

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

**Substantive Hearing
Tuesday 29 August 2023 – 8 September 2023**

Virtual Hearing

Name of Registrant: **Christina Eleth Carey**

NMC PIN 81Y0389E

Part(s) of the register: RN2: Adult nurse, level 2 (16 January 1984)
RN1: Adult nurse, level 1 (25 March 1996)

Relevant Location: Birmingham

Type of case: Misconduct

Panel members: Rachel Onikosi (Chair, Lay member)
Manjit Darby (Registrant member)
David Newsham (Lay member)

Legal Assessor: Nigel Ingram

Hearings Coordinator: Renee Melton-Klein

Nursing and Midwifery Council: Represented by Tom Hoskins, Case Presenter

Miss Carey: Not present and not represented

Facts proved: Charges 1a, 1b, 1c, 1g, 2a, 2d, 3a, 3b, 3c, 3d

Facts not proved: Charges 1d, 1e, 1f, 2b, 2c, 2e, 4

Fitness to practise: **Impaired**

Sanction: **Suspension Order (12 months)**

Interim order: **Suspension Order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Carey was not in attendance and that the Notice of Hearing letter had been sent to Miss Carey's registered email address by secure email on 3 July 2023.

Mr Hoskins, 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 that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss 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 Miss 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 Miss Carey

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

Mr Hoskins referred the panel to documentation from a phone call made to Miss Carey on 21 July 2023 from her case officer. The notes from the phone call were summarised as follows:

'I called Ms Carey and asked whether she wants to engage with the hearing and if so, whether she has any redaction requests. She said that she doesn't want to discuss things as she feels railroaded by the whole thing. She told me she's feeling very traumatized. I said that I appreciate it is not an easy process to go through and asked whether she would like me to send her the number for the emotional support line. I told her that I want to ensure that in terms of fairness, she is given the opportunity to engage; I said she can send me anything she wishes the panel to see. Ms Carey said that she does not want to engage or send anything but that she appreciated my call. She confirmed that the panel can proceed in her absence.'

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 Miss Carey. In reaching this decision, the panel has considered the submissions of Mr Hoskins, the documentation of the phone call with Miss Carey, 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* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Carey;
- Miss Carey has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;

- There is no reason to suppose that adjourning would secure her attendance at some future date;
- A number of witnesses have been warned to attend this hearing to give live evidence over the coming days;
- 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 2018-2019
- 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 Miss 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 has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC 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 Miss Carey's decisions 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.

The panel noted that though Miss Carey had been told in the Notice of Hearing that the hearing was to be held virtually on Teams link, the actual link had not been provided to her. The panel requested that the hearings coordinator write to her, providing her the joining link and inviting her to join, if she wished, at any stage of the hearing. This was done by email on day one of the hearing.

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

Details of charge

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital:

1. On 6 December 2018, in relation to Patient A:
 - a) Did not introduce yourself to Patient A and or Person B; **[Proved]**
 - b) Placed your hands on your hips and rolled your eyes at Person B; **[Proved]**
 - c) Spoke to Person B in a rude manner, and used words to the effect 'and you are?' **[Proved]**
 - d) Left Patient A to sit in urine-soaked clothing. **[Not Proved]**
 - e) Spoke in a disrespectful and or unprofessional way to one or more colleagues in the presence of Person B. **[Not Proved]**
 - f) Refused to provide Patient A with pain relief. **[Not Proved]**
 - g) Did not ensure that appropriate and timely pain relief was provided to Patient A. **[Proved]**
2. On 13 December 2018;

- a) Failed to allocate sufficient staff to cover patients who required enhanced care. **[Proved]**
 - b) Allocated a Student Nurse to monitor a Video Telemetry Room, (“VT”) patient, when a fully qualified Nurse was required. **[Not Proved]**
 - c) Left a Health Care Assistant to carry out all the personal care and assist with the daily activities of Section B and sides. **[Not Proved]**
 - d) Did not allocate a patient with severe diarrhoea to a room with a toilet; **[Proved]**
 - e) Laughed at colleagues who cleaned up the patient’s room which was covered in faeces. **[Not Proved]**
3. Failed to work cooperatively, in that you displayed patronising and unsupportive behaviour to other staff on ward 409 on more than one occasion;
- a) On numerous occasions would openly criticise staff in the presence of other staff members. **[Proved]**
 - b) When Colleague A indicated they were too busy to carry out repositioning of all your patients, after handover, said words to the effect “how can you be you’ve done nothing all day”. **[Proved]**
 - c) In the presence of other colleagues incorrectly accused Colleague A of not clocking you out. **[Proved]**
 - d) Said words to the effect that your colleagues were “stupid”. **[Proved]**

4. On the night shift of 13-14 January 2019 failed to respond in a timely and appropriate manner to Patient B, a patient with symptoms of urinary retention. **[Not Proved]**

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

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

During this course of the hearing, Mr Hoskins made a request that this case be held partly in private on the basis that private health information of witnesses could be described during oral evidence. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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

Having heard that there may be reference to private health information of witnesses, the panel determined to hold those parts of the hearing in private in order to protect their privacy.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Hoskins, on behalf of the NMC, to amend the wording of charges numbers 3 and 4.

The proposed amendments are as follows:

3. ***On 13 December 2018;***

Failed to work cooperatively, in that you displayed patronising and unsupportive behaviour to other staff on ward 409 on more than one occasion;

a) On numerous occasions would openly criticise staff in the presence of other staff members.

b) When Colleague A indicated they were too busy to carry out repositioning of all your patients, after handover, said words to the effect "*how can you be you've done nothing all day*".

c) In the presence of other colleagues incorrectly accused Colleague A of not clocking you out.

d) Said words to the effect that your colleagues were "stupid".

4. On ***the night shift of 13-14*** January 2019 failed to respond in a timely and appropriate manner to Patient B, a patient with symptoms of urinary retention.

Mr Hoskins first addressed the panel in regard to the amendment of charge 4. He submitted that the proposed amendment is merely to broaden the timeframe to cover a night shift which commenced on 13 January 2019 but finished the following calendar day (14th January 2019.) He submitted that this avoids the possibility of there being a technicality were the events to be found to have happened included events after midnight. He submitted that there is no unfairness to the registrant in regard to this, as the change reflects the evidence which Miss Carey has long known about, and which does not affect the merits of the case and the fairness of the proceedings.

Mr Hoskins then addressed the panel in regard to the proposed amendment of charge 3. He submitted that, whilst also related to the time frame of the charge, the suggested amendment has wider repercussions. He submitted, however, that the restriction of the charge solely to the date of 13 December 2018 is a clerical error that does not take into account the initial referral or the totality of the evidence. He specifically noted that the evidence of Witnesses 3, 4, and 5 would be irrelevant as the date of 13 December 2018 is not specifically identified.

Mr Hoskins submitted that, in regard to fairness, the registrant has had sight of the underlying evidence and not sought to exclude or redact any details, furthermore, she has chosen not to attend, and the panel has proceeded in her absence. He submitted that the regulatory concerns, which were formulated before the charges were drafted, were general in that they went to wider concerns about treatment of colleagues and Miss Carey provided, at the local level, a response to the totality of the allegations. He concluded that under these circumstances, there would be no unfairness to the registrant in accepting the amendments to charges 3 and 4. Furthermore he submitted that, conversely, if the panel were to deny this application it would prevent it from considering relevant background evidence and direct evidence of charge 3a).

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

The panel carefully considered the fairness of accepting the amendments to charges 3 and 4, particularly in light of the absence of Miss Carey. Firstly, the panel was of the view that the amendments, as applied for, provided greater clarity and were in the interest of justice. Furthermore, the panel was satisfied for the reasons Mr Hoskins submitted, in particular that the registrant has had sight of the underlying evidence and not sought to exclude or redact any details, and in light of this there would be no prejudice to Miss Carey and no injustice would be caused to either party by the proposed amendments being allowed. The panel determined it was therefore appropriate to allow the amendments, as applied for.

Background

The charges arose whilst Miss Carey was employed as a registered nurse by Queen Elizabeth Hospital, Birmingham (the Hospital).

An NMC referral was made by Person B, on behalf of her mother (Patient A) who was transferred as in-patient from another hospital to Ward 409 of the Hospital.

The referral included a letter of complaint about the behaviour of Miss Carey, whilst nurse in charge, and her treatment of Patient A and her family on 6 December 2018.

Person B alleged that whilst waiting for a bed to become available, Patient A suffered from excruciating pain requiring immediate pain relief. After speaking to several nurses and a doctor, Person B spoke to Miss Carey who appeared busy and stressed. Person B alleged that Miss Carey failed to introduce herself, was angry, intimidating and rude, and despite asking for pain relief for Patient A, Miss Carey refused. In the referral, Person B also alleged that Miss Carey spoke rudely to a colleague, was confrontational and ignored the patient's relatives.

The Trust carried out an internal investigation confirming that there were related concerns raised about Miss Carey's behaviour towards colleagues.

As a result of the local investigation and the matters that were uncovered, the Trust terminated Miss Carey's employment on 4 June 2019.

Decision and reasons on facts

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

The panel has drawn no adverse inference from the non-attendance of Miss 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 (Person B): The daughter of Patient A. Attended the hospital the night of 6 December 2018 with her mother where they admitted onto Ward 409 where Miss Carey was the nurse in charge.
- Witness 2: Senior Sister on Ward 409. She was Miss Carey's line manager at time of the incident with Patient A but was not working that particular shift.
- Witness 3: Currently employed by University Hospitals Birmingham NHS Foundation Trust ("The Trust") as a Band Six Infection Prevention and Control Nurse at Queen Elizabeth Hospital. Worked for The Trust since 2005 in her previous role, she was the Burns Ward Manager. Has known and worked with Miss Carey at various times since she was a student nurse in 2001.
- Witness 4: Started working at Ward 409 at the Queen Elizabeth Hospital in November 2017 as a Band 5 Nurse, where she worked with Miss Carey.

- Witness 5
Currently employed by University Hospitals Birmingham and works on Ward 409 as a Healthcare Assistant. She has held this role for seven years and during this time worked with Miss Carey.
- Witness 6
Currently employed by University Hospitals Birmingham. At the time the concerns were raised regarding Miss Carey she was a Band 6 Sister on Ward 409.

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 1a

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: On 6 December 2018, in relation to Patient A:

- a) Did not introduce yourself to Patient A and or Person B;

This charge is found proved.

The panel considered the evidence of Witness 1 and was of the view that she was a consistent and reliable witness throughout her statement and oral evidence. The panel also gave particular weight to the letter of complaint and referral to the NMC which was

written by Witness 1 and dated 15 December 2018 and serves as the most contemporaneous account of the incident which occurred on 6 December 2018.

The panel first considered whether there was a duty of a registered nurse to introduce herself to a patient and their family and decided that regardless of how busy the ward was that evening it was the duty of a registered nurse to treat all patients and their families with kindness and consideration. The panel then went on to consider whether or not Miss Carey did introduce herself to Patient A or her family. The panel noted the following quote from Witness 1's letter of complaint dated 15 December 2018, in which she described the first interaction she had with Miss Carey in which she said:

“and you are...” I said I’m [Patient A’s daughter] and I am just as confused as you. We were brought up by the nurses downstairs. Her response was “yeah because they want to go home and I ent got a bed so ent got no where to put her. I’m very busy and now this has added to everything”.

The panel also took into account the transcript of the registrant's response at the local level hearing on 4 June 2019. In her statement she says:

‘Unfortunately at the time of Patient A’s transfer the ward was quite heavy and busy. I admit I felt frustrated with the patient in pain and her relatives whom I was told was quite anxious on arrival by nursing staff attending to her.’

The panel was of the view that given the stress of the situation described by the registrant and Witness 1 and the contemporaneous description of the encounter in the letter of the complaint, that on the balance of probabilities the registrant did fail to introduce herself to Patient A or her family. Accordingly, the panel found this charge proved.

Charge 1b

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: On 6 December 2018, in relation to Patient A:

- b) Placed your hands on your hips and rolled your eyes at Person B;

This charge is found proved.

The panel took into consideration similar evidence as charge 1a when determining the facts of this charge. The panel was of the view that this charge would have occurred in the same interaction in which Miss Carey did not introduce herself to Patient A or her family. In the letter of complaint dated 15 December 2018, Witness 1 describes her interaction with Miss Carey as follows:

'I approached her in a friendly manner despite the day we've had and the treatment we received. Her attitude was the most disgusting and intimidating I have ever received for no reason. She was very heated, and her anger come across in her voice on top of her evident language. In front of myself and my father, she was rolling her eyes, hands on hips shaking her head and was looking down at us shaking her hands in utter confusion to why we were on the ward.'

The panel noted that the only thing it had before it from the viewpoint of Miss Carey is that in the local statement, she said that she did not speak like that. However, the panel also took into account the evidence of other witnesses who said that abrupt behaviour like this is consistent with the way Miss Carey would sometimes behave. The panel concluded that there was consistency of the witness evidence and the documentation, and there was nothing before it to give any further context or description of the situation. On the balance of probabilities, the panel determined that Miss Carey did place her hands on your hips and rolled your eyes at Person B and accordingly found this charge proved.

Charge 1c

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: On 6 December 2018, in relation to Patient A:

- c) Spoke to Person B in a rude manner, and used words to the effect ‘and you are?’

This charge is found proved.

As in charge 1a, the panel noted the following quote from Witness 1’s letter of complaint dated 15 December 2018, in which she described the first interaction she had with Miss Carey in which she said:

“and you are...” I said I’m [Patient A’s daughter] and I am just as confused as you.

In oral evidence Witness 1 said that she just wanted a basic standard level of care. The panel also took into account Miss Carey’s statement from the local report which stated:

‘[the] patient was transferred to ward with what I felt was inappropriate use of cover and without prior contact or notification towards staff. I would have asked for some grace as we were unprepared to accept patient A at that time.’

The panel noted the difficulties of the shift, but as in charge 1a, the panel was of the view that despite the stress of the situation described by the registrant, Witness 1 and the contemporaneous description of the encounter was cogent, and probable given the balance of probabilities. Accordingly, the panel did find that Miss Carey spoke in a rude manner and used words to the effect ‘and you are?’ and found this charge proved.

Charge 1d

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: On 6 December 2018, in relation to Patient A:

- d) Left Patient A to sit in urine-soaked clothing.

This charge is found NOT proved.

In considering this charge, the panel first sought to determine whether it was the duty of Miss Carey to address Patient A's clothing and provide her with clean linen. The panel noted that there was some inconsistency in Witness 1's oral evidence as to whether Miss Carey knew Patient A was wet and concluded that there was no evidence that she was clearly aware. Furthermore, the panel understood from the evidence that the situation already existed when she arrived from the outpatients department. Witness 1 describes in her letter of complaint that in outpatient Patient A:

'My mother was experiencing episodes of incontinent as a result of how the discs were compressing on her spine and nerves. Therefore, she was highly embarrassed and felt she had no dignity left. She felt so little as a human being.'

Whilst the panel was very concerned that Patient A was not given clean linen and attended to, there was nothing before it to demonstrate that this would have solely been the responsibility of the nurse in charge. The panel was of the view that if the registrant had a duty to respond to the situation, so did every other nurse who was working with Patient A. Accordingly, the panel is not satisfied, on the balance of probabilities, that Miss Carey left Patient A to sit in urine-soaked clothes and found this charge not proved.

Charge 1e

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: On 6 December 2018, in relation to Patient A:

- e) Spoke in a disrespectful and or unprofessional way to one or more colleagues in the presence of Person B.

This charge is found NOT proved.

The panel accepted the evidence of the Witness 1. In particular, the panel took note of the description Witness 1 gave in the original letter of complaint from 15 December 2018:

'At this point, [Miss Carey] came by and interrupted and told the nurse that she had any job to do. I cannot express how belittling she was to her staff. She spoke to her staff nurse as a piece of dirt. That she was nothing and no one. I would not speak to my worst enemy in the way she spoke to one of her members of staff.'

The panel carefully considered all the information before it, however, the panel was of the view that without corroboration from Miss Carey's colleagues or any further evidence, there was not sufficient evidence to find this charge proved for the date in question. The panel noted specifically that the staff nurse who was working with Miss Carey on the shift of 6 December 2018 does not remember the incident and therefore cannot corroborate Witness 1's evidence. Accordingly, the panel is of the view that the NMC has failed to discharge their burden of proof and therefore found this charge not proved.

Charge 1f

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: On 6 December 2018, in relation to Patient A:

- f) Refused to provide Patient A with pain relief.

This charge is found NOT proved.

The panel first considered whether Miss Carey had the ability to provide pain relief to Patient A in a timely manner, and if she did have the opportunity to do so, did she refuse to do it. The panel took into account the evidence of Witness 1 the evidence of Witness 2, including the exhibit entitled Procedure for the Transfer of Adults Across University Hospital Birmingham Sites, and the description of the events as described in Miss Carey's response at the local level. The panel accepted that as a transfer patient, there were clear guidelines that needed to be followed before a patient was administered pain medication.

The panel also accepted that though the ward was extremely busy; efforts were being made to find Patient A a bed and enter her into the system so that pain relief could be given. The panel did find in the evidence of the witnesses that Miss Carey may not have prioritised Patient A's pain relief nor communicated about the process effectively and kindly with the family. The panel noted the following statement from Witness 2:

Once the patient has been admitted on to the Prescribing Information and Communications System ("PICS"), the prescription can then be added. The patient can have a medication prescription added without needing to be in a bed space. However, the process of admitting the patient on to the PICS needs to be undertaken by a member of the medical team. Because the patient came from the outpatient department, she was not already on PICS. If a patient is not on PICS, it is not possible to safely administer medication...

Since patient records became electronic it has made it slightly harder to accept patients, but it is a very simple process, although can cause a slight delay to the patient receiving medication and this should have been communicated to the patient by [Miss Carey].

This description corroborates the events as described by Witness 1. The panel did consider that Miss Carey may have failed to prioritise Patient A's pain relief effectively and

accepted that her communication with the family did not meet the standard of kindness or clarity about the situation. However, in reviewing all the information before it the panel was not of the view that Miss Carey 'refused' in a deliberate way to provide Patient A with pain relief. Accordingly, the panel found this charge not proved.

Charge 1g

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: On 6 December 2018, in relation to Patient A:

- g) Did not ensure that appropriate and timely pain relief was provided to Patient A.

This charge is found proved.

As described in charge 1f, whilst the panel was not of the view that Miss Carey refused to give Patient A pain relief, it concluded in its consideration of all the evidence before it that Patient A did not get medication whilst she on the ward in a timely and efficient manner. The panel was of the view that that though there may have been extenuating circumstances, the registrant did not ensure appropriate and timely pain relief. The panel accepted the evidence of Witness 1 in which she described:

'It was evident that she was under pressure and stressed but my mother should be her priority also, as a caring compassionate nurse it is unacceptable to stand by and let someone be in that much pain and discomfort. We were told to leave her to do and she will get back to us when she has a spare second...

[Miss Carey] stopped me from talking and said to [the staff nurse] "stop what you are doing. I've already told you that someone is in the corridor waiting to be transferred by the paramedics."...she stated that she needs to

stop what she is doing as that is not her priority and this patient is more of a priority as needs to go back the nursing home. [The staff nurse] voiced that my mother is in pain and that she is just contacting a Dr. [Miss Carey] said no. NO. Bluntly and abruptly. She started that she is telling her to do this job and she needs to do it. Not only was her communication appalling she stated in front of me that my mother is not a priority.'

Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 2a

2. On 13 December 2018;
 - a) Failed to allocate sufficient staff to cover patients who required enhanced care.

This charge is found proved.

The panel took into account the evidence of Witness 5 and Witness 6 in relation to this charge. Witness 6 was also a Band 6 nurse who would be experienced allocating nurses and staff. In her evidence she states in regard to the shift of 13 December 2018:

'[Miss Carey] nearly always allocated staff inappropriately and this was the case on that day...She allocated one of the Healthcare Assistants to cover each of the following, beds 1-16, C and sides and D and sides and E bay, but didn't allocate a member of staff to cover any of the patients who need enhanced care. I challenged her about this after the handover, asking if she could allocate a staff member to be with the enhanced care patients who are more at risk . She didn't seem to understand the risk to the patients and complained about not having enough staff to cover, which is often the case , but we need to prioritise patients in order of risk. I then attempted to sort out the staffing to cover as I didn't want it to escalate into

an argument.'

Witness 5 corroborates this in her statement:

'Regularly someone would answer the ward phone to be told that a patient was coming back from the theatre. It was obvious that the patient would need an observation room to give them proper monitoring, she wouldn't do that. It needed some thought on moving other patients to accommodate this but she wouldn't recognise this and would allocate them a standard room...She would often allocate staff leaving some gaps where patients were not allocated someone to look after them. She would sometime allocate the work and put too much staff in one area, leaving the other part of the ward really short staffed.'

The panel then considered Miss Carey's responses to the allegations at the local level, though with the understanding that these responses were not to the current charges as written and would therefore be given less weight. The panel took into account that Miss Carey felt that she was still learning. She states:

'I entered as a naïve band 6 on Ward 409 and soon became aware of the high bar in this field and the expectations of established staff members and found myself in a brand new very unfamiliar and complex neurosurgery area. I did feel out of depth at times and repeated revalidated my worthiness to this speciality. A process that definitely required for more than a year to confidently achieve the competence, specialised skills and knowledge needed. While awaiting neurosurgery study sessions and or days, I was reading appropriate literature and trying to gain further information from surgeons, adapt and develop specific neurological skills from nursing staff by demonstration, guidance and advice..'

Given all the information before it, the panel was of the view that despite Miss Carey's statement that she wished to improve her care of patients, there was cogent and

consistent evidence that she struggled to allocate staff appropriately and prioritise the needs of higher risk patients. The panel accepted the evidence that on 13 December 2018 Miss Carey failed to allocate sufficient staff to cover patients who required enhanced care and found this charge proved.

Charge 2b

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: On 13 December 2018;

- b) Allocated a Student Nurse to monitor a Video Telemetry Room, ("VT") patient, when a fully qualified Nurse was required.

This charge is found NOT proved.

The panel first sought to establish what standard or qualification was required to monitor a patient in a Video Telemetry Room, ("VT"). The panel heard oral evidence from Witness 6 that there is no policy, or if there was no one was using it, but that student nurses could be used and replacing a student nurse with an HCA can be appropriate dependent on experience. The panel found that there was not sufficient evidence to suggest whether it was appropriate or not for a student nurse to be allocated but accepted that it was common practice to allocate an HCA. Accordingly, the panel concluded that there was no requirement for Miss Carey to allocate a fully registered nurse to monitor a Video Telemetry Room, ("VT") patient and found this charge not proved.

Charge 2c

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: On 13 December 2018;

- c) Left a Health Care Assistant to carry out all the personal care and assist with the daily activities of Section B and sides.

This charge is found NOT proved.

The panel noted that in the course of the evidence, witnesses stated that there were concerns that Miss Carey would not take on the role of personal care or assist with the daily nursing activities. Witness 4 states:

'A lot of the time she just worked in the office, but on the odd occasion that she did have patients, she would just leave it to Health Care Assistants to do everything.'

Witness 5, who was a Health Care Assistant on the ward stated:

'[Miss Carey] would do everything she could to avoid assisting in nursing care. It was apparent to all staff that she would prolong her drug round on purpose in order to avoid giving patient's personal care...I don't remember [Miss Carey] ever wearing gloves or helping out with patient care, it seemed to be beneath her.'

The panel did take into account the evidence of these witnesses, however the panel was not satisfied that on the night of the shift in question there was a requirement that Miss Carey would assist the HCA with general patient care, as it would be appropriate for an HCA to carry out these duties. The panel understood from the oral evidence if one is the nurse in charge, there is a duty to be present, but Witness 5 told panel that as the HCA on duty on the shift of 13 December 2018 she told Miss Carey that she didn't need assistance and she would 'call you if I need you'. The panel then was of the view that that the HCA was not 'left' and there were other nurses on the ward present who did assist her. Accordingly, the panel found that on this occasion the NMC had not proven on the balance of probabilities that Miss Carey had failed in her duties nor left the HCA without any

support in the personal care and daily activities of Section B and sides and found this charge not proved.

Charge 2d

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: On 13 December 2018;

d) Did not allocate a patient with severe diarrhoea to a room with a toilet;

This charge is found proved.

The panel examined the evidence of Witness 6 who speaks to this charge. The panel noted the detailed description of this event in the witnesses written statement. The panel accepted that she had requested and followed up with Miss Carey about allocating an appropriate room for this patient as soon as it was possible. The panel was of the view that Witness 6 was a credible witness and accepted the following description of events:

'[A colleague] informed me that the patient had been allocated to bed 14 [which had a toilet]. At this point [Miss Carey] came out of the office and immediately said that the patient couldn't be allocated to this side room, however couldn't give a reason for this.'

The panel determined that on the balance of probabilities Miss Carey did not allocate a patient with severe diarrhoea to a room with a toilet and found this charge proved.

Charge 2e

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: On 13 December 2018;

- e) Laughed at colleagues who cleaned up the patient's room which was covered in faeces.

This charge is found NOT proved.

The panel took the follow evidence of Witness 6 into account:

'On this shift I was looking after a patient in bed A 1 who developed severe diarrhoea. As there was no bathroom in this side room there was faeces on the floor and on the walls. I cleaned the room assisted by two other members of staff. [Miss Carey] came along to room A 1, saw us all cleaning and laughed at us, making us feel like a fool and walked off, which was really unprofessional.'

Whilst the panel accepted the credibility of this witness, the panel was not satisfied that the NMC had proved she was laughing at them. There was not sufficient evidence to demonstrate that the nature and intent of the laugh was to laugh at them as her response could have instead been a general laugh or even one of discomfort. Accordingly, the panel determined that the NMC have failed to discharge their burden of proof that Miss Carey did laugh at her colleagues and found this charge not proved.

Charge 3a

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: Failed to work cooperatively, in that you displayed patronising and unsupportive behaviour to other staff on ward 409 on more than one occasion;

- a) On numerous occasions would openly criticise staff in the presence of other staff members.

This charge is found proved.

Whilst the panel did not find charge 1e proved in the specific case of speaking in a disrespectful and or unprofessional way to one or more colleagues in the presence of Person B on 6 December 2018, the panel did find upon reviewing the following evidence of the witnesses that this behaviour was experienced by staff on numerous occasions, as detailed in the following statements:

Witness 3 stated:

'She often made staff question their competence and would undermine their clinical expertise. It was never outright bullying in the way that what she said could be quantified as bullying, but it was more subtle; it was her manner and tone. She would also use sarcasm. She would respond back to questions sarcastically, instead of volunteering to support and guide...

[her] natural response was an outward denial that it was never her intention to make people feel belittled... She didn't have any insight into her behaviour and how it made people feel.'

And Witness 5 stated,

'I noticed that she was really rude to other staff... Things steadily got worse, to such an extent that it was affecting, staff morale and sometimes the care provided to patients was effected... There was no way you could go to [Miss Carey] with a problem or ask for any care advice. Personally I think it was a power thing, it seemed to give her some kind of thrill, that she was in charge, ordering folk around, no matter who they were and in a rude way, constantly putting people down in the presence of others.'

Witness 6 also noted this behaviour:

'On numerous occasions she would criticise staff to other staff members. However she would do this in full knowledge the staff member being criticised was nearby and could hear her...on occasions had rows with staff in front of other people, which is not appropriate... she would constantly mutter under her breath knowing that potentially I wouldn't be able to hear her. I found this quite upsetting .

In response to allegations at the local level that Miss Carey had:

'displayed rude, patronising and unsupportive behaviour to other staff on ward 409 on more than one occasion'

Miss Carey responded:

I think it's just I'm frustrated that I don't understand all the... all about neurology and neurosurgery in itself, on the ward and on the system. It's been quite scary for me to already draw in a team that's closely knit, everyone knows who they are, what they are and what they're doing and like I said it's a year and I still consider myself to be the new girl and like I say that's why I always check have I messed this up, am I doing that right, so and so said that... I don't know what else to do.'

The panel took into account everything before it and determined that there were numerous cogent, credible, consistent reports of Miss Carey's behaviour toward her colleagues. The panel did consider that Miss Carey may have been under stress in the role, however, on the balance of probabilities the panel concluded that on numerous occasions she had openly criticised staff in the presence of other staff members and found this charge proved.

Charge 3b

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: Failed to work cooperatively, in that you displayed patronising and unsupportive behaviour to other staff on ward 409 on more than one occasion;

- b) When Colleague A indicated they were too busy to carry out repositioning of all your patients, after handover, said words to the effect “how can you be you’ve done nothing all day”.

This charge is found proved.

The panel found the evidence of Witness 6 to be consistent and clear on this point. She is very detailed in her written statement and was consistent in her oral evidence. She describes the interaction as follows:

‘[Miss Carey] approached me and asked me if she could handover a few things as she was going on her break. She then proceeded to handover all of her patients and what every patient needed while she was away. Several patients needed repositioning, some needed intravenous antibiotics or intravenous infusions put up. I said to [Miss Carey] that I couldn't do all of this as I was 'drowning in work' in my own area and had lots still to do and document. She then turned to me and said "how can you be, you've done nothing all day".’

The panel had nothing before it from Miss Carey to dispute this and the panel was of the view that on the balance of probabilities it did occur and accordingly found this charge proved.

Charge 3c

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: Failed to work cooperatively, in that you displayed patronising and unsupportive behaviour to other staff on ward 409 on more than one occasion;

- c) In the presence of other colleagues incorrectly accused Colleague A of not clocking you out.

This charge is found proved.

The panel was given the following evidence from Witness 6:

All staff have to clock in and out to keep a record of their working hours, but for some reason [Miss Carey] was never able to clock in and out, as there was an issue with her login in details. Near the end of the shift I was at the nursing station computer updating the handover when [Miss Carey] came out the office and in front of other staff members started shouting at me about not confirming one of her previous shifts properly. I asked her what she was talking about and she said that I hadn't clocked her out at 10 pm when she finished the other day. I told her that I hadn't done the confirmations and that the other Band 6 [colleagues] had done them. She then said that we were all stupid and that as she was unable to clock in and out that we should look at the PICS archive to determine what time she left.

Furthermore, at the end of the shift Witness 6 described that Miss Carey:

'As she was leaving she muttered under her breath that she better get clocked out at this time.'

Given that the witness was clear and consistent throughout her evidence and based on the material the panel has before it, the panel concluded that on the balance of probabilities that Miss Carey did accuse Witness 6 of not clocking her out in front of other colleagues and found this charge proved.

Charge 3d

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: Failed to work cooperatively, in that you displayed patronising and unsupportive behaviour to other staff on ward 409 on more than one occasion;

d) Said words to the effect that your colleagues were “stupid”.

This charge is found proved.

The panel noted that this charge arose within the same context of Miss Carey accusing Witness 6 of not clocking her out in front of other colleagues. As the panel has accepted the Witness 6’s description of the event, which was also consistently described later in the transcript of an interview at the local level in which Witness 6 states:

Once I was sat at the nurses station she come out shouting at me saying ‘Why haven’t you clocked me out at a certain time’. I said ‘I haven’t done that’ I went ‘If you have got a problem, speak to the person who clocked you out’ and then she was like ‘Oh are you stupid you know I can’t clock out you need to go and look at what time I printed the PICS archive off.’

The panel concluded that on the balance of probabilities Miss Carey did say words to the effect that her colleagues were stupid and accordingly found this charge proved.

Charge 4

That you, a registered nurse, whilst employed as a band 6 senior sister at Queen Elizabeth Hospital: On the night shift of 13-14 January 2019 failed to respond in a timely and appropriate manner to Patient B, a patient with symptoms of urinary retention.

This charge is found NOT proved.

The panel considered all the evidence before including the evidence of Witness 2 and the contemporaneous patient documentation. Witness 2 was Miss Carey's line manager and though she was not on shift at the time, reviewed the patient's notes and summarised them in her statement:

'Having reviewed these notes I can see that another nurse has recorded at 1830hrs on 13 January, 2019 that the patient came to the ward from theatre and was post-op, the patient was well and was self-voiding of urine. This entry is then followed at 0210hrs on 14 January, 2019 by an entry signed by [Miss Carey]. She records that the patient was encouraged to drink and was also self-voiding urine. I have been advised by the NMC that the patient had a bladder scan at 0545hrs which showed that the residual volume of urine was 545mls, supporting that the patient had gone into urinary retention...My thoughts on this are that it would be difficult to challenge by [Miss Carey]'s account. Post-operative patients can sometimes go to the toilet and although some urine is passed, they continue to retain urine in their bladder. The actions by [Miss Carey] to encourage the patient to drink, would be the correct approach, before considering the use of a catheter.'

Witness 4 further confirmed Miss Carey's assertion that she had handed over the patient to another staff nurse before going on her break, asking him to bladder scan and catheterise the patient. Based on this information and the original patient notes, the panel

was not satisfied that Miss Carey had acted inappropriately in the care of this patient nor failed to respond in a timely and appropriate manner to Patient B and accordingly found this charge not 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 Miss 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, Miss Carey's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

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

Mr Hoskins 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 Hoskins identified the specific, relevant standards where Miss Carey's actions amounted to misconduct. He submitted that there are five reasons why the facts found proved do constitute misconduct. Firstly, the panel has before it evidence of both direct and indirect patient harm. Secondly, and he submitted that this is at the core of this case, there has been harm to colleagues as the result of the registrant's actions. Thirdly, the extent of the charges found proved are not isolated incidents. He submitted that the fourth area that the panel should consider in regard to misconduct is the relevant context in which the charges occurred. In fairness to the registrant, he submitted that these contexts may be both mitigating and aggravating. Fifthly, and finally, and in reference to *Roylance*, he submitted that there were substantial areas of the code which had been breached.

Having set out the relevant areas that the panel may consider in regard to misconduct, he submitted evidence from both the documentation and the panel's determination of the facts which he submitted support a finding of serious misconduct. In particular, he described the extent of the harm which was caused to patients and colleagues. He submitted that there was a lack of care, compassion, dignity and respect shown to patients which suggested an underlying attitude toward patients which increased the harm that the patient was suffering. He submitted that this underlying attitude extended to the harm she caused to her colleagues. Furthermore, he submitted that the harm to colleagues had a real effect on patient care and hence the harm to colleagues and patients was connected. He submitted that her actions demonstrated a clear pattern of calculated behaviour over many years, which would sometimes improve, but the improvements would not be sustained. He reiterated that the harm to colleagues was significant, and the extent of the behaviour concerned many people who experienced it and many others who witnessed it, which included doctors, nurses, and HCAs.

Mr Hoskins then addressed the panel in regard to the context in which the charges occurred. It was submitted by Miss Carey, at the local level, that the role was stressful, and she felt inexperienced on a neurological ward. He submitted, however, that lack of experience did not address the issues surrounding her treatment of colleagues and furthermore the issues reflected a pattern of behaviour which persisted on the ward for over a year. He submitted that Miss Carey was a significantly experienced Band 6 nurse, who held a senior role and that the pattern of behaviour suggested an underlying attitude rather than any particular contextual factors.

However, Mr Hoskins submitted that in fairness to Miss Carey there is uncontradicted evidence about difficulties [PRIVATE] which the panel should bear in mind when considering misconduct. He then addressed whether or not racial discrimination may have been a context in this case. He submitted that there was no evidence before the panel to indicate that this was a factor and that, when questioned, it was contradicted by all the witnesses. He submitted that it was important to bear in mind that perspectives may vary significantly, particularly because without exception, none of the witnesses before the panel were of the same race as the registrant. He submitted, however, that given the evidence, it would not justify the allegations before the panel, nor was it the subject of any specific challenge or complaint at that time.

Mr Hoskins concluded by inviting the panel to conclude that for all these reasons, the charges do constitute serious misconduct.

Submissions on impairment

Mr Hoskins moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for*

Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant
[2011] EWHC 927 (Admin).

Mr Hoskins submitted that if the panel do find misconduct, then it must determine first, in the order of the Shipman test, if she is liable in the future to act in such a way as to put patients at unwarranted risk of harm both in the past and in the future. He submitted that given the actual harm to patients in the facts found proved and the indirect effect of her treatment of colleagues, that there was actual harm and a risk of unwarranted harm. He then posed the next question, which is whether Miss Carey is in the past and/or is liable in the future to bring the profession into disrepute? He submitted that the complaints raised by Person B and Miss Carey's colleagues are exactly the sorts of misconduct that indicate that in the past she has brought the profession into disrepute repeatedly. Finally, in addressing limb three of the test, he posed whether she has, in the past, breached one of the fundamental tenets of the profession and he submitted that this is clearly the case given the facts found proved.

Mr Hoskins then submitted that the panel should consider whether the misconduct is remediable, and if so, has it been remedied or is there a risk of repetition? He submitted that the panel may objectively find the behaviour could be remedied, however he invited the panel to instead find a long-standing pattern of repetition in which there were deep seated attitudinal issues which were not easily remediable. However, whether the panel find that the misconduct is remediable or not, it must determine if it has been remedied in this case.

Mr Hoskins submitted that Miss Carey has demonstrated no insight into her actions and that she instead has pushed the blame onto others. He submitted that the remorse that was shown in the local statement, was more likely to be about her performance rather than the effect of her actions. He submitted that there is a very real risk of risk of repetition in this case and a significant risk of the same misconduct being repeated in the future.

Mr Hoskins submitted that a finding of impairment should be found on public protection as there is an ongoing risk to public safety. Furthermore, he submitted that there was need to uphold proper professional standards and public confidence in the profession and that a member of the public would expect a finding of impairment to also be made. Accordingly, he invited the panel to also find impairment on public interest grounds.

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

Decision and reasons on misconduct

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

The panel was of the view that Miss Carey's actions did fall significantly short of the standards expected of a registered nurse, and that Miss 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*
- 1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay*

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

- 2.1 work in partnership with people to make sure you deliver care effectively*

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

8 Work co-operatively

To achieve this, you must:

8.1 respect the skills, expertise and contributions

of your colleagues, referring matters to them when appropriate

8.2 maintain effective communication with colleagues

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

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

To achieve this, you must:

9.3 deal with differences of professional opinion with colleagues by

discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

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

25 Provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care system

To achieve this, you must:

25.1 identify priorities, manage time, staff and resources effectively and deal with risk to make sure that the quality of care or service you deliver is maintained and improved, putting the needs of those receiving care or services first"

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel considered each of the charges found proved, first individually and then as a whole.

The panel was of the view that, in considering the limbs of charge 1: a, b, and c found proved, no single limb would have amounted to serious misconduct. However, the panel was of the view that the encounter with Patient A and her family, when taken as a whole, did fall seriously short of the standards of kindness and compassion expected of a registered nurse and did amount to misconduct. The panel then considered 1g and determined that, although there were mitigating circumstances, not ensuring appropriate and timely pain relief to a patient in pain also fell significantly short of the standards expected of a nurse and again found this to be misconduct.

When considering the charges found proved in relation to charge 2 the panel concluded the 2a also amounted to misconduct. The panel did take into account that the ward was short staffed but was of the view that it was a fundamental standard of nursing to ensure that the most vulnerable patients received appropriate and priority care. Accordingly, the panel found that her failure to allocate sufficient staff to these patients fell seriously short of the expected standards. The panel found that 2d did not amount to misconduct.

Finally, the panel considered the facts found proved in charge 3. As in charge 1, the panel was of the view that taken individually, not all the limbs did amount to misconduct but taken as whole Miss Carey's failure to work cooperatively, by displayed patronising and unsupportive behaviour to her colleagues fell seriously short of the conduct expected of a registered nurse and amounted to misconduct.

Accordingly, the panel found that Miss Carey's actions did fall seriously short of the conduct and standards expected of a nurse and did amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss 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. To justify that trust, 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*

The panel finds that the first three limbs of *Grant* are engaged in this case in that patients were put at risk and were caused physical and emotional harm as a result of Miss Carey's misconduct. Miss Carey's misconduct has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. Finally, her actions in the past caused significant distress to patients, their families, and her colleagues and fell significantly short of the standards of a registered nurse.

The panel did conclude that in general the misconduct in this case is capable of being addressed and carefully considered the evidence before it to determine whether or not Miss Carey has shown insight into her failings or taken steps to strengthen practice.

Regarding insight, the panel considered that there is nothing before it, in terms of reflection, to show that Miss Carey has shown any insight in her failings. The panel noted that according to the witnesses, her behaviour would improve for a time but would then be repeated, it noted that she apologised to the family of Patient A in the transcript at the local level but didn't seem to understand the impact her actions caused. Furthermore, she appeared to be surprised that others found her behaviour unacceptable. The panel found that given the repetition of her behaviour in the past and the appearance at the local level

to shift the blame onto her colleagues, that there was a real lack of insight into her conduct.

Regarding strengthening her practice, she indicated in the transcript at the local level that she was interested in improving her knowledge of working on the neurological ward, but there is nothing before the panel to demonstrate that she has further strengthened her clinical practice or addressed the attitudinal issues found proved.

Accordingly, the panel is of the view that there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

In considering any mitigation in this case, the panel noted that Miss Carey had brought up her race as being a potential issue for her on the ward. The panel gave careful consideration to the perception by Miss Carey that she may have experienced unfair treatment due to her race, which she raised as an issue at the local investigation. The panel noted, she was the only senior black nurse on the ward. In giving this serious attention, the panel questioned all of the witnesses in regard to this. The panel found that there may well have been personality differences within the workplace, but given the evidence, was satisfied that there was nothing to indicate that these were the result of her race.

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 was of the view that a well-informed member of the public would expect a finding of impairment, given the charges found proved in this case, and concluded that public confidence in the profession would be undermined if a finding of impairment were not made. The panel therefore also finds Miss Carey's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Carey's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that Miss Carey's registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case 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 Hoskins informed the panel that in the Notice of Hearing, dated 3 July 2023, the NMC had advised Miss Carey that it would seek the imposition of a striking off order if it found Miss Carey's fitness to practise currently impaired.

Mr Hoskins submitted that as the panel has found that Miss Carey's fitness to practise is currently impaired the panel must determine what sanction is appropriate in the circumstance, whilst keeping proportionality in the forefront of its considerations.

Mr Hoskins submitted that the following aggravating features were:

- Evidence of Witness 3 indicates that she experienced the type of behaviour found proved in the charges as far as 2001 when Miss Carey was on the Burn Ward and Witness 3 was a student nurse.
- Miss Carey's behaviour was calculating and deliberate.
- Miss Carey has not engaged with her regulator and only engaged at the local level

when it was her obligation to participate.

- A pattern of misconduct over time
- No indication of insight

In terms of mitigating features Mr Hoskins submitted that the following may be considered in this case:

- A potential lack of knowledge or at least experience on a new ward
- Working on a busy and understaffed ward
- Personal mitigation [PRIVATE]
- There are no concerns about her clinical practice as a nurse

Mr Hoskins also submitted that the panel may consider that before her dismissal from the Trust, Miss Carey may have been the major wage earner within her family, and this may be relevant for proportionality in the panel's decision.

Mr Hoskins submitted, given everything before the panel that the misconduct is too serious in terms of a caution order as a caution order would not sufficiently alleviate any risk to patient safety and would not address the damage done to the public interest. He submitted that in regard to a conditions of practice order, the panel is not dealing with a specific and identifiable deficit in the registrant's practice but rather a deep-seated attitudinal issue, which is not measurable and difficult to formulate conditions to address. Furthermore, conditions are not appropriate for the scale of the misconduct found proved.

Mr Hoskins then moved to the possibility of the panel imposing a suspension order. He submitted that in following the sanction guidance, Miss Carey's behaviour was not a single instance and did involve deep seated attitudinal concerns. There is, he submitted, no evidence to suggest the behaviour in the charges has been repeated since this referral, however the charges themselves point to a repetition of long-standing behaviour. Furthermore, the panel has found that Miss Carey has not demonstrated insight and does pose significant risk of repeating the behaviour. Finally, he submitted that whilst there is

not a lack of competence in this case, in terms of the various routes to a sanction finding, the panel may look at the more global issue of the deficits in her personality or practice, and the panel have already found that there is a risk to patient safety stemming from practice. He submitted then that a suspension order, therefore, would not be the appropriate order in this case.

Mr Hoskins submitted that fundamental questions about professionalism, taken globally in this case, cross the threshold, and that a striking off order is the only sanction which is sufficient to protect patients, members of the public, and maintain professional standards.

Decision and reasons on sanction

Having found Miss 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:

- Evidence of deep-seated attitudinal issues over a period of time
- A pattern of misconduct over a period of time
- Previous disciplinary findings at a local level
- Lack of insight into failings
- Miss Carey was in a senior leadership position as a senior nurse on the ward
- Misconduct which significantly undermined her colleagues, particularly her junior colleagues, and their ability carry out their duties effectively
- Conduct which put patients at risk of suffering harm.
- Lack of engagement with the NMC

The panel also took into account the following mitigating features:

- Personal Difficulties [PRIVATE]
- Struggling professionally with her the knowledge and expertise required in her new role on the neurological ward
- Working in a busy ward which was often short staffed

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 Miss 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 Miss Carey's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 Miss Carey's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*

- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

Without any participation from Miss Carey, 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 misconduct identified in this case would be difficult to address through retraining. The panel noted that no general incompetence was identified in her clinical practice and attitudinal issues are difficult to mitigate through conditions of practice. The panel were also of the view that it would be difficult to formulate workable conditions of practice which would adequately protect Miss Carey's colleagues.

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 panel considered that Miss Carey's case was finely balanced and seriously considered a striking off order. It found, based on the sanction guidance, that such an order would be entirely appropriate especially given that Miss Carey has not engaged with the NMC. However, the panel considered that as there had been no fundamental clinical

concerns over the course of her long career, and though the attitudinal concerns appear to be deep seated, this is the first time the Miss Carey has come before the NMC. Given this, and her difficult personal circumstances which to an extent mitigated her conduct, the panel was of the view that a suspension order would give her a last opportunity to more fully engage with the NMC.

In determining the appropriateness of a suspension order at this stage, the panel considered that Miss Carey had not specifically been asked to provide the panel with a reflective piece or demonstrate any remediation or insight. The panel concluded then that a striking off order would be disproportionate at this time. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Carey's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

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

The panel considered that this order is 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.

In making this decision, the panel carefully considered the submissions of Mr Hoskins in relation to the sanction that the NMC was seeking in this case. However, the panel considered that, though it was finely balanced between a suspension and a striking off order, a suspension order was the most appropriate order at this stage.

The panel determined that a suspension order for a period of 12 months with a review, was appropriate in this case to mark the seriousness of the misconduct and allow Miss Carey time to engage and show remediation and insight.

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

Any future panel reviewing this case would be assisted by:

- A reflective statement and evidence of insight into Miss Carey's failings
- Steps Miss Carey has taken to strengthen her practice, particularly in regard to working with patients and colleagues, and the prioritisation of patients
- References or testimonials to demonstrate ongoing positive working relationships
- Miss Carey's attendance at any review hearing

This will be confirmed to Miss Carey in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Hoskins. He submitted that an 18-month suspension is necessary to protect the public and meet the public interest during the 28 days of appeal which are granted to the registrant and to continue to ensure that an

order is in place in the event an appeal is made. He submitted that an order is necessary for the same reasons the panel identified and outlined in its determination above.

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

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 determined that imposing such an order was in line with its previous decision and that not to impose an interim suspension would be inconsistent with its earlier findings. The panel therefore imposed an interim suspension order for a period of 18 months in order to provide sufficient time in the event an appeal is made.

This concludes the determination.