

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

**Substantive Meeting
Thursday 27 May 2021**

Virtual Meeting

Name of registrant: Kate Palmer

NMC PIN: 14A1358E

Part(s) of the register: Registered Nurse – Adult (Effective) (May 2014)

Area of registered address: East Sussex

Type of case: Misconduct

Panel members: Robert Barnwell (Chair, Lay member)
Louise Poley (Registrant member)
Susan Ellerby (Lay member)

Legal Assessor: Cyrus Katrak

Panel Secretary: Graeme King

Facts proved: **Charge 1a and 1b**

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 received information and advice from the legal assessor concerning service of the notice of meeting.

The Notice of Meeting was sent by the Nursing and Midwifery Council (NMC) on 19 April 2021 to the email address it holds on the register for Miss Palmer. The panel noted that the emergency statutory instrument in place allows for electronic service of the notice of meeting to be deemed reasonable in the current Covid-19 circumstances.

The panel noted that the Notice of Meeting had been served on 19 April 2021, which was more than 28 days before this meeting. The panel was satisfied that there was good service and that it served in accordance with Rules 11A and 34 of the Fitness to Practise Rules 2004 (as amended) (the Rules).

The panel also noted that as this matter is being considered at a meeting, Miss Palmer would not be able to attend or send a representative. However, it noted that Miss Palmer had been sent all of the evidence relating to this matter, and was informed that this meeting will take place on or after 24 May 2021. Miss Palmer was also asked to provide comment and/or a response to the charges no later than 17 May 2021 by using the response form attached to the Notice of Meeting, however no such response has been provided.

The panel was satisfied that this case could be properly dealt with by way of a substantive meeting. It noted that there did not appear to be any engagement from Miss Palmer with these proceedings.

Therefore, the panel was of the view that referring this matter to a substantive hearing would not serve any useful purpose. It determined that it had all the information necessary before it to reach a decision on this matter, having regard to the documentary evidence.

Details of charges

'That you a registered nurse;

1) *Failed to maintain professional boundaries with Patient A's family, in that:*

a) *You accepted a loan of £1600 from Person A in September and/or October 2018. **Found Proved***

b) *You did not repay the loan to Person A until at least 30 September 2020 or at all. **Found Proved***

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

Background

The NMC received a referral on 7 October 2019 from The Chaseley Trust (the Trust), operator of Chaseley Trust Care Home (the Home) where Miss Palmer was employed as a Senior Nurse. The referral alleges that Miss Palmer accepted a loan of £1600 from Person A, who is the mother of one of the Home's residents. It is alleged that Person A wrote a cheque for £1600 to Miss Palmer on 2 October 2019, on the agreement that Miss Palmer would make repayments by direct debit. It is further alleged that Miss Palmer subsequently cashed the cheque on 4 October 2018. However, she made no repayments as was expected by Person A.

Miss Palmer resigned from the Home on 8 September 2019, with her last day being 5 October 2019, however Miss Palmer's last shift at the Home was 1 September 2019. Person A became aware that Miss Palmer had left the Home and reported the loan and lack of repayment to the Home on 4 October 2019. Person A received a payment of £1600 into her bank account on 30 September 2020 from '*a person known to Miss Palmer*' and not Miss Palmer herself, however Person A has indicated that she would prefer not to disclose who that person is.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

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 had regard to the written statements of the following witnesses on behalf of the NMC:

Witness 1 (Person A in the charges)

Mother of a resident at the Home and alleged lender of the £1600 in question.

Witness 2

Home Manager at the Home.

Before making any findings on the facts, the panel accepted the advice of the legal assessor. It considered the documentary evidence provided by the NMC.

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

Charge 1a

1) Failed to maintain professional boundaries with Patient A's family, in that:

a) You accepted a loan of £1600 from Person A in September and/or October 2018.

This charge is found proved.

In reaching this decision, the panel had regard to Witness 1's witness statement that contained a declaration and stated:

'I offered to loan Kate [Miss Palmer] some money to help her.

[...]

I wrote and gave Kate a cheque for £1600 on 2 October 2018.'

The panel had regard to a print out of a Nationwide Building Society cheque for £1600 dated 2 October 2018 and numbered '300482'. This cheque was made out to 'Miss Kate Palmer' and signed by Person A. The panel also had regard to a copy of Person A's Nationwide Building Society statement dated 4 October 2018 which shows £1600 being debited from her account with the reference 'Cheque 300482'.

The panel considered that the above evidence suggests that it is more likely than not that Miss Palmer accepted a loan of £1600 from Person A. It noted that Miss Palmer had not responded to this charge and that it had no evidence before it to suggest an alternate reason for a cheque for £1600 being made out to Miss Palmer and subsequently cashed two days later.

The panel therefore found charge 1a proved.

Charge 1b

1) *Failed to maintain professional boundaries with Patient A's family, in that:*

b) *You did not repay the loan to Person A until at least 30 September 2020 or at all.*

This charge is found proved.

In reaching this decision, the panel had regard to Witness 1's witness statement that contained a declaration and stated:

'I was checking my bank account regularly for a few months and noticed that Kate [Miss Palmer] hadn't given me back any of the money I loaned her.

[...]

I started to ask her about paying me back and she always had an excuse.

[...]

There is no way that Kate could have thought that the money was a gift.

[...]

The money was paid directly into my bank account on 30 September 2020. This money wasn't paid into my account by Kate but it is a repayment of the money I loaned to Kate. I would prefer that the person who paid this money remains anonymous.'

The panel considered that the sum of £1600 being paid to Person A, alongside Person A's evidence that this was repayment of the loan in charge 1a, to demonstrate that it is more likely than not that the loan was repaid on 30 September, by someone other than Miss Palmer.

The panel therefore found charge 1b proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Miss Palmer'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 Palmer'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 Palmer's actions amounted to misconduct. The conduct displayed was a clear breach of the Code which expressly forbids accepting loans from '*anyone in your care or anyone close to them*'. The

NMC also submitted that Miss Palmer had breached professional boundaries by discussing her personal situation with Person A and that accepting a loan from Person A could be deemed as taking advantage of a potentially vulnerable person. Further, not repaying the loan could reasonably be expected to cause Person A distress. The NMC invited the panel to find that Miss Palmer's actions and conduct amounted to serious 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 was referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Miss Palmer's fitness to practise impaired and that her breach of professional boundaries could reasonably be expected to cause distress to Person A. Further, the effect of any deterioration on Miss Palmer's and Person A's relationship had the potential to put Person A's son, Miss Palmer's patient, at a risk of harm as a consequence.

The NMC further submit that Miss Palmer's actions have brought the profession into disrepute as the public expects nurses to be individuals of '*unimpeachable probity*'. The reputation of the profession requires that the public have no reason to think that this trust may be misplaced

The NMC also submit that Miss Palmer took advantage of a patient's family, which is a breach of the fundamental tenets of the nursing profession.

The NMC submit that there are serious attitudinal and professional concerns in this case which would be difficult to remedy. When the attitudinal nature of the misconduct and Miss Palmer's lack of engagement are considered, there is a risk that she will repeat similar conduct in the future. The NMC submit that if she did so, it would result in a risk to patients, service users and their families, as well as the public's confidence in nurses. The NMC submit that Miss Palmer's actions are also so serious that a finding of current

impairment is required in order to maintain public confidence in the profession and to uphold proper professional standards.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

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 Palmer's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

'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

20.5 - 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'

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 Palmer's conduct has fallen seriously short of the standards expected of a nurse. The conduct was very serious involving accepting, and not repaying, a significant amount of money from the mother of a patient. The panel considered Miss Palmer's actions to constitute a serious abuse of her position of trust.

The panel considered that Miss Palmer has further breached fundamental tenets of the profession, such as trust, professionalism, and integrity. These are qualities of the nursing profession that must be adhered to at all times. Her failure to adhere to these fundamental tenets could well result in members of the public losing faith with the profession and the NMC as its regulator. The panel considered that a well-informed member of the public, and members of the profession, would consider Miss Palmer's actions as deplorable.

The panel also considered that Miss Palmer's failure to engage with the NMC's investigation is a serious departure from the Code and the standards expected of a professional nurse.

In light of Miss Palmer's actions and the conduct displayed, the panel found that her 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 Palmer's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest, 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) [...]*

The panel found that limbs *a*, *b* and *c* are engaged in this case.

The panel considered that borrowing, and then not repaying, money from the mother of a patient can reasonably be expected to cause distress. It further considered that Miss Palmer's professional relationship with Person A's son could have been impacted as a result of her misconduct.

The panel also found that Miss Palmer has brought the profession into disrepute and breached fundamental tenets of the profession. It considered Miss Palmer's actions to be deplorable and that members of the public would be shocked to hear of a registered nurse borrowing £1600 from her patient's mother and not repaying it.

The panel considered that the misconduct found demonstrates a deep seated attitudinal issue and it had no evidence of any reflection, insight or remorse from Miss Palmer. The panel considered that Miss Palmer's failure to engage with NMC proceedings, and there being no evidence of remediation, indicates that there remains a risk of her misconduct being repeated and therefore a risk to the public if Miss Palmer were able to practise without restriction. The panel therefore determined that a finding of current impairment on public protection grounds is necessary.

The panel also determined that a finding of current impairment is also particularly necessary on public interest grounds in order to declare and uphold proper professional standards and maintain confidence within the profession and the NMC as the regulator.

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.

Having regard to all of the above, the panel was satisfied that Miss Palmer'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 Palmer off the register. The effect of this order is that the NMC register will show that Miss Palmer 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 NMC outlined what it considered to be the aggravating and mitigating factors. It submitted that the proportionate sanction in this case is a striking-off order in order to protect the public, maintain confidence and standards within the profession and to mark the seriousness of the conduct.

Decision and reasons on sanction

Having found Miss Palmer'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:

- Miss Palmer was a Senior Nurse at the time of the incident
- The misconduct found constitutes a serious abuse of a position of trust
- There are attitudinal concerns raised
- Distress has been caused to a patient's family and Miss Palmer's colleagues

- The misconduct found demonstrates a serious lack of professionalism
- There is no evidence of remediation, insight or remorse
- There is a lack of engagement with the NMC.

The panel did not consider there to be any mitigating factors.

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 not protect the public nor be 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 with particular regard to the public interest issues identified, an order that does not restrict Miss Palmer'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 Palmer'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 next considered whether placing conditions of practice on Miss Palmer'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 identified is not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Palmer's registration would not adequately address the serious nature of this case and would not meet the public interests or adequately 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 panel considered Miss Palmer's actions in this case are at the upper end of the spectrum and call into question her professionalism. While the acceptance of the loan was a one-off incident, the panel noted that the non-repayment of the loan continued for two years. The panel considered that, as Miss Palmer's misconduct was such a departure from the standards expected of a registered nurse, it is fundamentally incompatible with her remaining on the Register. Miss Palmer's failure to engage with an investigation by her regulator has aggravated the attitudinal concerns raised in this case. The panel considered the public interest in this case to be particularly high and that it would not be appropriately marked by a suspension order. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

Miss Palmer'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 of this case demonstrate that Miss Palmer'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.

Balancing all of these factors and 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 matters it identified, in particular the effect of Miss Palmer's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

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 Palmer's interests 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 order is necessary for the protection of the public and otherwise in the public interest to impose an interim suspension order for a period of 18 months to cover the appeal period.

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 striking-off order 28 days after Miss Palmer is sent the decision of this hearing in writing.

This decision will be confirmed to Miss Palmer in writing.

That concludes this determination.