

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

**Substantive Order Review Hearing
Friday 16 September 2022**

**Nursing and Midwifery Council
Virtual Hearing**

Name of registrant: Natalija Sadkeviciene

NMC PIN: 15Y0001C

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – October 2015

Relevant Location: Lincolnshire

Type of case: Lack of knowledge of English

Panel members: Mary Idowu (Chair, Lay Panel Member)
Esther Craddock (Registrant Panel Member)
Richard Bayly (Lay Panel Member)

Legal Assessor: Gelaga King

Panel Secretary: Petra Bernard

Nursing and Midwifery Council: Represented by Yvonne Ferns, Case Presenter

Mrs Sadkeviciene: Present and represented by Inez Grummitt,
instructed by the Royal College of Nursing (RCN)

Order being reviewed: Suspension order (12 Months)

Outcome: **Suspension order (12 Months)
to come into effect on 5 October 2022 in
accordance with Article 30(1)**

Decision and reasons on review of the substantive order

The panel decided to impose a further 12 month suspension order.

This order will come into effect at the end of 5 October 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fifth review of a substantive suspension order originally imposed by a Fitness to Practise Committee panel on 1 September 2017 for 12 months. The order was reviewed on 24 August 2018, 28 August 2019, 28 August 2020, 17 September 2021 when a further period of suspension was imposed for 12 months on each occasion. The current order is due to expire at the end of 5 October 2022.

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

The charge found proved (by way of admission) which resulted in the imposition of the substantive order was as follows:

'That you, a registered nurse do not have the necessary knowledge of the English language to practise safely and effectively.

AND, in light of the above, your fitness to practise is impaired by reason of your lack of knowledge of English.'

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

'The panel noted the most recent OET results that do not meet the standard required by the NMC. The panel also noted that you accept that you have not achieved the required standard. The panel noted that you have demonstrated that you are committed and motivated and noted your positive testimonials. The panel further acknowledged your difficult personal situation and the current circumstances of the Covid 19 pandemic which are out of your control. However, the panel noted that the OET results were not marginal and that you are not up to the level of English required to effectively communicate with patients, your colleagues and

other professionals. It particularly noted that your listening skills are the least developed and that the assessment states that there are 'frequent errors, inaccuracies'. The panel therefore determined that there has been no material change in circumstances since the last review.

The panel concluded that until you have achieved the minimum grade required by the NMC in either the OET or the IELTS, a finding of current impairment will continue to be required on public protection grounds.

The panel had 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 current impairment on public interest grounds also continued to be required to maintain confidence in the nursing profession.

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

The fourth reviewing panel determined the following with regard to sanction:

'The panel next considered whether a 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 noted that your impairment was not limited to one area of practice that can be addressed through clinical retraining. It was of the view that the only conditions which would be sufficient to protect the public would be one which prevented you from working as a registered nurse until such a time as you have successfully passed the OET assessment. It agreed with the reasons of the last panel that such a condition would be tantamount to a suspension and therefore would not be appropriate.

The panel considered the imposition of a further period of suspension. The panel noted that this sanction was proposed by the NMC and the RCN. It was of the view that a suspension order would allow you further time to improve your English

language skills. It noted the positive testimonial from your English tutor:

'While studying English Natalija has been working systematically, showing a good approach to the subject, being responsible and determined. These abilities definitely give Natalija advantages among other students. I would like to emphasise that Natalija is a very good student as she is always eager to improve and develop her skills.'

The panel also noted your difficult personal circumstances and the difficulties created by the Covid 19 pandemic. The panel also noted that you have been working as a nurse in Lithuania for 20 years. The panel concluded that you are motivated and engaged to continue to improve your English language skills.

The panel considered a striking off order, but was of the view that applying this sanction in the case of an otherwise competent nurse who has demonstrated of being competent clinically would be wholly disproportionate at this stage.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 12 months. It was of the view that this would provide you with an opportunity to engage with your learning and improve your English language to the required standard. It considered this to be the most appropriate and proportionate sanction available.'

Decision and reasons on current impairment

The panel has considered carefully whether your 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. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle, and a bundle provided by you containing the following: a personal statement dated 12 September 2022; training documents; testimonials from your English tutor dated 27 August 2022, your Relief Team Leader and supervisor dated 14 September 2022, a Relief Care Worker dated 14 September 2022, as well as your Occupational English Test (OET) assessment results dated 22 August 2022. It has taken account of the submissions made by Ms Ferns on behalf of the NMC and Ms Grummitt on your behalf.

Ms Ferns outlined the background of the case and referred the panel to the decisions made by previous panels. She submitted that today's panel will be aware of its powers as set out under Article 30 of the Nursing and Midwifery Order 2001. If a finding of current impairment is made today the panel will have all sanctions available to it up to a striking-off order.

Ms Ferns submitted that it is the panel's primary function to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance.

Ms Ferns referred the panel to the comments of the original substantive panel on impairment and sanction and those of the last panel who noted that your OET results did not meet the standard required by the NMC.

Ms Ferns referred the panel to your test scores as provided in your registrant's bundle which includes the OET test results in: Listening 250 – C; Reading 270 – C; Speaking 330 - C+; and Writing 290 – C. She highlighted that the outcome of your assessment of English language skills. She submitted that you have not met the required standard of English as set out by the NMC and that therefore there is no material change in circumstances since the last review hearing. Ms Ferns acknowledged that your scores indicate that you are able to maintain a conversation and are able to follow the standard spoken language in your field of specialisation, your listening skills are likely to show frequent errors.

Ms Ferns submitted that there is no information to undermine the previous panel's finding that your practice remains impaired by reason of your lack of knowledge of the English

language. Therefore, the risk of harm to the public identified by the previous panel remains. As such, she submitted that a finding of current impairment was necessary on the ground of public protection and in the wider public interest.

Ms Ferns submitted that a conditions of practice on your registration would not be a sufficient or appropriate response and that it must proportionate, measurable and workable. Ms Ferns reiterated the concerns outlined in the original Consensual Panel Determination agreement that no conditions could be formulated that were not tantamount to a suspension, as it was necessary to stop you practising completely until you could prove that your knowledge of English was sufficient to allow you to practise safely and effectively.

Ms Ferns submitted that given that this case is focussed on language, only conditions requiring you to refrain from nursing before you pass a further OET or IELTS assessment, would provide adequate protection to the public. She submitted that it is not possible to formulate other conditions that would address impairment in this case, given that your fitness to practise is not impaired by reason of your lack of clinical skill.

With regard to sanction, Ms Ferns referred the panel to the Guidance and submitted that an order is necessary on the grounds of public protection and that it is otherwise in the public interest to protect the reputation of the professions and to declare and uphold proper standards of conduct and behaviour within the professions.

Ms Ferns invited the panel to impose a further period of suspension. She submitted that this would allow you more time and encourage you to build on the work you have already done. She acknowledged that a strike off order is also available to the panel.

Ms Grummitt submitted that a 12 month conditions of practice order would be sufficient to address the concern identified, or in the alternative a further 12 month suspension order. She submitted that there had been four reviews since the CPD findings were made and that you have clearly made significant progress in your language skills since then.

Ms Grummitt outlined your journey of learning English and your career history as a nurse to date. She submitted that you practise safely as a health care assistant. She told the

panel that you are working with a personal tutor who you meet with once per week for an hour. She told the panel that you would like to have more learning sessions with your private tutor however you are financially restrained from doing so. She told the panel that you have self-funded all of your studies and that you have also paid to enrol on an online learning platform in which you have made slow and steady progress; your scores last year were: Reading – C; Listening – D; Writing – C and Speaking – C+, and now your scores are: Reading – C; Listening – C; Writing – C/borderline C+ and Speaking – C+. Ms Grummitt accepted that you have some way to go to achieve the required grades before your fitness to practise can be found to not be impaired.

Ms Grummitt referred the panel to your personal statement dated 12 September 2022 which in and of itself shows a good level of English. She submitted that you have been working at the Wynhill Lodge (the Home) for over four years as a healthcare assistant and there has not been any concerns with your English language. She referred the panel to the testimonial of your supervisor dated 14 September 2022 in which it states that your spoken English language is *'very good'*.

Ms Grummitt submitted that although you are not currently working as a nurse there are duties which crossover to those of a nurse. [PRIVATE].

Ms Grummitt referred the panel to the references, testimonial and training certificates provided in your registrant's bundle. She submitted that the training certificates show achievements passed in an English language learning environment. She submitted that you have made progress and have been working in an English speaking environment for four years and as such the risk has reduced since the last hearing.

Ms Grummitt invited the panel to impose a conditions of practice order stating that it would be sufficient to address the concerns identified and suggested that it may include the condition to inform any employer or potential employer of the NMC's proceedings and also an indirect supervision requirement. She submitted that if the panel is not with her on imposing a conditions of practice order then a further 12 month suspension would be the appropriate order.

Ms Grummitt submitted that you are dedicated to studying and improving your English and it would be wholly disproportionate to strike-off a dedicated nurse, noting the crippling shortage of nurses.

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 your fitness to practise remains impaired.

The panel noted that you have not met the required standard of English as set out by the NMC. The panel took account of the references and testimonials from your colleagues, and that you are working with people with learning difficulties and not within a multi-disciplinary environment with a registered nurse who could provide a professional perspective as to your level of English and how you communicate. The panel noted that you are a good healthcare worker, committed to learning and improving your English, however you are still impaired and have not achieved the required standard.

The panel concluded that until you have achieved the minimum grade required by the NMC in either the OET or IELTS, a finding of current impairment will continue to be required on the ground of public protection.

The panel had 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 current impairment on public interest grounds also continues to be required in order to maintain confidence in the nursing profession.

For these reasons, the panel finds that your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your 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 to impose a caution order. However, the panel concluded that this would be neither appropriate nor in the public interest as this would not restrict your practice and would therefore not protect the public.

The panel next considered whether a 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 noted that your impairment was not limited to one area of practice that can be addressed through clinical retraining. It was of the view that the only conditions which would be sufficient to protect the public would be one which prevented you from working as a registered nurse until such a time as you have successfully passed the OET or IELTS assessment. It agreed with the reasons of the last panel that such a condition would be tantamount to a suspension and therefore would not be appropriate.

The panel considered the imposition of a further period of suspension. The panel acknowledged that your scores are improving and [PRIVATE]. The panel took account of the training and care certificates however noted that these are part of a whole course or program. The panel noted that this sanction was proposed by the NMC and the RCN. It was of the view that a suspension order would allow you further time to improve your English language skills.

The panel considered a striking off order, but was of the view that applying this sanction in the case would be wholly disproportionate at this stage. You have demonstrated your motivation to improve your English language to the standard required by the NMC and your continued engagement with your regulator.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly,

the panel determined to impose a suspension order for the period of 12 months. It was of the view that this would provide you with an opportunity to engage more with your learning and improve your English language to the required standard. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 5 October 2022 in accordance with Article 30(1).

Before 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.

This will be confirmed to you in writing.

That concludes this determination.