

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

**Substantive Hearing
Wednesday, 18 December 2024 - Friday, 20 December 2024**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant: Carmina C Balanon

NMC PIN 04H06220

Part(s) of the register: Registered Nurse – Adult Nursing (Level 10) - 18 August 2004

Relevant Location: South Gloucestershire

Type of case: Misconduct

Panel members: Mark Gower (Chair, lay member)
Janet Williams (Registrant member)
Bill Matthews (Lay member)

Legal Assessor: Ian Ashford-Thom

Hearings Coordinator: Hanifah Choudhury

Nursing and Midwifery Council: Represented by Iwona Boesche, Counsel

Mrs Balanon: Present and represented by Catherine Scrivens, instructed by UNISON

Facts proved: Charges 1 and 2

Facts not proved: N/A

Fitness to practise: Impaired

Sanction: **Suspension order (4 months)**

Interim order:

Interim suspension order (18 months)

Details of charge

That you, a registered nurse:

1. On unknown date(s) breached professional boundaries by accepting money from Resident A on multiple occasions;
2. Did not escalate to your manager and/or record that you had received money from Resident A;

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

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

At the outset of the hearing, Ms Scrivens, on your behalf, made an application that this case be held partly in private on the basis that proper exploration of your case may involve 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).

Ms Boesche, on behalf of the Nursing and Midwifery Council (NMC), made no objections to this application.

The panel determined to go into private session as and when such issues relating to [PRIVATE] are raised.

Background

You were referred to the NMC on 25 November 2022 from the Safeguarding Adults team at Bath & North East Somerset Council (The Council).

Whilst working at Kingswood Nursing Home (the Home), where you had been working as a nurse, you befriended a resident, Resident A.

When Resident A moved to another care home you continued to be friends with him and would visit him regularly with your husband or alone. Resident A referred to you as being *'like a daughter'* to him.

Concerns were raised due to Resident A donating approximately £8000 to charities in the Philippines via you over a period of two years. Resident A had capacity and was able to choose to do this and there appeared to be a genuine friendship between you and Resident A.

The safeguarding investigation by the Council was closed and it was found that you had not financially, emotionally or physically abused Resident A. A police investigation also found no evidence of abuse or a crime against you.

Decision and reasons on facts

The panel heard from Ms Scrivens, who informed the panel that you made full admissions to charges 1 and 2.

The panel therefore finds charges 1 and 2 proved in their entirety, by way of your admissions.

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 your 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 ability to practise kindly, safely and professionally.

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, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

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

Ms Boesche invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to The Code: Professional standards of practice and behaviour for nurses and midwives (2018) (the Code) and identified the specific, relevant standards where your actions amounted to misconduct. She submitted that the

misconduct in this case is serious and falls short of the standards expected of a registered nurse.

Ms Boesche moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Boesche submitted that your fitness to practise remains impaired. She submitted that although you have provided documents, including a reflective piece, this is inadequate in remediating the concerns raised.

Ms Boesche invited the panel to make a finding of impairment in relation to your fitness to practise.

The panel also had regard to your oral evidence.

You told the panel that you began visiting Resident A in 2017 after he had left the Home, both with your husband and by yourself. You said that you accepted a Facebook friend request from Resident A soon after and Resident A saw your frequent posts of you and your husband donating to charities in the Philippines regularly and he decided he wanted to get involved. You clarified that Resident A started making donations to the charities in 2020, three years after he was discharged from the Home.

You told the panel that Resident A had complex needs as [PRIVATE]. You also said that you did not ask Resident A about his bank account as you saw from your bank statements that it was a joint account he held with his daughter.

In response to a question from the panel regarding how Resident A obtained your bank account details, you said that *'I accidentally sent them.'* You also said that you raised this straight away when the money from Resident A went into your bank on the first occasion and that you apologised. You said that Resident A laughed in response to this error. You also clarified that all of Resident A's money for the charities went to your account but there is a paucity of evidence to show how the money was actually distributed.

In response to a question from the panel on whether you or your family personally benefitted from Resident A's donations, you said that Resident A gave money for you to buy a cake for your family for a birthday. You said that the cake cost between £30 to £50.

In response to a question from the panel on the donations you received from Resident A for the organisations you helped, you said that this was the first time anyone had donated money through you and that you felt honoured by this. You also clarified that Resident A made two separate donations of £5,000 each during Christmas in 2020 and 2021.

In response to a question from the panel on whether you thought Resident A was vulnerable, you said that he was but he did not see himself as so.

Ms Scrivens submitted that you have made admissions to the allegations from the outset. She submitted that at the time you did not fully understand what professional boundaries were and did not think anything of Resident A sending money to your account because you deemed him to be a friend. She also said that you now understand these boundaries.

Moving onto impairment, Ms Scrivens reminded the panel that not all misconduct will be sufficiently serious to result in impairment. She further submitted that your fitness to practise is no longer impaired.

Ms Scrivens submitted that you have reflected and recognise that you should not have taken money from Resident A. She submitted that Resident A's donations were not for personal use and were used to help disadvantaged children and adults in the Philippines.

Ms Scrivens drew the panel's attention to the training you have undertaken on professional boundaries and the positive references you have received from your work colleagues.

The panel accepted the advice of the legal assessor which included reference to *CHRE v NMC and Grant*.

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 your actions did fall significantly short of the standards expected of a registered nurse, and that your 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

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

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

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

To achieve this, you must:

21.1 refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment'

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 taken as a whole, your conduct falls far short of what would have been considered proper in the circumstances.

The panel took into account that, although he had capacity, Resident A was a vulnerable man and you should have been aware that it was wrong to cross professional boundaries with him. The panel also took into account the transcript from your interim order hearing in 2022 where Resident A said:

'So, by transferring it, it made it a lot easier. But no, like I said, she did make it that it could be a bit awkward...' [sic]

The panel found that you were aware that it was wrong to accept Resident A's money into your account and that you were aware that you were outside of the scope of your professional capacity but, failed to stop this or alert a colleague or manager of what was taking place.

The panel took into consideration the circumstances around your misconduct. You had become friends with Resident A and he first donated money to you in 2020, three years after you had last cared for him. The panel noted that there is no evidence that shows your relationship with Resident A was purely for financial gain. It also noted that you made admissions that you did gain personally from Resident A's donations, albeit to a small degree.

The panel found that you showed poor judgement in accepting the money from Resident A, knowing that this was wrong but allowed it to continue.

Having taken all of this into account, the panel found that your 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, your fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, 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) ...'*

In this particular case the panel had no information before it to suggest that Resident A was put at risk of harm as a result of your misconduct. The panel did not therefore find that limb a of the Grant test was engaged on the very particular facts of this case.

By accepting Resident A's money into your account and allowing this to continue, despite the error of sending your account details to Resident A and knowing this was wrong, the panel was of the view that your misconduct had breached the fundamental tenets of the

nursing profession and therefore brought its reputation into disrepute. The panel therefore found limbs b and c engaged.

The panel found there were no clinical concerns raised in this case. The panel also took into account that you have been working as nurse since 2004 with no concerns raised prior. The panel determined that, in light of the reflection you have provided and the recognition of your misconduct, the risk of repetition is low. The panel therefore concluded that a finding of impairment is not necessary on the ground of public protection.

The panel had regard to your oral evidence, testimonials from your work colleagues and training you have undertaken.

When assessing your level of insight, the panel gave regard to your reflective piece which said:

'I have learnt the risks in not setting professional boundary that it can be traumatizing [sic] and detrimental on both professionals and service user/former service user. It can take up huge toll on mental and physical health tremendously.'

The panel found that, although you have accepted that what you did was wrong and have recognised that you should not have crossed those professional boundaries, your insight is still developing as you have not fully understood the impact your actions had on those around you or the wider ramifications of your conduct, particularly in relation to vulnerable patients. In the panel's view, you continued to exercise poor judgement in accepting Resident A's money directly into your account, the details of which you state you 'accidentally sent them' to him, rather than directing the money to the organisations. These transactions have not been documented nor have you provided the panel with any receipts of the donations made.

The panel noted the training you have undertaken on professional boundaries. This has consisted of a two-hour online course. The panel found that you had made a limited attempt in demonstrating a strengthening of your practice.

The panel took into account the unique circumstances and context of the misconduct in this case. You had been caring for Resident A at the Home for 18 months before he was moved to another. You remained friends with him, visiting him on occasions and also becoming Facebook friends. Resident A began donating his money in 2020, three years after you had last cared for him. Although there was no evidence to show any financial motive for this relationship, you did gain from Resident A's generosity and there is ambiguity as to how much money was received into your account or distributed.

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 gave consideration to the NMC guidance on Impairment: What factors are relevant when deciding whether a professional's fitness to practise is impaired?:

'However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.'

The panel determined that whilst it accepted the contextual circumstances for your misconduct and the steps you have taken to address this, a finding of impairment on the ground of public interest is necessary. The panel was of the view that a fully informed member of the public or the profession who knew of the circumstances of this case would

be concerned if you were allowed to practise unrestricted as a nurse given the severity of the charges found proved.

Having found misconduct and given the nature of it, the panel determined that not to make a finding of impairment would significantly undermine the public's trust and confidence in the nursing profession. It is also necessary to mark the seriousness of the misconduct and to uphold proper standards and conduct for members of the nursing profession.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on public interest grounds.

Sanction

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

Submissions on sanction

Ms Boesche took the panel through the sanctions that were available for the panel to consider. She submitted that a 12-month suspension order is sufficient and the most appropriate sanction to address the public interest.

Ms Boesche submitted that, despite being under an interim conditions of practice order, it appears that you have chosen not to work as a nurse.

Ms Scrivens told the panel that the interim conditions of practice order you have been under since 2022 has prevented you from obtaining employment. She said that you have applied for a number of jobs but have had no success so far. She also said that you have felt deep shame because of this.

Ms Scrivens reminded the panel of the context in this case; you had been caring for Resident A for 18 months prior to his discharge from the Home, you remained friends with Resident A for a while and Resident A made the donations in 2020 and 2021, three years after you had last cared for him.

Ms Scrivens submitted that you understand and recognise that what you did was wrong and have learnt from it. She submitted that your misconduct has been remediated and that you will continue to develop your insight.

Ms Scrivens told the panel that you have no previous criminal or regulatory findings and that you are of good character. She said that there is no evidence of coercion or deep-seated attitudinal issues from you.

Ms Scrivens submitted that a substantive conditions of practice order would bring the same result as your interim conditions of practice order; you being unable to obtain employment. She also submitted that a suspension order would be purely punitive and stopping a kind and safe nurse from practising.

Ms Scrivens invited the panel to make no order as the imposition of any order would be disproportionate. She submitted that if the panel was of a different view then a caution order would be sufficient in satisfying the public interest. She said that the public would not be alarmed if you were allowed to work without any restrictions on your practice, given the circumstances in this case.

The panel accepted the advice of the legal assessor concerning its powers and the approach it should take in determining sanction. This included reference to a number of relevant judgments, including *Kamberova v Nursing and Midwifery Council* [2016] EWHC 2955 and *Nursing and Midwifery Council v Persand* [2023] EWHC 3356 (Admin).

Decision and reasons on sanction

Having found your 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:

- You demonstrated a lack of professionalism by accepting money from Resident A.
- You have shown a lack of understanding of the vulnerability of patients, in particular Resident A.
- You allowed the transactions between yourself and Resident A to continue, despite having '*accidentally sent them.*'

The panel also took into account the following mitigating features:

- You made early admissions to your misconduct.
- You have been engaged with the NMC throughout proceedings.
- Resident A had been your friend for a while and you had not cared for him as a nurse since 2017.
- Resident A was a persuasive individual within a unique set of circumstances.
- Whilst there were several transactions, these took place in connection with a single individual.

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.

The panel then gave careful consideration as to whether the imposition of a caution order would satisfy the public interest. The panel did consider that a caution order could have been appropriate in these circumstances. However, a caution order did not provide the panel with the reassurance that you will fully reflect on your shortcomings and fully remediate the concerns raised. The panel therefore decided that it would not be sufficient at this stage to fulfil the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *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 took into consideration that you have been under an interim conditions of practice order since 2022 and have been unable to secure employment as a result of this. The panel did not have sight of your interim conditions of practice order and was not aware of any of the conditions that were imposed on you. The panel was of the view that a

further period of being under a conditions of practice order would not aid you in returning to work as a nurse and would only be more punitive.

Whilst there has been some acknowledgement of your lack of professionalism the panel was not satisfied that you had shown enough understanding and insight into the impact of your actions and how you would handle a similar situation in the future.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case.

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;*

In light of its earlier findings, the panel was satisfied that there are no attitudinal issues, a minimal risk of repetition and that there has been no indication of any other similar concerns. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel was of the view that a period of suspension would provide you with the opportunity for further reflection and to undertake further training around professional boundaries, recognising professional boundaries and recognising vulnerable patients.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate in light of the unique circumstances of this case. The panel noted from the testimonials you provided that your clinical practice is kind and safe and considered that it is in the public interest that such a nurse should not be permanently removed from the register.

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

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

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

In deciding the appropriate length of the suspension order, the panel carefully balanced the public interest against the impact a suspension order would have on you and the potential risk that it could set back the progress, which the panel acknowledges, you have made. Furthermore, the panel noted that you have been unable to obtain work for three years under the interim conditions of practice order. The panel reflected on *Kamberova v Nursing and Midwifery Council* and took it into consideration in deciding the length of the suspension order. The panel determined that a suspension order for a period of four months was appropriate in this case to mark the seriousness of the misconduct and allow you time to fully reflect and remediate your shortcomings.

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

Any future panel reviewing this case would be assisted by:

- an updated, in-depth reflection on the overall impact on the people this affected, recognising the vulnerability of patients and safeguarding and how you would handle a similar situation if the situation arose again.
- Evidence of completed training in:
 - Vulnerable patients
 - Maintaining professional boundaries with specific emphasis towards vulnerable patients
 - Integrity
 - Conflicts of interest

This will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Boesche. She submitted that an interim suspension order for a period of five months should cover any potential period of appeal.

Ms Scrivens indicated that she did not object to the imposition of an interim order.

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

In response to the legal assessor's advice, Ms Boesche submitted that an interim order for a period of 18 months would be more appropriate.

After hearing Ms Boesche's further submissions, Ms Scrivens submitted that, given that there are no public protection issues and you are now effectively suspended for five months, an interim order is not necessary.

Decision and reasons on interim order

The panel was satisfied that an interim order is 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 has taken into consideration that the substantive order only takes into effect after 28 days. The panel therefore imposed an interim suspension order for a period of 18 months to cover any potential period of appeal. The panel was satisfied that this period was proportionate in the circumstances of the case.

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

That concludes this determination.