

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

**Substantive Order Review Hearing
Monday, 10 July 2023**

Virtual Hearing

Name of Registrant: **Elena Cristina Sacuiu**

NMC PIN 13F0142C

Part(s) of the register: Registered Nurse (Sub Part 1)
Adult Nurse – June 2013

Relevant Location: Dorset

Type of case: Lack of Knowledge of English

Panel members: Susan Ball (Chair, registrant member)
Dorothy Keates (Registrant member)
Rachel Robertson (Lay member)

Legal Assessor: Fiona Moore

Hearings Coordinator: Jessie Miller

Nursing and Midwifery Council: Represented by Holly Girven, Case Presenter

Ms Sacuiu: Present and represented by Andrew Windross,
instructed by Royal College of Nursing (RCN)

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months) to
come into effect at the end of 8 August 2023 in
accordance with Article 30 (1)**

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr Windross, on your behalf, made a request that this case be held in private on the basis that proper exploration of your case involves reference to personal and financial information. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Girven, on behalf of the Nursing and Midwifery Council (NMC) indicated that she supported the application to the extent that any reference to [PRIVATE] should be heard in private.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to [PRIVATE], the panel determined to hold part of the hearing in private in order to protect your privacy.

Decision and reasons on review of the substantive order

The panel decided to vary and extend the current conditions of practice order.

This order will come into effect at the end of 8 August 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the sixth review of a substantive conditions of practice order, originally imposed by a panel of the Conduct and Competence Committee on 30 September 2016 for a period of 12 months. The order was previously reviewed and extended on 31 October 2017 and extended and varied on 9 August 2018 and 28 June 2019. The order was further extended on 30 June 2020 for a period of 18 months. At the last review on 23 December 2021, the conditions of practice order was extended for 18 months from 8 February 2022.

The current order is due to expire at the end of 8 August 2023.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

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

‘That you, a registered nurse:

- 1. Do not have the necessary knowledge of English to practise safely and effectively.’*

The previous panel determined the following with regard to impairment:

‘The panel was of the view that you have insight into why your fitness to practise is currently impaired due to your acceptance and that you plan to continue to take English lessons to improve your language skills. It determined that whilst your English has continued to improve and noted your commitment and dedication, it is not at the level required by the NMC. The panel therefore determined that a finding of current impairment on public protection grounds continued to be required to protect the health, safety, and well-being of patients in your care.

The panel was also satisfied that a finding of current impairment continued to be required on public interest grounds to maintain confidence in the nursing profession and in the NMC as a regulator. It considered that a well-informed member of the public would expect nurses practising in the UK to be able to communicate effectively in English.

For these reasons, the panel finds that your fitness to practise remains impaired.’

The previous panel determined the following with regard to sanction:

'Having found your 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 considered that this would be inappropriate. Taking no further action would not restrict your practice and would therefore not protect the public from the risk of harm posed by your lack of knowledge of English. 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 this would be inappropriate for the same reasons.

The panel next considered whether imposing a conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. It noted that the public remained protected by conditions so far, and that you continue to demonstrate commitment to both the nursing profession and to improving your English. The panel did consider the variation of indirect supervision to direct supervision, however, it determined that this would be too onerous an approach and would have the same effect as a suspension order. Therefore, the panel was satisfied that a conditions of practice order in the same terms as previously, continued to be the appropriate and proportionate order which would protect the public and the wider public interest.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 18 months to allow you sufficient time to undertake further studies and your next scheduled test. It decided the following conditions remain appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

- 1. Whilst consolidating your English language skills to enable you to practise safely and effectively and until you have passed the IELTS or the OET to the requisite standard, you must restrict your nursing practice to one employer.*
- 2. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the indirect supervision of a workplace line manager, mentor or supervisor nominated by your employer. Such supervision is to consist of working at all times on the same shift as another registered nurse who is physically present in or on the same ward, unit, floor or home that you are working in or on.*
- 3. You must continue to work to improve your proficiency in the English Language towards achieving the NMC standard required for registration. You must undertake and pass the International English Language Testing System ("IELTS") or the Occupational English Test ("OET") to the required standard prior to any NMC review of this Order and you must send the results of the IELTS or OET assessment to the NMC at least 7 days before the review of this order.*

4. *You must forward a report to the NMC from the home manager or deputy manager setting out the standard of your clinical performance generally, and specifically in relation to your English language proficiency, prior to any NMC review of this order.*
5. *You must inform the NMC of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*
6. *You must within 14 days of accepting any employment or course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.*
7. *You must immediately inform the following parties that you are subject to a Conditions of Practice Order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (6) above, to them:*
 - a) *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).*
 - b) *Any organisation or person employing, contracting with, or using you to undertake nursing work.'*

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise is currently 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. Further, the NMC guidance outlines that the question that will help decide whether a professional's fitness to practice is impaired is; *'can the nurse, midwife or nursing associate practice kindly, safely and professionally?'*

The panel has had regard to all of the documentation before it, including the NMC bundle, witness evidence and evidence provided by you. It has taken account of the submissions made by Ms Girven, on behalf of the NMC and those made by Mr Windross, on your behalf.

Ms Girven went through the background of the case for the panel's benefit. She submitted that the NMC are requesting an extension of the current conditions of practice order, with a minor variation of condition 4 to reflect that you are no longer working in a care home setting. She noted that whilst you have met the standard benchmark for speaking and writing in English, you are yet to meet the required standards set out by the NMC for listening and reading in English.

Ms Girven went on to state that there are no concerns around your clinical ability or practice. She acknowledged several positive references provided by colleagues that praise your abilities and interactions with service users.

Ms Girven concluded by stating that whilst the NMC are not seeking a striking off order at this time, it should be noted that conditions of practice orders cannot continue forever. She stated that at this time, a strike off would be disproportionate and inappropriate and a conditions of practice order would allow you to continue working on your English skills to resit the IELTS or OET.

You were questioned by Ms Girven, Mr Windross and the panel in relation to your case. You confirmed that you had undertaken 2 hours and 45 minutes of weekly English language learning between December 2021 and December 2022 which you had funded. You confirmed that you stopped this in December 2022 and are instead studying independently. You confirmed that you intend to resit your IELTS or OET test in the next 12 months. You also noted that you struggle in an exam setting, particularly with listening and reading as it is a high-pressure, fast paced environment, spoken with various accents and limited time to complete questions. When asked about dealing with different accents in your day to day work, you noted that you work with colleagues who have varying accents which you successfully understand.

Ms 1, Clinical Services Manager, gave evidence under Oath that she had been your line manager between September 2021 and January 2022. She explained that the hospital dealt with planned elective work, mostly joint replacement with no High Dependency Unit or Intensive Care Unit. She submitted that she hadn't directly seen you handle an emergency situation, however, went on to give an example of your "*calm and sensitive*" handling of a concern when you had noticed a surgeon approaching a patient without wearing Personal Protective Equipment (PPE). She stated that you handled the situation in an "*articulate, professional and assertive manner*" whilst, most importantly, maintaining patient safety at all times. Ms 1 stated that she found you to be a "*caring, compassionate nurse*" and went on to note that you would not work outside of your competency and would ask questions to check understanding. Ms 1 went on to state that she was confident that you understood and took part in the discussions within the multidisciplinary meetings. She noted the diverse workforce at the hospital and that many staff had accents with no issues having been raised with her as the line manager, regarding your understanding of this.

Mr Windross informed the panel that you concede that you remain impaired. However, he submitted that the current conditions of practice order should be revoked and that you should be allowed to practice unrestricted and referenced several testimonials provided by previous and current employers and colleagues that highlight your ability, communication skills and passion as a registered nurse.

Mr Windross went on to submit that you have recently undergone the successful process of revalidation and in the period of February 2022 to April 2023, have successfully completed 23 different courses, allowing you to keep your skills valid. He also noted that all of these training courses were delivered and assessed in the English language.

Mr Windross submitted that you have practiced nursing in an English speaking environment for eight years, six of which have been under a conditions of practice order. He noted that during this time, you have a proven record of safe practice without incident.

Mr Windross noted that you have not met the required marks to pass both the listening and reading aspects of the test required by the NMC, but highlighted you have a clear plan, outlined in your reflective account, and that you intend to sit the test again in the early part of 2024. He stated that you intend to use various online resources to improve comprehension, allocating more time to practice under exam conditions and progressively increase the complexity of the materials and speed at which you need to complete them.

Mr Windross submitted that you were able to provide swift and accurate responses when questioned during the hearing, which demonstrated your clear abilities. He concluded by stating that a striking off order would be both disproportionate and inappropriate in the current circumstances, and noted that this would have a severe impact upon your personal life.

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 whether your fitness to practise remains impaired.

The panel noted that there remain no concerns around your clinical competence or ability. It had view of several testimonials which highlight your skills, ability, commitment and positive attitude. It was the panel's view that you demonstrated a good grasp of the English language when answering questions and noted the documentary and witness evidence supported that you have a good understanding of English in certain settings, particularly in your current setting where you have worked a number of years and which is a small hospital setting involving routine procedures being undertaken with no HDU/ICU.

Your test scores were as follows:

December 2022: 360 in speaking, 300 in writing, 250 in listening and 240 in reading

May 2023: 230 in listening and 230 in reading (you had previously reached the required standard in speaking and reading in December 2022 which was within 12 months of this test)

The panel noted the test scores for listening and reading were significantly below the required minimum of 350. In these circumstances, the panel could not be confident that your understanding of English would apply across different, fast-paced or pressurised environments.

The panel had regard to your reflective piece, dated 9 July 2023, in which you stated:

'On 27th May 2023, due to financial constraints and a desire to mitigate the stress associated with the examination process, I chose to sit only for the Listening and Reading components of the OET.

Despite my best efforts, I fell short of the necessary pass mark in these components on both occasions. My performance in the Listening was affected by my struggle to keep up with the pace of the dialogues and extract pertinent information within the time constraints. As for the Reading section, I found the time limit a challenge again, impacting my ability to fully comprehend and analyse complex texts.

I am committed to addressing these shortcomings and aim to sit my next OET test around the first half of next year. My plan for improvement includes using various online resources to improve my speed and comprehension in listening and reading. I will start by allocating more time to practice under exam conditions, progressively increasing the complexity and speed of the materials. I am also considering joining an OET preparation course, which can provide structured guidance and personalised feedback.

Despite these challenges, my unwavering passion for nursing has been integral to my professional identity. Nursing isn't simply a job to me; it is a lifelong commitment to serve, heal, and constantly seek better ways to provide patient care and improve lives.'

The panel noted that you demonstrated insight and commitment to nursing and developing your English language skills. However, the panel had regard to NMC guidance and, in particular, the potential risk to patients. Whilst there has been no evidence of actual harm, the panel was concerned that should you be allowed to practice unrestricted, and should you not fully understand written or spoken English, this could put patients at risk. 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 your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your 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 circumstances 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 this would be inappropriate for the same reasons.

The panel next considered whether imposing a further or varied conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. It noted that the current conditions of practice have adequately protected the public and public interest to date, and you continue to demonstrate your commitment to your role as a nurse as well as improving your English.

The panel accepted that you have been complying with current substantive conditions of practice and have been engaging well with the NMC and the NMC process. The panel noted that there was no evidence of general incompetence, nor any deep seated attitudinal problems. It was therefore satisfied that a conditions of practice order remains appropriate and proportionate to manage the risks identified as well as allowing you time to further your English skills and take International English Language Testing System (IELTS) or Occupational English Test (OET).

The panel was of the view that to impose a suspension order or a striking-off order at this time, would be disproportionate and would not be a reasonable response in the circumstances of your case because you have demonstrated that you have been able to work well within the current conditions imposed, you continue to engage with the NMC and NMC process and have shown your commitment to strengthening your skills and revalidation as a nurse.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 8 August 2023. It decided to impose the following varied conditions which it considered are appropriate and proportionate in this case:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. Whilst consolidating your English language skills to enable you to practise safely and effectively and until you have passed the IELTS or the OET to the requisite standard, you must restrict your nursing practice to one employer.
2. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the indirect supervision of a workplace line manager, mentor or supervisor nominated by your employer. Such supervision is to consist of working at all times on the same shift as another registered nurse who is physically present in or on the same ward, unit, floor or home that you are working in or on.
3. You must continue to work to improve your proficiency in the English Language towards achieving the NMC standard required for registration. You must undertake and pass the International English Language Testing System ("IELTS") or the Occupational English Test ("OET") to the required standard prior to any NMC review of this Order and you must send the results of the IELTS or OET assessment to the NMC at least 7 days before the review of this order.

4. You must forward a report to the NMC from the line manager, mentor or supervisor setting out the standard of your clinical performance generally, and specifically in relation to your English language proficiency, prior to any NMC review of this order.
5. You must inform the NMC of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.
6. You must within 14 days of accepting any employment or course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.
7. You must immediately inform the following parties that you are subject to a Conditions of Practice Order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (6) above, to them:
 - a) Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).
 - b) Any organisation or person employing, contracting with, or using you to undertake nursing work.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 8 August 2023 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing or meeting to see how well you have complied with the order. At the review hearing or meeting, the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

This will be confirmed to you in writing.

That concludes this determination.