

**Nursing and Midwifery Council**  
**Fitness to Practise Committee**  
**Substantive Meeting**  
**10 January 2020**

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

<b>Name of registrant:</b>	Matej Kadezabek
<b>NMC PIN:</b>	16F0092C
<b>Part(s) of the register:</b>	Registered Nurse – Sub-Part 1 RN1: Adult Nursing – 7 July 2016
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Conviction
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Timothy Cole (Chair, Lay member) Deborah Hall (Registrant member) Gregory Hammond (Lay member)
<b>Legal Assessor:</b>	Jonathan Whitfield
<b>Panel Secretary:</b>	Maya Hussain
<b>Facts proved:</b>	All
<b>Facts not proved:</b>	N/A
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off Order
<b>Interim Order:</b>	Interim Suspension Order for 18 months

**Details of charge:**

That you, a registered nurse:

- 1) On 5 March 2019 at Liverpool Crown Court were convicted of care worker ill-treatment/wilfully neglect of an individual, contrary to s. 20(1)(2) of the Criminal Justice and Courts Act 2015;

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

**Decision on Service of Notice of Meeting:**

Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (“the Rules”) 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.

The panel considered whether notice of this meeting has been served in accordance with the Rules.

Notice of this substantive meeting was sent to Mr Kadezabek’s registered address on 5 December 2019 by recorded delivery and first class post. The panel also noted that notice of this meeting was signed for at Mr Kadezabek’s registered address on 5 December 2019.

The panel is satisfied that the notice was sent at least 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

The panel noted the email from Mr Kadezabek dated 8 April 2019 requesting the meeting to be heard in private. The legal assessor advised the panel that it does not have power to grant this application given that meetings are already held in private.

## **Background**

Mr Kadezabek was working as a nurse at the Grace Lodge Care Home (the Home) on the night of 30/31 October 2018. At approximately 02:00 on 31 October 2018, Mr Kadezabek was attending to Service User A, a 93 year old patient with a diagnosis of advanced vascular dementia, along with Colleague A. Service User A became agitated and begged Mr Kadezabek not to hurt him. This was not unusual behaviour for Service User A, given his condition. Mr Kadezabek replied to Service User A, with the words to the effect of: "I'm not hurting you, but I am now". Mr Kadezabek then took hold of Service User A and started to shake him aggressively. Colleague A shouted at Mr Kadezabek to stop. Mr Kadezabek shouted back, using words to the effect of: "shut the fuck up. I haven't done anything".

The police investigated the allegation and Mr Kadezabek was subsequently charged. Mr Kadezabek was convicted at Liverpool Crown Court, for an offence of 'Care worker ill-treat/wilfully neglect an individual', contrary to section 20 (1) (2) of the Criminal Justice and Courts Act 2015.

## **Decision on the findings on facts and reasons**

The charges concern Mr Kadezabek's conviction and, having been provided with a copy of the certificate of conviction dated 15 March 2019, the panel finds that the facts of charge 1 are found proved in accordance with Rule 31 (2) and (3) of the Rules which states:

- (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 (s)he is not the person referred to in the certificate or extract.

### **Decision on impairment**

The panel next went on to decide if as a result of this conviction Mr Kadezabek's fitness to practise is currently impaired.

The panel accepted the advice of the legal assessor.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. 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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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.”

Mrs Justice Cox went on to say in Paragraph 76:

“I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor’s fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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 fitness to practise is impaired in the sense that s/he:

- 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...”

The panel considered that Mr Kadezabek’s conduct had engaged the first three criteria of the guidance in Grant. The panel concluded that Mr Kadezabek acted so as to put Service User A at an unwarranted risk of both physical and psychological harm by his aggressive actions albeit no physical harm was actually caused. Mr Kadezabek’s actions were an inappropriate and an unacceptable approach towards a vulnerable

service user in his care and were inconsistent with the compassionate attitude expected of a registered nurse. Mr Kadezabek has breached fundamental tenets of the profession and brought the profession into disrepute.

The panel noted that as a result of Mr Kadezabek's actions, which led to his conviction, he failed in his fundamental duty as a Registered Nurse. Mr Kadezabek did not fulfil the responsibilities of a Registered Nurse as was expected by his colleagues, the public and the NMC as his regulator.

The panel had regard to the terms of The Code: Professional standards of practice and behaviour for nurses and midwives (2015), and it considered that the following sections were breached by Mr Kadezabek:

### **1 Treat people as individuals and uphold their dignity**

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

### **17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection**

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

17.3 have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people

### **20 Uphold the reputation of your profession at all times**

20.1 keep to and uphold the standards and values set out in the Code

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

20.4 keep to the laws of the country in which you are practising

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

The panel bore in mind that it had to look to the future and consider whether Mr Kadezabek was liable to act in such a way again. The decision regarding the risk of repetition in this case would be informed by consideration of the level of insight and remorse demonstrated by Mr Kadezabek and by whether his actions have been, or are capable of being, remedied.

Regarding Mr Kadezabek's insight, the panel determined that he has expressed limited insight into his failings. It acknowledged that Mr Kadezabek expressed his embarrassment for his actions at the interim order hearing which took place in April 2019. It also noted the email from Mr Kadezabek dated 8 April 2019 which stated:

*'It would be very detrimental for me to be reported again in the media and possibility my family and friends hearing about this at my home.'*

The panel was of the view that Mr Kadezabek did not properly acknowledge the risk of harm to Service User A the impact his actions and conviction could have had on colleagues and the nursing profession in general.

The panel bore in mind that that it had received limited information from Mr Kadezabek about his understanding of why he behaved in the way he did, how it impacted on others, and how he will prevent it happening again, and the lack of evidence of remediation in practice. Because of this, the panel was not satisfied that Mr Kadezabek is unlikely to repeat his conduct.

The panel is therefore of the view that there is a risk of repetition and it determined that Mr Kadezabek's fitness to practise is impaired on the ground of public protection.

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 and 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 public confidence in the profession would be undermined if a finding of impairment were not made in circumstances where a nurse was physically abusive to a vulnerable service user and putting the service user at risk of significant harm.

The panel also concluded that a finding of impairment was necessary on the grounds of public interest.

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

#### **Determination on 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 Kadezabek off the register. The effect of this order is that the NMC register will show that Mr Kadezabek has been struck-off the register.

In reaching this decision, the panel has had regard to all the documentary evidence in this case. The panel accepted the advice of the legal assessor. The panel bore 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 Sanctions Guidance ("SG") published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel first considered what it deemed to be the aggravating and mitigating factors in this case and determined the following:



**Aggravating factors:**

- Mr Kadezabek's initial denial of the charge at the police interviews;
- Mr Kadezabek's behaviour involved an abuse of his position of his trust responsible for providing care to a vulnerable service user;
- Mr Kadezabek's actions caused an unwarranted risk of physical harm to Service User A;
- Mr Kadezabek's actions caused emotional harm to Service User A; and
- Mr Kadezabek has not demonstrated sufficient remorse or insight into his behaviour.

**Mitigating factors:**

- This appears to be an isolated incident in Mr Kadezabek's nursing career.

The panel bore in mind that Mr Kadezabek's sentence is ongoing.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and having identified the risk of repetition. The panel decided that no further action would fail to address the public protection and the public interest concerns in Mr Kadezabek's case.

Next, in considering whether a caution order would be appropriate, the panel took into account the SG, 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 determined that Mr Kadezabek's actions involved physical abuse which is not at the lower end of the spectrum. It 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 Kadezabek's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel

took into account the SG. Given Mr Kadezabek's limited insight into his failings, the panel determined that in the current circumstances, there are no proportionate or workable conditions which could be formulated which would sufficiently protect the public and uphold the wider public interest. Further, it determined that it would be difficult to formulate conditions of practice which would address the issue of the attitudinal problems Mr Kadezabek displayed. Accordingly, a conditions of practice order would not be appropriate.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates key considerations in relation to suspension:

### **Key considerations**

- Whether the seriousness of the case require temporary removal from the register?
- Will a period of suspension be sufficient to protect patients, public confidence in nurses and midwives, or the professional standards?

The panel referred to the SG's checklist to guide its decision on whether a suspension order would be appropriate in the circumstances. The panel found that

- by the very nature of Mr Kadezabek's conviction there is evidence of attitudinal problems;
- Mr Kadezabek has demonstrated a lack of insight; and
- there is a risk of repetition and a consequent risk to patient safety.

The panel was of the view that Mr Kadezabek's conduct was a very significant departure from the standards expected of a registered nurse and was not satisfied that a period of suspension would satisfy the public interest or uphold public confidence in the profession or the NMC.

Balancing all of these factors, the panel has determined that a suspension order would not be an appropriate or proportionate sanction.

The panel therefore went on to consider the appropriateness of a striking-off order and took into account the following sections of the SG:

**Key considerations are:**

- 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?

The panel determined that each of these three bullet points are engaged in this case.

Accordingly, after considering all the circumstances of the case, the panel considered that Mr Kadezabek's actions are fundamentally incompatible with his remaining on the register. His offence contravenes fundamental tenets of the nursing profession, demonstrating attitudinal issues and there is very limited evidence of remorse or insight.

The panel was of the view that to suspend or to allow Mr Kadezabek to continue practising would gravely undermine public confidence in the profession and in the NMC as a regulatory body. The panel decided to impose a striking off order.

The effect of this order is that the NMC register will show that Mr Kadezabek has been struck-off the register.

**Determination on Interim Order**

Under Article 31 of the Nursing and Midwifery Order 2001 ("the Order"), the panel considered whether an interim order should be imposed in this case. A panel may only

make an interim order if it is satisfied that it is necessary for the protection of the public, and/or is otherwise in the public interest, and/or is in the registrant's own interests.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.