

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

**Substantive Order Review Hearing
Friday, 25 August 2023**

Virtual Hearing

Name of Registrant:	Natalija Sadkeviciene
NMC PIN	15Y0001C
Part(s) of the register:	Registered Nurse, Adult, Level 1 (October 2015)
Relevant Location:	Lincolnshire
Type of case:	Lack of knowledge of English
Panel members:	James Lee (Chair, registrant member) Claire Clarke (Registrant member) Keith Murray (Lay member)
Legal Assessor:	Caroline Hartley
Hearings Coordinator:	Clara Federizo
Nursing and Midwifery Council:	Represented by Sam Smart, Case Presenter
Mrs Sadkeviciene:	Not present and unrepresented at the hearing
Order being reviewed:	Suspension order (12 months)
Fitness to practise:	Impaired
Outcome:	Order to lapse upon expiry in accordance with Article 30 (1), namely 5 October 2023

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Sadkeviciene was not in attendance and that the Notice of Hearing had been sent to Mrs Sadkeviciene's registered email address by secure email on 26 July 2023.

Further, the panel noted that the Notice of Hearing was also sent to Mrs Sadkeviciene's representative at the Royal College of Nursing (RCN) on the same date as above.

Mr Smart, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing would be heard virtually and, amongst other things, information about Mrs Sadkeviciene's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Sadkeviciene has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Sadkeviciene

The panel next considered whether it should proceed in the absence of Mrs Sadkeviciene. The panel had regard to Rule 21 and heard the submissions of Mr Smart who invited the panel to continue in the absence of Mrs Sadkeviciene. He submitted that Mrs Sadkeviciene had voluntarily absented herself.

Mr Smart referred the panel to the letter from the RCN, dated 22 August 2023, on behalf of Mrs Sadkeviciene. In terms of proceeding in absence, the written submissions state:

“Our member will not be attending the hearing nor will she be represented. No disrespect is intended by her non-attendance. Our member has received the notice of hearing and is happy for the hearing to proceed in her absence. She is keen to engage with the proceedings. The Registrant’s legal representatives will be available by phone should the Panel desire to hear from us.”

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Sadkeviciene. In reaching this decision, the panel has considered the submissions of Mr Smart, the written representations made on Mrs Sadkeviciene’s behalf, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Sadkeviciene;
- Mrs Sadkeviciene has informed the NMC, through the RCN, that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Sadkeviciene.

Decision and reasons on review of the substantive order

The panel decided to allow the order to lapse upon expiry in accordance with Article 30 (1), namely 5 October 2023.

This is the sixth effective 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 and

16 September 2022 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 2023.

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 fifth reviewing panel determined the following with regard to impairment:

'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.'

The fifth 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 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 your recent significant personal difficulties. 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.'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Sadkeviciene'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 ability to practise kindly, safely and professionally. 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, the written submissions from the RCN, Mrs Sadkeviciene's personal statement and the testimony of Mrs Sadkeviciene's team leader. It has taken account of the submissions made by Mr Smart on behalf of the NMC.

Mr Smart provided the panel with a background of the case. Mr Smart outlined that the personal statement provided by Mrs Sadkeviciene is dated 28 June 2023. He submitted that given the updates to the language requirement guidance only came out in June 2023, there is indication that the representative and Mrs Sadkeviciene may not be aware of this. He submitted that given the recent change in guidance, Mrs Sadkeviciene may wish to reconsider her current position. The panel decided to temporarily adjourn the hearing to allow contact with the RCN and Mrs Sadkeviciene.

The response from the RCN in regard to this matter was:

"Thank you for your email and thank you to the panel for bringing the change in the guidance to our attention.

I can confirm that I have taken instructions from the registrant and despite the changes in the guidance, the registrant's position remains the same."

The panel also had regard to the RCN's written submissions on behalf of Mrs Sadkeviciene, which Mr Smart acknowledges and highlights that Mrs Sadkeviciene states that her fitness to practise is currently impaired within the submissions dated 22 August 2023. These state:

"Submissions:

We are requesting that the panel make a finding of current impairment but allow the order to expire as the registrant no longer wishes for her name to appear on the register.

The registrant continues working for Wynhill Lodge as a Relief Care Worker. Wynhill Lodge is a short break service owned by Nottinghamshire County Council. They do not employ nurses.

The registrant last worked as a nurse in 2017 and since that time has spent a considerable amount of time and money on private tutoring and English courses to bring her English up to the standard required by the NMC. Unfortunately, she has been unable to reach that standard.

The panel will note in her personal statement that the registrant no longer wishes to continue to pursue reaching the required standard of English so that she can return to nursing. She now wishes to put it behind her so that she can enjoy and live the life that she now has.

The registrant accepts that her fitness to practise remains impaired as she has not met the NMC's English Language required standard. In the circumstances, we respectfully invite the panel to find that the registrant's fitness to practice remains impaired, and allow the substantive order to lapse. The registrant applies for this under article 30(2) and 30 (4)(e) of the Nursing and Midwifery Order.

We submit to the panel that a strike off order would be disproportionate in this case where the original panel did not consider that the registrant's actions were incompatible with remaining on the register and therefore resisted the imposition of a strike off order.

*The principle authority for this submission is the recent Court of Appeal case *Clarke v General Optical Council* [2018] EWCA Civ 1463, and before the High Court [2017] EWHC 521 (Admin).*

We submit that a finding of current impairment does not necessarily have to be followed up with the imposition of a sanction, and that this is not the only outcome which would ensure the protection of patients or the only way to uphold confidence in the profession.

The registrant has fully engaged with the NMC process throughout. However, her nursing registration is only active because of the substantive order currently in place. If that order is revoked or allowed to lapse, her registration would immediately lapse and her name would no longer appear on the NMC register.

There is NMC guidance in respect of this issue, which states that:

In certain circumstances allowing a suspension or conditions of practice order to expire following a finding of current impairment may actually be the best way to protect the public from concerns about a nurse or midwife's practice.

Taking this option is likely to be appropriate if:

- the nurse or midwife's registration is only active because of the substantive order being in place,*
- the nurse or midwife doesn't want to continue practising, and*
- the public are protected because the panel have made a clear finding that the nurse or midwife's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse or midwife attempts to re-join the register.*

As stated previously, the registrant does not intend to continue to pursue a return to nursing and she does not intend to do so in the future. She has not renewed her PIN and so it follows that if the order is allowed to lapse so too would her registration.

If the registrant does not return to nursing, there can be no question in respect of public protection.

The panel may be concerned about what would happen if the registrant's intentions were to change. It is submitted that the Registrar would be in a position to fully protect the public (and the public interest) in such an eventuality. If the panel were to revoke the order and the registrant's registration lapsed, she would need to apply for readmission to the register under rule 15 of the Rules:

“Where the Registrar receives an application for readmission... and is or becomes aware of information... which raises concerns that the registrant's fitness to practise may be impaired, the Registrar shall have regard to that information for the purposes of determining whether the applicant has satisfied the Registrar –

- (a) That the applicant is capable of safe and effective practice...*
- (b) Of the applicant's good health ...*
- (c) Of the applicant's good character...*
- (d) That the applicant has the necessary knowledge of English ...”*

Accordingly, the Registrar would be able to take these proceedings into account and decide whether to allow the readmission, and on what terms, in light of them and all the circumstances of the case.

These proceedings can only end with no impairment or no order, or strike-off. The substantive panel decided that strike-off would be disproportionate. As in Clarke, strike-off is still disproportionate now. That sanction would mar the registrant's reputation for no legitimate reason, making it appear as though she has done something warranting the 'strike-off' label when, in fact, she has not. It is submitted that any finding other than revocation would be solely punitive. It could only be

based on the registrant's decision not to continue practising, which is not misconduct. There is no public interest in taking such action.

The above approach is consistent with the Court of Appeal's findings in Clarke v General Optical Council [2018] EWCA Civ 1463. In that case the decision to impose "no order" was not challenged. Instead, the appeal focussed on whether the registrant's planned retirement was sufficient to lead to a finding of no impairment or not. In this case, the registrant accepts that she is currently impaired.

The panel will be aware of its powers under Article 30(4) of the Nursing and Midwifery Order. An application is hereby made under Article 30(2) for the panel to utilise those powers to revoke the order immediately. It is submitted that there is simply no necessity for the order to continue to its expiry, and to do so would accordingly be disproportionate.

We submit that there is no reason to question the registrant's good faith in asserting her intention not to practise again in the future. Even if she did intend to return to nursing now or in the future, she would have to satisfy the Registrar that she was of sufficient good character and good health to practise, and satisfy the Registrar that she was capable of safe and effective practice (in light of the possibility that her practice might be impaired). The order was made to protect the public, but the public is entirely protected by revocation of the order. Accordingly, all the legitimate goals of the NMC would be met by that decision, and as that decision would be the least restrictive decision to make, anything more would be disproportionate. The panel is invited to revoke the order, and allow this case to close.

If the panel is unconvinced by any of these submissions such that it is not minded to revoke the order, then it is invited to impose an order short of strike-off, and provide recommendations as to what the registrant might do to persuade a future panel that revocation is appropriate.'

Mr Smart submitted that the position of the NMC is neutral in this case and that it is a matter for the panel to determine the appropriate course of action.

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 Mrs Sadkeviciene's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mrs Sadkeviciene had not met the required standard of English as set out by the NMC. The previous panel took account of the references and testimonials from her colleagues, and her employment with people with learning difficulties and that she is a good healthcare worker, committed to learning and improving her English. However, the previous panel found her fitness to practise to be impaired as she had not achieved the required standard. This panel agreed that until Mrs Sadkeviciene achieves the minimum grade required by the NMC in either the OET or IELTS, she cannot be allowed to practice safely and professionally without restriction. Therefore, a finding of current impairment is still 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 Mrs Sadkeviciene's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Sadkeviciene'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 had regard to its previous findings on impairment in coming to this decision. It bore in mind that its primary purpose is to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator. In this case, there were concerns relating to meeting the NMC's English language standards for nursing practise. The panel recognised that there were no concerns regarding Mrs Sadkeviciene's clinical practice. The panel acknowledged Mrs Sadkeviciene's thoughts as outlined in her personal statement:

"...As per today I can speak, read and write, communicate with my team and patients with great confidence. I don't have any language issues or barriers doing my daily activities or working with my team or residents.

I have been trying to pass the exam for many years now which affected my daily life.

After almost 7 years trying I feel like I am loosing myself and my precious time studying which I already spent almost whole life studying nursing college and after that higher medical degree before moving to UK...At this point I would like to give up on this exam and carry on living the life I have now as I'm afraid I will loose many more years doing the same thing without getting my nursing job back.

...I am happy of what I achieved. But I cannot unfortunately keep fighting the same exam over and over again that is limiting me too much in time and doesn't give me a chance to show my language knowledge."

As a result of all the evidence available, the panel decided to allow the current order to lapse on expiry. The panel accepted that Mrs Sadkeviciene no longer wishes to pursue a career in the nursing field and there is no reason to question her good faith in asserting her intention not to practise again in the future. The panel was satisfied that even if Mrs Sadkeviciene did intend to return to nursing now or in the future, she would have to satisfy the Registrar that she was of sufficient good character and good health to practise and

satisfy the Registrar that she was capable of safe and effective practice. Therefore, the public protection would be maintained as a result of the current finding of impairment.

The substantive suspension order will be allowed to lapse at the end of the current period of imposition, namely the end of 5 October 2023 in accordance with Article 30(1).

This will be confirmed to Mrs Sadkeviciene in writing.

That concludes this determination.