

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

**Substantive Order Review Hearing**

**20 December 2019**

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

<b>Name of registrant:</b>	Daniela Floricica Frincu
<b>NMC PIN:</b>	15G0568C
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Adult Nursing – July 2015
<b>Area of Registered Address:</b>	Romania
<b>Type of Case:</b>	Knowledge of English
<b>Panel Members:</b>	Raymond Marley (Chair, Lay member) Susan Jones (Registrant member) Andrew Macnamara (Lay member)
<b>Legal Assessor:</b>	Andrew Young
<b>Panel Secretary:</b>	Edmund Wylde
<b>Daniela Floricica Frincu:</b>	Not present and not represented
<b>Nursing and Midwifery Council:</b>	Represented by Callum Munday, counsel, instructed by NMC Case Preparation and Presentation Team.
<b>Order being reviewed:</b>	Conditions of Practice Order (30 months)
<b>Fitness to Practise:</b>	Impaired
<b>Outcome:</b>	Striking-Off order to come into effect at the end of 27 January 2020, in accordance with Article 30 (1)

## **Service of Notice of Hearing**

The panel was informed at the start of this hearing that Ms Frincu was not in attendance, nor was she represented in her absence either in London or in Belfast.

The panel was informed that the notice of this hearing was sent to Ms Frincu on 20 November 2019 by recorded delivery and first class post to her registered address. It was further informed that the notice of hearing was unable to be delivered on 27 November 2019, "as it was not possible to identify the delivery address". The panel bore in mind that it is incumbent upon a registrant to ensure that their details on WISER are correct and up-to-date.

The panel accepted the advice of the legal assessor, which was that the notice of hearing had been served in accordance with The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of the Rules.

## **Proceeding in absence**

The panel then considered proceeding in the absence of Ms Frincu. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Mr Munday, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

The panel noted that there had been no response from Ms Frincu, in relation to the notice of hearing. The panel was mindful that Ms Frincu has not engaged with the NMC since prior to her substantive hearing, which she did not attend. The NMC have made significant efforts to attempt to contact Ms Frincu, by post and email, to which there has

been no response. The panel noted that in the last correspondence with Ms Frincu, an email dated 7 August 2017, Ms Frincu indicated that she does not want to work in the UK as a nurse.

The panel was satisfied that Ms Frincu had been sent notice of today's hearing. The panel has no request for an adjournment before it, and had no reason to believe that an adjournment would result in Ms Frincu's attendance. It considered that, on the information before it, Ms Frincu has disengaged from the regulatory process. Having weighed the interests of Ms Frincu with those of the NMC and the public interest in an expeditious disposal of this hearing, the panel determined to proceed in Ms Frincu's absence.

## **Decision and reasons on review of the current order**

The panel decided to impose a striking-off order. This order will come into effect at the end of 27 January 2020 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a conditions of practice order, originally imposed by a panel of the Conduct and Competence Committee on 26 June 2017 for 30 months. The current order is due to expire at the end of 27 January 2020.

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

The charges found proved which resulted in the imposition of the substantive order were as follows:

*That you, a registered nurse:*

- 1. Do not have the necessary knowledge of English to practise safely and effectively.*
- 2. Failed to undertake a Language Test as required by the Nursing and Midwifery Council.*

*And in light of the above, your fitness to practise is impaired by reason of you not having the necessary knowledge of English.*

The original panel determined the following with regard to impairment:

*In regard to charge 1, the lack of necessary knowledge of English, the panel had regard to clause 7.5 of the Code which provides that a Registered Nurse:*

*“must be able to communicate effectively and clearly in English.”*

*The panel has drawn the inference from Ms Frincu's failure to take the IELTS assessment and the evidence of Ms 1 that her knowledge was then below the necessary standard. There is nothing to indicate that she has now remedied this deficiency and she has stated that she has no desire to return to the UK to work as a Registered Nurse. In these circumstances, the panel has concluded that Ms Frincu's lack of knowledge of English is such that it would put patients at unwarranted risk of harm. Moreover, it would have been liable to bring the profession into disrepute. Ms Frincu has shown insight by way of understanding that her English needs improving before she can practise in the UK but she has yet to take the IELTS assessment. This would act as a step towards achieving this but Ms Frincu has shown no indication that she plans to undertake the assessment. As a consequence, the panel cannot be satisfied that her knowledge of English has reached or will reach the necessary standard. The panel has therefore determined that Ms Frincu's fitness to practise is currently impaired by reason of lack of the necessary knowledge of English.*

*In reaching its decision, the panel has borne in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to 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 Ms Frincu 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 practice safely and effectively.*

*In all the circumstances, the panel was satisfied that Ms Frincu's fitness to practise is currently impaired by way of her lack of necessary knowledge of English.*

The original panel determined the following with regard to sanction:

*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.*

*Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the ISG, which states that a caution order may be appropriate where ‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’ The panel considered that Ms Frincu’s failings were not at the lower end of the spectrum and that a caution order would be inappropriate due to her lack of knowledge of the English language. 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 Ms Frincu’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 took into account the Indicative Sanctions Guidance (‘ISG’), in particular:*

*64. This sanction may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):*

*64.1 No evidence of harmful deep-seated personality or attitudinal problems*

*64.2 Identifiable areas of nurse or midwife’s practice in need of assessment and/or retraining*

*64.3 No evidence of general incompetence*

*64.4 Potential and willingness to respond positively to retraining*

*65.5 Nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision*

*64.6 Patients will not be put in danger either directly or indirectly as a result of conditional registration*

*64.7 The conditions will protect patients during the period they are in force*

*64.8 It is possible to formulate conditions and to make provision as to how conditions will be monitored*

*The panel determined that it would be possible to formulate appropriate and practical conditions, as set out in paragraph 63 of the ISG, which would address the failings highlighted in this case.*

*The panel had regard to the fact that no actual harm had come to the patients in Ms Frincu's care and that while she currently does not wish to return to the UK to practise as a Registered Nurse, this view may change over the course of time.*

*Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.*

*The panel was of the view that to impose a suspension order would be disproportionate and would not be a reasonable response in the circumstances in this case.*

*Having regard to the matters it has identified, the panel has concluded that a conditions of practice order protects the public and will mark the importance of maintaining public confidence in the profession.*

*The panel determined that the following conditions are appropriate and proportionate in this case:*

- 1. Before practising in any capacity as a Registered Nurse,*
- I. You must complete the IELTS assessment, achieving a level deemed acceptable by the NMC;*
  - II. You must notify the NMC and produce documentary evidence of your IELTS assessment results.*
- 2. 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 above, to them:*
  - (a) Any organisation or person employing, contracting with, or using you to undertake nursing work.*
  - (b) Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services.*
  - (c) Any prospective employer (at the time of application) where you are applying for any nursing appointment.*
  - (d) 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).*

*The period of this order is for 30 months.*

*Before the end of the period of the order, a panel will hold a review hearing. At the review hearing 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 with another order including a striking off order.*

### **Decision on current fitness to practise**

This panel has considered carefully whether Ms Frincu'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. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel has had regard to all of the documentation before it. It has taken account of the submissions made by Mr Munday on behalf of the NMC. Ms Frincu has provided no written representations for the panel to consider in her absence.

Mr Munday informed the panel of the background to this case, and invited its attention to the relevant documentation before it. He submitted that a finding of impairment remains necessary and that to continue the current conditions of practice order is proportionate, as there is no evidence before this panel that the deficiency in Ms Frincu's level of English has been remedied. He reminded the panel of Ms Frincu's latest communication with the NMC, in August 2017, which indicates that she does not want to return to the UK or to take the IELTS test; Mr Munday submitted that the current conditions of practice order remains necessary, were Ms Frincu to change her mind and return to the UK with the intention to practise as a nurse.

Mr Munday submitted that having a sufficient command of the English language is fundamental to the nursing profession, and that a deficiency in this area could expose patients to a real risk of harm. He invited the panel to consider that such a deficiency also breaches a fundamental tenet of the profession and undermines confidence in the profession and the regulatory process.

Mr Munday invited the panel to consider that to take no action would not sufficiently protect the public nor address the public interest in this case; to impose a caution order would likewise be inappropriate, as adequate knowledge of English is fundamental to the profession. He submitted that the current conditions of practice are necessary, proportionate, appropriate and workable – and would adequately address the regulatory concerns in this case. Mr Munday submitted that to impose a suspension order or striking off order may be disproportionate. He concluded his submissions by inviting the panel to consider that the length of any order is a matter for the panel's judgement.

The panel 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 Ms Frincu's fitness to practise remains impaired. It determined that there is no information before it to suggest that Ms Frincu has successfully completed an IELTS test or otherwise demonstrated knowledge of the English language to an appropriate standard. There has been no material change of circumstances since the substantive hearing, and Ms Frincu has not engaged with the regulatory process to attempt to persuade a panel otherwise.

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

### **Determination on sanction**

Having found Ms Frincu'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 29 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 or impose a caution order but concluded that these sanctions 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 or impose a caution order; such sanctions would not put adequate restrictions on Ms Frincu's practice and would expose patients to an unwarranted risk of harm.

The panel considered continuing the current conditions of practice order. It considered that such an order may adequately protect the public. However, the panel took into account that Ms Frincu has provided no evidence to indicate that she would engage with a further conditions of practice order; she has disengaged from the NMC and not taken any apparent action to remedy her language deficiency in some 30 months. The panel bore in mind Ms Frincu's stated intention not to return to the UK to work as a nurse. It determined that to impose a further conditions of practice order would serve no purpose in the light of Ms Frincu's sustained disengagement; there is no evidence of any potential willingness to respond to retraining, on Ms Frincu's part.

The panel next considered imposing a suspension order. It considered that such an order may adequately protect the public. However, the panel reminded itself of Ms Frincu's lack of engagement with the NMC, and of the most recent communication with the NMC, namely an email dated 7 August 2017, which states:

*I do not want to work in UK as nurse, as result I have not given exam for English language. [sic]*

The panel concluded that, in the light of this, a period of suspension would serve no useful purpose.

The panel considered a striking-off order; such a sanction would protect the public, and address the public interest in this case appropriately, given Ms Frincu's persistent and prolonged non-engagement with the regulatory process and her stated intent not to return to the UK to practise as a nurse. Ms Frincu has not taken the opportunity, over the past 30 months, to attempt to address the regulatory concerns in respect of her language deficiencies. The panel considered that it would be futile and disproportionate to prolong this regulatory process any further. It determined that it was necessary to take action to prevent Ms Frincu from practising in the United Kingdom 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. The panel therefore directs the registrar to strike Ms Frincu's name off the register.

In accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 this striking-off order will come into effect upon the expiry of the existing conditions of practice order, namely at the end of 27 January 2020.

This decision will be confirmed to Ms Frincu in writing.

That concludes this determination.