

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

**Substantive Meeting
Monday, 24 April 2023**

Virtual Meeting

Name of Registrant:	Negrea Bogdan
NMC PIN	10K0143C
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing -19 November 2010
Relevant Location:	Cwmbran
Type of case:	Conviction
Panel members:	Bryan Hume (Chair, lay member) Linda Pascall (Registrant member) Asmita Naik (Lay member)
Legal Assessor:	Charles Apthorp
Hearings Coordinator:	Catherine Acevedo
Facts proved:	Charge 1
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 month)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Mr Bogdan's registered email address by secure email on 7 March 2023.

Further, the panel noted that the Notice of Meeting was also sent to Mr Bogdan's representative at the Royal College of Nursing (RCN) on 7 March 2023. The RCN have acknowledged receipt of this notice.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and the fact that this meeting was to be heard virtually.

In the light of all of the information available, the panel was satisfied that Mr Bogdan has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse:

1. On 6 April 2021 at Cardiff Magistrates Court, you were convicted of sexual assault by touching contrary to section 3 of the Sexual Offences Act 2003.

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

Background

Mr Bogdan is entered on the Nursing and Midwifery Council ("the NMC") register as a registered nurse.

On 2 June 2021, the NMC received referrals from Gwent Police, Willowbrook Nursing Home (“the Home”) and Mr Bogdan. Mr Bogdan began working at the Home as the Home manager in April 2016.

On 23 July 2020, Mr Bogdan sexually assaulted a female colleague, Colleague A at the Home by grabbing her by her t-shirt, putting his hand up her top and touching her stomach. He then ran his hand up to her breast which he touched over her bra. Mr Bogdan had been responsible for managing Colleague A.

The matter was reported to Gwent Police on 4 August 2020 and Mr Bogdan was suspended from the Home. Mr Bogdan resigned shortly after on 7 August 2020 which meant no investigation by the Home could take place.

Mr Bogdan was later charged by Gwent Police with sexual assault. He denied the charge but was convicted after trial by a criminal court on the 6 April 2021.

Mr Bogdan was sentenced to a community order on the 1 June 2021. The conviction also means he will appear on the Sex Offenders Register and is subject to the notification requirements of that register for a period of 5 years.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC and from Mr Bogdan’s RCN representative.

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 charge concerns Mr Bogdan's conviction and, having been provided with a copy of the memorandum of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

- '31.—** (2) *Where a registrant has been convicted of a criminal offence—*
- (a) *a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*
 - (b) *the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*
- (3) *The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'*

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Bogdan's fitness to practise is currently impaired by reason of his conviction. 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.

Representations on impairment

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 has 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 Mr Bogdan's fitness to practise impaired on public protection and public interest grounds. The NMC consider that while no patient harm was

caused, the trauma caused by Mr Bogdan could have had a resulting impact on the care provided by Colleague A and this could have placed residents at risk of harm. If this behaviour is not addressed, then it has the potential to put future patients at risk of harm.

The NMC submit that the public has the right to expect high standards of registered professionals. The seriousness of the conduct is such that it calls into question Mr Bogdan's professionalism in the workplace. This therefore has a negative impact on the reputation of the profession and, accordingly, has brought the profession into disrepute. Mr Bogdan has clearly breached fundamental tenets of the profession by the very nature of the conduct displayed.

The NMC next considered Mr Bogdan's insight. Mr Bogdan was convicted after a criminal trial and maintains his denial that he assaulted Colleague A. Whilst Mr Bogdan engaged in the NMC investigation and made a self-referral following his sentencing hearing, he has not responded to the Notice of Referral or returned a completed Case Management Form. In previous responses he denied the offence and suggested it was a malicious complaint made after he disciplined Colleague A. The NMC consider that Mr Bogdan has shown little or no insight into his conviction.

The NMC consider there is a public protection and public interest requirement in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour.

The panel also bore in mind the representations from the RCN which indicated that Mr Bogdan accepts that the public interest in this matter is high, and a finding of impairment is required in light of his conviction.

The panel accepted the advice of the legal assessor.

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, Mr Bogdan'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 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. 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/their fitness to practise is impaired in the sense that S/He/They:

- 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 limbs a, b and c engaged in the *Grant* test. The panel found that while no patient harm was caused, there was potential to place residents at real risk of harm.

The panel found that Mr Bogdan's conviction negatively impacted on the reputation of the profession, breached the fundamental tenets of the nursing profession, and therefore brought its reputation into disrepute. The public has the right to expect high standards of registered professionals. The panel found that the seriousness of the conviction is such that it calls into question Mr Bogdan's professionalism in the workplace.

Regarding insight, the panel considered whether Mr Bogdan has reflected and taken opportunities to show insight into what happened. The panel noted that Mr Bogdan was convicted after a criminal trial and maintains his denial that he assaulted Colleague A.

The panel considered that whilst Mr Bogdan had engaged in the NMC investigation and made a self-referral following his sentencing hearing, but the panel has seen no evidence that Mr Bogdan has shown remorse or developed any insight.

The panel carefully considered the evidence before it in determining whether or not Mr Bogdan has taken steps to address his behaviour. The panel took into account that Mr Bogdan worked at two other care homes after he resigned from the Home. Mr Bogdan disclosed the details of the criminal investigation to those care homes.

Although no concerns were raised about Mr Bogdan's conduct at those care homes, the panel considered that there is a risk of repetition to the public due to Mr Bogdan's lack of insight. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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.

The panel determined that a finding of impairment on public interest grounds is required because public confidence in the profession would be undermined if a finding of impairment were not made in this case.

Having regard to all of the above, the panel was satisfied that Mr Bogdan'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 Mr Bogdan off the register. The effect of this order is that the NMC register will show that Mr Bogdan 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 submit that a striking-off order is the appropriate and proportionate sanctions. The NMC outlined what they consider to be the aggravating and mitigating features of the case.

The NMC submit that taking no further action, a caution order and a conditions of practice order would not be appropriate in view of the seriousness of the conviction. The NMC's sanctions guidance states that a suspension order may be appropriate in cases where the conduct isn't fundamentally incompatible with the nurse continuing to be a registered professional. However, conduct of this nature is likely to give rise to serious concerns which are more difficult to put right. Taking into account the nature and seriousness of the conduct temporary suspension from the register would be insufficient to protect patients, public confidence in nurses, the NMC as a regulator and professional standards.

Given the seriousness of the incident and the lack of insight shown by Mr Bogdan, it is submitted by the NMC that his conduct is fundamentally incompatible with being a registered professional. As such the NMC consider the most appropriate sanction would be striking-off order. A striking off order would adequately protect the public as well as maintain public confidence in the profession.

The panel also bore in mind the representations from the RCN which indicated that Mr Bogdan does not oppose the NMC's sanction bid of a striking-off order.

Decision and reasons on sanction

Having found Mr Bogdan'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:

- Criminal behaviour towards a female colleague which occurred in a professional setting
- Abuse of position of trust
- Lack of insight into his conduct

The panel determined that there were no mitigating features.

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.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Bogdan'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 Mr Bogdan's conduct resulting in his conviction 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 Mr Bogdan'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 conduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Bogdan'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 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 determined that the conduct leading to Mr Bogdan's conviction, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Bogdan's actions is fundamentally incompatible with him remaining on the register.

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?*

Mr Bogdan's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings, in this particular case, demonstrate that Mr Bogdan's actions were serious and to allow him 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 Mr Bogdan's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, 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.

This will be confirmed to Mr Bogdan in writing.

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 Mr Bogdan's own 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 if a finding is made that Mr Bogdan's fitness to practise is impaired and a restrictive sanction is imposed, an 18-month interim suspension order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest. An interim order of 18 months is necessary to cover any possible 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 to cover the appeal period.

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

That concludes this determination.