

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

Substantive Order Review Meeting

15 March 2019

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

Name of registrant:	Charlotte Zoe Nykoluk
NMC PIN:	06E0620E
Part(s) of the register:	Registered Nurse – Sub Part One Adult Nursing – 28 August 2006
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Tim Skelton (Chair, lay member) Anne Asher (Registrant member) Seamus Magee (Lay member)
Legal Assessor:	John Donnelly
Panel Secretary:	Kathleen Picketts
Order being reviewed:	Suspension Order (12 months)
Outcome:	Striking off order to come into effect at the end of 24 April 2019 in accordance with Article 30 (1)

Service of Notice of Meeting

The panel was informed at the start of this meeting that Ms Nykoluk was not in attendance.

The panel was informed that the notice of this meeting was sent to Ms Nykoluk on 5 February 2019 by recorded delivery and first class post to her registered address. The panel noted that notice of this meeting was collected from the post office on 12 February 2019.

The panel accepted the advice of the legal assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

Decision and reasons on review of the current order:

The panel decided to impose a striking off order. This order will come into effect at the end of 24 April 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a suspension order originally imposed by a Fitness to Practise panel on 22 March 2018 for 12 months. The current order is due to expire at the end of 24 April 2019.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved which resulted in the imposition of the substantive order were as follows:

That you, a registered nurse, between October 2014 and July 2015:

1. Did not attend a Peterborough and Stamford Hospitals NHS Foundation Trust (“the Trust”) funded ultrasound course (“the Course”) at the University of Hertfordshire on one or more of the dates set out in Schedule 1.
2. Took paid study leave from the Trust on one or more of the dates set out in Schedule 1 when you did not attend the Course.
3. Claimed for travelling expenses to attend the Course when you did not in fact attend on one or more of the occasions set out in Schedule 2.
4. Your conduct in Charge 2, above, was dishonest in that you should not have accepted payment for study leave for the dates you did not attend the Course.
5. Your conduct in Charge 3, above, was dishonest in that you claimed for expenses you knew you had not incurred.

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

The original panel determined the following with regard to impairment:

When considering insight, the panel noted that Ms Nykoluk demonstrated some insight during her internal investigation interview and within her written submissions to the NMC. However, the panel determined that this insight was limited to a recognition that her misconduct had been discovered by her employer and her insight was focused on her own lack of communication. However, she failed to show insight into the extent of what she had done. She made no reference to dishonesty and showed no recognition of the significant impact her actions had on the Trust and on the wider reputation of the nursing profession. Ms Nykoluk acknowledged her mistake but not that her actions were deliberate.

The panel then referred to the case of *Ronald Jack Cohen v General Medical Council [2008] EWHC 581 (Admin)* in relation to remediation. The panel accepted that cases of dishonesty can be difficult to remediate but found that there was no evidence before it of any attempts to remediate her misconduct. As such, and taking into account the deficiencies in Ms Nykoluk's insight, the panel concluded that there remains a real risk of repetition.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that, in this case, Ms Nykoluk had misused public money, had allowed her colleagues to be put under extra pressure when she was supposed to be on her course and concealed her behaviour from the Trust over a long period of time. This conduct was dishonest and unacceptable. A finding of impairment on public interest grounds was required to demonstrate that such misconduct would not be tolerated by the public or the profession.

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

The original panel determined the following with regard to sanction:

The panel considered the following aggravating and mitigating factors to apply in this case:

Aggravating

- A sustained period of dishonesty, which was persistent in nature;
- The dishonesty related to personal gain in terms of false mileage claims and time for which she was paid to be on the course, but was actually at home;

- Ms Nykoluk abused her position of trust;
- Ms Nykoluk showed a lack of insight.

Mitigating

- No concerns have been raised regarding Ms Nykoluk's clinical practice or of any harm to patients as a result of her misconduct;
- Ms Nykoluk struggled with elements of the course she had undertaken and had made some effort to raise this informally with managers;
- Ms Nykoluk has a previously unblemished record for more than ten years.

The panel also recognised that Ms Nykoluk made reference to some personal issues in her life which put her under stress at the time.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 Ms Nykoluk's misconduct was not at the lower end of the spectrum and that a caution order would be neither proportionate nor in the public interest.

The panel next considered the imposition of a conditions of practice order. The panel noted that no concerns have been raised regarding Ms Nykoluk's clinical practice and was mindful that any conditions imposed must be proportionate, measurable and workable. In these circumstances, the panel determined that it would not be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. As such, a conditions of practice order would not be appropriate.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel determined that there had been a clear breach of a fundamental tenet of the profession. However, the panel considered that there is no evidence of a deep seated personality issues and that Ms Nykoluk has a previously unblemished career of over ten years. The panel also considered that the dishonesty in Ms Nykoluk's case was not at the most serious end of the spectrum. As such, the panel considered that, in Ms Nykoluk's case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel carefully considered whether a striking-off order would be proportionate in Ms Nykoluk's case. Taking account of all the information before it, and taking account of all the mitigation provided to the panel on Ms Nykoluk's behalf, the panel concluded that it would be disproportionate. At the heart of the panel's decision was its view that if Ms Nykoluk was given the opportunity, she might be able to remediate her misconduct by demonstrating real insight into her actions. It concluded that this opportunity should be offered to this experienced nurse, whose clinical practice was not in question and whose managers had spoken highly of her nursing ability.

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 a suspension order will inevitably cause Ms Nykoluk. 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.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to allow Ms Nykoluk time to consider her actions and demonstrate some form of insight and remediation. The period would also

sufficiently mark the seriousness of the misconduct and satisfy the public interest in this case.

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 may be assisted by:

- Ms Nykoluk's attendance at the hearing;
- A reflective piece demonstrating insight into her misconduct;
- Recent testimonials and/or references attesting to Ms Nykoluk's honesty since the discovery of these events in January 2017; and
- A statement from Ms Nykoluk indicating her intent with regard to her future in the nursing profession.

Decision on current fitness to practise

This panel has considered carefully whether Ms Nykoluk's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle which contained the substantive panel's determination.

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

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Ms Nykoluk's fitness to practise remains impaired. It was mindful of the substantive panel's findings on impairment, specifically that her insight

was limited, and she failed to show recognition of the impact her actions had on the Trust and the wider reputation of the nursing profession. Ms Nykoluk has not engaged with the NMC since the substantive hearing. As a result, this panel had no new information to demonstrate that she has developed any insight or remediation into her misconduct, and the panel was not satisfied that the misconduct would not be repeated.

The panel has borne in mind that its primary function was to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on both grounds of public protection and public interest is required.

For these reasons, the panel finds that Ms Nykoluk's fitness to practise remains impaired.

Determination on sanction

Having found Ms Nykoluk's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the NMC's Sanctions Guidance (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action, or impose a caution order, but concluded that this would be inappropriate in view of the serious nature of the charges found proved, and Ms Nykoluk's lack of engagement with her regulator. The panel decided that it would be neither proportionate nor in the public interest to take no further action or impose a caution order.

The panel next considered imposing a conditions of practice order. It noted that no concerns had been raised in respect of Ms Nykoluk's clinical practice. Furthermore, the panel was mindful that any conditions imposed must be proportionate, measurable, and workable. Given Ms Nykoluk's complete lack of engagement since the substantive hearing, the panel had no information to suggest that she would comply with a

conditions of practice order. The panel therefore decided that it could not formulate workable or practicable conditions of practice.

The panel next considered imposing a further suspension order. The panel noted that it had no evidence before it to demonstrate that Ms Nykoluk has remediated her misconduct, or that she had complied with any of the recommendations that the substantive panel had set out as matters that would assist this panel. Furthermore, Ms Nykoluk has not provided any evidence that would give the panel confidence that she had developed insight or appreciated the impact of her dishonesty on the Trust and nursing profession.

The panel was mindful that the substantive panel had not found evidence of a deep seated attitudinal problem. However, this panel considered the attitudinal problems evident in her non-engagement. The panel was mindful of Ms Nykoluk's duty to cooperate with her regulator and was of the view that she has had 12 months to reflect on her misconduct and engage with the NMC. The panel decided that a further period of suspension would not serve any useful purpose in all of the circumstances.

The panel decided that it was necessary to take action to prevent Ms Nykoluk from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

The panel was mindful of the fact that a striking-off order meant that Ms Nykoluk could not apply for restoration to the register until a period of 5 years had lapsed, but it considered the misconduct, her non-engagement, and her consistent lack of insight meant it was proportionate to strike her off in these circumstances.

This decision will be confirmed to Ms Nykoluk in writing.

That concludes this determination.