

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

**Substantive Hearing
26 May 2021 – 28 May 2021**

Virtual Hearing

Name of registrant: Carmen Bogzoiu

NMC PIN: 16B0486C

Part(s) of the register: Registered Nurse – Sub Part 1
RN1: Adult Nursing – February 2016

Area of registered address: Wales

Type of case: Lack of knowledge of English, Misconduct

Panel members: Dale Simon (Chair, Lay member)
Donna Hart (Registrant member)
Anne Phillimore (Lay member)

Legal Assessor: Lucia Whittle-Martin

Panel Secretary: Sherica Dosunmu

Nursing and Midwifery Council: Represented by Rakesh Sharma, Case Presenter

Miss Bogzoiu: Not in attendance and not represented

Facts proved: Charge 1, 2, 3

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Suspension order (12 months)**

Interim order: **Interim suspension order (18 months)**

Details of charge

That you, a Registered Nurse:

1. Do not have the necessary knowledge of English to practise safely and effectively;
2. Having been directed by the Registrar to take an IELTS test by letter dated 18 July 2019, failed to do so by 4 September 2019;
3. Having been directed by the Registrar to take an IELTS test by letter dated 30 November 2020, failed to do so by 15 January 2021.

And, in light of the above, your fitness to practise is impaired by reason of your lack of knowledge of English in respect of charge 1 and your misconduct in respect of charges 2 and 3.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Bogzoiu was not in attendance and that the Notice of Hearing had been sent to Miss Bogzoiu by email on 22 April 2021. Mr Sharma, on behalf of the Nursing and Midwifery Council (NMC), referred the panel to a witness statement signed by a NMC Case Coordinator confirming this had been sent.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and means of joining the virtual hearing and, amongst other things, information about Miss Bogzoiu's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Sharma, 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). He stated that Rule 34 (c) indicates that service can be provided through electronic means.

Mr Sharma informed the panel that the Notice of Hearing was sent to the email address provided by Miss Bogzoiu. He explained that the NMC Case Coordinator has shown a copy of the entry on the NMC Wiser system, which is a system used by the NMC to record registration details provided by each registrant.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Bogzoiu has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date contact information.

Decision and reasons on proceeding in the absence of Miss Bogzoiu

The panel next considered whether it should proceed in the absence of Miss Bogzoiu. It had regard to Rule 21 and heard the submissions of Mr Sharma who invited the panel to continue in the absence of Miss Bogzoiu.

Mr Sharma invited the panel to continue in the absence of Miss Bogzoiu on the basis that she had voluntarily absented herself. Mr Sharma referred the panel to various attempts by the NMC to contact Miss Bogzoiu on a variety of dates and submitted that there had been no response from her in relation to these proceedings. He submitted that after a long period of silence, Miss Bogzoiu called the NMC on 4 March 2021 to enquire about the hearing dates and also indicated that she would attend. He submitted that despite further efforts by the NMC to contact Miss Bogzoiu, no further contact has been received from her after that communication.

Mr Sharma referred to the panel the recent correspondence from Miss Bogzoiu's last known employer. He informed the panel that between 23 September 2019 and 17 March 2021 Miss Bogzoiu was working as a live-in Health Care Assistant at Leighton House Nursing Home. However, on 17 March 2021 she was given one weeks' notice to vacate her accommodation. Mr Sharma referred the panel to correspondence from the Operations Manager of Leighton House Nursing Home who stated that as far as they are aware Miss Bogzoiu had returned back to her home country Romania.

Mr Sharma submitted that the NMC had made efforts to trace Miss Bogzoiu both in the UK and abroad, but with no success.

Mr Sharma submitted that it is Miss Bogzoiu's duty to update the NMC with any change to her address and this was not done. He also submitted that the NMC has received no further information to suggest Miss Bogzoiu has taken up further employment and that there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Ms BogzoIU. In reaching this decision, the panel has considered the oral submissions of Mr Sharma, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It took into account that:

- No application for an adjournment has been made by Ms BogzoIU;
- Miss BogzoIU has not engaged with the NMC since 4 March 2021 and has not responded to any further calls or emails to her about this hearing;
- Miss BogzoIU is now untraceable, which appears to be voluntary and deliberate;
- Miss BogzoIU has not provided the NMC with details of how she may be contacted other than her registered address;
- There is no reason to suppose that adjourning today's hearing would secure her attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss BogzoIU in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address and email, she has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the disadvantage is the consequence of Miss BogzoIU's decisions to absent herself from the hearing, waive her

rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided to proceed in the absence of Miss Bogzoiu. The panel will draw no adverse inference from Miss Bogzoiu's absence in its findings of fact.

Decision and reasons on application to admit hearsay evidence

Mr Sharma told the panel that the NMC case against Miss Bogzoiu involves an allegation that she did not have the necessary knowledge of English to practise safely, and two allegations that she has failed to take an International English Language Testing System (IELTS) assessment when directed to do so by the NMC 4 September 2019 and by 15 January 2021.

Mr Sharma informed the panel that the first allegation came to light following an anonymous referral which then set the investigation in motion.

Mr Sharma further explained that Miss Bogzoiu is a registered nurse but has never practised as a nurse in the UK. He stated that Miss Bogzoiu has worked as a Health Care Assistant, however owing to her registration, she must maintain the standards required of all registered nurses.

Mr Sharma submitted that the evidence relied upon in relation to charges 2 and 3, namely the directions from the Registrar (dated 18 July 2019 and 30 November 2020) are not hearsay. He submitted that the application to admit hearsay is relevant to charge 1. He stated that there is very little direct evidence of Miss Bogzoiu's knowledge of English, and the NMC relies upon the inferences which can be drawn from her failures to undertake the language assessments when required, supported by a number of hearsay documents from which further inferences can be drawn.

Mr Sharma asked the panel to admit a statement from a NMC Case Coordinator, and the documents exhibited by the Case Coordinator including; email correspondence between the NMC and Miss Bogzoiu, and email, telephone and documentary

correspondence between the NMC with Miss Bogzoiu's ex employers. He submitted that there are also various documents not exhibited by the Case Coordinator, which include correspondence from the NMC showing attempts made to secure Miss Bogzoiu's attendance at the assessments.

In relation to the statement from the Case Coordinator, Mr Sharma described the statement as an enabling statement in that it enables certain documents to be placed before the panel and put into context. He stated that the Case Coordinator does not provide direct evidence; she produces exhibits from other sources.

Mr Sharma submitted there are copies of correspondence between Miss Bogzoiu and the NMC, and between Miss Bogzoiu's ex employers and the NMC arise from the regulatory process, therefore although they are hearsay (in that the participants in the correspondence are not at the hearing to give evidence), their source and genuineness are not in doubt.

Mr Sharma directed the panel to Rule 31(1) of the Nursing and Midwifery Council (Fitness to Practise) Rules, 2004 (as amended) (the Rules) which states:

'Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place).'

Mr Sharma took the panel to the tests for admissibility of hearsay evidence.

Mr Sharma submitted that the Case Coordinator's evidence and exhibits are relevant. The Case Coordinator provides evidence of the regulatory process followed by the NMC in respect of the requirement to undertake IELTS assessments, and produces exhibits showing when requirements were made, what the requirements were, the relevant timescales and the warnings given to Miss Bogzoiu of the possible consequences of non-compliance.

Mr Sharma submitted that the various documents not exhibited by the Case Coordinator are also relevant. He stated that these correspondence show the attempts made by the NMC to secure Miss Bogzoiu's attendance at the IELTS assessments, reminders of the timescales and importance of taking the assessments and informing the Regulator of the results.

On the issue of fairness Mr Sharma submitted that the panel can draw guidance from *NMC v Ogbonna [2010] EWCA Civ 1216* and *Thornycroft v NMC [2014] EWHC 1565*. He explained that distinction should be made between the admission of evidence and the weight placed on the evidence.

Mr Sharma submitted that the panel can safely admit the statement of the Case Coordinator without any unfairness. He submitted that the Case Coordinator is an NMC employee and if deemed necessary can be called to give evidence. He explained that the panel should also note that the Miss Bogzoiu has been provided with all of the evidence contained within the bundle and was served with a copy of this statement and exhibits on 16 April 2021. Miss Bogzoiu was also informed that the NMC intended to rely on the written statement of the Case Coordinator and was asked to indicate if she had any objection to this by 23 May 2021; however no objection was received.

Mr Sharma submitted that the hearsay in this case is relevant, important, and fair to admit. He stated that hearsay evidence must be treated with caution but in the circumstances of this case it comes from various sources and builds a compelling case without sole reliance on any single piece of evidence.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. She also took the panel to *NMC v Ogbonna [2010] EWCA Civ 1216* and *Thornycroft v NMC [2014] EWHC 1565*

The panel carefully considered Mr Sharma's submissions and the legal advice. It also had regard to Rule 31(1) in the tests for admissibility of hearsay evidence. The panel concluded that it had little difficulty with admitting the statement by the Case Coordinator as the statement itself simply produced the exhibits. The panel then went on to consider individually the exhibits produced within this statement.

The panel noted that there were two categories of witness evidence, these included: people who spoke to representatives of the NMC, giving their view of Miss Bogzoiu's ability to speak English; and standardized letters and forms in respect of Miss Bogzoiu's regulatory requirement to undertake a language assessment.

The panel applied the relevant criteria of the *Thorneycroft* test to decide whether it would be fair to admit hearsay irrespective of the question of weight, which would only become relevant at a later stage, and only if the panel had first decided it was fair for the evidence to be admitted.

In considering the question of whether the exhibits were sole and decisive; the panel noted that there was a combination of exhibits from more than one source, which does not rely on a single person's credibility. It therefore decided that no single piece of hearsay evidence relating to the charges could be described as sole and decisive.

The panel next considered the nature and extent of the challenge to the contents of the exhibits. The panel took account of the NMC's Response to Allegation Form, completed by Miss Bogzoiu, in which she had ticked the relevant box to indicate that she challenged charge 1. It also considered an email from Miss Bogzoiu to the NMC dated 26 July 2019, stating the following:

'Good morning I am Carmen bogzoiu (sic) and would like to give permission to (sic) to speak on my behalf, due to my language barrier. Thank you'

The panel considered whether there was any suggestion that the witnesses had reasons to fabricate their allegations. The panel determined that there was no information to suggest fabrication, it considered that there was information to the

contrary, as it appeared that some witnesses attempted to support Miss Bogzoiu. An email from Miss Bogzoiu's ex employer dated 16 July 2019, explained that they intended to help her enrol on an English course (specifically referred to as '*Functional skills English*').

In considering the seriousness of the charges, the panel determined that the charges are serious and inevitably will have an impact on the Miss Bogzoiu's career if found proved.

The panel also considered whether there was a good reason for the non-attendance of the witnesses and whether the NMC had taken reasonable steps to secure their attendance. The panel determined that the NMC have not provided evidence of reasonable steps taken to secure attendance of the witnesses. However, the panel was of the view that given the particular charges being considered in this case the witnesses would only be able to provide a subjective view of Miss Bogzoiu's knowledge of English. The only objective evidence of Miss Bogzoiu's knowledge of English would come from Miss Bogzoiu's IELTS assessment.

In addition, the panel concluded that Miss Bogzoiu had ample notice of the NMC's intention to read the statement and produce the evidence and she had not objected to the admission of the evidence.

Consequently the panel concluded that it would be fair and relevant to accept hearsay evidence in this case.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel considered all the evidence adduced in this case together with the submissions made by Mr Sharma, on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Miss Bogzoiu.

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.

Background

The NMC received an anonymous referral relating to Miss Bogzoiu on 31 January 2019.

At this time Miss Bogzoiu was employed at Pine Care Home where she was working as a Health Care Assistant.

In summary, it is alleged that Miss Bogzoiu's understanding and interpretation of the English language is poor and does not meet the standards required to practise safely as a registered nurse.

The NMC spoke to the Manager of Meddyg Care Home on 6 February 2019 in relation to the allegation. The Manager confirmed that Miss Bogzoiu was employed as a Health Care Assistant at Pine Care Home and that they have had no issues regarding her ability to speak English.

The NMC later spoke to another member of staff at Pine Care Home on 14 February 2019 in relation to the allegation. The member of staff stated that while Miss Bogzoiu was employed as a Health Care Assistant she was unable to follow instructions very well due to poor English.

On 15 February 2021 the NMC requested information about Miss Bogzoiu from the Managing Director of Meddyg Care Home. The Managing Director responded to the request by email dated 15 February 2019, confirming that Miss Bogzoiu worked as a Health Care Assistant at Pine Care Home between 1 November 2018 and 10 February 2019, but was no longer employed by them and that Miss Bogzoiu's understanding and interpretation of English was poor and not up to their standards required to practise safely, even as a Carer.

The NMC contacted the Director of Rapid Improvement Limited on 10 July 2019, following information that Miss BogzoIU was recently employed by their organisation. On 16 July 2019 the NMC received an email from the Director of Rapid Improvement Limited, who explained that Miss BogzoIU was employed by their organisation as a Care Worker in June 2019, and that the organisation intends to help her enrol on an English course (specifically referred to as '*Functional skills English*').

The NMC sent a '*Notice of Direction To Take Language Test*' letter to Miss BogzoIU on 18 July 2019, informing her that a direction had been made by the Registrar for her to undertake an English language assessment (IELTS) and that she is required to share the results with the NMC by 4 September 2019. This letter explained the consequences of failing to comply with this direction.

On 26 July 2019, Miss BogzoIU emailed the NMC and wrote the following:

'Good morning I am Carmen bogzoIU (sic) and would like to give permission to (sic) to speak on my behalf, due to my language barrier. Thank you'

On 2 September 2019, Miss BogzoIU contacted the NMC to say she would be taking the IELTS assessment the following day, 3 September 2019, at Tooting College. However, to date, the NMC has not received any information indicating that she has taken the assessment.

On 27 September 2019 the NMC spoke to the Director of Rapid Improvement Limited, who explained that Miss BogzoIU left their organisation effective from 21 September 2019. In response to being asked why Miss BogzoIU did not take the IELTS assessment, the Director stated that they did not know and now that she has left the organisation they don't know what she intends to do.

The NMC sent a '*Notice of Direction To Take Language Test*' letter by email to Miss BogzoIU on 30 November 2020, instructing Miss BogzoIU to undertake an English language assessment (IELTS) and share the results with the NMC by 15 January 2021.

This letter again explained the consequences of failing to comply with this direction. To date, the NMC has not received any information indicating that she has taken the assessment.

On 4 March 2021, Miss Bogzoiu called the NMC to enquire about the hearing dates and also indicated that she would attend. However, despite further efforts by the NMC to contact Miss Bogzoiu, no further contact has been received from her after that communication.

The NMC made efforts to trace Miss Bogzoiu both in the UK and abroad, since she has not responded to various attempts by the NMC to contact her. On 24 May 2021 the NMC received a Trace Report, indicating that Miss Bogzoiu was last located at Leighton House Nursing Home.

As a result, the NMC spoke to the Deputy Manager of Leighton House Nursing Home, who explained that Miss Bogzoiu was employed as a live-in Health Care Assistant until 17 March 2021. The Deputy Manager informed the NMC that Miss Bogzoiu was given one week's notice to move out of Leighton House Nursing Home on 17 March 2021 and as far as they are aware she returned back to her home country of Romania.

The NMC further received an email on 24 May 2021 from the Operations Manager of Leighton House Nursing Home, who confirmed that Miss Bogzoiu vacated her room on 17 March 2021 and to their knowledge returned to Romania. The Operations Manager informed the NMC that Miss Bogzoiu's employment dates were 23 September 2019 to 17 March 2021.

The NMC has since been unable to trace Miss Bogzoiu both in the UK and abroad.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

The panel then considered each of the disputed charges and made the following findings.

Charge 1

'1. Do not have the necessary knowledge of English to practise safely and effectively;'

The panel followed the advice of the legal assessor in relation to Rule 31 (6) (a), which states:

'In determining whether a registrant's fitness to practise is impaired by reason of not having the necessary knowledge of English, the Fitness to Practise Committee may draw inferences as seem appropriate to it if a registrant fails to undertake an examination or other assessment or to provide evidence of that assessment in accordance with direction made pursuant to these Rules.'

The panel relied on this Rule, which invites the panel to draw inferences.

The panel noted that Miss Bogzoiu was given two separate opportunities to take the IELTS assessments, which it regarded as an objective measure of the knowledge of English. Importantly, it considered that the *'Notice of Direction To Take Language Test'* sent to Miss Bogzoiu on two separate occasions (18 July 2019 and 30 November 2020), made it sufficiently clear that it was mandatory for Miss Bogzoiu to take the IELTS assessment. It further noted that Miss Bogzoiu failed to comply with her language assessment requirement nor did she provide the NMC with an explanation for her non-compliance. The panel concluded that an inference could be drawn from this that Miss Bogzoiu does not have the necessary knowledge of English as she has failed to produce IELTS assessment results indicating otherwise.

In addition to this evidence, the panel also had regard to the hearsay evidence that had been provided. It noted that Miss Bogzoiu's English was commented on by five different witnesses, and of the five only one was positive and four identified problems with Miss Bogzoiu's English.

In a telephone conversation with the NMC on 6 February 2019, it is recorded that the Manager of Meddyg Care Home stated the following in relation to Miss Bogzoiu:

'(sic) the nurse speaks English well, they've had no issues regarding her ability to speak English. She is carrying out HCA duties only. She has not been asked to undertake nurse's duties at all. She is a good and hardworking member. They have no concerns.'

In a telephone conversation with the NMC on 14 February 2019, it is recorded that a member of staff at Pine Care Home stated the following in relation to Miss Bogzoiu:

'She lacked good level of English and didn't follow instructions very well.'

In relation to being asked if there were any concerns about Miss Bogzoiu's level of communication in English, in an email dated 15 February 2019, the Managing Director of Meddyg Care Home stated the following:

'Yes her understanding and interpretation of English is poor and not up to our standards required to practice safely, even as a carer.'

An email from the Director of Rapid Improvement Limited dated 16 July 2019, explained that they intended to help Miss Bogzoiu enrol on an English course. A further email on 9 August 2019 from the Director stated:

'We are just registering her for Functional skills English'.

In a telephone conversation with the NMC on 1 October 2019, the following was recorded in relation to the Managing Director of Saanie Medical Services recruitment agency:

'He called because he knows that the registrant had received a notification from Royal Mail about being unable to deliver a parcel and he was aware that it was

from the NMC. He was calling on her behalf as he stated she "has trouble with English and is not as fluent".'

The panel concluded that the hearsay evidence came from different sources, which corroborated the inference that Miss Bogzoiu's knowledge of English, is more likely than not, insufficient for her to practise safely. The panel also considered that it appeared some of the witnesses' identified problems with Miss Bogzoiu's English from a place of being supportive, which adds weight to the inference that her knowledge of English is poor.

The panel also considered an email dated 26 July 2019, sent directly to the NMC from Miss Bogzoiu, which states the following:

'Good morning I am Carmen bogzoiu (sic) and would like to give permission to (sic) to speak on my behalf, due to my language barrier. Thank you'

The panel concluded that further inference can be drawn from Miss Bogzoiu's email, which suggest that she does not have sufficient knowledge of English to communicate effectively.

In light of the evidence before it, the panel was satisfied that Miss Bogzoiu does not have the necessary knowledge of English to practise safely and effectively.

Therefore, the panel found charge 1 proved.

Charge 2

'2. Having been directed by the Registrar to take an IELTS test by letter dated 18 July 2019, failed to do so by 04 September 2019;'

In reaching this decision, the panel had regard to the letter sent to Miss Bogzoiu by the NMC on 18 July 2019, giving her notice of a direction to take a language assessment.

The panel took into account various hearsay documentary evidence included in the NMC bundle that demonstrated attempts made by the NMC to contact Miss Bogzoiu to remind her of the direction that had been made by the Registrar and to secure her attendance at the assessment. The panel accepted that the direction has not been complied with and no test results provided by Miss Bogzoiu.

The panel noted that the onus is on Miss Bogzoiu to book the IELTS assessment, but the NMC stated within this letter that it will pay for the cost of the assessment.

The panel determined that the letter explained the consequences of failing to comply with this direction clearly, and Miss Bogzoiu was made sufficiently aware that the IELTS assessment was a mandatory requirement.

In the NMC's Response to Allegation Form Miss Bogzoiu indicated an admission to charge 2. The panel was however careful not to give the same weight of a formal admission to this document.

The panel concluded that this was an unreasonable failure to cooperate with the direction to complete the IELTS assessment and therefore found charge 2 proved.

Charge 3

'3. Having been directed by the Registrar to take an IELTS test by letter dated 30 November 2020, failed to do so by 15 January 2021;'

In reaching this decision, the panel had regard to the letter sent to Miss Bogzoiu by the NMC on 30 November 2020, giving her notice of a direction to take a language assessment. It noted that the NMC fairly afforded Miss Bogzoiu a second chance to comply with the direction to take an IELTS assessment.

The panel took into account various hearsay documentary evidence included in the NMC bundle that demonstrated further attempts made by the NMC to contact Miss

Bogzoiu to secure her attendance at the assessment. The panel accepted that the direction has not been complied with and no test results provided by Miss Bogzoiu.

The panel noted that the mandatory wording was the same on the letter dated 30 November 2020 and that the onus is on Miss Bogzoiu to book the IELTS test, but the NMC stated within this letter that it will pay for the cost of the assessment.

The panel determined that the letter explained the consequences of failing to comply with this direction clearly, and Miss Bogzoiu was made sufficiently aware that the IELTS assessment was a mandatory requirement.

The panel concluded that Miss Bogzoiu had failed to undertake an IELTS assessment following the direction made by the Registrar for a second time despite various prompts attempted by the NMC.

The panel therefore found charge 3 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved in charge 2 and 3 amount to misconduct and, if so, whether Miss Bogzoiu's fitness to practise is currently impaired. Charge 1 will only be taken into account at the impairment stage. 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.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved in charge 2 and 3 amount to misconduct.

Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Miss Bogzoiu's fitness to practise is currently impaired as a result of that misconduct and its findings in relation to charge 2 and 3.

Submissions on misconduct

Mr Sharma referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311.

In his submission Mr Sharma invited the panel to take the view that Miss Bogzoiu's inability to communicate (spoken and written) English affects her ability to comply with the following parts of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code):

'7.5. Communicate clearly

8.2. Maintain effective communication with colleagues

10. Keep clear and accurate records relevant to your practice

22. Fulfil all registration requirements

23. Co-operate with all investigations and audits'

Mr Sharma submitted that the first three are examples of professional conduct which the Regulator cannot effectively assess without the co-operation from Miss Bogzoiu in taking the required English assessments.

Mr Sharma submitted that the misconduct in this case concerns Miss Bogzoiu's failures in carrying out IELTS assessments on two occasions when required to do so. He stated that these tests are the only way the Regulator can properly assess a Registrant's command of the English language to ensure they are safe to practise.

Mr Sharma submitted that effective communication could be said to be at the heart of safe nursing practice. From initially communicating with patients in order to assess need, to effective communication with nursing colleagues, to the continued safe care and communication with medical staff when matters need to be diagnosed or escalated.

Mr Sharma submitted that such conduct, in failing to comply with the directions of the Regulator, will always be a serious matter. He submitted that these failings are clear examples of misconduct, falling far short of what is deemed proper conduct of a professional. He stated that these failures to co-operate on such a fundamental matter were inexcusable.

Mr Sharma submitted that whilst it is accepted that breaches of the Code will not be conclusive as to the issue of misconduct, these are fundamental requirements for the nursing profession and in a case of such failings, breaches of these parts of the Code should go a considerable way to assisting the panel.

Submissions on impairment

Mr Sharma moved on to the issue of impairment and addressed the panel on the need to have regard to protecting 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. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2)* and *Grant* [2011] EWHC 927 (Admin) and *Zgymunt v General Medical Council* [2008] EWHC 2643 (Admin).

Mr Sharma submitted that the panel has found failures in Miss BogzoIU's knowledge of English and co-operation in not taking the assessments. He submitted that these clearly show that in the past, Miss BogzoIU has acted so as to place patients at unwarranted risk of harm. He submitted that the lack of English creates such a barrier as to make safe care almost impossible and the lack of co-operation makes it impossible for the Regulator to ensure safety.

Mr Sharma then stated that the public should feel assured that their needs will be met. He submitted that if they cannot be communicated then patient's needs clearly cannot be met. He stated that likewise the public are reliant upon the Regulator for upholding certain levels of standards and would be appalled at such non-cooperation of such a fundamental requirement.

Mr Sharma submitted that current impairment can be found on the basis that there is a continuing risk to the public or that the public confidence in the nursing profession and the NMC as regulator would be undermined if such a finding was not made. With regard to current and future risk, he submitted that the panel will likely find assistance in the questions asked by Silber J in the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin), namely, is the misconduct easily remediable, has it in fact been remedied and is it highly unlikely to be repeated.

As to the risk of repetition, Mr Sharma submitted that the lack of knowledge of English has been identified and Miss Bogzoiu has failed to take the tests. He stated that there is no evidence showing her knowledge of English is any better than it was at the start of 2019 as Miss Bogzoiu has disengaged with NMC proceedings. He submitted that the only way this could be remediated is by Miss Bogzoiu engaging with the NMC process with a demonstration of belated co-operation. He stated that there is a complete absence of any remediation to date.

Mr Sharma submitted that taking account Miss Bogzoiu's attitude towards NMC proceedings, lack of remediation, lack of insight and her absence from nursing, suggested that these failings are highly likely to re-occur in any future period of nursing practice.

Mr Sharma submitted that Miss Bogzoiu's actions and omissions were serious. He stated that Miss Bogzoiu was responsible for omissions which had the potential to place residents at unwarranted risk of harm and without full remediation, and it is not possible to say there will be no repetition and it would therefore be appropriate to make a finding of current impairment.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Decision and reasons on misconduct

When determining whether the facts found proved in charge 2 and 3 amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Miss Bogzoiu's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a serious breach of the Code. Specifically:

'22. Fulfil all registration requirements

23. Cooperate with all investigations and audits.'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel took into account that the Registrar directed Miss Bogzoiu to undertake an IELTS assessment following concerns having been raised that she may not have the necessary knowledge of English to practise safely and effectively. The Registrar's powers to direct such assessments exist in order to protect patients. The Panel determined that Miss Bogzoiu's failure to cooperate with the Registrar's direction means that important patient safety concerns have not been addressed.

The panel found that Miss Bogzoiu's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of this misconduct in charge 2 and 3, and the language impairment in charge 1, that Miss BogzoIU's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. 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*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel finds that in being registered as a nurse when she did not have the necessary knowledge of English to communicate safely and effectively, Miss Bogzoiu put patients at unwarranted risk of harm, brought the profession into disrepute and breached a fundamental tenet of the nursing profession. Further, the panel determined that her actions in not completing the IELTS assessment also engaged these parts of the Grant judgment.

The panel has drawn the inference from Miss Bogzoiu's failure to take the IELTS assessment and the hearsay evidence that her knowledge of English was below the necessary standard. The panel noted that there is nothing to indicate that she has now remedied this deficiency as Miss Bogzoiu has disengaged with the NMC proceedings.

In these circumstances, the panel has concluded that Miss Bogzoiu's lack of knowledge of English is such that it would put patients at unwarranted risk of harm. Moreover, it is liable to bring the profession into disrepute. Miss Bogzoiu has shown no indication that she plans to undertake the IELTS assessment and has provided no evidence of insight. As a consequence, the panel cannot be satisfied that her knowledge of English is at the necessary standard to practise as a nurse safely. The panel has therefore determined

that Miss Bogzoiu's fitness to practise is currently impaired on the ground of public protection by reason of her failure to undertake the IELTS assessment and by reason of her failings with regard to having the necessary knowledge of English to practise safely and effectively.

The panel also had regard to the fact 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 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 a finding of impairment was required not only on the ground of protecting patients but also on public interest grounds. A member of the public would be concerned to hear if Miss Bogzoiu had been found not to be impaired having failed to comply with a direction from her regulator and being without the necessary knowledge of English to practise safely and effectively.

In all the circumstances, the panel was satisfied that Miss Bogzoiu's fitness to practise is currently impaired on the grounds of both public protection and public interest.

Submissions on sanction

Mr Sharma submitted that a sanction of no further action or a caution order would be not be appropriate as the panel found Miss Bogzoiu's fitness to practise impaired on the grounds of public protection and public interest. He submitted that a conditions of practice order would be inappropriate in the circumstances as there has been demonstrable non-compliance with the regulator by Miss Bogzoiu and it is unlikely she will cooperate with conditions in place.

Mr Sharma invited the panel to impose a suspension order for a period of 12 months. He submitted that Miss Bogzoiu's temporary removal from the register will adequately address the public protection and public interest considerations of this case, and it would also provide sufficient time for her to improve her English and sit the IELTS assessment.

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

Decision and reasons on sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that registrant's registration has been suspended.

Having found Miss Bogzoiu'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 first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel had borne in mind that it had identified at the impairment stage of these proceedings that your lack of knowledge of English exposed patients to a risk of unwarranted harm, and that these concerns have not yet been remediated. To take no action in respect of your nursing practice would not provide any protection to the public, nor would it mark the seriousness of this case. In addition, the panel determined that to take no action would not be in the public interest in declaring and upholding standards and maintaining public confidence in the profession.

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 Miss Bogzoiu'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 Miss Bogzoiu'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 placing conditions of practice on Miss Bogzoiu'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 noted that the principle concern centres around your lack of knowledge of English, and it was not satisfied on this basis that a conditions of practice order could be devised. Furthermore the panel was not satisfied that Miss Bogzoiu would comply with any conditions in light of her lack of engagement.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel consulted the sanctions guidance. The panel concluded that the seriousness of the case required temporary removal from the register and that a period of suspension would be sufficient to protect patients, public confidence in nurses and professional standards. There was no suggestion that Miss Bogzoiu had been brought before her Regulator before, and in those circumstances the panel concluded that it would be appropriate and proportionate to impose a suspension order to provide Miss Bogzoiu with the opportunity to remediate her failings. The panel was of the view that temporary removal from the register would provide Miss Bogzoiu with an opportunity to re-engage and to sit and meet the required standard in the IELTS assessment, whilst sufficiently addressing the public protection and public interest considerations identified in this case.

It did go on to consider whether a striking-off order would be proportionate but concluded that this would be disproportionate for the reasons set out above.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of 12 months was appropriate to provide Miss BogzoIU with sufficient time to meet the standards required by the IELTS assessment and to mark the seriousness of the misconduct.

At 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 decision will be confirmed to Miss BogzoIU in writing.

Determination on Interim Order

The panel has considered the submissions made by Mr Sharma that an interim order should be made on the grounds that it is necessary for the protection of the public and it is otherwise in the public interest. He invited the panel to impose an interim suspension order for a period of 18 months.

The panel accepted the advice of the legal assessor.

The panel had regard to the seriousness of the facts found proved, and the reasons set out in its decision for the substantive order. The panel decided that an interim suspension order is necessary for the protection of the public and it is otherwise in the public interest. To conclude 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 suspension order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.