

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Meeting
17 February 2020

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

Name of registrant:	Agata Bulka
NMC PIN:	16F0186C
Part(s) of the register:	Registered Nurse (Sub Part 1) Adult Nursing – June 2016
Area of Registered Address:	England
Type of Case:	Misconduct and Lack of English
Panel Members:	Emma Boothroyd (Chair, Lay member) Kitty Lamb (Registrant member) Eileen Skinner (Lay member)
Legal Assessor:	Nigel Mitchell
Panel Secretary:	Caroline Pringle
Order being reviewed:	Suspension order (12 months)
Fitness to Practise:	Impaired
Outcome:	Striking-off order to come into effect at the end of 3 April 2020 in accordance with Article 30(1)

Decision on proof of service

The panel considered whether notice of this meeting has been served in accordance with the rules. Rules 11A and 34 of the *Nursing and Midwifery Council (Fitness to Practise) Rules 2004*, as amended state:

'11A.(1) Where a meeting is to be held in accordance with rule 10(3), the [Fitness to Practise] Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

*34.(3) Any other notice or document to be served on a person under these Rules may be sent by—
(a) ordinary post'*

The panel accepted the advice of the legal assessor.

It noted that the letter of notice of this substantive meeting was sent to Miss Bulka's address on the register by both first class post and recorded delivery on 6 January 2020. The notice informed Miss Bulka that her suspension order would be reviewed at a meeting on or after 14 February 2020, unless she asked for the review to take place at a hearing.

Royal Mail "Track and Trace" documentation confirmed that the notice was returned to the NMC as undelivered on 3 February 2020. The panel noted letters previously sent to this same address had also been returned to sender. In light of this, a copy of the notice was also emailed to Miss Bulka with a request that she provide an up to date postal address. No response was received to this email.

The panel noted that the Rules regarding service do not require delivery and that it is the responsibility of registrants to maintain an up-to-date and effective address on the NMC register. Having regard to this, the panel was satisfied that the notice was sent more than 28 days in advance of this meeting and had been served in accordance with the Rules. The panel was also satisfied that it was appropriate to proceed with this

review at a meeting as it had no reason to believe that referring this matter to a hearing would result in Miss Bulka's attendance or engagement.

Decision and reasons on review of the current order

The panel decided to make a striking-off order. This order will come into effect at the end of 3 April 2020 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a 12 month suspension order imposed by a Fitness to Practise panel on 5 March 2019. The current order is due to expire at the end of 3 April 2020.

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,

1. Having been directed, on 5th February 2018, to undertake an IELTS test by the Registrar, failed to comply with this direction.

2. Having been directed, on 3rd May 2018, to undertake an IELTS test by the Registrar, failed to comply with this direction.

3. Do not have the necessary knowledge of English to practise safely and effectively.

And, in light of 1 and 2 above, your fitness to practise is impaired by reason of your misconduct, and in light of 3 above, your fitness to practise is impaired by reason of your lack of knowledge of English.

The substantive panel determined the following with regard to impairment:

Regarding insight, the panel considered that although there was no patient harm, Miss Bulka's colleagues had had to repeat what they said to her, and to speak slowly to ensure she was able to understand what was being said. The panel was of the view that it was through the efforts of Miss Bulka's colleagues on duty at the Home that the risk of patient harm had been mitigated but it determined the risk of patient harm remains high if circumstances arose in which Miss Bulka was unable to seek further clarification if she was unclear on instructions or unable to engage effectively with patients. The panel also noted Miss Bulka has not demonstrated insight into the risk of patient harm as she has not taken the steps necessary to acquire a level of English to enable her to practise safely and effectively.

The panel noted that Miss Bulka has been afforded an opportunity to remediate the concern in respect of charge 3. The Home had recognised Miss Bulka needed to remediate the concern around her verbal English language knowledge. The Home had supported Miss Bulka and were willing to pay for her to attend an English language course. Miss Bulka has chosen not to take up this offer and resigned from the Home. The panel has no evidence before it that Miss Bulka has remediated the concern around her verbal English language knowledge and therefore it determined the risk of repetition was high.

In its consideration of whether Miss Bulka has remedied her practice the panel took into account that it has no evidence before it that she has demonstrated any insight into the consequences for patients, their families and her colleagues of a lack of the necessary English to practise safely and effectively.

The panel is of the view that there is a risk of repetition based on the engagement shown by Miss Bulka, The panel determined Miss Bulka has shown no insight and consequently the risk of repetition is high.

Accordingly a finding of impairment on public protection grounds is necessary.

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 Miss Bulka's repeated failure to cooperate with, and follow the directions of, the NMC, meant that a finding of impairment on public interest grounds was required. There is no evidence to suggest any change in Miss Bulka's attitude to cooperating with her regulator.

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

The substantive panel determined the following with regard to sanction:

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the Sanctions Guidance, 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 Miss Bulka'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 Bulka's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. 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. Miss Bulka's failure to comply with the directions of the Registrar led the panel to the view it had no confidence Miss Bulka would in any event comply with a conditions of practice order.

Furthermore the panel concluded that the placing of conditions on Miss Bulka'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 Sanctions Guidance indicates that a suspension order may be appropriate where some of the following factors are apparent:

- does the seriousness of the case require temporary removal from the register?*
- will a period of suspension be sufficient to protect patients and the public interest?*

The panel considered that the seriousness of the case does require at least temporary removal from the register. Further, a suspension order would be sufficient to mark the gravity of Miss Bulka's misconduct and her failure to comply with the directions of the Registrar.

The panel determined that, although there had been a clear breach of a fundamental tenet of the profession, the panel considered that, in Miss

Bulka's case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel further considered whether a striking-off order would be proportionate in Miss Bulka's case. Taking account of all the information before it, the panel concluded that it would be disproportionate at this time. The panel determined that a suspension order would mark the seriousness of the matter. A suspension order would also provide public protection as Miss Bulka could not practise as a registered nurse during the period of suspension. The panel determined that a suspension order will also allow Miss Bulka time to demonstrate insight, to address the misconduct and attend an English language course and pass the IELTS assessment test. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in this case to impose a striking off order.

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 Miss Bulka. 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 mark the seriousness of the misconduct.

Prior to 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:

- *Miss Bulka's attendance at the review hearing;*
- *written reflection demonstrating Miss Bulka's insight into the consequences of her behaviour so far; and*
- *evidence Miss Bulka has addressed her failings in English and evidence she has passed the IELTS assessment test, or an equivalent English language assessment test, acceptable to the NMC.*

Decision on current fitness to practise

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

The panel 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 noted that Miss Bulka did not attend or engage with the substantive hearing. Miss Bulka's non-engagement has persisted since. This panel has no information or any evidence of engagement from Miss Bulka. It has no evidence that she has taken steps to address the deficiencies in her language skills, nor that she intends to, and her non-cooperation with her regulator has continued. The panel therefore concluded that there remains a risk of repetition and Miss Bulka's fitness to practise continues to be

impaired, both by reason of her misconduct and her English language skills, on public protection grounds.

The panel also considered that a finding of current impairment continued to be required on public interest grounds, for the same reasons identified by the substantive panel.

Determination on sanction

Having found Miss Bulka'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 Articles 29 and 30 of the Order. The panel also took into account the NMC's Sanctions Guidance and bore 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 but concluded that this would be inappropriate. Taking no action would not restrict Miss Bulka's practice and so would not protect the public from the risk of harm. It would also be insufficient to satisfy the public interest, given her persistent lack of engagement.

The panel also determined that a caution order would be inappropriate for the same reasons.

The panel determined that it would not be possible to formulate workable conditions in the absence of any engagement from Miss Bulka. It therefore concluded that a conditions of practice order was not an appropriate or proportionate sanction.

The panel next considered a suspension order. It noted that the substantive panel had imposed this order because her misconduct '*was not fundamentally incompatible with remaining on the register*' and a suspension order would allow Miss Bulka time to demonstrate insight and remediate her English language skills. However, Miss Bulka has not used the time to do so. The misconduct charges that the substantive panel found proved relate to Miss Bulka's failure to co-operate with directions made by the NMC Registrar on two occasions. Miss Bulka did not engage with her substantive

hearing in March 2019 and there has been no engagement from her since. She has not responded to emails from her NMC case officer and has not provided an up-to-date postal address when asked to do so. Taking all of this into account, the panel reached the view that Miss Bulka's misconduct, namely her persistent and consistent failure to cooperate and engage with her regulator, had become fundamentally incompatible with remaining on the register. The panel considered that a further period of suspension would serve no useful purpose and that, at this point, the only sanction which would adequately protect the public and maintain confidence in the nursing profession and the NMC was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely at the end of 3 April 2022, in accordance with Article 30(1) of the Nursing and Midwifery Order 2001.