

# Section 29 Case Meeting

8 November 2023

16-18, New Bridge St, Blackfriars, London, EC4V 6AG



## Christina Eleth Carey (NMC)

### *Members present*

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority

Marcus Longley, Board Member, Professional Standards Authority

David Martin, Concerns and Appointments Officer, Professional Standards Authority

### *Legal Advisor in attendance*

Michael Standing of 39 Essex Chambers

### *Observers in attendance*

Georgina Tait, Senior Scrutiny Officer, Professional Standards Authority

Kate Fawcett, Scrutiny Officer, Professional Standards Authority

Melanie Spencer, Lawyer, Professional Standards Authority

## 1. Definitions

- 1.1 In this meeting note, standard abbreviations have been used. Definitions of the standard abbreviations used by the PSA, together with any abbreviations used specifically for this case are set out in the table at Annex A.

## 2. Purpose of this note

- 2.1 This meeting note records a summary of the Members' consideration of the relevant decision about the Registrant made by the Regulator's Ranel, and the PSA's decision whether or not to refer the case to the Relevant Court under Section 29 of the Act.

## 3. The PSA's powers of referral under Section 29 of the Act

- 3.1 The PSA may refer a case to the Relevant Court if it considers that a relevant decision (a finding, a penalty or both) is not sufficient for the protection of the public.
- 3.2 Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient:
  - to protect the health, safety and well-being of the public
  - to maintain public confidence in the profession concerned, and
  - to maintain proper professional standards and conduct for members of that profession.

3.3 This will also involve consideration of whether the Panel's Determination was one that a disciplinary tribunal, having regard to the relevant facts and to the object of the disciplinary proceedings, could not reasonably have reached; or was otherwise manifestly inappropriate having regard to the safety of the public and the reputation of the profession (applying *Ruscillo*<sup>1</sup>).

#### **4. Conflicts of interest**

4.1 The Members did not have any conflicts of interest.

#### **5. Jurisdiction**

5.1 The Legal Advisor confirmed that the PSA had jurisdiction to consider the case under Section 29 of the Act. Any referral in this case would be to the High Court of Justice of England and Wales and the statutory time limit for an appeal would expire on 13 November 2023.

#### **6. The relevant decision**

6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 8 September 2023.

#### **7. Documents before the meeting**

7.1 The following documents were available to the Members:

- Determination of the panel dated 8 September 2023
- The PSA's Detailed Case Review
- Transcripts of the hearing
- Counsel's Note dated 6 November 2023
- The NMC's Code
- The NMC's Indicative Sanctions Guidance
- The PSA's Section 29 Case Meeting Manual

7.2 The Members and the Legal Advisor were provided with a copy of a response from the NMC to the PSA's Notification of Section 29 Meeting.

#### **8. Background, Panel hearing and Determination**

8.1 The charges arose whilst the Registrant was employed as a registered nurse by Queen Elizabeth Hospital, Birmingham (the Hospital) on Ward 409, a 36 bed speciality neurosurgery ward.

---

<sup>1</sup> CRHP v Ruscillo [2004] EWCA Civ 1356

- 8.2 An NMC referral was made by Person B, on behalf of her mother (Patient A) who was transferred as an in-patient from another hospital to Ward 409 (Neurosciences) of the Hospital.
- 8.3 Person B alleged that whilst waiting for a bed to become available, Patient A suffered from excruciating pain requiring immediate pain relief. After speaking to several nurses and a doctor, Person B spoke to the Registrant who appeared busy and stressed. Person B alleged that the Registrant failed to introduce herself, was angry, intimidating and rude, and despite asking for pain relief for Patient A, the Registrant refused. In the referral, Person B also alleged that the Registrant spoke rudely to a colleague, was confrontational and ignored the patient's relatives.
- 8.4 The Trust carried out an internal investigation confirming that there were related concerns raised about the Registrant's behaviour towards colleagues.
- 8.5 As a result of the local investigation and the matters that were uncovered, the Trust terminated the Registrant's employment on 4 June 2019.
- 8.6 The Registrant was not present or represented and did not engage with the NMC during proceedings, either at the investigation or hearing stage.
- 8.7 The charges brought by the NMC related to her treatment of patient A and patient B, including, speaking to patient B in a rude manner, leaving patient A in urine-soaked clothes, refusing to provide pain relief, not allocating a room with a toilet to patient A when they were suffering from diarrhoea, failing to work cooperatively with colleagues and openly criticising colleagues.
- 8.8 Of 17 charges of misconduct brought against the Registrant, 10 charges were found proved in relation to two separate shifts on 6th and 18th December, with 9 of those charges being found to amount to misconduct.
- 8.9 The Panel considered that the Registrant's actions caused both actual and a risk of unwarranted harm, both physical and emotional harm, to both patients and colleagues and that her fitness to practise was impaired by reason of her misconduct.
- 8.10 The Panel imposed a 12-month suspension order with review.

## **9. Consideration and application of Section 29 of Act**

- 9.1 The Members considered all the documents before them, and the legal advice received from the legal advisor in detail.
- 9.2 The Members considered whether there had been possible under-prosecution in the case. They noted there was evidence from a witness who had stated that the Registrant had been seen to be disrespectful towards a doctor, and perhaps more seriously, mocking another patient.
- 9.3 The Panel noted the case examiner evidence that there was insufficient evidence available to formulate a charge, however the Members agreed that there was prima facie evidence and that the NMC could have investigated further, and concluded that overall, if charged, may have made a difference to the outcome.

- 9.4 The Members did agree that if the decision was to appeal that this possible under-prosecution concern could add weight to the PSA's case.
- 9.5 The Members also considered the sanction imposed and were concerned that the Panel had failed to properly apply the NMC's sanctions guidance. The guidance for suspension notes that such a sanction may be appropriate where the misconduct was isolated, no evidence of harmful deep-seated personality or attitudinal problems, no evidence of repetition of behaviour since the incident and where the Committee is satisfied that the nurse, midwife, or nursing associate has insight and does not pose a significant risk of repeating behaviour.
- 9.6 The Members agreed that these factors were not present in this case and instead were concerned that the registrant demonstrated a deep-seated attitudinal concern and that the Panel had failed to explain why strike off was not appropriate noting that the factors they had identified pointed towards conduct that was incompatible with continued registration.
- 9.7 The Members agreed that the Panel's decision did not demonstrate correct application of the sanctions guidance or give any reasons for departure from it and as such concluded that the decision did not satisfy the public interest or uphold public confidence in the profession.

**10. Referral to court**

- 10.1 Having concluded that the Panel's Determination was not sufficient, the Members moved on to consider whether they should exercise the PSA's discretion to refer this case to the Relevant Court.
- 10.2 In considering the exercise of the PSA's discretion, the Members received legal advice as to the prospects of success and took into account the need to use the PSA's resources proportionately and in the public interest.
- 10.3 Taking into account those considerations, along with advice on the prospects of success, the Members agreed that the PSA should exercise its power under Section 29 and refer this case to the High Court of Justice of England and Wales.

.....

<b>Alan Clamp (Chair)</b>	<b>Dated</b>
---------------------------	--------------

**11. Annex A – Definitions**

- 11.1 In this note the following definitions and abbreviations will apply:

**Christina Eleth Carey**  
**Section 29 case meeting on 8 November 2023**

<b>The PSA</b>	The Professional Standards Authority for Health and Social Care
<b>The Panel</b>	A Fitness to Practise Panel of the NMC
<b>The Registrant</b>	Christina Carey
<b>The Regulator</b>	Nursing and Midwifery Council
<b>Regulator's abbreviation</b>	NMC
<b>The Act</b>	The National Health Service Reform and Health Care Professions Act 2002 as amended
<b>The Members</b>	The PSA as constituted for this Section 29 case meeting
<b>The Determination</b>	The Determination of the Panel sitting on 8 September 2023
<b>The Court</b>	The High Court of Justice of England and Wales
<b>The Code</b>	Regulator's Code of Practice
<b>The ISG</b>	Regulator's Indicative Sanctions Guidance

