

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

**Substantive Meeting
Monday 16 August 2021**

Virtual Meeting

Name of registrant: **Brid Patricia Martin**

NMC PIN: 79J2095E

Part(s) of the register: RN3: Registered Nurse – Mental Health (level 1)-
July 1983
RN4: Registered Nurse – Mental Health (level 2)-
June 1983

Area of registered address: West Yorkshire

Type of case: Misconduct

Panel members: Florence Mitchell (Chair, Registrant member)
Katharine Martyn (Registrant member)
Georgina Foster (Lay member)

Legal Assessor: Michael Levy

Panel Secretary: Holly Girven

Facts proved by admission: All

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that Miss Martin was not in attendance and that the Notice of Meeting had been sent to Miss Martin's registered address by recorded delivery and by first class post on 6 July 2021.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Meeting was delivered to Miss Martin's registered address on 7 July 2021.

The panel took into account that the Notice of Meeting provided details of the allegations, that the case would be dealt with at a meeting, and the approximate date of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Martin has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse:

1. In or around December 2018 breached professional boundaries with Service User A, in that you borrowed around £1,700 from them.
2. In 2018 breached professional boundaries with Service User B, in that you borrowed around £1,600 from them.
3. In 2018 breached professional boundaries with Service User C, in that you borrowed around £500 from them.
4. In or around December 2018 told Service User A that you would be sacked if anyone found out you had borrowed money from them, or words to that effect.

5. In 2018 told Service User C not to tell anyone that you had borrowed money from them as you could get sacked, or words to that effect.

6. Your conduct in Charge 4 and/or Charge 5, above, was dishonest in that you were attempting to conceal from your employer that you had borrowed money from one or more service users.

7. On one or more of the dates listed in Schedule 1, in relation to one or more of the service users in Schedule 2, failed to;
 - a. Record an entry in the RiO diary.
 - b. Record an entry in the progress notes.
 - c. Record an entry in the paper diary.
 - d. Record sufficient detail regarding your visit.

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

Schedule 1

4 June 2018	1 October 2018	3 December 2018
5 June 2018	2 October 2018	4 December 2018
6 June 2018	5 October 2018	5 December 2018
7 June 2018	8 October 2018	10 December 2018
8 June 2018	9 October 2018	11 December 2018
11 June 2018	10 October 2018	12 December 2018
12 June 2018	11 October 2018	13 December 2018
13 June 2018	12 October 2018	14 December 2018
14 June 2018	22 October 2018	17 December 2018
20 June 2018	23 October 2018	18 December 2018
21 June 2018	24 October 2018	19 December 2018
22 June 2018	25 October 2018	20 December 2018
25 June 2018	26 October 2018	21 December 2018
26 June 2018	29 October 2018	24 December 2018

27 June 2018
28 June 2018
29 June 2018

30 October 2018
31 October 2018

27 December 2018
28 December 2018

Schedule 2

Service User A	TD	TM
Service User B	JF	JM
Service User C	SF	DN
SW	AG	GO
AB	CH	SS
ZB	GH	GV
DC	AH	JW
PC	DH	KW
KC	KH	
BC	EH	

Decision and reasons on facts

At the outset of the meeting, the panel noted the Case Management Form (CMF) completed by Miss Martin, dated 12 April 2021. The panel noted that Miss Martin had indicated she admitted to all of the charges as set out above.

The panel therefore finds charges 1, 2, 3, 4, 5, 6, 7a, 7b, 7c and 7d proved, by way of Miss Martin's admissions and the written evidence provided by the Nursing and Midwifery Council (NMC).

Fitness to practise

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

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

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

Representations on misconduct and impairment

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

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

The NMC identified the specific, relevant standards where Miss Martin's actions amounted to misconduct. With regard to the record keeping concerns, the NMC submitted that Miss Martin made a large number of errors which demonstrates a lack of care and attention. In relation to Miss Martin's actions against Service Users A, B and C, the NMC submitted that these go against the fundamental principles in nursing. The NMC submitted that Miss Martin disregarded her patient's wellbeing, took advantage of their trust and acted dishonestly. The NMC submitted that Miss Martin's actions fall at the highest level of misconduct.

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence*

v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) and Cohen v General Medical Council [2008] EWHC 581 (Admin).

The NMC submitted that a finding of current impairment should be made to protect the public, to uphold standards in the nursing profession and to maintain public confidence in the profession. The NMC submitted that Miss Martin had caused her patients, who were vulnerable, undue stress and harm. It was submitted that Miss Martin's actions had a financial, and emotional, impact on the service users involved. It was submitted that Miss Martin had acted dishonestly and this caused further harm.

The NMC submitted that Miss Martin has not remediated the concerns. The NMC submitted that whilst the record keeping concerns are remediable, Miss Martin is not currently working and has not provided any evidence of remediation. It was submitted that the other concerns are harder to remediate and indicate an attitudinal issue. The NMC submitted that Miss Martin has only shown some insight and that there is high risk of repetition.

In the CMF completed by Miss Martin, dated 12 April 2021, she indicated that she accepts that her fitness to practise is impaired. In an email dated 12 April 2021, Miss Martin stated:

'I have seen documentation to suggest that I have shown little remorse for my actions and I can assure you this is far from the truth.

I am ashamed and horrified at my action after serving 40 years as a caring and dedicated nurse. [sic]

... Suggestions made at hearing that I am not remorseful are difficult to understand when they have been made by someone I have never met and when I express my remorse several times to my ex-employer during their investigation.

...

I was not able to offer my apologies to the patient I let down and hope that they will forgive me.'

In a statement dated 31 May 2019, Miss Martin states:

'I regret deeply my actions and feel I have let myself, my patients and my employers down and this is not how I would have wanted to end an unblemished career of 40 years. I find it hard to understand my actions even now and have always put the interest of my patients first so no amount of reflection can bring me to terms with what I have done. I always prided myself on acting in the best interest of my patients and providing the best care possible for people under my care, any colleagues who has worked with me would say that I have always gone above and beyond what was needed of me to ensure I gave the best care possible.'

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance, Grant and Cohen*.

Decision and reasons on misconduct

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

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

'10 Keep clear and accurate records relevant to your practice

To achieve this you must:

10.1 complete records at the time or as soon as possible after an event, recording if the notes are written sometime after the event

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

20.5 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.

21 Uphold your position as a registered nurse, midwife or nursing associate

To achieve this you must:

21.2 never ask for or accept loans from anyone in your care or anyone close to them

21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care.'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Miss Martin's actions were very serious and fell well below the standards expected. The panel considered that the charges relate to a number of record keeping errors and asking vulnerable patients to not disclose Miss Martin's personal financial gain from money borrowed, which it determined increased the seriousness of the concerns. The panel considered that the charges regarding breaching professional boundaries and acting dishonestly were serious and repeated over a period of time.

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

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional 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 finds that patient(s) were put at risk and were caused emotional and financial harm as a result of Miss Martin's misconduct. Miss Martin's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that whilst Miss Martin did make admissions and has shown some insight by expressing some remorse, her insight is limited. The panel considered that Miss Martin has not demonstrated an understanding of the impact of her actions on the service users, their families or the general public. The panel noted that Miss Martin has not shown insight into the impact her actions had on public confidence in the nursing profession. The panel considered that Miss Martin's statements focus more on the impact of her actions on herself.

The panel was satisfied that the misconduct in this case is capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Martin has remedied her practice. The panel took into account the statements provided by Miss Martin and the information that she has returned the money borrowed from the service users. The panel considered that Miss Martin has not provided any evidence that she has remediated the concerns, for example by completing training. The panel considered that the charges relating to breaching professional boundaries and acting dishonestly are harder to remediate, particularly due to Miss Martin's lack of insight.

The panel is of the view that there is a risk of repetition based on Miss Martin's lack of insight or remediation. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

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

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

Sanction

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

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

Representations on sanction

The panel noted the NMC's submissions relating to sanction. It was submitted that a striking off order is the only order that is appropriate in this case as the misconduct raises fundamental questions about Miss Martin's professionalism and is incompatible with ongoing registration. It was submitted that public confidence in the NMC can only be maintained if Miss Martin is permanently removed from the register.

The panel also bore in mind Miss Martin's representations that she no longer wishes to practise as a nurse, has retired and wants her name to be removed from the register.

Decision and reasons on sanction

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

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

The panel took into account the following aggravating features:

- There is a serious breach of trust and crossing professional boundaries with three separate service users.
- Service users suffered financially as a result of Miss Martin's actions.
- Psychological and emotional harm caused to the service users by Miss Martin.
- Miss Martin acted dishonestly in asking the service users not to report that she had borrowed money from them.

The panel also took into account the following mitigating features:

- Miss Martin has expressed remorse at her actions.
- The money was repaid to the service users.

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

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

The panel next considered whether placing conditions of practice on Miss Martin's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct relating to professional boundaries in this case would be difficult to address through training. Furthermore, the panel concluded that the

placing of conditions on Miss Martin's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Martin's actions is fundamentally incompatible with Miss Martin remaining on the register. The panel considered that this was not a case involving a single instance of misconduct and there is indication of an attitudinal issue. The panel considered that Miss Martin has not demonstrated a sufficient level of insight or remorse.

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

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

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

Miss Martin's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Martin's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. The panel considered that the charges relating to Miss Martin borrowing money from service users raise fundamental questions about her professionalism and honesty. The panel noted that Miss Martin has indicated she no longer wishes to practise as a nurse or engage with the NMC.

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

This will be confirmed to Miss Martin in writing.

Interim order

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

Representations on interim order

The panel took account of the representations made by the NMC that an interim suspension order is necessary to protect the public and uphold public confidence in the nursing profession.

Decision and reasons on interim order

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

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

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

That concludes this determination.