

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

**Substantive Hearing  
Monday, 24 February 2025 – Friday 28 February 2025  
Monday 3 March 2025 – Friday 7 March 2025  
Monday 10 March 2025 – Friday 14 March 2025  
Monday 17 March 2025 – Friday 21 March 2025  
Monday 24 March 2025 – Tuesday 25 March 2025**

Virtual Hearing

<b>Name of Registrant:</b>	<b>Robert Carter</b>
<b>NMC PIN</b>	05F1486E
<b>Part(s) of the register:</b>	Nurses part of the register Sub part 1 RNA: Adult nurse, level 1 (17 September 2005)
<b>Relevant Location:</b>	Barnsley
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Richard Youds (Chair, lay member) Melanie Lumbers (Registrant member) Alison Hayle (Lay member)
<b>Legal Assessor:</b>	Charles Conway
<b>Hearings Coordinator:</b>	Khatra Ibrahim
<b>Nursing and Midwifery Council:</b>	Represented by Ben Edwards, Case Presenter
<b>Mr Carter:</b>	Not Present and unrepresented at this hearing
<b>Facts proved:</b>	<b>1(a, b, c, d, e, f, g, h), 2, 3, 4, 5, 6 (a, b), 7, 8, 9 10, 11, 12 (a, b, c, d, e, f, g) 13 (in relation to 12a, b, c, d, e, g), 14 (a, b), 15, 16 (a, b), 17, 18, 19, 20, 21 (a, b, c), 22, 23 and 24 (a, b)</b>
<b>Facts not proved:</b>	<b>13 (in relation to charge 12f)</b>
<b>Fitness to practise:</b>	<b>Impaired</b>

**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 Mr Carter was not in attendance and that the Notice of Hearing letter had been sent to Mr Carter's registered email address by secure email on 8 January 2025.

Mr Edwards, 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 was sent to Mr Carter's registered email address and 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 Mr Carter's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In light of all of the information available, the panel was satisfied that Mr Carter 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 Mr Carter**

The panel next considered whether it should proceed in the absence of Mr Carter. It had regard to Rule 21 and heard the submissions of Mr Edwards who invited the panel to continue in the absence of Mr Carter. He submitted that Mr Carter had voluntarily absented himself, and referred the panel to an email from Mr Carter dated 19 February 2025, where he states:

*'...Reference to hearing. I wont attend this. As stated previous i requested voluntary removal from register. Robert carter...[sic]'*

Mr Edwards submitted that there is a public interest to proceed with this hearing due to the nature and seriousness of the charges. He submitted that this matter has been listed for a considerable amount of time, and that a number of witnesses have been scheduled to give evidence.

Mr Edwards informed the panel that an application was made by Mr Carter for agreed removal from the register on 26 January 2024, and that this was refused by the Assistant Registrar due to the seriousness and nature of the charges. He invited the panel to proceed with the hearing in Mr Carter's absence.

The panel accepted the advice of the legal assessor.

### **Decisions and reasons to proceed in the absence of Mr Carter**

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 Mr Carter. In reaching this decision, the panel has considered the submissions of Mr Edwards, communications from Mr Carter, and the advice of the legal assessor. It 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 Mr Carter;
- There is no reason to suppose that adjourning would secure his attendance at some future date;

- Mr Carter sent an email dated 19 February 2025 stating he has no intention to attend this hearing;
- A number of witnesses are due to give live evidence at this hearing;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice and the clients who need their professional services;
- These are serious charges, and this hearing had already been relisted;
- Any further delay may affect witnesses' recollection of events, these incidents having occurred in 2019 and previously;
- Mr Carter has made reference to [PRIVATE], but the panel have no evidence before it in support of this; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Carter in proceeding in his absence. Although the evidence upon which the NMC relies has been sent to him at his registered address, he will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his 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. Mr Carter has provided the panel with a registrant's response bundle, which would allow the panel to explore Mr Carter's position. Furthermore, the limited disadvantage is the consequence of Mr Carter's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented.

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

### **Details of charge**

That you a registered nurse:

Breached professional boundaries with and/or behaved in an inappropriate and/or unprofessional manner towards Colleague A in that:

1. On 20 April 2019;
  - a. Grabbed Colleague A's waist.
  - b. Attempted to kiss and/or kissed Colleague A.
  - c. Unfastened Colleague A's trousers.
  - d. Placed your hand/s down Colleagues trousers.
  - e. Penetrated Colleague A's vagina with your finger/s.
  - f. Grabbed Colleague A's hand/s and placed them onto your penis.
  - g. Pulled Colleague A's trousers down.
  - h. Penetrated Colleague A's vagina with your penis.
2. On one or more occasions stated to Colleague A words to the effect of, *'tell me that you love me'*.
3. On one or more occasions *'winked'* at Colleague A.
4. On one or more occasions *'hugged'* Colleague A.
5. On one or more occasions would stick your tongue out towards Colleague A.
6. On one or more occasions made sexual gestures towards Colleague A by;
  - a. Sticking your tongue out and placing it between your fingers.
  - b. Turning towards Colleague A and grabbing your crotch and/or penis.
7. On a date unknown sent a picture of your penis to Colleague A.

8. Your actions and/or conduct set out in charge 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 amounted to harassment of Colleague A in that:
- a. It related to Colleague A's sex.
  - b. It was unwanted, and/or
  - c. It was sexual in nature, and/or
  - d. It had the purpose or effect of:
    - i. Violating Colleague A's dignity, and/or
    - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.
9. Your conduct in charge 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 was sexually motivated for the purposes of sexual gratification.
10. On 19 May 2022 during an investigation meeting held by Barnsley Hospitals NHS Foundation Trust, incorrectly declared that you did not send a picture of your penis to Colleague A.
11. Your declaration in charge 10 was dishonest in that you had previously declared that you had sent a picture of your penis to Colleague A when;
- a. Interviewed by the police on 6 November 2019.
  - b. Giving evidence under oath at Sheffield Crown Court on 12 January 2022.
12. Behaved in an inappropriate and/or unprofessional manner towards Colleague B by;
- a. On date unknown stated to Colleague B whilst on an evening out, words to the effect of, *'hold my hands let's get them talking'*.

- b. Stating to an unknown couple and in front of Colleague B, words to the effect of, *'we are having an affair'*.
- c. Sending unrelated text messages to Colleague B on one or more occasions.
- d. Stating in a text message to Colleague B words to the effect of, *'does your husband get jealous with me messaging you'*.
- e. Sending one or more messages to Colleague B stating words to the effect of, *'don't forget it's me and you'*.
- f. Requesting on one or more occasions that Colleague B states that she *'loves you'* or words to that effect.
- g. Stating to Colleague B about another colleague words to the effect of, *'look at the arse on her'*.

13. Your actions in any or all of the conduct set out charge 12 amounted to harassment of Colleague B in that:

- a. It related to Colleague B's sex.
- b. It was unwanted, and/or
- c. It was sexual in nature, and/or
- d. It had the purpose or effect of:
  - i. Violating Colleague B's dignity, and/or
  - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B.

14. Behaved in an inappropriate and/or unprofessional manner towards Colleague C by;

- a. Stating to Colleague C words to the effect of, *'people don't know that you and I are having an affair do they?'*.
- b. Snapping at Colleague C stating words the effect of, *'I'm sick of hearing about Steve, will you shut up about Steve'*.



15. Behaved in an inappropriate and/or unprofessional manner towards Colleague D by stating words to the effect of, *'I had a sexual dream about you'*.
16. Behaved in an inappropriate and/or unprofessional manner towards Colleague E by;
- a. Kissing Colleague E on the neck.
  - b. Stating to Colleague words to the effect of, *'I have had three affairs'*.
17. Your conduct in charge 16 was sexually motivated in that it was in the pursuit of a sexual relationship Colleague E and/or was for the purposes of sexual gratification.
18. Behaved in an inappropriate and/or unprofessional manner towards Colleague F by;
- a. Placing your face in Colleague F's crotch when she was bent down.
  - b. Pushing Colleague F onto a bed and;
    - i. Opened Colleague F's legs and/or
    - ii. Pretend to give Colleague F oral sex.
19. Your actions in charge 18 amounted to harassment of Colleague F in that:
- a. It related to Colleague F's sex.
  - b. It was unwanted, and/or
  - c. It was sexual in nature, and/or
  - d. It had the purpose or effect of:
    - i. Violating Colleague F's dignity, and/or
    - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague F.
20. Your conduct in charge 18 was sexually motivated for the purpose of sexual gratification.

21. Behaved in an inappropriate and/or unprofessional manner towards Colleague G by;

- a. Stating to Colleague G whilst she was bent over words to the effect of, '*whilst you are down there*'.
- b. Kissing Colleague G on the neck.
- c. Hugging Colleague G on one or more occasions.

22. Your actions charge 21 amounted to harassment of Colleague G in that:

- a. It related to Colleague G's sex.
- b. It was unwanted, and/or
- c. It was sexual in nature, and/or
- d. It had the purpose or effect of:
  - i. Violating Colleague G's dignity, and/or
  - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague G.

23. Your conduct in charge 21 was sexually motivated for the purposes of sexual gratification.

24. On one or more occasions failed to maintain professional boundaries and/or behaved in an inappropriate and/or unprofessional manner towards one or more colleagues whilst on duty by;

- a. Hugging them.
- b. 'Cocking' your leg up against a colleague/s thigh.

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

## Decision and reasons on application to amend the charges

The panel heard an application made by Mr Edwards, on behalf of the NMC, to amend the wording of the following charges:

1. On 20 April 2019;

d. Placed your hand/s down ~~Colleagues~~**Colleague A's** trousers.

14. Behaved in an inappropriate and/or unprofessional manner towards Colleague C by;

b. Snapping at Colleague C stating words **to** the effect of, 'I'm sick of hearing about Steve, will you shut up about Steve'.

16. Behaved in an inappropriate and/or unprofessional manner towards Colleague E by;

b. Stating to Colleague **E** words to the effect of, '*I have had three affairs*'.

17. Your conduct in charge 16 was sexually motivated in that it was in the pursuit of a sexual relationship **with** Colleague E and/or was for the purposes of sexual gratification.

The proposed amendments were to correct typographical errors. It was submitted by Mr Edwards that the proposed amendments would provide clarity and more accurately reflect the evidence before the panel. He submitted that in regard to charges 1d, 14b, 16b and 17, these are merely typographical errors, and that it would not change the mischief of the charges.

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 was of the view that in regard to charges 1d, 14b, 16b and 17 that such amendments, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Carter and no injustice would be caused to either party by the proposed amendments being allowed. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy, and would not change the mischief of the charges.

In regard to the header of the charges, the panel, of its own volition determined that amending the charge to:

***In relation to charges 1-7, bBreach***ed professional boundaries with and/or behaved in an inappropriate and/or unprofessional manner towards Colleague A in that:...

This would make it fair to all parties, and such an amendment would not create injustice in that the amendment would make it clear as to which charges relate to Colleague A.

### **Charges (as amended)**

In relation to charges 1-7, breached professional boundaries with and/or behaved in an inappropriate and/or unprofessional manner towards Colleague A in that:

And

18. On 20 April 2019;

d. Placed your hand/s down Colleagues Colleague A's trousers.

14. Behaved in an inappropriate and/or unprofessional manner towards Colleague C by;

b. Snapping at Colleague C stating words to the effect of, 'I'm sick of hearing about Steve, will you shut up about Steve'.

16. Behaved in an inappropriate and/or unprofessional manner towards Colleague E by;

b. Stating to Colleague E words to the effect of, 'I have had three affairs'.

17. Your conduct in charge 16 was sexually motivated in that it was in the pursuit of a sexual relationship with Colleague E and/or was for the purposes of sexual gratification.

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

At the outset of the hearing, Mr Edwards made a request that this case be held partly in private on the basis that proper exploration of Mr Carter's case involves reference to [PRIVATE]. 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.

The panel decided that the hearing will proceed partly in private, when references are raised in relation [PRIVATE].

### **Application to admit witness statements of Colleague A**

Mr Edwards made an application to adduce the witness statement of Colleague A. He invited the panel to admit this evidence by way of hearsay. He stated that the witness statements, contained within the witness statement bundle were signed on 26 October 2023 and 25 July 2022, by Colleague A.

Mr Edwards submitted that the evidence is relevant and that it would be fair in all the circumstances to admit the evidence as hearsay. He submitted that the main consideration for the panel is to determine whether the statements of Colleague A are relevant to the charges put to Mr Carter, bearing in mind that Colleague A is not in attendance at this hearing, and would therefore not be able to be cross examined or questioned by the panel. He referred the panel to the communications between Colleague A and the NMC, which details reasons as to their non-attendance. He submitted that Colleague A [PRIVATE].

Mr Edwards submitted that the assault took place on 20 April 2019, and referred the panel to an excerpt of Colleague A's most recent statement, dated 26 October 2023, where they state:

‘...[PRIVATE]...’

Mr Edwards submitted that the NMC did not seek to have Colleague A attend this hearing, as it would have had a [PRIVATE] since the conclusion of the criminal proceedings. He submitted that the panel have before it the transcript of the ABE (Achieving Best Evidence) interview that Colleague A gave to the police, the record of the local Trust investigation and its meeting minutes. He invited the panel to consider that these records form a part of Colleague A's evidence, and would be the same if Colleague A were in attendance at this hearing. He submitted that Colleague A has remained engaged with the NMC's process, and that they have [PRIVATE] whilst also assisting the NMC with its investigations and these proceedings.

Mr Edwards submitted that in regard to fairness, it would be fair to admit the statement as Mr Carter has already had the opportunity to present his evidence at the criminal trial, and that his evidence was tested during those proceedings, he submitted that it is for the panel to determine what weight, if any to apply to Colleague A's statement. He further submitted that the evidence in regard to charge 1 is the sole and decisive evidence of the alleged sexual assault. He submitted that it is for the panel, however, to decide whether that is the case.

Mr Edwards submitted that to admit the evidence is in the public interest, and that there are sufficient safeguards in place to counter any potential prejudice to Mr Carter.

### **Application to admit the statement of Colleague D**

In regard to the statement of Colleague D, Mr Edwards made an application to admit their statement into evidence. [PRIVATE]. He referred the panel to an email dated 11 February 2020, where they state in an email to the NMC:

‘...[PRIVATE]...’

Mr Edwards submitted that Colleague D is another witness where, although the allegations they make are not so serious, [PRIVATE]. He submitted that their evidence relates to charge 15, which relates to Mr Carter allegedly having sexual dreams about Colleague D. He submitted that this is the sole and decisive evidence in relation to this charge, but that it is for the panel to determine what weight, if any to apply to it.

Mr Edwards submitted that it would be fair and relevant to admit Colleague D's statement, and invited the panel to do so.

### **Application to admit Witnesses 10 and 12-15's statements**

In regard to Witness 10, Mr Edwards submitted that this statement relates solely to their local statement from the local investigation meeting contained within the exhibit bundle. He submitted that the NMC have made number of attempts to obtain an NMC witness statement, and that several phone calls had been made. He submitted that the evidence relates to the charges around ‘*Bobby love*’ and Mr Carter’s behaviour at the time. He submitted that to admit the statement would be fair and relevant to these proceedings.

Mr Edwards made an application to admit a number of investigation meetings with people who have not been called as NMC witnesses. He submitted that Witnesses 10, 12, 13, 14, and 15 were interviewed as part of the local investigation and that these statements are relevant and fair to admit as part of the NMC’s case. He submitted that the NMC accept that these statements are hearsay, but that they are responses to questions put to them in a formal setting as part of the local investigation. He submitted that although some statements support the NMC’s case, some are also in favour of Mr Carter’s. He submitted that Mr Carter is aware of the presence of these statements within the exhibit bundle, and that he has not expressed any objection to the inclusion of the statements.

Mr Edwards submitted that under Rule 31 of the Rules, it would be fair and relevant to admit these statements into evidence, and invited the panel to do so.

The panel heard and accepted the advice of the legal assessor, which included a reference to a number of authorities, including *Thorneycroft v NMC EWHC 1565* and *El Karout v NMC 2020 EWHC 3079*. He also referred the panel to NMC guidance on hearsay, set out in DMA-6.

### **Decisions and reasons on application to admit Colleague A’s statement into evidence**

The panel had regard to Mr Edwards’ submissions and determined that in relation to charges 1-7, Colleague A’s evidence is relevant, and was accepted by the panel as the sole or decisive evidence in relation to charge 1. However, it was of the view that there is



other evidence before it to support charges 2-7, including Mr Carter's registrant's response bundle, the transcript of his cross-examination, and noted that although Mr Carter denies the assault occurred, however, there is no evidence before the panel to suggest any fabrication in Colleague A's statement.

The panel determined that charge 1 is extremely serious, and there is a level of seriousness in charges 2-7, especially when taken together. It also considered if the charges are found proved, the impact could have an adverse effect on Mr Carter's career.

In regard to the non-attendance of witnesses, the panel was satisfied that the repeated attempts to secure their attendance had been made and support offered. It noted that they are not due to appear to give evidence, [PRIVATE]. The panel noted that Colleague A would not have received prior notice that this application was going to be made, and that Mr Carter has voluntarily absented himself, and whilst the panel cannot draw any adverse inference from Mr Carter's non-attendance, he loses the ability to cross-examine witnesses and challenge the NMC's case. The panel further noted that in relation to charge 1, Mr Carter disputes that these events ever took place, but also relies on his assertion that [PRIVATE] meant he was unable to have carried out the alleged assault. However, the panel determined this claim can be tested during these proceedings.

The panel decided that it would be fair to admit Colleague A's evidence, as it consists of a transcript of an ABE interview conducted by trained police officers, who reassured Colleague A that the interview would be a one-time event and is the accepted process for obtaining evidence in some circumstances. The panel also considered that the interview of Colleague A at the local level was a formal process, governed by the Trust policy. The panel determined that whilst Witness 1 does not provide corroboration of Colleague A's evidence, they do provide evidence of complaint, and their evidence can be tested when they give oral evidence.

The panel will determine the weight to be given to the evidence of Colleague A at the fact-finding stage.

## **Decisions and reasons to admit J.B's statement – Colleague D**

In regard to the non-attendance of witnesses, the panel was satisfied that the repeated attempts to secure their attendance had been made and support offered. It noted that Colleague D is not due to appear to give evidence, [PRIVATE]. The panel noted that Colleague D would not have received prior notice that this application was going to be made, and that Mr Carter has voluntarily absented himself, and whilst the panel cannot draw any adverse inference from Mr Carter's non-attendance, he loses the ability to cross-examine witnesses and challenge the NMC's case.

The panel had nothing before it to suggest any aspect of the statement was fabricated, and when looking at the charge separately, the panel determined that it is at the lower level of the charges in terms of seriousness. It also considered reasons for non-attendance, [PRIVATE], and the NMC's numerous attempts to secure attendance, it determined that there were good reasons for non-attendance.

The panel noted that the evidence contained within Colleague D's statement is related to charge 15, and is the sole or decisive evidence in support of the charge. Notwithstanding this, the panel decided it was fair to admit Colleague D's statement because on the face of it, the evidence is relevant, balanced, and puts Colleague D's view to the panel as to the impact the assault had on them and the overall working environment. The panel noted that Colleague D's evidence also speaks to other charges, not solely to charge 15, and is not sole or decisive in these instances. The panel decided to admit the statement, as it is signed, dated and the panel further noted that Colleague D had also signed the meeting minutes and was also present during the local investigation.

## **Decisions and reasons to admit local investigation interviews x5**

In regard to the five local investigation interviews, the panel determined that in relation to Witness 13, the evidence speaks to charge 24, is not sole nor decisive, witness 13 was

not asked to attend as an NMC witness as their report was the result of the local investigation. The panel determined that there was no reason to suggest that any part of their local investigation interview has been fabricated as their account is supported by the accounts given by others. It further noted that the local investigation interviews provide a detailed background into Mr Carter's workplace behaviour.

The panel considered each of the hearsay applications for witnesses 10, 12, 14 and 15 separately. The panel determined that each local investigation interview should be admitted as hearsay evidence for the same reasons, namely:

It determined that each local investigation interview is not sole or decisive evidence in respect of the charges, but they do provide evidence in relation to the circumstances at the time of the charges. The panel were of the view that there is no reason to suggest that any part of each local investigation interview has been fabricated, and they were conducted in line with the Trust's disciplinary process.

The panel therefore decided to admit the additional four local investigation interviews.

## **Background**

The charges arose whilst Mr Carter was employed as a Band 5 registered nurse on the Endoscopy Unit/Day Surgery by Barnsley Hospitals NHS Foundation Trust (The Trust). On 3 July 2019, the NMC received a referral detailing that Mr Carter had been arrested for sexual assault on Colleague A, and that he had behaved inappropriately in the workplace towards other female colleagues on the Endoscopy unit.

Mr Carter was arrested on 1 July 2019 on suspicion of rape, and was consequently found not guilty at the criminal trial. On 2 July 2019, Mr Carter was suspended by the Trust, and an internal investigation was started. Before the conclusion of this investigation, Mr Carter resigned on 11 November 2022.

## **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 Edwards on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Mr Carter.

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

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 oral evidence from the following witnesses called on behalf of the NMC. With the exception of Witness 11, all worked on the Endoscopy Unit/Day Surgery at the time in the following roles:

- Colleague B: Band 5 Staff Nurse
- Witness 2: Band 6 Staff Nurse
- Colleague C: Band 5 Staff Nurse
- Witness 1: Band 5 Staff Nurse
- Witness 3: Band 6 Staff Nurse
- Witness 4: Housekeeper

- Witness 5: Health Care Assistant (HCA)
- Witness 6: Band 5 Staff Nurse
- Colleague E: Clerical Officer (Administration)
- Witness 7: Health Care Assistant (HCA)
- Witness 8: Band 5 Staff Nurse
- Witness 9: Band 7 Ward Sister
- Colleague F: Housekeeper
- Colleague G: Housekeeper
- Witness 11: Band 8b Nurse Manager

### **Decisions and reasons to further amend the charges**

After the witnesses had been called to give evidence, Mr Edwards made a further application to amend the wording to charges 12c, 12d and 12e, 16 and 18a. He submitted that after hearing the evidence of Colleagues B, E and F, he proposed that the following amendments should state as follows:

12. Behaved in an inappropriate and/or unprofessional manner towards Colleague B by;
  - c. Sending unrelated ~~text~~ messages **via text message and/or Snapchat** to Colleague B on one or more occasions.

- d. Stating in **person and/or via** a text message **and/or Snapchat** to Colleague B words to the effect of, 'does your husband get jealous with me messaging you'.
- e. Sending one or more messages to Colleague B **via text message and/or Snapchat** stating words to the effect of, 'don't forget it's me and you'.

16. Behaved in an inappropriate and/or unprofessional manner towards Colleague E by;

- a. ~~Kissing~~ **Kissed or attempted to kiss** Colleague E on the neck.

18. Behaved in an inappropriate and/or unprofessional manner towards Colleague F by;

- a. Placing ~~your~~ **Colleague F's** face in ~~Colleague F's~~ **your** crotch when she was bent down.

Mr Edwards submitted that these amendments would not cause any injustice or prejudice to Mr Carter, do not change the substance of any of the charges that he is answering to. He submitted that the proposed amendments provide further clarity, and the mischief of the charges remain unchanged.

Mr Edwards submitted that the amendments are fair, and sufficiently reflect the written and oral evidence in relation to these charges. He submitted that the panel have heard from a number of witnesses who have confirmed what occurred, and invited the panel to accept the application to amend the charges.

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

In regard to the proposed amendments for charges 12c, 12d and 12e, the panel looked at the charges individually and collectively, and decided to accept the proposed amendments. It determined that the amendments reflect the evidence and is fair, they

would not cause any prejudice or injustice to Mr Carter, and that it would provide further clarity as to the charges. It decided to allow the amendments as proposed by Mr Edwards.

In regard to charge 16a, the panel decided to refine the application and further amended the proposed wording to *'kissing or attempting to kiss'* to make the tenses consistent. This would not cause any injustice or prejudice to Mr Carter.

In regard to charge 18a, the panel decided to refine the proposed amendment to "*placing your crotch near Colleague F's face when she was bent down*". The panel determined that the proposed amendment by the panel would provide further clarity as to the mischief of the charge and would accurately reflect the evidence before the panel. It concluded that there would be no injustice or prejudice to Mr Carter and would be fair to allow the refined amendments.

The panel decided to accept the application to amend charges 12c, d, e. It decided to refine the wording to charges 16a and 18a.

### **Charges (as amended)**

12. Behaved in an inappropriate and/or unprofessional manner towards Colleague B by;

- c. Sending unrelated messages via text message and/or Snapchat to Colleague B on one or more occasions.
- d. Stating in person and/or via a text message and or Snapchat to Colleague B words to the effect of, 'does your husband get jealous with me messaging you'.
- e. Sending one or more messages to Colleague B via text message and/or Snapchat stating words to the effect of, 'don't forget it's me and you'.

16. Behaved in an inappropriate and/or unprofessional manner towards Colleague E by;

- a. Kissing or attempting to kiss Colleague E on the neck.

18. Behaved in an inappropriate and/or unprofessional manner towards Colleague F by;

- a. Placing your crotch near Colleague F's face when she was bent down.

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

### **Charge 1**

**In relation to charges 1-7, breached professional boundaries with and/or behaved in an inappropriate and/or unprofessional manner towards Colleague A in that:**

**1. On 20 April 2019;**

- a. Grabbed Colleague A's waist.**
- b. Attempted to kiss and/or kissed Colleague A.**
- c. Unfastened Colleague A's trousers.**
- d. Placed your hand/s down Colleague A's trousers.**
- e. Penetrated Colleague A's vagina with your finger/s.**
- f. Grabbed Colleague A's hand/s and placed them onto your penis.**
- g. Pulled Colleague A's trousers down.**
- h. Penetrated Colleague A's vagina with your penis.**

In reaching its decision, the panel took into account the following evidence:

Colleague A's ABE interviews both video and transcript, two NMC witness statements, the local investigation meeting minutes and the cross-examination in court.

Mr Carter's Police interviews, his cross-examination in court, registrant's response bundle, and the local investigation meeting minutes.



The panel determined that Colleague A's is the sole and decisive evidence, and what weight to give to it.

The panel noted that in the ABE video interview Colleague A was visibly upset when using the word "*rape*", and when they were asked to add description of the alleged assault, Colleague A was hesitant to relive the experience and it was evident this was very difficult to do, with many long pauses between words being spoken. Colleague A appeared calmer when speaking about the background of their role, but when speaking about the details of the alleged assault, they visibly and audibly became distressed. The panel were confident that there was no fabrication in their recollection of the events, and that they remained consistent throughout the interview. The panel also noted that Colleague A recounted the events of 11 May 2019, when Mr Carter went back to the Unit to collect his phone, and stated:

*'I was too embarrassed to report it, or take it any further...'*

The panel determined that in regard to the consistency of Colleague A's evidence which was admitted as hearsay, they were credible, reliable and consistent during the local investigation meeting, police interviews, ABE video evidence and when they gave evidence at the criminal trial. Whilst the panel, when watching the ABE, did not consider Colleague A's demeanour, it took note of Colleague A's reactions and manner in which they were giving answers, and determined that Colleague A was credible and honest.

The panel also considered that in Colleague A's account given to Witness 1, they responded positively to a leading question asked by Witness 1 that may have been construed as Mr Carter requesting oral sex. However, [PRIVATE], and that this incident was not mentioned later, the panel determined that it was not sufficient to undermine their evidence as a whole. It further considered what Colleague A said in their cross-examination in court, in that they could not remember sending Snapchats or text messages to another person, including Mr Carter, and also that the accounts were collected years after the incidents, there was nothing before this panel to undermine their

credibility. The panel determined that taking into account any inconsistencies, the panel saw this as peripheral, but that their evidence did not undermine their evidence as a whole.

The panel noted Mr Carter's comment where he stated he is *'a happily married man and there is no way I would have sex with anyone else...'* and noted a number of inconsistencies in the various accounts Mr Carter gave, and contradictions by other witnesses, whose evidence was consistent and which the panel accepted.

Mr Carter did not mention the following in his police interviews and first spoke about it when giving evidence at the Crown Court on 12 January 2022:

1. *'...she were offering to meet up with me to go have sex, and also to her nanna's house 'cos she told me that she'd got access to her nannan's house quite regularly'; he suggested that's where Colleague A said they offered to meet up and have sex with reg. Colleague A also said she has access to her nan's house and that was the first time the nan's home was mentioned. If there was any truth to that, it would have been mentioned in the police interview; [sic]*

Mr Carter gave conflicting evidence in respect of an image of his penis that he sent to Colleague A, moving between it being sent by accident to it being sent in a moment of *'stupidity'*, to denying he sent the image.

Mr Carter's evidence was that he had changed out of his scrubs on the day in question – 20 April 2019 – into his own clothes before he returned files to storage at the end of his shift. All witnesses confirmed to the panel that this was not normal practice, it would not be sensible given the layout of the unit, and that staff would not change until the very end of their shift.

Mr Carter stated that he had medical issues at the time of the incident, which limited his movement/strength, but he provided the panel with no medical evidence of this. The panel

heard from witnesses who worked with him who all confirmed that he was fully able to carry out the physical aspects of his role at that time.

Mr Carter told the Police that Colleague A had been flirtatious towards him at work. However, the panel heard from a number of NMC witnesses, whose evidence the panel accepted, all of whom confirmed that Colleague A had not been flirtatious with Mr Carter. Mr Carter said that Colleague A had sent suggestive and flirtatious comments and photographs. Mr Carter also said that he provided the Police with his telephone so that they could see them but there was no evidence before the panel or the Court to support this claim of flirtatious behaviour towards him from Colleague A.

The panel considered all the evidence before it in relation to charges 1a, 1b, 1c, 1d, 1e, 1f, 1g and 1h, it had evidence from Colleague A, who stated that the incidents in charges 1a-1g occurred in a short space of time, approximately five to ten minutes. The panel decided that Colleague A's ABE interview was consistent for the most part with what they had said to Witness 1, the cross-examination of Colleague A in the Crown Court and the local investigation, where they clearly explained in detail how Mr Carter made them feel at the time of the incident. Having considered this, the panel went on to consider each of the limbs separately and collectively, and based on the evidence before it, found charges 1a, 1b, 1c, 1d, 1e, 1f, 1g, and 1h proved. The panel determined in respect of these charges Mr Carter did indeed breach professional boundaries and behaved in an inappropriate and unprofessional manner in the workplace.

## **Charge 2**

- 2. On one or more occasions stated to Colleague A words to the effect of, *'tell me that you love me'*.**

In reaching its decision, the panel took into account Colleague A's ABE interview and the oral evidence heard from a number of witnesses at these proceedings, who were present

at the time of the incidents. The panel took into account the evidence of Witness 6's NMC statement, where they state:

*'...The only time I saw anything at work between Bob (Mr Carter) and Colleague A was when he made a comment to her. I was at the reception desk, with Bob and Colleague A was sitting at the other end of reception. He shouted over to Colleague A 'tell me you love me'. Colleague A was sheepishly smirking, she did not reply...'*

And

*'...other than that occasion when he asked Colleague A to tell him she loved him...'*

The panel heard from Witness 6, where they stated in their oral evidence that the comment *'tell me you love me'* was said in front of patients, and the panel were of the view that Mr Carter was not behaving in a professional manner, and caused embarrassment for Colleague A, who did not reply to him at the time. It accepted that Witness 1's evidence was credible, reliable and consistent.

The panel also heard from and had sight of Colleague B's witness statement, where they state:

*'...I later heard about the incident with Colleague A, the only thing I witnessed with Bob and Colleague A was when I heard him say to her in front of patients 'tell me you love me Colleague A'. I think that she felt awkward about Bob like I did...'*

Colleague B was consistent, clear and reliable in all their evidence before the panel, and there was no reason to believe they had fabricated any parts of their evidence. The panel also considered Mr Carter's denial at the local investigation interview.

Based on all the evidence before it, the panel found charge 2 proved and determined that Mr Carter's actions breached professional boundaries and he behaved in an inappropriate and unprofessional manner towards Colleague A.

### **Charge 3**

#### **3. On one or more occasions '*winked*' at Colleague A.**

In reaching its decision, the panel took into account the minutes from the local investigation and the statement from Colleague A dated 26 October 2023:

*'...When he was going into either one of the patient rooms he would walk backwards, facing towards reception and away from the patients and wink at me when I was on reception...'*

The panel also considered the layout of the Day Unit to confirm that Mr Carter would appear visible to Colleague A from reception.

Based on all the evidence before it, the panel found charge 3 proved and determined that this happened on more than one occasion. The panel determined that on its own, '*winking*' may not be inappropriate. However, the panel looked at the pattern of behaviour exhibited by Mr Carter, and in that context, determined that he breached professional boundaries, behaved inappropriately and unprofessionally in the workplace towards Colleague A.

### **Charge 4**

#### **4. On one or more occasions '*hugged*' Colleague A.**

In relation to charge 4, the panel took note of the following excerpt from Colleague A, where they state that:

*‘...Bobby love was a hug. He would ask me and other members of staff if we wanted bobby love. It was often in front of patients and other staff member, which made it difficult to refuse the hug...’*

Colleague A described Mr Carter as *‘difficult and not easy to say no to’*

The panel also had regard to the evidence of other witnesses, who stated that *‘bobby love’* was a regular occurrence. It determined that based on the evidence of Colleague A, and the confirmation of *‘bobby love’* by other witnesses, that hugging occurred on more than one occasion. Based on all the evidence before it, the panel found charge 4 proved and it concluded that Mr Carter breached professional boundaries, was inappropriate and unprofessional towards Colleague A.

## **Charge 5**

### **5. On one or more occasions would stick your tongue out towards Colleague A.**

The panel took note of the evidence before it, and in particular the gestures mentioned in Colleague A's ABE interview:

*‘...It wor [sic] like running off pulling faces and stuff like sticking his tongue out...’*

Based on the evidence before it, the panel found charge 5 proved. It determined that Mr Carter breached professional boundaries, was inappropriate and unprofessional towards Colleague A.

### **6. On one or more occasions made sexual gestures towards Colleague A by;**

- a. Sticking your tongue out and placing it between your fingers.**
- b. Turning towards Colleague A and grabbing your crotch and/or penis.**

In reaching its decision on charge 6a, the panel took into account Colleague A's ABE interview and determined the evidence contained supports that the incidents occurred, but the panel could not be assured as to how many times the incidents occurred. It noted that Colleague A, during their local interview stated that by Mr Carter sticking his tongue out between his fingers, it was a sexual gesture towards them and that they felt uncomfortable:

*'...Sticking his tongue out between his fingers in a V to his mouth in an oral sex manner...'*

Since Colleague A believed it was sexual, the panel determined that Mr Carter breached professional boundaries, was inappropriate and unprofessional towards Colleague A.

In regard to charge 6b, the panel had sight of the local investigation interview minutes and Colleague A's ABE interview:

*'...I have seen him grab himself down below over his scrubs...'*

And

*'...he used to like grab his-self and just like pull funny faces...What part of his body would (unintelligible)...his penis...' [sic]*

The panel determined that the very nature of the gesture made by Mr Carter was sexual, and happened on more than one occasion and concluded that it could not be reasonably explained as something else. The panel determined that Mr Carter breached professional boundaries, was inappropriate and unprofessional towards Colleague A.

The panel therefore found the entirety of charge 6 proved.

**7. On a date unknown sent a picture of your penis to Colleague A.**

In reaching its decision the panel took into account Mr Carter's evidence in the second police interview on 6 November 2019 he stated:

*'Did you send her any intimate pictures...I sent one ....Right and what was that of...of my penis...'*

During his evidence at the Crown Court on 12 January 2022, Mr Carter stated:

*'...I actually sent her a picture of me self, of me penis...' [sic]*

And in Colleague A's ABE interview, they said:

*'...He once sent one of himself his penis...'*

Mr Carter denied at his local investigation interview that he sent the picture, but admitted it to Police and evidence at court, as confirmed by the police in an email to Mr Carter's employer on 20 May 2022:

*'...Yes I can confirm that Robert Carter certainly admitted sending the image when he was under oath...'*

Based on all the evidence before it, the panel found charge 7 proved.

The panel determined that based on the evidence before it, that whilst the image was sent when Mr Carter was off shift, he was not a personal friend of Colleague A, but merely a work colleague and sending the image therefore breached professional boundaries, was inappropriate and unprofessional.

## **Charge 8**



**8. Your actions and/or conduct set out in charge 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 amounted to harassment of Colleague A in that:**

- a. It related to Colleague A's sex.**
- b. It was unwanted, and/or**
- c. It was sexual in nature, and/or**
- d. It had the purpose or effect of:**
  - i. Violating Colleague A's dignity, and/or**
  - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague A.**

In considering the word 'harassment', the panel accepted the advice from the legal assessor that it could take into account Section 26 of the Equality Act 2010. The legal assessor referred the panel to NMC guidance FTP-3, namely:

*'Harassment is defined by the Equality Act 2010 as someone engaging in unwanted conduct that's related to a protected characteristic or is of a sexual nature. The behaviour has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. It's necessary to take the perception of the person who's the subject of the conduct and any other circumstances into account. As well as harassment linked to a protected characteristic as defined by the Equality Act, harassment can also be unwanted conduct that is unrelated to a protected characteristic which someone finds offensive or which makes someone feel intimidated or humiliated.'*

In reaching its decision on charge 8, the panel determined that Mr Carter's actions were intimidating, hostile, degrading, humiliating and created an offensive environment for Colleague A. The panel found that charges 1-7 taken together, amount to a course of conduct that constituted harassment due to it being related to Colleague A's sex, was unwanted and was sexual in nature. The panel therefore found this charge proved.

## **Charge 9**

- 9. Your conduct in charge 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 was sexually motivated for the purposes of sexual gratification.**

The panel, when looking at the charges 1-7 collectively, it determined that Mr Carter's actions and conduct was sexually motivated for the purposes of sexual gratification. It was of the view that his actions escalated to the point of rape, and that there could not have been any other purpose for Mr Carter's actions, asides from being for sexual gratification. The panel also had sight of Mr Carter's cross examination at the Crown Court, when asked about the image subject of charge 7:

*'Q: It was a sexual overture, wasn't it?*

*A: If that's what you call it, sir, yes.*

*Q: Well, it couldn't have been anything else, could it?*

*A: No, it couldn't sir'*

The panel, therefore, based on the evidence before it, found this charge proved.

## **Charge 10**

- 10. On 19 May 2022 during an investigation meeting held by Barnsley Hospitals NHS Foundation Trust, incorrectly declared that you did not send a picture of your penis to Colleague A.**

In reaching its decision, the panel took into account the evidence before it, including the minutes of the local investigation, the police interview and court cross-examination, and namely, an email from the police to his employer dated 20 May 2022:

*‘... Yes I can confirm that ROBERT CARTER certainly admitted sending the image when he was under oath...’*

When asked as part of the local investigation on 19 May 2022:

*‘Q: Did you send a picture of your penis to any of your colleagues?’*

*A: No.’*

The panel found this charge proved.

## **Charge 11**

**11. Your declaration in charge 10 was dishonest in that you had previously declared that you had sent a picture of your penis to Colleague A when;**

- a. Interviewed by the police on 6 November 2019.**
- b. Giving evidence under oath at Sheffield Crown Court on 12 January 2022.**

In reaching its decision, the panel accepted the advice of the legal assessor, who referred the panel to the case of *Ivey v Genting Casinos Ltd [2017] UKSC 67*.

The panel took into account a Police interview, the transcript from the Crown Court, an email dated 20 May 2022 from the Police and Mr Carter’s denial of sending any images to Colleague A during the local investigation.

The panel noted that Mr Carter stated in his local investigation meeting:

*‘Witness 11: Did you send a picture of your penis to Colleague A?’*

*Mr Carter: Again this was thrown out of court it is not true and was a lie. There was no evidence to prove this...’*

However, the panel had sight of an interview Mr Carter had with the police on 6 November 2019, where he answers a question as to whether he set any intimate pictures to Colleague A:

*‘...I sent one...of my penis...’*

The panel also considered the evidence given at Sheffield Crown Court on 12 January 2022, where Mr Carter said:

*‘...I sent a picture of my penis. I regretted it straight away. It was ten seconds of complete madness...’*

In considering dishonesty, the panel determined that there was no other reasonable explanation for the discrepancies in Mr Carter’s accounts and that he knew that he had sent the image when he denied it to the local investigation. The panel concluded this was a deliberate lie and a reasonable person would regard this as dishonest.

The panel therefore determined Mr Carter was dishonest and found the entirety of charge 11 proved.

## **Charge 12a**

**12.Behaved in an inappropriate and/or unprofessional manner towards Colleague B by;**

- a. On date unknown stated to Colleague B whilst on an evening out, words to the effect of, *'hold my hands let's get them talking'*.**

Mr Carter denies this allegation.

In reaching its decision on charge 12a, the panel took into account the evidence before it, including the witness statement and oral evidence of Colleague B, which it accepted to be credible, reliable and consistent:

*'On one occasion we were going out on a evening out after work with the other staff on the unit. I was working with Bob until six thirty so we walked across to the pub together to meet the others. He said to 'hold my hand lets get them talking'. I told him I didn't want to hold his hand...' [sic]*

Mr Carter mentioned having an affair, which was denied by him at the local level investigation. The panel had regard to Colleague B's oral evidence, when they stated Mr Carter *'made me feel uncomfortable and nervous'*. The panel were of the view that there is no reason to doubt Colleague B's account of events, and as a result of the effect it has had on them, the panel found this charge proved and it determined that Mr Carter was unprofessional and breached professional boundaries.

## **Charge 12b**

### **12.Behaved in an inappropriate and/or unprofessional manner towards Colleague B by;**

- b. Stating to an unknown couple and in front of Colleague B, words to the effect of, *'we are having an affair'*.**

In reaching its decision on charge 12b, the panel had regard to Mr Carter's denial and Colleague B's evidence, which it accepted to be credible, reliable and consistent. The panel had sight of an excerpt of Colleague B's statement:

*'...There was a couple at the next table, I do not know if he knew them or not, but he said to them that we were having an affair. I said that he shouldn't be saying that as we are both married, he laughed and said that he was only joking...'*

The panel heard from Colleague B during their oral evidence that they felt '*sick to the stomach*', and the panel found that this charge is proved and such a comment could only be seen as inappropriate and unprofessional.

### **Charge 12c**

**12.Behaved in an inappropriate and/or unprofessional manner towards Colleague B by;**

**c. Sending unrelated messages via text message and/or Snapchat to Colleague B on one or more occasions.**

In reaching its decision on charge 12c, the panel took the view that this charge referred to messages unrelated to work. The panel had sight of Colleague B's witness statement, where they state:

*'...Bob started messaging me to my personal phone. The messages had nothing to do with work, he sent pictures of the fishing lake, I ignored his messages mostly as he was getting on my nerves...'*

The panel determined that this was inappropriate, and breached professional boundaries. It was clear to the panel during Colleague B's oral evidence that the majority of the messages were via Snapchat, but that if Mr Carter was discussing work related issues, this would

usually be via text message. In oral evidence, Witness 9 explained that nurses would only have each others' private phone numbers to facilitate being contacted for emergency callouts. Witness 9 stated that they had conducted an audit and that there were only 19 callouts in the previous year. Colleague B confirmed in their evidence that the only reason they allowed Mr Carter had their number was for the purpose of emergency callouts.

The panel also heard from Colleague B that they felt '*bombarded*' by Mr Carter's messages, and that it happened a number of times over a period of time. The panel therefore determined, that based on the evidence before it, this charge is found proved and that Mr Carter used both messages and Snapchat to send unrelated messages.

## **Charge 12d**

### **12. Behaved in an inappropriate and/or unprofessional manner towards Colleague B by;**

#### **d. Stating in person and/or via a text message and/or Snapchat to Colleague B words to the effect of, '*does your husband get jealous with me messaging you*'.**

In reaching its decision on charge 12d, the panel had sight of Colleague B's witness statement, where they state:

*'...then he sent me a message asking if [PRIVATE] got jealous of him messaging me...'*

The panel heard from Colleague B, who said during their oral evidence that they could recall Mr Carter saying this to them in person, and that they told Mr Carter that their [PRIVATE] was not jealous of the Snapchat and text messages. They also confirmed to the panel that they could not be sure whether these messages were sent to them via Snapchat, but

confirmed that they were sure that non-work related messages were sent via Snapchat. Colleague B also told the panel that they could not block or ask Mr Carter to stop messaging them, as they were colleagues and mobile text messages were used for messaging nurses on call for emergency callouts. The panel had regard to Mr Carter's answer in relation to contacting Colleague B:

*'I can't remember sending that message...'*

The panel determined that based on the evidence before it, that this charge was found proved and Mr Carter behaved in an inappropriate and unprofessional manner.

## **Charge 12e**

### **12. Behaved in an inappropriate and/or unprofessional manner towards Colleague B by;**

#### **e. Sending one or more messages to Colleague B via text message and/or Snapchat stating words to the effect of, *'don't forget it's me and you'*.**

In reaching its decision on charge 12e, the panel had regard to Colleague B's evidence, which it accepted to be credible, reliable and consistent. The panel had sight of Colleague B's witness statement, where it is stated:

*'...the messages were things like 'don't forget it's me and you' I felt harassed by him.'*

The panel noted that Colleague B's witness statement details that Mr Carter and Colleague B were working together on a Saturday, but Mr Carter had messaged Colleague B several times the night before and on the Saturday morning, prior to the shift commencing. Saturday work on the initiative list was planned overtime, and not emergency work. The panel heard from Colleague B who described that the messages they received were upsetting,



unnecessary and harassing, so much so that they reported this to a senior colleague. The panel determined that Mr Carter was inappropriate and unprofessional, and therefore found this charge proved.

### **Charge 12f**

#### **12. Behaved in an inappropriate and/or unprofessional manner towards Colleague B by;**

##### **f. Requesting on one or more occasions that Colleague B states that she 'loves you' or words to that effect.**

In reaching its decision on charge 12f, the panel had regard to Colleague B's evidence, which it accepted to be credible, reliable and consistent. The panel, after hearing from them, determined that the evidence it heard was consistent with Mr Carter's pattern of behaviour, as described in previous charges.

The panel had sight of Colleague B's statement, specifically:

*'...He would say to me tell me you love me...'*

The panel also heard in Colleague B's oral evidence:

*'...randomly he would say tell me you love me...I found this very strange...I thought it was bizarre and strange behaviour...'*

The panel found this charge proved, and that Mr Carter's behaviour was inappropriate and unprofessional in the workplace.

### **Charge 12g**

**12. Behaved in an inappropriate and/or unprofessional manner towards Colleague B by;**

**g. Stating to Colleague B about another colleague words to the effect of, *'look at the arse on her'*.**

In reaching its decision on charge 12g, the panel had sight of Colleague B's evidence, which it accepted to be credible reliable and consistent. It had regard to Colleague B's witness statement, specifically:

*'....made a comment about an Health Care Assistants bum in day surgery saying 'look at the arse on her' as she walked away...' [sic]*

The panel were of the view that whilst Colleague B could not recall the exact details of the incident, they were able to recall important details of the incident, and so there was no reason to believe they fabricated their recollection of events. The panel took into account that Mr Carter denied at the local investigation that he made the comment:

*'Witness 11: Specifically commenting on a colleagues bottom, why did you do this?*

*Mr Carter: No I have not done that...'*

The panel, after considering all the evidence before it, determined that on the balance of probabilities, this did happen and therefore found the charge proved and that it was inappropriate and unprofessional.

**Charge 13**

**13. Your actions in any or all of the conduct set out charge 12 amounted to harassment of Colleague B in that:**

- a. It related to Colleague B's sex.**
- b. It was unwanted, and/or**
- c. It was sexual in nature, and/or**
- d. It had the purpose or effect of:**

- i. Violating Colleague B's dignity, and/or**
- ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague B.**

In reaching its decision on charge 13 in respect of charge 12a, the panel considered the oral evidence from the NMC's witnesses, of which the majority stated that Mr Carter's behaviour was directed at female members of staff, predominantly younger junior members of staff. It noted from Colleague B's oral evidence that they had previously raised concerns as formally as they could, and that Mr Carter's behaviour was sexual in nature, violated Colleague B's dignity, and made them feel '*uncomfortable and nervous*'. It considered Colleague B's evidence, namely:

*'...not very nice, [PRIVATE] it wasn't very nice...'*

The panel determined that Mr Carter's actions were related to Colleague B's sex, were unwanted and sexual in nature and created an intimidating environment for Colleague B. The panel found this part of charge 13 in relation to 12a proved.

In reaching its decision on charge 13 in respect of charge 12b, the panel had sight of Colleague B's witness statement and oral evidence. It heard from Colleague B that they were married, and that they felt uncomfortable during Mr Carter's interactions with them. The panel determined that Mr Carter's conduct was sexual in nature, as his words were intimating that he and Colleague B were having an affair is sexual in itself. The panel also concluded that Mr Carter's actions violated Colleague B's dignity, as was heard during their oral evidence:

*‘...felt sick to my stomach...’*

The panel determined that Mr Carter’s actions created an intimidating and hostile environment, especially as this incident occurred in a public place close to the Hospital, the statement was said to an unknown couple, and by doing this, Mr Carter degraded and humiliated Colleague B in front of others, who may have been patients or staff. The panel had further regard to Colleague B’s witness statement, specifically:

*‘...I felt really uncomfortable and couldn’t wait for the others to arrive which they soon did...’*

The panel, based on the evidence before it, found this charge proved in relation to charge 12b.

In reaching its decision on charge 13 in respect of charge 12c, the panel had no evidence before it to suggest that Mr Carter’s conduct was related to Colleague B’s sex, or was sexual in nature but determined that his conduct was unwanted and had the effect of violating Colleague B’s dignity. The panel was satisfied that Mr Carter’s actions created an intimidating environment because Colleague B had spoken to Mr Carter asking him to stop messaging them, but he required their number for work purposes, and so Colleague B felt powerless to stop Mr Carter. The panel heard in oral evidence that Colleague B felt *‘bombarded’* and that Mr Carter did not stop contacting them via Snapchat and/or text message despite not receiving a response from Colleague B.

The panel determined that Mr Carter’s behaviour created an intimidating environment, as Colleague B felt they could not block him. The panel had regard to Colleague B’s witness statement, specifically:

*‘...I ignored his messages, as he was mostly getting on my nerves...it was unwanted...’*

The panel determined that Mr Carter's conduct was unwanted, and violated Colleague B's dignity, in that they felt '*trapped*' and concluded that Mr Carter's behaviour amounted to harassment, and therefore found charge 13 in relation to charge 12c proved.

In reaching its decision on charge 13 in respect of charge 12d, the panel heard Colleague B's oral evidence and had sight of their witness statement. It determined Mr Carter's behaviour created an uncomfortable environment for Colleague B as a member of the opposite sex, and that his conduct was unwanted. The panel determined that his conduct was sexual in nature, as the sole reason Colleague B's [PRIVATE] would have been jealous is if Mr Carter had been a sexual partner of Colleague B's, and that this could have potentially been a threat to Colleague B and [PRIVATE]. The panel concluded, having had sight of the evidence, that Mr Carter created an intimidating, hostile, degrading, humiliating and environment for Colleague B, and therefore on the balance of probabilities, this did occur and found this charge proved in relation charge 12d.

In reaching its decision on charge 13 in respect of charge 12e, the panel determined that Mr Carter's actions were unwanted, and that it had the effect of violating Colleague B's dignity in that they felt that they were being made to feel that they were not competent in knowing that they were due to be on shift the following day. Mr Carter created an intimidating, hostile, degrading, humiliating and environment for Colleague B. By Mr Carter stating '*...it's me and you...*', his actions amounted to harassment, as evidenced in Colleague B's witness statement:

*'...We were working a Saturday together, we do initiative lists, which is the option to do overtime if we want it. On the Friday before our shift together he kept messaging me to remind me that we were working together. He must have messaged me five times or more to tell me, the messages were things like 'don't forget it's me and you'. I felt harassed by him.*

*On the Saturday morning we were due to start at 08:30 I arrived at work and went to get changed arriving at 08:15. Bob rang me to see where I was. I went into the sitting room, where Bob was and asked him what his problem was. He said that he thought I was going to be late I replied 'I'm here and on time'. We had to work all day together and he wouldn't talk to me. He spoke with the patient and to the doctor but not to me.*

*One of the other nurses asked me if I wanted to swap with her so that I did not have to work with him, it was so awkward and there was an atmosphere in the room. I was uncomfortable because I had confronted him. I as annoyed by the texts and the call, but then thought that perhaps I was overthinking things. At the end of the shift he apologised to me and I told him that it was too late...'*

The panel determined that Mr Carter's actions were sexual in nature, and that his conduct did have the effect of creating an intimidating, hostile, degrading and humiliating environment for Colleague B. The panel determined that this did occur and therefore found this charge proved in relation to charge 12e.

In reaching its decision on charge 13 in respect of charge 12f, the panel determined that Mr Carter's actions were unwanted by Colleague B, and that he was attempting to persuade Colleague B to say something they did not want to say. The panel concluded that his actions were not humiliating, degrading and was not intimidating, as Colleague B told the panel they thought Mr Carter's behaviour was '*bizarre*' but they did not describe the effect Mr Carter's conduct had on them as a whole.

The panel determined that whilst the comment made by Mr Carter was related to Colleague B's sex, unwanted and was sexual in nature, the panel had nothing from Colleague B to evidence what impact Mr Carter's actions had on them, as they did not describe his conduct to be offensive, and simply stated that '*it was strange and bizarre*' and determined that Mr Carter's conduct fell short of harassment. It therefore found this charge not proved in relation to charge 12f.

In reaching its decision on charge 13 in respect of charge 12g, the panel determined that Mr Carter's comment regarding an HCA was inappropriate and unwanted. It was of the view that Mr Carter made the comment created a humiliating environment for Colleague B. It determined that his comments were particularly inappropriate because they were said in the Endoscopy Unit, and that if patients overheard the comment, it could damage their confidence in the care being provided by the Unit. It determined that this incident did occur, and therefore found this charge proved in relation to charge 12g.

When taken as a whole, with the exception of charge 12f, Mr Carter's conduct collectively amounted to harassment. Therefore, the panel concluded that charge 13 was found proved.

#### **Charge 14a**

#### **14.Behaved in an inappropriate and/or unprofessional manner towards Colleague C by;**

- a. Stating to Colleague C words to the effect of, *'people don't know that you and I are having an affair do they?'*.**

In reaching its decision on charge 14a, the panel took into account Colleague C's oral and written evidence, which the panel accepted to be credible, reliable and consistent and determined that Mr Carter's comment was grossly inappropriate. It was of the view the behaviour exhibited by Mr Carter was unprofessional, and that he disrespected Colleague C in front of their colleagues, who were in proximity when the comment was made. The panel had sight of the following excerpt from Colleague C's witness statement:

*'...The only incident involving me and bob was one day I was in the sitting room chatting, there was a consultant, Mr 1 me and Bob. Bob started to say things like 'people don't know that me and you are having an affair do they?'...' [sic]*

The panel heard from Colleague C, who stated that Mr Carter made the comment to ‘*attract Mr 1’s attention*’ and the panel determined that Mr Carter was unprofessional and inappropriate towards Colleague C. The panel considered the local investigation meeting, where Mr Carter said:

*‘Witness 11: It is alleged that you have said on more than on occasion to separate colleagues about having an affair with them in front of other people, why did you say this?’*

*Mr Carter: I was messing about having a laugh a doctor started that.*

*Witness 11: It is alleged that you would brag about having had affairs with other women, why did you do this?’*

*Mr Carter: No I have been happily married for 36 years...’*

Although the panel heard from Colleague C in their oral evidence that they did not believe Mr Carter’s comments were inappropriate or unprofessional, the panel determined that the comments were inappropriate and unprofessional, as they were made in a work setting, where senior colleagues were present. The panel therefore found this charge proved.

## **Charge 14b**

**14.Behaved in an inappropriate and/or unprofessional manner towards Colleague C by;**

**b. Snapping at Colleague C stating words to the effect of, ‘*I’m sick of hearing about Steve, will you shut up about Steve*’.**

In reaching its decision on charge 14b, the panel took into account the minutes from the local investigation meetings, and Colleague C’s evidence, which the panel accepted to be



credible, reliable and consistent. The panel were of the view that there is nothing before it in relation to this charge to suggest any fabrication, and preferred Colleague C's account over the denial of Mr Carter that this incident occurred. It determined that Mr Carter's comment was inappropriate, and that Colleague C was '*surprised and thought it was strange*'. The panel, on the balance of probabilities, found this charge proved.

### **Charge 15**

**15.Behaved in an inappropriate and/or unprofessional manner towards Colleague D by stating words to the effect of, '*I had a sexual dream about you*'.**

In reaching its decision on charge 15, the panel had sight of Colleague D's statement, and investigation meeting minutes which were previously admitted as hearsay. The panel accepted that the account was credible, reliable and consistent throughout their evidence.

The panel placed significant weight on the statements and investigation meeting minutes , and relied on them as evidence in relation to this charge. It also had nothing before it to suggest that Colleague D had fabricated the contents of the statement, and that they had nothing to gain by being dishonest. The panel were of the view that Colleague D answered questions at the local investigation, which were consistent with their witness statement. The panel also determined that this comment was consistent with other inappropriate and unprofessional comments of a sexual nature made by Mr Carter. The panel noted that Mr Carter offered no evidence or information in relation to this charge, and based on the balance of probabilities, the panel determined that it more likely occurred and therefore found this charge proved.

### **Charge 16a**

**16.Behaved in an inappropriate and/or unprofessional manner towards Colleague E by;**

**a. Kissing or attempting to kiss Colleague E on the neck**

In reaching its decision on charge 16a, the panel took into account Colleague E's interview notes, where they state:

*'...he would overly touch people...and overly flirt...'*

In oral evidence, Colleague E described how Mr Carter tried to kiss their neck and Colleague E moved away and said *'what you doing?'*. Colleague E described how they were alone in the office at the time. The attempted kiss was never spoken about and interpreted as *'a clumsy advance'* where Mr Carter was *'trying his luck'*. Colleague E went on to explain in oral evidence that if Mr Carter were challenged, he became *'narky'* and acted like *'a petulant child'*.

*'...probably walking to reception when Bob came into the office. I can't remember what was said but suddenly as I was stood there without warning he leaned in and kissed my neck on the side. I pulled away, I felt shocked by what he did...'*

The panel determined that their evidence was consistent to what they stated at the local investigation. The panel accepted that Colleague E's evidence was consistent, credible and reliant throughout their evidence. The panel specifically took note of the following statement from Colleague E:

*'...he tried kissing me on the neck...in hindsight, I wish I'd reported it...'*

During Mr Carter's investigation meeting, he denied that this incident occurred.

The panel determined that Mr Carter's conduct was unprofessional and inappropriate. It was unprovoked and unwelcome and happened at the time when Mr Carter knew that Colleague E was working on their own. The panel concluded that on the balance of probabilities, it is

more likely than not that Mr Carter attempted to kiss Colleague E on the neck, and therefore found this charge proved.

### **Charge 16b**

**16. Behaved in an inappropriate and/or unprofessional manner towards Colleague E by;**

**b. Stating to Colleague E words to the effect of, *'I have had three affairs'*.**

In reaching its decision in relation to charge 16b, the panel had regard to the local investigation minutes from Colleague E, specifically:

*'Robert Carter used to say he had three affairs I don't know if he was trying his luck...'*

The panel determined that the evidence of Colleague E was consistent, and that Mr Carter's conduct was inappropriate and unprofessional. Mr Carter was aware that Colleague E had recently split up with their long term partner at the time. The panel were satisfied that on the balance of probabilities, it is more likely than not that Mr Carter made this comment, and therefore found this charge proved.

### **Charge 17**

**17. Your conduct in charge 16 was sexually motivated in that it was in the pursuit of a sexual relationship with Colleague E and/or was for the purposes of sexual gratification.**

In reaching its decision on charge 17, the panel took account of the evidence aforementioned in charges 16a and 16b, and determined that Colleague E was consistent across all accounts of the events, and that Mr Carter did attempt to kiss them on the neck.

Colleague E stated that they thought Mr Carter was *'trying it on'* and that Colleague E had just left a long term relationship.

The panel determined that the only reasonable explanation for Mr Carter's actions in respect of charges 16a and 16b, was that his conduct was sexually motivated. It determined that his actions were in pursuit of a sexual relationship and for the purposes of sexual gratification. The panel therefore found this charge proved.

### **Charge 18a**

#### **18. Behaved in an inappropriate and/or unprofessional manner towards Colleague F by;**

##### **a. Placing your crotch in Colleague F's face when she was bent down.**

In reaching its decision in relation to charge 18a, the panel took account of Colleague F's witness statement, and their oral evidence, which it accepted to be credible, reliable and consistent specifically:

*'...if ever I was bent down he would put his crotch in my face...'*

The panel heard from Colleague F, who was consistent in their evidence both in their signed witness statement and oral evidence, which the panel found to be credible, reliable and consistent with the interviews carried out at the local investigation. The panel considered Mr Carter's denial of this charge at the local investigation meeting:

*'...Witness 11: It is alleged that on more than 1 occasion you have put your crotch in your colleagues face and stated 'whilst you are down there' why did you do this?*

*Mr Carter: No I didn't do that This is not true. Its a load of nonsense...' [sic]*

The panel rejected Mr Carter's denial and accepted the evidence of Colleague F.

The panel heard from Colleague F that this was a part of Mr Carter's behaviour, and that they were '*embarrassed and laughed it off*', as they did not know how else to react to his actions. The panel determined, that on the balance of probabilities, it is more likely than not that the events occurred, and that Mr Carter's conduct was unprofessional and inappropriate. It therefore found this charge proved.

### **Charge 18b**

**18.Behaved in an inappropriate and/or unprofessional manner towards Colleague F by;**

- b. Pushing Colleague F onto a bed and;**
  - i. Opened Colleague F's legs and/or**
  - ii. Pretend to give Colleague F oral sex.**

In reaching its decision in relation to charge 18b, the panel took into account Colleague F's signed witness statement and their oral evidence. In their witness statement, Colleague F stated:

*'...The second occasion was when the registrant pushed me on the trolley bed and lifted my legs up, he pretended to do oral sex...'*

It was of the view that Colleague F's oral evidence was credible, reliable and consistent with previous accounts given at the local investigation. It considered other oral evidence heard, and concluded that other staff members were not shocked and that Mr Carter '*picked his audience*'. During questions from the panel, Colleague F told it that it was normal to expect similar behaviour from Mr Carter, and that '*it depended on age and who you are...*'.

The panel was satisfied that based on the balance of probabilities, Mr Carter did push Colleague F onto the trolley bed after checking they were alone, and in the knowledge that Colleague F was a junior member of staff.

The panel determined that this act formed a part of Mr Carter's pattern of behaviour, and when challenged on it, *'became a different person...'*. Based on the evidence before it, the panel found this charge proved.

### **Charge 19**

**19. Your actions in charge 18 amounted to harassment of Colleague F in that:**

- a. It related to Colleague F's sex.**
- b. It was unwanted, and/or**
- c. It was sexual in nature, and/or**
- d. It had the purpose or effect of:**
  - i. Violating Colleague F's dignity, and/or**
  - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague F.**

In reaching its decision in relation to charge 19, based on all charges detailed in charge 18 being found proved, the panel determined that Mr Carter's conduct amounted to harassment. It took into account that it related to Colleague F's sex, it was unwanted and was sexual in nature. Collectively, these actions violated Colleague F's dignity and created an intimidating, hostile, degrading, humiliating and offensive environment for Colleague F in the workplace. The panel found this charge proved.

### **Charge 20**

**20. Your conduct in charge 18 was sexually motivated for the purpose of sexual gratification.**

In reaching its decision on charge 20 in respect of charge 18, the panel determined that Mr Carter's actions were intended to be sexual, and that they were sexually motivated for the purposes of sexual gratification. The panel took note of the following statement from Mr Carter's interview at the local investigation:

*'...why would I do that on a ward when I can do it with my wife at home...'*

The panel determined that it is more likely than not that Mr Carter's conduct in charge 18 was sexually motivated for the purpose of sexual gratification. It therefore found this charge proved.

**Charge 21a**

**21. Behaved in an inappropriate and/or unprofessional manner towards Colleague G by;**

- a. Stating to Colleague G whilst she was bent over words to the effect of, *'whilst you are down there'*.**

In reaching its decision in relation to charge 21a, the panel took account of Colleague G's witness statement, their signed NMC statement and their oral evidence. The panel accepted that Colleague G was credible, reliable and consistent and it had no reason to believe any parts of their statements were fabricated. The panel had sight of Colleague G's witness statement, where they state Mr Carter said:

*'...While you are down there...'*

This incident was corroborated by Witness 10, who saw and heard it.

Colleague G told the panel they were uncomfortable, and the panel decided that Mr Carter's conduct was unprofessional and inappropriate. The panel heard that Colleague G said at the local investigation that they did not report Mr Carter, as they *'didn't want any conflict...'* and when they described how they reacted to his actions, Colleague G said:

*'I was gobsmacked and didn't say anything...I got annoyed on many occasions...'*

The panel determined that Mr Carter's conduct was unwanted, despite Mr Carter's denial, where he stated during his interview at the local investigation:

*'...No that was in court no, why would I do that on a ward when I can do it with my wife at home...'*

The panel considered that Colleague G's evidence was consistent, credible and reliable and concluded therefore on the balance of probabilities, it is more likely than not that the incident occurred. The panel therefore found this charge proved and further determined that Mr Carter's conduct was unprofessional and inappropriate.

## **Charge 21b**

**21. Behaved in an inappropriate and/or unprofessional manner towards Colleague G by;**

**b. Kissing Colleague G on the neck.**

In reaching its decision on charge 21b, the panel took into account the evidence of Colleague G, which the panel accepted to be credible, reliable and consistent. Colleague G states:



*‘...One day, I was stood on the corridor and he came from behind me, he kissed my neck. I then jumped and looked around and I didn’t know what to say or do...’*

This incident was corroborated by Witness 10, who saw and heard it.

The panel heard from Colleague G that they would avoid being in the same area as Mr Carter in the workplace, and that they were ‘*shocked*’ when Mr Carter kissed their neck. They also told the panel that any challenges made about his behaviour was not well received by Mr Carter, and that he would, for some time afterwards, ignore the person raising the issue. The panel also heard from other witnesses describing Mr Carter as a ‘*petulant child*’ when spoken to about his conduct. The panel determined that Mr Carter’s conduct in the workplace was unprofessional and inappropriate by causing upset on the Unit, where there were younger and more junior members of staff present. The panel therefore found this charge proved.

### **Charge 21c**

**21. Behaved in an inappropriate and/or unprofessional manner towards Colleague G by;**

**c. Hugging Colleague G on one or more occasions.**

In reaching its decision in relation to charge 21c, the panel took account of the local investigation notes, specifically:

*‘...It was a daily thing he would give me a Bobby hug and I didn’t want it, it felt inappropriate it wasn’t necessary...’*

The panel also took note of Mr Carter’s response to the allegation at the time, where he states:

*‘...it wasn’t inappropriate, it was a bit of fun...’*

The panel deemed Colleague G to be a credible and reliable witness, and determined that Mr Carter’s conduct was inappropriate and unprofessional, and on the balance of probabilities, found that it is more likely than not that this incident occurred. The panel therefore found this charge proved.

## **Charge 22**

**22. Your actions charge 21 amounted to harassment of Colleague G in that:**

- a. It related to Colleague G’s sex.**
- b. It was unwanted, and/or**
- c. It was sexual in nature, and/or**
- d. It had the purpose or effect of:**
  - i. Violating Colleague G’s dignity, and/or**
  - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for Colleague G.**

Based on all charges detailed in charge 21 being found proved, the panel determined that Mr Carter’s conduct amounts to harassment, as it was a course of conduct. It took into account Colleague F’s sex, that it was unwanted, sexual in nature. Collectively, these actions violated Colleague G’s dignity and created an intimidating, hostile, degrading, humiliating and offensive environment for Colleague G in the workplace. The panel, on the balance of probabilities, found this charge proved.

## **Charge 23**

**23. Your conduct in charge 21 was sexually motivated for the purposes of sexual gratification.**

In reaching its decision on charge 21, the panel determined that Mr Carter's actions were intended to be sexual, that they were sexual and that there could not be any other reasonable explanation.

The panel determined that it is more likely than not that Mr Carter's conduct in charge 21 was sexually motivated for the purposes of sexual gratification. It therefore found this charge proved.

### **Charge 24a**

**24. On one or more occasions failed to maintain professional boundaries and/or behaved in an inappropriate and/or unprofessional manner towards one or more colleagues whilst on duty by;**

**a. Hugging them.**

In reaching its decision in relation to charge 24a, the panel had sight of Mr Carter's acceptance:

*'Witness 11: What is Bobby Love?*

*Mr Carter: It started when a colleague was upset I asked if they were alright she said no and I gave her a hug and said I was there for them and it was nicknamed bobby love...'*

The panel were of the view that although Mr Carter stated that '*bobby love*' was for both male and female colleagues, the panel determined, having heard from a number of witnesses that it is more likely that Mr Carter gave '*bobby love*' solely to female members of staff. Only one witness stated they had seen Mr Carter hug a male colleague and this was not corroborated by any other witness and differed from the account this witness gave in

their earlier written statement. The panel had sight of Mr Carter's answer when asked if 'bobby love' was appropriate, and he stated:

*'Witness 11: Do you think Bobby Love is appropriate in a professional setting?*

*Mr Carter: It is there to give colleagues someone to speak to you...'*

During their oral evidence, Colleague E told the panel that 'bobby love' made them 'squirm and feel uncomfortable'.

The panel also considered Witness 12's local investigation interview, where they stated:

*'Witness 12: Robert Carter would say do you need or do you want bobby love and he would come and hug you.*

*Witness 11: How did it make you feel?*

*Witness 12: Uncomfortable in general...'*

The panel also considered statements made regarding the behaviours exhibited by Mr Carter and the impact it had on colleagues:

*'...When asked what 'Bobby Love' referred to witnesses described that Robert Carter would display behaviours such as:*

- *"cuddles it was a front to front hug"*
- *...*
- *"giving you a hug front to front, arms around you and one leg up on you too"*

*Whilst some of the witnesses were not bothered by 'Bobby Love', others witnesses stated comments such as –*

- *“Uncomfortable and embarrassing he is old enough to be my grandad”*
- *“a lot of staff felt uncomfortable especially a couple of housekeepers, a newly qualified staff nurse”*
- ....’

The panel were of the view that whilst some witnesses felt it was not inappropriate, other witnesses gave oral evidence to the contrary, and were unsure as to how to prevent it from happening again. The majority of witnesses found Mr Carter’s conduct distasteful and inappropriate and uncomfortable. The panel found in the overwhelming majority of cases that ‘*bobby love*’ was unprofessional. Mr Carter failed to maintain professional boundaries and acted inappropriately towards colleagues in the workplace. The panel, having considered all the evidence before it, on the balance of probabilities, found this charge proved.

## **Charge 24b**

**24. On one or more occasions failed to maintain professional boundaries and/or behaved in an inappropriate and/or unprofessional manner towards one or more colleagues whilst on duty by;**

### **b. Cocking your leg up against a colleague/s thigh.**

In reaching its decision in relation to charge 24b, the panel took account of the term ‘*cocking up*’ as stated by Witness 1 in their oral and written evidence, and accepted that their evidence was credible, reliable and consistent. The panel had sight of an excerpt from Mr Carter’s interview at the local investigation:

*Witness 11: It is alleged that when you gave Bobby Love you hugged your colleagues including being front to front, up close, touch shoulders and sides, pressing yourself onto them, with leg hitched up on them, do you think this was appropriate behaviour?*

*Mr Carter: It wasn't inappropriate it was a bit of fun...*

The panel acknowledged Mr Carter's admission to the '*cocking up*' at the local investigation stage, and also heard from Witness 1, who, during their oral evidence, described an incident with Mr Carter:

*'...he always cocked his leg up with me...it seemed to me not a problem, but especially the younger ones didn't like it...'*

The panel considered that as Witness 1 and Mr Carter had worked with each other for some time (over 20 years), it was of the view that this action occurred on more than one occasion but it could not be sure that it happened with more than one colleague as described by Witness 1 and based on this evidence, Mr Carter's conduct in charge 24b evidenced that he failed to maintain professional boundaries, was inappropriate and unprofessional, and therefore the panel found this charge proved.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mr Carter's fitness to practise is currently impaired. The panel considered the NMC guidance, namely, DMA-1 dated 3 March 2025. This guidance invites the panel to ask the question '*can the nurse...practise safely, kindly and professionally? And if the answer is yes, then the likelihood is that the registrant is fit to practise*'.

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, Mr Carter's fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct**

Mr Edwards invited the panel to find the facts found proved amounted to misconduct.

Mr Edwards referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311, which defines misconduct as:

*'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances'*

Mr Edwards also referred the panel to the following cases: *Calhaem v GMC* [2007] EWHC 2606 (Admin), and *Nandi v GMC* [2004] EWHC 2317 (Admin) and submitted that the facts found proved amount to misconduct both individually and collectively. He submitted that the panel have found that Mr Carter's actions were sexually motivated in relation to some of the charges, and also amounted to harassment in relation to others found proved. He submitted that Mr Carter's actions both individually and cumulatively fell well below the standards expected of a registered nurse.

Mr Edwards submitted that Mr Carter's behaviour is not acceptable, and would not be expected from a nurse who works with such a wide variety of people, members of the public, and nurses. He submitted that the charges found proved is not the behaviour expected of a registered nurse, and that his behaviour was found by the panel to be

appalling, shocking, disrespectful, degrading and humiliating, and demonstrated an escalation of Mr Carter's behaviour.

Mr Edwards referred the panel to the terms of '*The Code: Professional standards of practice and behaviour for nurses and midwives 2015*' (the Code). He identified the specific, relevant standards where he submitted Mr Carter's actions amounted to misconduct, was inappropriate, unprofessional, deplorable and fell well below the standards expected of a registered nurse. In particular, he submitted that Mr Carter had breached the following sections of the Code:

**1 Treat people as individuals and uphold their dignity** To achieve this, you must:

**1.1** treat people with kindness, respect and compassion

**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

**20.6** stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

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

**20.10** use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times.



Mr Edwards submitted that it is clear that Mr Carter would have known what was required of him as a registered nurse, and invited the panel to find misconduct.

### **Submissions on impairment**

Mr Edwards addressed the panel on the issue of impairment and reminded the panel to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. He referred the panel to questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin).

*“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:*

- (i) Has in the past, and/or is liable in the future to act as so as to put a patient or patients at unwarranted risk of harm;*
- (ii) Has in the past, and/or is she liable in the future to bring the profession into disrepute;*
- (iii) Has in the past, and/or is she liable in the future to breach one of the fundamental tenets of the profession;*
- (iv) Has in the past, and/or is she liable in the future to act dishonestly.”*

Mr Edwards also referred the panel to paragraph 74 of Grant and submitted that if the panel wish to do so, it should *‘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*'. He submitted that by considering the four limbs of Grant, Mr Carter's fitness to practise is impaired, as he has failed to show any remorse for his conduct, has not provided any evidence of remediation, nor has he shown any insight, both in regard to his actions towards Colleague A and behaviour towards others.

Mr Edwards also referred the panel to the case of *Cohen v GMC* [2008] EWHC 5811 in regard to impairment.

He invited the panel to find Mr Carter's fitness to practise impaired.

The panel accepted the advice of the legal assessor.

### **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 Mr Carter's actions fell significantly short of the standards expected of a registered nurse, and that Mr Carter'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

**1.3** Avoid making assumptions and recognise diversity and individual choice

**1.5** Respect and uphold people's human rights

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

**9.2** Gather and reflect on feedback from a variety of sources, using it to improve your practice and performance

**16 Act without delay if you believe that there is a risk to patient safety or public protection**

**16.5** Not obstruct, intimidate, victimise or in any way hinder a colleague, member of staff, person you care for or member of the public who wants to raise a concern.

**20 Uphold the reputation of your profession at all times**

**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

**20.4** Keep to the laws of the country in which you are practising

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

**20.6** Stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

**20.7** Make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way

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

**20.10** Use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times

**24 Respond to any complaints made against you professionally To achieve this, you must:**

**24.2** Use all complaints as a form of feedback and an opportunity for reflection and learning to improve practice.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the charges amounted to misconduct, the panel

considered the charges individually and collectively as well as the circumstances of the case as a whole.

The panel next considered each charge, and if it was so serious to amount to misconduct.

The panel took into account the NMC's guidance on seriousness – FTP-3, dated 27 February 2024, and the behaviour the NMC regarded as particularly serious, namely sexual misconduct and harassment.

### **Charge 1**

It considered the seriousness of the charge, and were of the view that Mr Carter demonstrated an alarming escalation in his sexually motivated behaviour. It determined that it is at the highest level of seriousness, as it culminated in sexual assault and rape of a young colleague in the workplace during working hours. The panel found Mr Carter's conduct to be deplorable, disrespectful, humiliating and degrading for Colleague A. Based on the evidence before it, the panel were of the view that his advances were unwanted and concluded that his actions amounted to serious misconduct.

### **Charges 2, 3, 4 and 5**

The panel, having found these charges proved, it considered if Mr Carter's actions were so serious as to amount to misconduct. The panel determined that the charges, when looked at individually and collectively and having happened on more than one occasion demonstrated a pattern of sexually motivated behaviour towards Colleague A, and concluded that his actions amounted to serious misconduct.

### **Charge 6**

The panel, having found charge 6 proved, considered that the actions were sexually motivated, serious, was sexual misconduct and that Mr Carter's actions were

unprofessional and inappropriate, especially given that he was accompanying patients at the time of the incident. The panel therefore found that this is serious and amounted to misconduct.

### **Charge 7**

The panel, having found charge 7 proved, and taken into account the evidence and NMC guidance, considered that Mr Carter's action was unwanted by Colleague A. There was a clear sexual motivation for Mr Carter doing it, as admitted in his cross examination at the Crown Court, and this was clearly sexual misconduct. The panel therefore found it amounted to serious misconduct.

### **Charge 8**

The panel, having found charge 8 in respect of charges 1-7 amounted to sexual harassment in the workplace, took into account the NMC's guidance, and determined that this is particularly serious and concluded it amounted to misconduct.

### **Charge 9**

The panel considered that having found charge 8 proved in relation to charges 1-7, it determined that Mr Carter's actions were particularly serious, as they were for the purposes of sexual gratification. Having taken into account the NMC guidance, the panel concluded that Mr Carter's actions were so serious as to amount to misconduct.

### **Charges 10 and 11**

Having found charges 10 and 11 proved, the panel considered whether Mr Carter's actions amounted to misconduct. The panel considered the evidence before it and the NMC guidance, and determined that Mr Carter was in a privileged position as a registered

nurse, where honesty is an integral part of his role. The panel noted his local investigation meeting, which was carried out to determine if Mr Carter was to remain employed by the Trust. The panel were of the view that Mr Carter was dishonest in an attempt to keep his job and therefore it concluded that his actions amounted to serious misconduct.

### **Charge 12**

The panel considered the charges both separately and collectively. The panel concluded that when taken individually, each sub-charge may not be so serious as to amount to misconduct. When taken together, however, the sub charges found proved show a pattern of inappropriate and unprofessional behaviour, which collectively amount to serious misconduct. The panel had evidence before it to show that Colleague B was so upset by Mr Carter's actions that his conduct was reported to senior staff. The panel concluded that his actions were so serious, that they amounted to misconduct.

### **Charge 13**

The panel, having found charge 13 amounted to sexual harassment in the workplace, took into account the NMC's guidance, in that harassment and sexual misconduct is each particularly serious and related to Colleague B feeling harassed when receiving unwanted messages from Mr Carter. It concluded Mr Carter's actions amounted to misconduct.

### **Charge 14**

Having considered that Mr Carter's actions did breach the Code. It heard oral evidence from Colleague C, who told the panel that they thought it was a joke, and that they did not think anything of it. The panel decided therefore that each of his actions in relation charge 14 did not amount to serious misconduct.

### **Charge 15**

The panel took into account the evidence before it, including that the comment made was sexual in nature, and that it was said in front of others, was inappropriate and unprofessional. The panel determined that Mr Carter's conduct was so serious as to amount to misconduct.

### **Charges 16 and 17**

Having found charges 16 and 17 proved, the panel determined that there was a sexual motive behind Mr Carter's actions, and considered the context that these actions were unwanted and occurred in a work environment. The panel were of the view that his behaviour was unprofessional, inappropriate and unwanted and was carried out for the sake of sexual gratification. Having taken into account NMC guidance, and the evidence before it, the panel concluded that Mr Carter's actions were so serious that they amounted to misconduct.

### **Charges 18, 19 and 20**

The panel took into account the inappropriate and unprofessional behaviour, with the possibility of patients being in the vicinity. The panel, having taken all 3 charges together and having found they collectively amounted to harassment that was sexual in nature, and involved harassment in the workplace against a junior female colleague who was on duty. It therefore found his actions amounted to serious misconduct.

### **Charges 21, 22 and 23**

Having found charges 21, 22 and 23 proved, the panel considered whether Mr Carter's actions amounted to misconduct. It considered the evidence before it, and NMC guidance and determined that Mr Carter's actions, when taken individually and collectively, were sufficiently serious to amount to misconduct. He approached a junior female colleague who was on their own from behind, and the effect of this meant they actively avoided Mr

Carter after the incident occurred. It was sexual in nature, and amounted to harassment in the workplace. The panel therefore found his actions amounted to serious misconduct.

## **Charge 24**

The panel, having found this charge proved in its entirety, considered the evidence before it, and the NMC guidance. The panel considered that although on occasion, Mr Carter's behaviour was towards mature members of staff, knowing some of them took it as '*banter*', this unwanted behaviour predominantly involved younger or junior, female staff. The local investigation concluded that majority of staff were uncomfortable with Mr Carter's actions and found his conduct in the workplace to be inappropriate. The panel took the outcome of the local investigation into account, when considering misconduct and noted from the evidence before it that if Mr Carter was challenged, his reaction was to ignore the challenger for some time afterwards and there would be tension in the workplace as a result. The panel determined that there was a sexual motive behind Mr Carter's actions and concluded that it was so serious that it amounted to misconduct.

## **Decision and reasons on impairment**

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, namely DMA-1, updated on 3 March 2025, which states:

*'The question that will help decide whether a professional's fitness to practise is impaired is:*

*"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*

*If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*



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

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

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

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

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

*c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

*d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that limbs a, b, c and d were all engaged in this case. In relation to Grant, the panel determined that if patients had seen Mr Carter's behaviour, patients might not have had confidence in the nurses working on the Unit. Additionally, colleagues who had been subject to his inappropriate behaviour or were affected by the tensions caused when Mr Carter was challenged might find their work performance compromised. The panel determined that Mr Carter's actions brought the nursing profession into disrepute, and that he had breached the fundamental tenets of the nursing profession and is liable in the future to repeat it. He was also found to be dishonest for his own benefit and there was nothing before the panel to demonstrate that he would not repeat this conduct in the future.

The panel had regard to the case of *Cohen v GMC* [2008] EWHC 5811.

The panel were of the view that Mr Carter's actions are not easily remediable through training, courses or reflections as they involve sexual misconduct, harassment and dishonesty, and they are not directly related to his clinical practice.

The panel had no evidence before it to demonstrate any attempt to remediate the concerns and concluded that there is a distinct lack of insight into how Mr Carter's actions affected those around him, or his colleagues or the nursing profession. The matters found proved evidence deep-seated attitudinal problems, particularly towards younger and or junior female colleagues. There is no evidence before the panel to evidence any remorse or insight, however it did have a brief reflection from Mr Carter which appeared to blame the victim, and failed to address the concerns raised. During the local investigation

meeting, Mr Carter did not show any remorse on how his behaviour impacted colleagues, particularly colleagues A-G. The panel determined that Mr Carter's conduct is likely to be repeated, and therefore concluded that Mr Carter's fitness to practise is impaired on the grounds of public protection.

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

The panel determined that public confidence in the profession would be seriously undermined if a finding of impairment were not made in this case, particularly given the sexual nature of the charges, findings of harassment and that Mr Carter was dishonest. The panel determined that a reasonable and well-informed member of the public would be appalled if Mr Carter's fitness to practise was not found impaired, given the panel's decision on misconduct. Accordingly, the panel also finds Mr Carter's fitness to practise impaired on the grounds of public interest.

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

## **Sanction**

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

In reaching its decision, the panel 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.

## **Submissions on sanction**

Mr Edwards submitted that the NMC had advised Mr Carter in the Notice of Hearing that it would seek the imposition of a striking off order if the panel found Mr Carter's fitness to practise impaired.

Mr Edwards invited the panel to consider the Sanction Guidance (SG) and submitted that a striking off order is proportionate and fair and would adequately address the public protection and the public interest concerns in this case.

Mr Edwards submitted that the aggravating factors of this case include:

- Mr Carter was in a senior position within the Unit for a significant period of time;
- Mr Carter's actions were targeted at younger and more junior female members of staff;
- Serious breach of professional boundaries;
- Mr Carter's actions and the charges found proved show a lack of professionalism;
- Charges found proved indicate that there is a pattern of conduct, and this conduct took place over a period of time and that the conduct was repeated;
- Psychological harm – particularly towards Colleague A;
- Deep seated attitudinal concerns;
- Lack of insight and remediation; and
- Lack of candour

Mr Edwards submitted that there is a singular mitigating factor, that being no concerns have been raised regarding Mr Carter's professional clinical practice.

Mr Edwards referred the panel to the NMC guidance, namely SAN-2, and submitted that there remains a risk of repetition and therefore a risk of harm. He submitted that Mr Carter's conduct involved an imbalance of power, cruelty and predatory behaviour. He submitted that Mr Carter was dishonest in his actions, honesty is of central importance to

a nurse, and that allegations of dishonesty are always of the utmost seriousness. He also submitted that it is for the panel to consider the kind of dishonest conduct that has taken place, and whether Mr Carter should be allowed to remain on the register.

Mr Edwards submitted that Mr Carter deliberately breached the professional duty of candour by attempting to conceal his misconduct during the local investigation, especially as it could cause harm to patients under his care. He submitted that by Mr Carter attempting to deny sending an image of his penis, he also deliberately breached his professional duty of candour.

Mr Edwards invited the panel to consider two sanctions: a suspension order or a striking off order. He submitted that when considering the charges found proved, a striking off order is the most proportionate order to impose. He submitted that Mr Carter's conduct was sexually motivated and there is clear evidence of deep seated attitudinal issues, and that his behaviour was of the most serious kind and degrading, particularly towards Colleague A. He submitted that Mr Carter has failed to demonstrate any remorse or insight, and that he has failed to acknowledge his actions, or the impact his conduct has had on his colleagues.

Mr Edwards submitted that only a striking off order would address the issues in this case.

In relation to a suspension order, Mr Edwards submitted that the public would not be sufficiently protected if Mr Carter were not removed from the register. Moreover, in light of the panel's findings, a suspension order would fail to satisfy the wider public interest. The fact that Mr Carter's conduct was repeated over a period of time further demonstrates deep-seated attitudinal concerns. There has been no evidence of insight, reflection, or meaningful remediation. In these specific circumstances, a well-informed member of the public would be shocked if Mr Carter were not struck off from the register, having been found impaired on the basis of serious sexual misconduct.

Therefore, Mr Edwards' submission was that the only appropriate order in this case was a striking-off order.

The panel accepted the advice of the legal assessor.

### **Decision and reasons on sanction**

Having found Mr Carter'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 panel took into account the following aggravating features:

- Repeated incidents of serious misconduct over a number of years;
- No insight into his failings;
- Significant harm was caused particularly to Colleague A and there was a further risk of harm to colleagues and patients; and
- Abuse of position in trust in that he targeted younger, junior female members of staff.

The panel did not identify any mitigating features.

The decision on sanction is a matter for the panel independently exercising its own judgement. In relation to charge 1, the panel were of the view that it was sexual misconduct of the most serious kind, and had regard to SAN-2 (the section relating to cases involving sexual misconduct) where it states:

*‘Long-term or repeated conduct is more likely to suggest risk of harm, together with conduct involving imbalances of power, ... and predatory behaviour.’*

In regard to dishonesty, the panel had regard to SAN-3, and determined that it was serious, but that it was a one-off incident. It accepted Mr Edwards’ submissions and concluded that Mr Carter’s dishonesty was at the lower end of the spectrum.

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 Mr Carter’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 Mr Carter’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 Mr Carter’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 NMC guidance – SAN-3d, 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;*
- *Potential and willingness to respond positively to retraining;*

- *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.*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the sexual nature of the charges in this case.

Furthermore, the panel concluded that the placing of conditions on Mr Carter'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; and*
- *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 the incidents were repeated over a significant period of time, and that there remains a risk of harm. It further considered that Mr Carter failed to demonstrate any kind of remorse or remediation, and there is evidence of harmful and deep seated attitudinal problems, and a significant risk of this behaviour being repeated. It therefore concluded that a suspension order is not appropriate.

The panel had regard to SAN-3e. It determined that Mr Carter's actions were significant departures from the standards expected of a registered nurse and are fundamentally



incompatible with Mr Carter remaining on the register. The findings in this particular case demonstrate that Mr Carter's actions were serious and dishonest, and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

After taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Carter's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel 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.

### **Submissions on interim order**

Mr Edwards invited the panel to impose an interim suspension order for a period of 18 months. He submitted that an interim suspension order for a period of 18 months is necessary given the panel's findings in order to protect the public and meet the wider public interest. Further, he submitted that this was required to cover the 28-day appeal period and, if Mr Carter wishes to appeal the decision, the period for which it may take for that appeal to be heard.

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 striking-off order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28-day appeal period and any period which an appeal may be heard.

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

This will be confirmed to Mr Carter in writing.

That concludes this determination.