 2021, Ms Herring describes her actions which led to the conviction as “entirely unacceptable and reprehensible”. Ms Herring states that she was working in a demanding role, working long hours and was exhausted. Ms Herring says that her actions were not wilful or deliberate but were motivated by her*

awareness of more pressing tasks and that she is deeply ashamed of herself. Ms Herring states: "I accept entirely that no matter what my intentions were, that my conduct was entirely unacceptable and reprehensible". Ms Herring acknowledges the effects of her actions on Resident A and on the reputation of the nursing profession. Ms Herring also apologises for the harm caused to Resident A, and for breaching the trust of the resident's family.

31. Ms Herring expands in her reflection to say:

"Working in a nursing home setting can be very challenging, particularly when residents have complex care needs or can demonstrate challenging behaviour. When this incident happened, I was under stress and tired due to not sleeping well, therefore this might have affected my decision making. I also had flu symptoms and had taken medicines to ease the symptoms. I had other residents to deal with and was trying to balance the safety of resident [A] with the need to ensure the safety of other residents. I remember that the shift was very busy with lots of demands being placed on me and the staff."

32. This explanation does little to allay concerns or explain fully the conduct which led to her conviction. These factors alone cannot be used to justify the actions, which were a gross breach of the standards expected of a registered nurse and also show a lack of accountability for her actions.

33. Ms Herring's reflection does make reference to the NMC Code of Conduct and acknowledges that she failed to meet the standards expected. Ms Herring also includes a discussion of the training she has undertaken and how she would try to ensure that a similar situation never arises in future.

34. In Ms Herring's 21 January 2022 reflection, she reiterates her remorse and apologises for her conduct toward Resident A. Ms Herring also sets out her acceptance that a striking off order is necessary in her case and her awareness of the implications of such an order. This further reflection is indicative of Ms Herring's evolving insight into her failings as a nurse.

Public Protection Impairment

35. Although Ms Herring has undertaken reflection, her insight is evolving and she has shown remorse for her actions, this does not lessen the serious impact of her failings. Such behaviour cannot be absolved by any level of reflection. Offences of this nature can be seen as indicative of underlying attitudinal concerns. Irrespective of whether Ms Herring's behaviour was deliberately wilful, such conduct by a caring professional raises current and future concerns as to the safety of Ms Herring's unrestricted practice.

36. Also in relation to the risk of repetition, it is relevant to record that Ms Herring has been subject to a previous referral to the NMC, regarding an incident in September 2013. This led to a substantive hearing in 2015 where it was found that Ms Herring had hoisted a patient from the floor to their bed after a fall and had then failed to call emergency services, check on the patient or document what happened. At the substantive hearing the charges were admitted by Ms Herring and a 3 year caution order was imposed. The reasons for that hearing are appended to this agreement (Appendix 3).

37. The nature and background of this case demonstrate that there is a risk of repetition of the type of conduct which gave rise to Ms Herring's conviction. Therefore, if Ms Herring were allowed to return to unrestricted practice, she would present a risk to the health, safety and well-being of the public.

38. Accordingly, a finding of impairment is necessary on public protection grounds.

Public interest impairment

39. In *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that: “In determining whether a practitioner's fitness to practise is impaired ... 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.”

40. Ms Herring's actions and conviction has brought the nursing profession into disrepute and breached fundamental tenets of the profession. The Parties highlight the following extract from the guidance (at FTP-3c) on when action is required based on public confidence and professional standards: “Sometimes we may need to take regulatory action against a nurse, midwife or nursing associate because of our objectives to promote and maintain professional standards and the public's trust and confidence in nurses, midwives and nursing associates.

This means we may need to take action even if the nurse, midwife or nursing associate has shown that they have put serious clinical failings right, if the past incidents themselves were so serious they could affect the public's trust in nurses, midwives and nursing associates.

We're more likely to need to do this if the clinical failings suggest an underlying issue with the nurse, midwife or nursing associate's attitude to people in their care.”

41. Ms Herring's conviction relates to the ill treatment and neglect of a particularly vulnerable patient. The conduct has fallen so far short of the standards the public would expect of professionals caring for them. Given the serious nature of this conviction, a finding of impairment is necessary in order to protect the public and the wider public interest. If no finding of impairment were made, public confidence in the profession and the NMC as regulator would be seriously undermined.

42. A finding of impairment is therefore also necessary on public interest grounds.

43. The Parties agree that Ms Herring's fitness to practise is impaired on public protection and public interest grounds.

Sanction

44. The appropriate sanction in this case is that of a striking off order.

45. In determining sanction the panel should have regard to the NMC's published sanctions guidance.

46. The NMC identify the following as aggravating factors:

- The conviction relates to behaviour which placed a vulnerable patient at serious risk of harm and caused them distress*
- Ms Herring will not have completed her community order until July 2022*
- Ms Herring has a previous regulatory referral resulting in a 3 year caution order for a matter similar in nature to the facts which led to her conviction, in that she did not provide the appropriate standard of care to a patient*

47. In relation to mitigating factors, it is relevant that Ms Herring pleaded guilty during the criminal proceedings and has engaged with the fitness to practise process. Ms Herring has also completed relevant clinical training and provided evolving reflection.

48. In assessing the available sanctions in ascending order, considering the least restrictive first, taking no further action would not be appropriate as this matter is too serious and would not protect the public nor uphold the public interest.

49. Caution order: This matter is also too serious for a caution order. The NMC sanction guidance 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.’ Ms Herring’s conviction was not at the lower end of the spectrum and a caution order would be inappropriate in view of the seriousness of the case. It would be neither proportionate nor in the public interest to impose a caution order.

50. Conditions of practice order: Ms Herring’s actions resulted in a criminal conviction directly related to her clinical practice and constitutes conduct which surpasses poor clinical judgment alone. There are attitudinal concerns associated with the utter lack of respect and dignity shown by Ms Herring toward Resident A. Conditions would not be appropriate or proportionate and would not adequately protect the public interest.

51. Suspension order: Ms Herring was convicted for the ill treatment of an elderly and vulnerable resident and was sentenced to a community order for a period of 18 months. This will not be completed until July 2022. Accordingly, the NMC’s position is that Ms Herring should not be permitted to practise, at least for the duration that the sentence is in force. It is also of

relevance that Ms Herring has been placed on the Children and Adult barred list by the DBS. The nature of her conviction is of the gravest nature and raises fundamental concerns about Ms Herring's professionalism and public confidence would be undermined if Ms Herring were not removed from the register.

52. In this particular case, it is submitted that a suspension order temporarily removing Ms Herring from the NMC register would not be a sufficient, appropriate or proportionate sanction. This is a case which raises serious and fundamental concerns about Ms Herring's attitude and professionalism. A suspension order would not adequately address the public interest due to the seriousness of the conviction.

53. Striking off order: The actions which led to Ms Herring's conviction were a significant departure from the standards expected of a registered nurse and breached fundamental tenets of the profession. The previous regulatory finding and sanction against Ms Herring suggests a pattern of behaviour and deep-seated attitudinal concerns. In these circumstances, it is submitted that Ms Herring's conviction is fundamentally incompatible with her remaining on the register.

54. The Guidance (at SAN-2) states: "Cases about criminal offending by nurses, midwives or nursing associates illustrate the principle that the reputation of the professions is more important than the fortune of any individual member of those professions. Being a registered professional brings many benefits, by this principle is part of the 'price'."

55. A member of the public's view of how a registered nurse should conduct herself is adversely affected by the conduct of Ms Herring in this case. The findings in this particular case are such that to allow Ms Herring to return to practise would undermine public confidence in the profession and in the

NMC as a regulatory body. The position of the NMC is that nothing short of a striking off order would be sufficient or proportionate in this case.

56. Such an order is necessary for the protection of the public and to mark the importance of maintaining public confidence in the profession. It will also send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

Referrer's comments

57. ...

Relative's comments

58. The NMC has been in contact with Resident A's son in relation to this case and they have been asked if they wished to comment on the agreed sanction between the parties, Resident A's son informed the NMC of the negative impact Ms Herring's actions and conviction have had upon his trust in the healthcare system as well as the stress Ms Herring has caused. Relative A's son stated that he supported the proposed striking off order.

Interim order

59. An interim order is required in this case. The interim order is necessary for the protection of the public and is otherwise in the public interest for the reasons given above. The interim order should be for a period of 18 months in the event Ms Herring seeks to appeal against the panel's decision. The interim order should take the form of an interim suspension order.

The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The parties understand that, in the event that a panel does not

agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'

The provisional CPD agreement was signed by Mrs Herring and the NMC on 24 January 2022.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice.

Mr Webb referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or reject the provisional CPD agreement reached between the NMC and Mrs Herring. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

Mr Webb referred the panel to paragraph 57 of the CPD. He explained that whilst the NMC has made efforts to obtain referrer's comments, this has not been received. He further referred the panel to paragraph 58 of the CPD which sets out the relative comments, namely of Resident A's son, which provides a detailed description of the impact Mrs Herring's actions and convictions have had on him.

The panel noted that Mrs Herring admitted the facts underlying her conviction and the conviction itself. Accordingly the panel was satisfied that the charge is found proved by way of Mrs Herring's admissions, as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

The panel then went on to consider whether Mrs Herring's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Mrs Herring that her fitness to practise is impaired, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel took into account all of the information before it, including Mrs Herring's reflective piece, training certificates and character statements in her name. It was of the view that whilst she demonstrated some insight and remorse as detailed in her reflective piece, these are very serious attitudinal concerns which resulted in actual harm to a vulnerable patient, which was caught on CCTV footage. Mrs Herring was a registered nurse in a senior position and the charges directly relate to the expectations on an individual in such a role. The panel considered that the charge is very serious and the public interest would therefore not be satisfied if a finding of impairment was not made at this stage.

The panel determined that Mrs Herring's fitness to practise is currently impaired on the grounds of public protection and public interest. In this respect the panel endorsed the relevant paragraphs in the provisional CPD agreement.

Decision and reasons on sanction

Having found Mrs Herring'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:

- The conviction relates to behaviour which placed a vulnerable patient at serious risk of harm and caused them distress
- Mrs Herring will not have completed her community order until July 2022
- Mrs Herring has a previous regulatory referral resulting in a 3 year caution order for a matter similar in nature to the facts which led to her conviction, in that she did not provide the appropriate standard of care to a patient

The panel also took into account the following mitigating features:

- Ms Herring has completed relevant clinical training and provided a reflective piece

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 Herring'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 Herring'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 Herring'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 and was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Herring's

registration would not adequately address the seriousness of this case and would not protect the public.

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

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

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

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

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?*

Mrs Herring's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Herring's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. The panel further noted that Mrs Herring has had previous regulatory concerns and that her criminal conviction is for an offence only recently added to the statute book to reflect the public's growing concern about the mistreatment of the vulnerable by those responsible for their care.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mrs Herring'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.

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

Decision and reasons on 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 Herring's own interest until the striking-off sanction takes effect.

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

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

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

That concludes this determination.

This will be confirmed to Mrs Herring in writing.