

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

Substantive Order Review Meeting

19 October 2020

Nursing and Midwifery Council, Virtual Meeting

Name of registrant:	Ms Bernadetta Maria Kortus
NMC PIN:	15C0726C
Part(s) of the register:	Registered Nurse – sub part 1 Adult Nursing (23 March 2015)
Area of Registered Address:	Poland
Type of Case:	Lack of Knowledge of English
Panel Members:	Jacqueline Alexander (Chair, Lay member) Kevin Hope (Registrant member) Geoffrey Baines (Lay member)
Legal Assessor:	Douglas Hogg
Panel Secretary:	Anjeli Shah
Order being reviewed:	Suspension Order for 12 months
Fitness to Practise:	Impaired
Outcome:	Striking-Off Order to come into effect at the end of 5 December 2020 in accordance with Article 30(1)

Decision on Service of Notice of Meeting:

The panel considered whether notice of this meeting has been served in accordance with the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (“the Rules”).

The panel noted that notice of this meeting was sent to Ms Kortus on 15 September 2020 to her email address on the register.

The panel accepted the advice of the legal assessor.

The panel noted that under the recent amendments made to the Rules during the COVID-19 emergency period, notice of a meeting can be sent to an email address held for the registrant on the register, or an email address the registrant has notified the Nursing and Midwifery Council (“NMC”) of for the purposes of communication.

The panel was satisfied that notice of this meeting was sent at least 28 days in advance of this meeting. The panel considered that notice had been served in accordance with Rules 11A and 34 of the Rules.

Decision regarding proceeding to consider this case at a meeting

The panel noted that the notice of meeting sent to Ms Kortus on 15 September 2020 informed her that her case would be considered at a meeting on or after 19 October 2020. Ms Kortus was also informed that if she wished for her case to be considered at a hearing, she should respond to indicate this within 29 days of the date of the letter (15 September 2020). The panel noted that there had been no communication from Ms Kortus since the notice of meeting was sent to her, and that there had been limited engagement from her with the NMC.

The panel therefore proceeded to consider this case at a meeting.

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 5 December 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (“the Order”).

This is the third review of a suspension order, originally imposed by a panel of the Fitness to Practise Committee on 3 May 2018, for a period of six months. On 26 October 2018 the suspension order was extended for 12 months. On 1 November 2019 the suspension order was extended for a further 12 months. The current order is due to expire at the end of 5 December 2020.

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

The charge found proved which resulted in the imposition of the substantive order was as follows:

That you, a Registered Nurse:

- 1) Do not have the necessary knowledge of English to practise safely and effectively.*

The second reviewing panel determined the following with regard to impairment:

*“The panel noted the previous reviewing panel’s decision regarding impairment:
“Ms Kortus’ scores in the IELTS were well below the standard required.
This panel has received no new information as to Ms Kortus’ current
circumstances. Ms Kortus has not engaged with the NMC since the
imposition of the suspension order. There is no evidence before the panel
that Ms Kortus has completed the IELTS test (or its equivalent) to the
required standard demonstrating sufficient knowledge of English”*

*This panel has not received any new information regarding Ms Kortus’ current
circumstances. It noted that there has been no evidence that she has completed
the IELTS test (or its equivalent) to the required standard demonstrating*

sufficient knowledge of English. The panel also had no evidence that Ms Kortus has developed insight into her failings. In light of this, the panel decided that a finding of current impairment is necessary on the grounds of public protection and to uphold the wider public interest.

The panel determined that Ms Kortus' fitness to practise remains impaired.”

The second reviewing panel went on to determine the following with regard to sanction:

“The panel considered the imposition of a further period of suspension. The panel considered that continuing this sanction would adequately protect the public as Ms Kortus would not be able to practice as a registered nurse in the United Kingdom. The panel agreed with the last reviewing panel's decision that the seriousness of the case and Ms Kortus not having the necessary knowledge of English language requires her continued removal from the Register at least on a temporary basis.

The panel decided to impose a further suspension order for 12 months. The panel considered that such a sanction would allow Ms Kortus a full opportunity to engage with the NMC, provide evidence of developed insight and to improve her English language knowledge and successfully complete an IELTS (or its equivalent) assessment. Ms Kortus should appreciate that at a subsequent review, the panel may have the full range of sanctions available including that of strike-off.”

Decision on current fitness to practise

This panel has considered carefully whether Ms Kortus' 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 had regard to all of the documentation before it.

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 considered whether Ms Kortus' fitness to practise remains impaired.

The panel had regard to the information before it, noting that on 4 November 2019, Ms Kortus emailed the NMC indicating that she wished to undertake the International English Language Testing System ("IELTS"). Ms Kortus then booked the IELTS, and provided confirmation of her booking to the NMC by email on 29 November 2019. The confirmation stated that the test was due to take place on 21 March 2020. On 4 December 2019 an NMC case officer emailed Ms Kortus to indicate that the IELTS had been paid for by the NMC, and Ms Kortus was asked to keep the NMC updated with her test results.

The panel noted that since this correspondence between Ms Kortus and the NMC, there had been no further communication from Ms Kortus. Therefore, there had been no confirmation as to whether she had in fact taken the IELTS on 21 March 2020, and no test results had been provided.

The panel bore in mind from the documentation before it that when Ms Kortus last underwent the IELTS in 2017, her scores were particularly low. The panel noted that since the original substantive meeting in May 2018, Ms Kortus has been suspended, and during that time, she has been given sufficient opportunity to improve her English language skills, to undertake the IELTS again and to demonstrate evidence of remediation. Despite such opportunities and time afforded to Ms Kortus, she has failed to demonstrate improvement of her English language skills. Whilst Ms Kortus did indicate in November 2019 that she wished to take the IELTS, there was no further correspondence or documentation from her to indicate any active steps she has taken to improve her English language skills. The panel was disappointed by Ms Kortus' lack of meaningful engagement with the NMC, since the enquiries made in November 2019 regarding undertaking the IELTS.

In light of the lack of evidence to suggest Ms Kortus has taken any steps to improve her English language skills, including undertaking the IELTS and passing the test to the required level, the panel considered that a risk to patient safety remains. The panel considered that without having the knowledge of English required for safe and effective practice, Ms Kortus remains liable to place patients at risk of harm if she were able to practise unrestricted. The panel therefore determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore in mind that its primary function is 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 had regard to Ms Kortus' limited engagement with the NMC, and her lack of effort in improving her English language skills and demonstrating evidence of remediation. The panel considered that registrants have a duty to engage with their regulator, and the burden is upon them to demonstrate remediation of any fitness to practise concerns. The panel considered that members of the public would be concerned by such lack of engagement and lack of attempts to remediate by Ms Kortus, despite being given a number of opportunities to address these areas of concern. The panel therefore determined that a finding of impairment also remains necessary on public interest grounds.

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

Determination on sanction

Having found Ms Kortus' 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 also took into account the NMC's Sanctions Guidance ("SG") 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 in view of the remaining risk identified. Taking no action would not restrict Ms Kortus' practice. The panel determined that taking no action would not protect the public and it would not satisfy the public interest.

The panel then considered whether to impose a caution order but concluded that this would also be inappropriate in view of the remaining risk identified. A caution order would also not restrict Ms Kortus' practice. The panel determined that imposing a caution order would not protect the public and it would not satisfy the public interest.

The panel next considered whether to impose a conditions of practice order. The panel was mindful that any conditions imposed must be measurable, practicable and workable. The documentation before the panel indicated that when Ms Kortus last undertook the IELTS in 2017, her test scores across all areas were significantly low. Since then, there was no information to suggest that she had successfully undertaken the IELTS or an equivalent test, or that her English language skills had improved. The panel also noted Ms Kortus' limited engagement with the NMC. In light of these factors, the panel was unable to formulate measurable, practicable and workable conditions of practice which would address the risks in this case, which would sufficiently protect the public and which would satisfy the public interest.

The panel next considered whether to impose a further period of suspension. The panel bore in mind that Ms Kortus had been suspended since the original substantive meeting was held in May 2018. During that time, there had been limited engagement with the NMC, and no evidence to suggest there had been any improvement in her English

language skills. Furthermore, during this period of time, there was limited information to suggest that Ms Kortus had been taking proactive steps to remediate the concerns in this case. Whilst Ms Kortus had made enquiries with the NMC in November 2019 with regards to undertaking the IELTS, there was no further communication in relation to this, and therefore no information to confirm whether the test had been taken, and no test results had been provided. The panel reminded itself that the duty was upon Ms Kortus to demonstrate positive evidence of remediation, and it considered that she had been afforded a number of opportunities and a lengthy period of time to do so.

Given the lack of progress made by Ms Kortus since 2018, the panel considered that a further period of suspension would serve no useful purpose. The panel considered that it was not in the public interest to continue these proceedings when there was no evidence to suggest that this would facilitate Ms Kortus' return to safe and effective practice. The panel determined that a suspension order is no longer appropriate and proportionate in the circumstances of this case.

Noting that Ms Kortus has been suspended for a continuous period of over two years, the panel determined that it was now necessary to take action to prevent her from practising in the future. The panel had regard to the SG, and considered that the lengthy passage of time without Ms Kortus demonstrating a willingness to meaningfully engage and improve her English skills raised fundamental concerns about her professionalism. The panel considered that public confidence in the nursing profession and in the NMC as a regulator could not be maintained unless Ms Kortus were to be removed from the register. It considered that a striking-off order was now the only sanction which would be sufficient to protect patients.

The panel concluded that a striking-off order is the only appropriate and proportionate sanction in the circumstances of this case.

In accordance with Article 30(1) of the Order, this striking-off order will come into effect upon the expiry of the current suspension order, namely at the end of 5 December 2020.

This decision will be confirmed to Ms Kortus in writing.

That concludes this determination.