Name of registrant: Rositsa Manolova
NMC PIN: 11H0063C
Part(s) of the register: RN1: Registered Nurse (Sub Part 1)
Adult – 8 August 2011
Area of Registered Address: England
Type of Case: Language impairment
Panel Members: John Brookes (Chair, Lay member)
Melanie Lumbers (Registrant member)
Sue Davie (Lay member)
Legal Assessor: Nina Ellin
Panel Secretary: Roshani Wanigasinghe
Consensual Panel Determination: Accepted
Facts proved by admission: 1
Fitness to practise: Impaired
Sanction: 12 months suspension order, with a review
Interim Order: Interim suspension order – 18 months
Decision on Service of Notice of Meeting:
The panel was informed at the start of this meeting that notice of this meeting had been sent to Mrs Manolova’s registered address by recorded delivery and by first class post on 20 August 2019.

The panel took into account that the notice letter provided details of the allegation, the time and dates of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Manolova has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34. It 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 registered address.

Consensual panel determination:
The panel considered the Consensual Panel Determination Agreement (the Agreement) that had been reached with regard to this case between Mrs Manolova and the NMC. The Agreement, which was put before the panel, sets out Mrs Manolova’s admission of charge 1, and her acceptance of her fitness to practise being currently impaired by reason of her lack of English. It is further proposed in the Agreement that the appropriate and proportionate sanction in this case would be a suspension order for a period of 12 months. The Agreement was signed by Mrs Manolova on 23 August 2019. The panel was referred to the Agreement at a meeting and read the contents with care. That Agreement reads as follows:
The CPD Agreement:

Agreement

The Nursing and Midwifery Council and Rosita Manolova (‘the Registrant’), PIN 11H0063C, (‘the parties’) agree as follows:

The Charges

1. The Registrant admits the following charges:

   That you, a registered nurse:

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

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

The Agreed Facts

2. The Registrant appears on the register of nurses and midwives maintained by the NMC as a Registered Nurse – Adult. She registered in August 2011.

3. The NMC received a referral regarding the Registrant’s fitness to practise on 2 March 2017 from Maidstone and Tunbridge Wells NHS Trust (the Trust).

4. The regulatory concerns included the Registrant’s poor English language skills which impacted on her ability to practise safely. An International English Testing
System (IELTS) Test Report Form dated 24 August 2017 gave an overall score of 4.5 which is below the NMC requirement to practice.

5. NMC Undertakings were issued and agreed by the Registrant in July 2018. These required the Registrant to complete an IELTS examination within nine months of accepting the undertakings and scoring at least:

   a. 7.0 in the listening and reading sections
   b. 7.0 in the writing and speaking sections, and
   c. 7.0 overall

6. On 6 April 2019, the Registrant completed an IELTS examination where the Registrant scored the following marks:

   • Listening 4.5
   • Reading 3.5
   • Writing 4.5
   • Speaking 5.5
   • Overall 4.5

7. The Registrant accepts that she has not complied with the NMC Undertakings as she did not pass the IELTS test and received an overall score of 4.5 in respect of all four components

8. Accordingly the Undertakings were revoked and the concerns referred to the Fitness to Practise Committee.

9. The NMC has received and assessed all of the relevant evidence obtained during the local investigations.

10. The Registrant accepts her fitness to practise is impaired by reason of her lack of
knowledge of English.

Current Impairment

11. The parties agree that the following paragraph of the 2015 NMC Code of Conduct is engaged in this case:

7 Communicate clearly
To achieve this, you must:

7.5 be able to communicate clearly and effectively in English

12. The parties agree that good communication, both oral and written, between nurses and patients and/or colleagues, is an essential part of safe nursing practice and the public expects nurses to be able to communicate safely and effectively. The parties also agree that, in order to practise safely as a nurse, it is necessary to be able to speak, read and understand complex language. This is required in all aspects of nursing practice, especially in relation to care planning, handovers, record keeping and the accurate recording of the administration of medication.

13. It is evident from the Registrant's most recent IELTS assessment score that her practice does fall below the standards expected of a registered nurse, in that she has not demonstrated the knowledge of English required to practise without restrictions.

14. The parties have considered the questions formulated by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of CHRE v Grant & NMC [2011] EWHC 927 (Admin) (‘Grant’) by Cox J. They are as follows:

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

15. The parties agree that the admitted facts do amount to the Registrant putting
patients at unwarranted risk of harm as a result of her lacking the requisite
knowledge of the English language.

16. In considering the question of whether the Registrant's fitness to practise is
currently impaired, the parties have considered Cohen v GMC [2007] EWHC 581
(Admin), in which the court set out three matters which it described as being
'highly relevant' to the determination of the question of current impairment:

1. Whether the conduct that led to the charge(s) is easily
   remediable
2. Whether it has been remedied
3. Whether it is highly unlikely to be repeated

17. The parties agree that the last of these tests is not engaged in this case where
the issue is one of standards of English.

Insight

18. The Registrant accepts that her fitness to practise is impaired by reason of her
lack of knowledge of English and the Registrant intends to retake the IELTS
assessment.
**Remediation**

19. The Registrant is not currently employed as a registered nurse and is subject to an interim suspension order. The Registrant has yet to achieve the required IELTS score and therefore has not demonstrated that she has the necessary knowledge of English to practise safely as a registered nurse. The parties agree that, as the Registrant has yet to achieve that standard, the public remains at risk of harm.

**Impairment – public interest**

20. The parties agree that the public would expect the NMC as a regulator to ensure that all nurses have the requisite English language knowledge to practise safely and effectively. Without such knowledge, the public would expect the NMC to restrict a nurse’s practice.

21. The parties therefore agree that this is a case where a finding of current impairment is also required to declare and uphold proper professional standards and protect the reputation of the nursing profession. This is in accordance with the comments of Cox J in *Grant* at paragraph 101:

> “The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.”

22. Accordingly the parties agree that a finding of impairment is required on both public protection and public interest grounds.
Sanction

23. The appropriate sanction in this case is a suspension order for a period of 12 months. The parties considered the NMC Sanctions Guidance, bearing in mind that it provides guidance not firm rules.

24. The aggravating feature of the case is as follows:

• The results of the Registrant’s most recent IELTS fell well below the standards expected of a registered nurse despite the intervention of NMC Undertakings following an earlier IELTS test with insufficient results.

25. The mitigating feature of the case is as follows:

• The Registrant’s continuing engagement with the NMC and willingness to retake the IELTS assessment.

26. In considering what sanction would be appropriate the parties began by considering whether this is a case in which it would be appropriate to take no further action. The parties agree that this would leave the public exposed to an unwarranted risk of harm. The parties also agreed that this would not be a sufficient course of action to address the public interest considerations in this case.

27. The parties next considered whether a caution order would be appropriate. A caution order would not restrict the Registrant’s practice and would therefore be insufficient to protect the public. The parties also agree that such a sanction would not be sufficient to maintain public confidence.

28. The parties considered the imposition of a conditions of practice order, taking into account that any conditions imposed should not have the effect of amounting to a
complete restriction on a nurse’s ability to practise. The parties recognised that any condition requiring that the Registrant does not practise until she has achieved the required IELTS score would effectively act as a suspension order.

29. The parties were not able to formulate any workable conditions to restrict the Registrant’s practise until she has satisfactorily completed the IELTS assessment, whilst also providing sufficient protection to the public. Accordingly, the parties agreed that a conditions of practice order would not be workable or appropriate in this case.

30. The parties next considered a suspension order. This is not a case of misconduct or a case where there are any behavioural or attitudinal issues. The Registrant has failed to meet an objective standard of knowledge of English as required by the NMC. It is agreed that there are public protection concerns in this case and conditions of practice would not be appropriate. A suspension order will prevent the Registrant from practising and will thereby address these concerns.

31. The Registrant is not currently employed as a registered nurse and she is subject to an interim suspension order. The Registrant is aware that she needs to retake the IELTS assessment and gain the required score to demonstrate that she is fit to practise.

32. The parties are also of the view that the public, in possession of the full details of this case would be satisfied that a suspension order was appropriate and that such an order would therefore maintain public confidence in the profession.

33. Should the Registrant achieve the required IELTS score, she will be able to request an early review of the suspension order, At such a review a panel will determine, on the basis of any new information before it, whether the Registrant’s fitness to practise remains impaired by reason of her lack of knowledge of English.
34. The parties agree that a suspension order for a period of 12 months should be sufficient for the Registrant to undertake the necessary action in relation to her lack of knowledge of English.

35. A striking off order is not available in cases of impairment of fitness to practise by reason of a lack of knowledge of English, unless the registrant had been continuously subject to a substantive suspension or conditions of practice order for a period of not less than two years.

36. Finally, the parties agree that an interim order is required in this case. The order is necessary for the protection of the public and is otherwise in the public interest (for the reasons given above). The order should be for a period of 18 months to guard against the risk to the public in the event that the Registrant seeks to appeal against the substantive order. The interim order should take the form of an Interim suspension order.

37. The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings of impairment and sanction is a matter for the panel. The parties also understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charge and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegations, provided that it would be relevant and fair to do so.

Here ends the Agreement between the NMC and Mrs Manolova. The Agreement was signed by Mrs Manolova on 23 August 2019 and the NMC on 29 August 2019.
**Decision and reasons on the consensual panel determination:**

The panel decided to accept the Agreement.

The panel heard and accepted the legal assessor’s advice. She referred the panel to the NMC Sanctions Guidance (SG) and to the NMC’s guidance contained within the Fitness to Practise Library on Consensual Panel Determinations. She reminded the panel that they could accept, amend or outright reject the Agreement reached between the NMC and Mrs Manolova. Further, the panel should consider whether the Agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Mrs Manolova admitted the facts of the charges. Accordingly the panel was satisfied that the charges are found proved by way of Mrs Manolova’s admission as set out in the signed Agreement before the panel.

The panel noted that Mrs Manolova has accepted that her IELTS scores in April 2019 were:

- Listening 4.5
- Reading 3.5
- Writing 4.5
- Speaking 5.5
- Overall 4.5

The panel also noted that these are well below the language testing requirements which are deemed acceptable to practise safely as a nurse.
The panel then went on to consider whether Mrs Manolova’s fitness to practise is currently impaired. It took the advice of the legal assessor.

Whilst acknowledging the Agreement between the NMC and Mrs Manolova, the panel has exercised its own independent judgement in reaching its decision on impairment. The ability to communicate clearly and effectively in English is essential for any registered nurse and is a requirement of the Code (7.5). It therefore agrees that Mrs Manolova’s fitness to practise is currently impaired by reason of her lack of knowledge of English and that until she has reached the required standard, there remains a risk of harm to the public. The panel also agrees that a finding of impairment is also required on public interest grounds.

Having found Mrs Manolova’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. The purpose of any sanction is not intended to be punitive even though it may have a punitive effect. The panel had careful regard to the SG. Decision on sanction is a matter for the panel exercising its own independent judgement. The panel took the advice of the legal assessor.

The panel has considered the SG and the various sanctions available, as well as the aggravating and mitigating features set out in paragraphs 24 and 25 of the Agreement. It agrees with the reasons set out in paragraphs 26 to 32 of the Agreement and having considered all the sanctions, starting with the least serious, it concluded that the most suitable sanction is a suspension order for a period of 12 months. This is not a case of misconduct or a case where there are any behavioural or attitudinal issues. The Registrant has failed to meet an objective standard of knowledge of English as required by the NMC. It is agreed that there are public protection concerns in this case and conditions of practice would not be appropriate. This should provide sufficient time for Mrs Manolova to undertake the necessary action in relation to her lack of English and achieve the required IELTS scores.
The effect of this order is that the NMC register will show that Mrs Manolova’s registration has been suspended.

The panel noted the hardship such an order will inevitably cause Mrs Manolova. However this is outweighed by the public interest in this case.

The period of this order is for 12 months

Before the end of the period of the order, a panel will hold a review hearing to see if Mrs Manolova has retaken the ILETS exams and achieved the required scores in English in order to practise safely. 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 for another order.

The panel determined that a suspension order for a period of 12 months was therefore appropriate in this case.

**Determination on interim order:**

The panel agreed that an interim suspension order for a period of 18 months should be made in this case for the reasons set out within the Agreement and in particular in paragraph 36. It accepted the advice of the legal assessor.

If no appeal is made, then the interim order will be replaced by the suspension order 28 days after Mrs Manolova is sent the decision of this hearing in writing.

That concludes this determination.