

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

**Substantive Order Review Hearing
Wednesday, 24 April 2024**

Virtual Hearing

Name of Registrant:	Camelia Nechilciuc
NMC PIN	08A0056C
Part(s) of the register:	Registered Nurse – Adult RN1 – 4 January 2008
Relevant Location:	Perth and Kinross
Type of case:	Misconduct
Panel members:	Dale Simon (Chair, Lay member) Jason Flannigan-Salmon (Registrant member) Matt Wratten (Lay member)
Legal Assessor:	Paul Hester
Hearings Coordinator:	Hamizah Sukiman
Nursing and Midwifery Council:	Represented by Mohsin Malik, Case Presenter
Mrs Nechilciuc:	Not present and unrepresented
Order being reviewed:	Suspension order (6 months)
Fitness to practise:	Impaired
Outcome:	Striking-Off order to come into effect on 2 June 2024 in accordance with Article 30 (1)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Nechilciuc was not in attendance and that the Notice of Hearing had been sent to Mrs Nechilciuc's registered email address by secure email on 25 March 2024.

Mr Malik, on behalf of the Nursing and Midwifery Council (NMC) submitted that he is aware that the hearing link was sent by the Hearings Coordinator to Mrs Nechilciuc on the morning of 24 April 2024. Consequently, he further submitted that the NMC 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 was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Nechilciuc's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

With regard to the virtual hearing link, the panel noted that, due to NMC staffing difficulties and the exclusive sending of links by a Hearings Coordinator, it cannot determine whether a virtual hearing link was sent to Mrs Nechilciuc prior to 24 April 2024. However, the panel were aware that a new virtual hearing link was sent to Mrs Nechilciuc at 09:40 on 24 April 2024, and the hearing did not commence until 10:45 to give her the opportunity to read the email and attend the hearing. The panel noted that Mrs Nechilciuc did not respond to that email.

In the light of all of the information available, the panel was satisfied that Mrs Nechilciuc 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 Nechilciuc

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

Mr Malik submitted that there had been '*no engagement at all*' by Mrs Nechilciuc with the NMC in relation to these proceedings despite all the reasonable efforts to serve the Notice of Hearing on her. Consequently, he further submitted that there was no reason to believe that an adjournment would secure her attendance on some future occasion. He drew the panel's attention to the email sent to Mrs Nechilciuc, dated 2 April 2024, asking her to confirm her attendance, and he submitted that Mrs Nechilciuc has not responded.

He further submitted that there is a strong public interest in the expeditious review of this matter, and Mrs Nechilciuc is able to request an early review if she has new information she wishes for a reviewing panel to consider.

The panel heard and accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Nechilciuc. In reaching this decision, the panel has considered the submissions of Mr Malik as well as the advice of the legal assessor. It further considered all relevant case law and the overall interests of justice and fairness to all parties. It noted that:

- Mrs Nechilciuc has not engaged with the NMC and has not responded to any of the correspondence sent to her about this hearing;
- No application for an adjournment has been made by Mrs Nechilciuc;
- There is no reason to suppose that adjourning would secure her attendance at some future date, particularly as Mrs Nechilciuc has not attended any of the previous review hearings; and
- This is a statutory review, 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 Nechilciuc.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect at the end of 2 June 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive conditions of practice order originally imposed for a period of 18 months by a Fitness to Practise Committee panel on 4 November 2021. This was reviewed on 25 April 2023 and the reviewing panel decided to impose a six-month suspension order. This was reviewed for a second time on 20 October 2023, where the reviewing panel imposed a further six-month suspension order.

The current order is due to expire at the end of 2 June 2024. The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charge found proved, which resulted in the imposition of the substantive order, was as follows:

'That you, a registered nurse:

- 1. Having agreed undertakings recommended in the light of a case to answer being found in respect of the regulatory concerns set out in Schedule 1, failed to remedy the issues identified in your practice;*

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

Schedule 1

- 1. Failure to follow procedures and safe practices while administering medication to three residents;*

2. *Verbal abuse of residents;*
3. *Failure to document resident's refusal to take medication and/or covert administration of the same.'*

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

'The panel noted that the last reviewing panel found there to be no new information that undermined the decision of the original panel and Mrs Nechilciuc had not engaged with the NMC in relation to these proceedings. Further, in its consideration of whether Mrs Nechilciuc had taken steps to strengthen her practice, the last reviewing panel noted it had no information whatsoever from Mrs Nechilciuc that demonstrated she had satisfied the conditions of practice imposed by the original panel on 4 November 2021, remediated her previous failings, and strengthened her practice. It noted also that Mrs Nechilciuc had provided no evidence that she had developed insight.

Today's panel found there to be no new information that undermines the decision of the last reviewing panel on 21 April 2023 and noted that Mrs Nechilciuc has still not engaged with the NMC in relation to these proceedings. Further, Mrs Nechilciuc has not provided the NMC with any up-to-date evidence which could demonstrate any steps she has taken to strengthen her practice, remediate her previous failings, or demonstrated any developed insight.

The last reviewing panel determined that Mrs Nechilciuc was liable to repeat matters of the kind found proved. It follows that having received no new information, today's panel determined that Mrs Nechilciuc is still liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is 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 continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Mrs Nechilciuc's fitness to practise remains impaired.'

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

'The panel next considered whether a conditions of practice on Mrs Nechilciuc's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and that Mrs Nechilciuc had failed to adhere to a previous conditions of practice order. It concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was further not able to formulate revised conditions of practice that would adequately address the concerns relating to Mrs Nechilciuc's misconduct. The panel has not received any evidence of communication or any other engagement with the NMC by Mrs Nechilciuc since November 2020 and so the panel has concluded that conditions of practice would not be workable without her cooperation.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Nechilciuc further time to fully reflect on her previous failings. It considered that Mrs Nechilciuc needs to gain a full understanding of how her failings had an impact upon the nursing profession as a whole and not just the organisation that the individual nurse was working for. The panel concluded that a further 6-month suspension order would be the appropriate and proportionate response and would afford Mrs Nechilciuc adequate time to further develop her insight and take steps to strengthen her practice. It would also give Mrs Nechilciuc an opportunity to approach past and current health professionals to attest to her honesty and integrity in her workplace assignments since the substantive hearing. This panel urges Mrs Nechilciuc to engage with the NMC and in particular, to tell the NMC whether she wishes to remain on the

register, what her work plans are and whether she wishes to return to practice as a registered nurse.

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 that the imposition a suspension order for a further period of 6 months would provide Mrs Nechilciuc with an opportunity to engage with the NMC and provide evidence to demonstrate any acts of remediation, strengthened practice and insight or remorse into her failings. It considered this to be the most appropriate and proportionate sanction available.

The panel gave serious consideration to the imposition of a striking-off order, however, decided that would be premature at this stage. It noted that such an order would be available to a future panel should Mrs Nechilciuc continue to fail to engage with the NMC in relation to these proceedings and explore all of her options with them'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Nechilciuc'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 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, as well as submissions made by Mr Malik on behalf of the NMC. He outlined the background of the case, and he drew the panel's attention to the last reviewing panel's recommendation to Mrs Nechilciuc regarding her engagement with the NMC, and her future intentions in nursing.

With regard to whether Mrs Nechilciuc's fitness to practise remains impaired, Mr Malik reminded the panel that, pursuant to *Abrahaem v General Medical Council* [2008] EWHC 183 (Admin), the persuasive burden lies with Mrs Nechilciuc to demonstrate that her

fitness to practise is no longer currently impaired, and that she has acknowledged that her past performance was insufficient. He submitted that, with no engagement since the last review hearing, Mrs Nechilciuc has not provided this reviewing panel with up-to-date evidence demonstrating the strengthening of her practice, the remediation of her past failings or her developed insight. He further submitted that Mrs Nechilciuc has not engaged with the NMC for some time.

Mr Malik submitted that the misconduct was serious, and without evidence of remediation or full insight, there is a risk of repetition. Accordingly, he submitted that a finding of continuing impairment remains necessary on public protection grounds.

He further submitted that a finding of continuing impairment also remains necessary on public interest grounds to maintain public confidence in the nursing profession and uphold proper standards of conduct and performance.

With regard to sanction, Mr Malik submitted that, due to the seriousness of the case, a caution order would not adequately address the public protection and public interest concerns identified. He further submitted that Mrs Nechilciuc has been subject to a conditions of practice order before, and she has chosen not to engage with her conditions. He submitted that, without any engagement from her, this panel may find it difficult to formulate workable conditions.

Mr Malik reminded the panel that the last reviewing panel seriously considered imposing a striking-off order but determined not to do so to give Mrs Nechilciuc the opportunity to engage with the NMC and outline her future intention in nursing. He reminded the panel that the last reviewing panel outlined that a striking-off order would be available to a future reviewing panel should Mrs Nechilciuc continue to not engage with the NMC. He drew the panel's attention to the cases of *Unozor v Nursing and Midwifery Council* [2016] 2 WLUK 667 and *Abbas v Nursing and Midwifery Council* [2019] EWHC 971(Admin). He submitted that these cases make clear that it is not appropriate to continue extending a suspension order in the hope that a registrant complies with a panel's suggestions, and that there is no public interest in the continuous review of a suspension order.

Mr Malik submitted that deciding on sanction is a matter for the panel's professional judgment.

When asked by the panel for confirmation as to the last date that Mrs Nechilciuc engaged with the NMC, Mr Malik said that he is unsure of the exact date of correspondence, but that Mrs Nechilciuc has not attended any of the last two review hearings. He told the panel that [PRIVATE].

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 Mrs Nechilciuc's engagement with the NMC. It noted that Mr Malik submitted that there had been no engagement at all with the NMC. However, the panel further noted, from the reviewing panel's decision on 4 November 2021, that the NMC telephoned Mrs Nechilciuc on 17 November 2020, when she indicated that [PRIVATE]. The panel also noted that the NMC again telephoned Mrs Nechilciuc on 1 October 2021 to ask whether she was aware that the next review would be heard at a meeting. There has been no contact made by Mrs Nechilciuc with the NMC since these dates.

The panel considered whether Mrs Nechilciuc's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mrs Nechilciuc had not engaged with the NMC, and she had provided no evidence that she had developed insight. At this hearing, the panel considered that the persuasive burden lies on Mrs Nechilciuc to demonstrate that her fitness to practise is no longer impaired. The panel noted the last reviewing panel's decision on impairment and acknowledged that it was not bound by the last reviewing panel's decision. However, this panel determined that Mrs Nechilciuc has continued to not engage with the NMC, and she has not engaged with the NMC for over three years. Accordingly, she has not demonstrated any evidence of remediation, developed insight or strengthened practice.

The last reviewing panel determined that Mrs Nechilciuc was liable to repeat matters of the kind found proved. As today's panel received no new information to the contrary, it determined that Mrs Nechilciuc remains liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment remains necessary on the ground of public protection.

The panel has borne in mind that its primary function is 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 continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Mrs Nechilciuc's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Nechilciuc'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 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 Mrs Nechilciuc'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 Mrs Nechilciuc's misconduct was not at the lower end of the spectrum and that a caution order

would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice on Mrs Nechilciuc's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. Although the concerns in this case were capable of being addressed through the imposition of a conditions of practice order, the panel was not able to formulate conditions of practice that would be workable, as Mrs Nechilciuc has continued to not engage with the NMC. The panel noted that Mrs Nechilciuc has been previously subject to a conditions of practice order, but she did not engage with those conditions. Accordingly, the panel cannot be satisfied that Mrs Nechilciuc would engage with conditions it may impose today.

The panel next considered imposing a further suspension order. The panel noted that Mrs Nechilciuc has not meaningfully engaged with the NMC over several years, and consequently, she has not demonstrated adequate insight into her previous failings. The panel noted the last reviewing panel's decision on sanction, which stated:

'The panel gave serious consideration to the imposition of a striking-off order, however, decided that would be premature at this stage. It noted that such an order would be available to a future panel should Mrs Nechilciuc continue to fail to engage with the NMC in relation to these proceedings and explore all of her options with them'

The panel noted the last reviewing panel's recommendation to Mrs Nechilciuc regarding her engagement with the NMC and the opportunity available to her to outline her intentions in respect of her nursing career. The panel took into account Mrs Nechilciuc's prolonged period of lack of meaningful engagement with this process, spanning a period of several years. The panel considered that, since the referral to the NMC in 2019, Mrs Nechilciuc has had ample opportunities to demonstrate full insight and strengthen her practice, which she has not responded to. Mrs Nechilciuc has not complied with the recommendations of the last reviewing panel, and this panel has received no new information from her. The panel also considered that Mrs Nechilciuc only remains on the nursing register due to this suspension order. The panel determined that a further period of suspension would not

serve any useful purpose and that there was no public interest in imposing yet another period of suspension. This is the third review of a substantive order and it may be said that there is an interest, as these proceedings are funded by nurses, to impose a striking-off order.

The panel determined that it was necessary to take action to prevent Mrs Nechilciuc from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 2 June 2024 in accordance with Article 30(1).

This decision will be confirmed to Mrs Nechilciuc in writing.

That concludes this determination.