

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Hearing**

30 May 2019

Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE

Name of registrant:	Florentina Mitrata
NMC PIN:	16F0129C
Part(s) of the register:	Sub part 1 RNA: Adult nurse (07 June 2016)
Area of Registered Address:	England
Type of Case:	Language/Misconduct
Panel Members:	Irene Kitson (Chair, Lay member) Shorai Dzirambe (Registrant member) Razia Karim (Lay member)
Legal Assessor:	Nicholas Leviseur
Panel Secretary:	Aoife Kennedy
Registrant:	Not present and not represented in her absence
Nursing and Midwifery Council:	Represented by Richard Webb, Counsel for NMC Regulatory Legal Team
Order being reviewed:	Suspension Order (12 months)
Outcome:	Striking Off Order, to come into effect at the end of 11 July 2019 in accordance with Article 30 (1)

Service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Mitrata was not in attendance, nor was she represented.

The panel was informed that the notice of this hearing was sent to Ms Mitrata on 1 May 2019 by recorded delivery and first class post to her registered address.

The panel accepted the advice of the legal assessor.

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 Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

Proceeding in absence

The panel then considered proceeding in the absence of Ms Mitrata. 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 Webb, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Mr Webb drew the panel's attention to an email and telephone note, both dated 30 May 2019, which show the NMC's attempts to contact Ms Mitrata.

Mr Webb submitted that notice has been served to Ms Mitrata's registered address and she should be aware of today's hearing. He submitted that Ms Mitrata has voluntarily absented herself, and there is nothing to suggest that an adjournment would secure her attendance at a future hearing. Mr Webb submitted that the current

substantive order is due to expire at the end of 11 July 2019, and that an expeditious disposal of this hearing is in the public interest.

The panel accepted the advice of the legal assessor.

The panel considered that Ms Mitrata was sent notice of today's hearing and has not engaged with these proceedings. The panel considered that Ms Mitrata should be aware of today's hearing and has voluntarily absented herself. The panel is therefore satisfied that she has disengaged with these proceedings. In these circumstances, the panel had no reason to believe that an adjournment would result in Ms Mitrata's attendance. Having weighed the interests of Ms Mitrata with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Ms Mitrata'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 11 July 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (“the Order”).

This is the first review of a suspension order, originally imposed by a Fitness to Practise panel on 12 June 2018 for 12 months. The current order is due to expire on 11 July 2019.

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 practice safely and effectively
2. Failed to co-operate with the NMC’s investigation in that you did not undertake an International English Language Testing System (‘IELTS’) assessment when requested and/or directed to do so.

The **substantive panel** determined the following with regard to impairment:

“The panel decided that Ms Mitrita, by not having the necessary knowledge of English, could put patients at unwarranted risk of harm if she were to practise in the United Kingdom. Regarding insight, the panel had regard to Ms Mitrita’s admissions that her English was “*not very good*”. However she has not taken the ILETS test, or taken any other steps to demonstrate her knowledge of the English language. The panel bore in mind that the most recent correspondence from Ms Mitrita was in July 2017. Accordingly, the panel was of the view that there is an ongoing risk of potential patient harm.

Ms Mitrita has brought the profession into disrepute by not co-operating with her regulator. Cooperation with the regulator is essential for the safe and effective practise of nursing in the United Kingdom. Furthermore, she is liable to bring the profession into disrepute in the future if she were allowed to practise as a Registered Nurse in the United Kingdom without the required level of English.

The panel found that Ms Mitrita has breached fundamental tenets of the profession, both by not co-operating with her regulator, and by not having the necessary knowledge of the English language to practise safely and effectively in the United Kingdom.

The panel decided that a finding of current impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. Ms Mitrita, by not engaging with her regulator, and undertaking the ILETS test as required to do so, has not complied with her regulator and breached fundamental tenets of the profession. Accordingly, the panel determined that, in this case, a finding of impairment on public interest grounds is required.

Having regard to all of the above, the panel was satisfied that Ms Mitrita's fitness to practise is currently impaired."

The **substantive panel** determined the following with regard to sanction:

“The panel next considered whether placing conditions of practice on Ms Mitrita’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 Ms Mitrita was, so far as it was aware, currently residing in Romania. There is no indication that she is working as a Registered Nurse in the United Kingdom or what her future career intention may be in respect of nursing in the UK. In those circumstances the panel determined that it was not practicable to impose a conditions of practice order.

Furthermore, in view of her ongoing failure to undertake the ILETS test the panel were not confident that she would comply with a conditions of practise order.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a suspension order may be appropriate where some of the following factors are apparent:

- *does the seriousness of the case require temporary removal from the register?*
- *will a period of suspension be sufficient to protect patients and the public interest?*

This sanction may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):

- *a single instance of misconduct but where a lesser sanction is not sufficient*
- *no evidence of harmful deep-seated personality or attitudinal problems*

The panel considered that a 12 month suspension order would give Ms Mitrata the opportunity to engage with her regulator and complete the necessary ILETS or equivalent relevant testing to demonstrate sufficient knowledge of English to practise safely and effectively.

The panel further considered whether a striking-off order would be proportionate in Ms Mitrata's case. Taking account of the limited information before it, the panel concluded that it would be disproportionate at this stage. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Ms Mitrata's case to impose a striking off order.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of these matters.

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

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. Any future panel may be assisted by:

- Evidence that Ms Mitrata has undertaken the ILETS test, and/or any other evidence to show competence in her knowledge of written and spoken English. She is directed to the NMC published guidance "Directions to take a language assessment" available online.
- Ms Mitrata's engagement with the proceedings."

Decision on current fitness to practise

This panel has considered carefully whether Ms Mitrata'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 had regard to all of the documentation before it, and took account of the submissions made by Mr Webb, on behalf of the Nursing and Midwifery Council ("NMC").

Mr Webb submitted that nothing has been put forward by Ms Mitrata since the previous review hearing which would change the findings of the previous reviewing panel. He submitted that Ms Mitrata has disengaged from these proceedings and has not demonstrated that she has the required level of English, nor has she demonstrated any remorse, insight, or remediation into her misconduct. He submitted that her fitness to practise remains impaired.

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 Mitrata's fitness to practise remains impaired. It had no new information before it from Ms Mitrata to demonstrate that she has the necessary knowledge of English, nor to demonstrate that she has shown remorse or insight into her misconduct, or taken steps to remediate that misconduct.

The panel considered that, since the previous review hearing, Ms Mitrita has disengaged from NMC proceedings and this panel had no new information before it which would change the findings of the previous panel. The panel was concerned with Ms Mitrita's disengagement from the NMC process, and concluded that she had not demonstrated that she is safe to practise, nor that she no longer poses a risk to patients.

The panel concluded that there remains a risk to patients, colleagues, and the public in view of Ms Mitrita's lack of knowledge of English, and that there remains a risk of repetition of the misconduct identified by the substantive panel. The panel therefore concluded that a finding of impairment remains 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 and midwifery professions and upholding proper standards of conduct and performance. The panel determined that a finding of current impairment on public interest grounds is also required.

For these reasons, the panel is satisfied that Ms Mitrita's fitness to practise remains impaired.

Determination on sanction

Having found Ms Mitrita'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 in relation to sanction are set out in Article 30 of the Order. The panel also had regard to the NMC's Sanctions Guidance. It bore in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel considered that it would be neither appropriate nor proportionate to take no further action and allow the current order to lapse, or to impose a caution order in light of Ms Mitrita's lack of knowledge of English, and the risk of repetition and risk to the public identified.

For the same reasons as those identified by the previous reviewing panel, this panel considered that it was not possible at this time to formulate workable conditions of practice which would be sufficient to protect the public from the risk of harm identified. The panel has not received any evidence which would enable it to conclude that Ms Mitrita would be willing to engage with conditions of practice. The panel concluded that a conditions of practice order is not appropriate or workable in this case.

The panel then considered whether a further suspension order would be appropriate and proportionate. It took into account the substantive panel's reasons that a 12 month suspension order would give Ms Mitrita the opportunity to engage with her regulator and complete the necessary ILETS or equivalent relevant testing to demonstrate sufficient knowledge of English to practise safely and effectively.

The powers of this panel in relation to the finding of lack of competence in the English language, do not extend to striking off, because there has not been a continuous period of restriction of two years. In relation to that charge, the panel therefore determined that a suspension order is the only appropriate sanction order to it.

In relation to the misconduct finding, this panel has seen no evidence that Ms Mitrita is willing to engage with these proceedings by attaining the required level of English and remediating her practice. She has not engaged and has not provided any evidence that she has taken steps to improve her English, nor has she shown a willingness to take a language test, as she was required to do by the NMC. This panel therefore was not satisfied that Ms Mitrita would make use of a further period of suspension to engage. For these reasons, the panel considered that a further suspension order would not be appropriate.

The panel then considered whether strike-off was appropriate and proportionate in the circumstances in relation to the misconduct charge. This panel considered Ms Mitrata's continued failure to demonstrate a commitment to and engage with the process of attaining the required level of English or remedying the failings identified in her practice. It regretfully concluded that striking off Ms Mitrata's name from the register was the only appropriate and proportionate option available to the panel.

The striking-off Order will take effect from the expiry of the current order at the end of 11 July 2019 in accordance with Article 30(1) of the Order.

This decision will be confirmed to Ms Mitrata in writing.

That concludes this determination.