

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

**Substantive Meeting
Friday 10 March 2023**

Virtual Meeting

Name of registrant:	Peter Kollar
NMC PIN:	11F0191C
Part(s) of the register:	Registered Nurse – Sub part 1 Adult Nurse (level 1) - June 2011
Relevant Location:	Hampshire
Type of case:	Conviction
Panel members:	Deborah Hall (Chair, Registrant member) Helen Chrystal (Registrant member) June Robertson (Lay member)
Legal Assessor:	Juliet Gibbon
Hearings Coordinator:	Chantel Akintunde
Facts proved:	Charge 1
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Kollar's registered email address by secure email on 31 January 2023. The panel had regard to the email evidence and the signed witness statement from an NMC case officer confirming this.

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 period the meeting will take place (on or after 7 March 2023) 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 Kollar 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 21 June 2021, was found guilty of assault by beating, contrary to section 39 of the Criminal Justice Act 1988 at West Hampshire Magistrates Court.

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

Background

The events which led to the criminal conviction occurred whilst Mr Kollar was employed as a registered Staff Nurse at Oak Lodge Care Home (the Home), part of BUPA. Mr Kollar commenced his employment at BUPA on 13 January 2020.

On 14 April 2020, it is alleged that Mr Kollar used inappropriate and excessive force to move Resident A from one area to another. Resident A was a 90 year old resident [PRIVATE].

The event which led to the conviction commenced with Mr Kollar shouting at Resident A in response to something Resident A said to him, and then told Resident A to leave the room they were located in whilst pushing Resident A along the wall. At this point, Resident A became very distressed whilst clinging onto the wall and shouted out for help. Resident A then picked up a bowl and tried to hit Mr Kollar with it. Mr Kollar in response grabbed Resident A who then fell against the wall. Mr Kollar then lunged towards Resident A in an attempt to 'bear hug' them from behind, and then shoved Resident A towards the lounge. It said that Resident A at this point was 'shaking, crying and breathing rapidly'.

Following the incident, Resident A was escorted back to their room and checked for physical injuries. It was confirmed that Resident A had bruises appearing on their arm from the altercation with Mr Kollar. Subsequently, the police were contacted and Mr Kollar was arrested.

On 28 April 2022, Mr Kollar was interviewed by police under caution, where he claimed that Resident A had become "aggressively attached" to him and that Resident A was known to get agitated or violent. Mr Kollar also denied using excessive force with Resident A during the incident.

An internal investigation by BUPA was conducted and the following was indicated:

- a doctor who examined Resident A after the incident confirmed that Resident A had bruising to her left ring finger, left back hand, left forearm and left upper arm, as well as light scratches on her back;
- Resident A was not able to disclose what had happened as she lacked the

mental capacity to do so, but was able to say “*A bad man had hurt my arms*”;

- [PRIVATE]
- [PRIVATE]

On 14 May 2020, following a disciplinary hearing held by BUPA, Mr Kollar was dismissed from his role with immediate effect.

On 24 June 2020, Mr Kollar was charged with assault, and pleaded not guilty on 4 September 2022.

On 1 March 2021, following a referral to the Disclosure Barring Services (the DBS), it was confirmed that Mr Kollar’s name was entered on to both the Children’s Barred List and the Adult’s Barred List on 9 February 2021.

On 21 June 2021, Mr Kollar attended West Hampshire Magistrates’ Court and was found guilty of assault by beating, contrary to section 39 of the Criminal Justice Act 1988. On 14 July 2021, Mr Kollar was sentenced to 20 weeks imprisonment and ordered to pay compensation.

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 submissions made by the NMC in its statement of case.

The panel accepted the advice of the legal assessor.

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 panel had regard to the Memorandum of Conviction, which is certified as a correct record by an officer of the Court and dated 14 July 2021. The document confirms that on 21 June 2021, Mr Kollar was found guilty of assault by beating contrary to section 39 of the Criminal Justice Act 1988. The memorandum indicated that this was in relation to the incident which took place on 14 April 2020 as set out in the charge.

The panel had regard to Rule 31(2) 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.'*

In light of the above, the panel was satisfied that Mr Kollar received a criminal conviction for the incident as set out in the facts for charge 1. It therefore found this charge proved in its entirety in accordance with Rule 31 (2) and (3).

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Kollar's fitness to practise is currently impaired by reason of Mr Kollar's 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 had regard to all the documentary evidence in this case, together with the submissions made by the NMC in its statement of case. It also considered a statement produced by Mr Kollar at the time of the incident (undated) where he states:

“...I would like to apologise to [Resident A] and her family for it coming to this but I can assure you that I would never intentionally hurt or cause harm to a resident...”

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Decision and reasons on impairment

The panel next went on to decide if, as a result of the conviction, Mr Kollar's fitness to practise is currently impaired. The panel had regard to the NMC guidance titled '*Can the concern be addressed?*' (FTP-13a).

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 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 judgment of Mrs Justice Cox in the case of *CHRE v NMC and 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.'

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 that limbs a), b) and c) of the test have been met in this case. The panel noted that Resident A was caused physical harm as a result of being assaulted by Mr Kollar. Mr Kollar's conviction has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel acknowledged the fact that this was a single isolated incident, and that there is no evidence of a similar pattern of behaviour either prior to the incident or since Mr Kollar received his conviction. However, the panel considered the nature of the conduct to be very serious as it involved assaulting a vulnerable elderly person who was under

the care of Mr Kollar, and occurred during the course of his clinical practice. The seriousness of Mr Kollar's conduct is also supported by the criminal conviction he received, which resulted in a custodial sentence.

With regard to insight, the panel acknowledged the apology Mr Kollar provided for the incident in his statement (undated). However, it took into account the fact that Mr Kollar to date has denied the charge, and that he entered a 'not guilty' plea at court in relation to the assault. The panel also noted the following that Mr Kollar stated in an email dated 18 September 2022:

"...Im not interested at all anything in Uk after what they done to me."

And in an email dated 1 November 2022 he stated:

"...not see point for this court put my[sic] in prison."

The panel found that the emails referred to above from Mr Kollar demonstrates his lack of appreciation for the seriousness of his conviction, and his lack of acceptance of the sentence he received from the court. Furthermore, the panel has not received a written reflection from Mr Kollar that demonstrates his understanding of the seriousness of his conviction and the impact his behaviour had on Resident A, and the reputation of the nursing profession. It therefore determined that Mr Kollar has shown no insight and very little remorse for this matter.

Given the nature of the conviction, the panel did not consider this to be easily remediable. It did take into account the online workshop course Mr Kollar undertook in June 2020 [PRIVATE], but deemed this to be insufficient to address the regulatory concerns in this case.

In addition, the panel also took into account the positive testimonials Mr Kollar provided which attest to his character, but noted that those commenting on his current work at the time of writing were all dated June 2020, and hence were only written around two weeks after his dismissal from the Home. The one testimonial dated February 2021

focused on his historical clinical practice prior to 2010. The panel deemed these testimonials as outdated and therefore placed little weight on them.

In light of the above, the panel was of the view that there is a high risk of the behaviour that led to the criminal conviction being repeated. 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/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.

Given the serious nature of the conviction, which resulted in a custodial sentence, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case. The panel determined that, in this case, a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that Mr Kollar'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 Kollar off the register. The effect of this order is that the NMC register will show that Mr Kollar 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 panel had regard to all the documentary evidence in this case, together with the submissions made by the NMC in its statement of case who recommended that the most appropriate and proportionate sanction in this case is that of a striking off order.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Mr Kollar'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:

- Actual harm was caused to a vulnerable and elderly person who was in Mr Kollar's care at the time.
- The conduct resulted in Mr Kollar being placed on the Children's Barred List and the Adult's Barred List.
- Mr Kollar received a criminal conviction and a custodial sentence for the conduct.
- Mr Kollar has demonstrated a lack of insight, particularly with regard to the impact his conviction had on Resident A.

The panel found that there were no mitigating features in this case.

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 Kollar'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 Kollar's 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 Kollar's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. Given the nature of the conviction which involved Mr Kollar assaulting a vulnerable person, the panel considered that this was not something that could be sufficiently addressed through placing conditions on his practice. It was therefore of the view that there are no suitable or practical conditions that could be formulated that would adequately address the seriousness of this case and protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It accepted that this was a single isolated incident, and that there is no evidence of repetition of similar conduct either prior to or after the incident. Nevertheless, the panel deemed that the conduct was at the top-end of seriousness as it involved the assault of a vulnerable person during the course of Mr Kollar's clinical practice. The seriousness of the conduct is strengthened by the fact that a court of law deemed it to be a criminal offence worthy of a custodial sentence. Mr Kollar has to date not accepted his wrongdoing, and has shown no insight and very little remorse for his assault on Resident A. Furthermore, Mr Kollar has not demonstrated a willingness to remediate the regulatory concerns. In the panel's view this is evidence of a harmful deep-seated attitudinal problem which in itself is hard to address effectively, especially without Mr Kollar's engagement and cooperation.

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?*

Overall, the panel determined that Mr Kollar'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 Kollar's actions were so serious that 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 Kollar'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.

Interim order

The panel took account of the submissions made by the NMC in its statement of case that the panel considers the imposition of an interim suspension order on the basis that it is necessary for the protection of the public, and is otherwise in the public interest.

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 Kollar's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

The panel accepted the advice of the legal assessor.

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 conviction 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. Given the seriousness of the case, and taking into account its reasons for striking Mr Kollar off the register, the panel decided to impose an interim suspension order for a period of 18 months on the grounds of public protection and public interest 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 Kollar is sent the decision of this hearing in writing.

This will be confirmed to Mr Kollar in writing.

That concludes this determination.