

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

13 September 2019

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

Name of registrant:	Cristina Torres Moya
NMC PIN:	15F0860C
Part(s) of the register:	RN1, Registered Nurse Adult (19 June 2015)
Area of Registered Address:	Spain
Type of Case:	Lack of knowledge of English
Panel Members:	Anthony Griffin (Chair, lay member) Esther Joan Craddock (Registrant member) Peter Swain (Lay member)
Legal Assessor:	Nigel Mitchell
Panel Secretary:	Maya Hussain
Miss Moya:	Not present and not represented
Nursing and Midwifery Council:	Sally Mertens, Case presenter
Order being reviewed:	Suspension Order (9 months)
Fitness to Practise:	Impaired
Outcome:	Striking off order to come into effect at the end of 28 October 2019 in accordance with Article 30 (1)

Service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Moya was not in attendance, nor was she represented in her absence.

The panel was informed that the notice of this hearing was sent to Miss Moya on 14 August 2019 by recorded delivery and first class post to her registered address. It arrived in Spain and was delivered on 20 August 2019.

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

Ms Mertens submitted that no request for an adjournment had been made by Miss Moya and that she had voluntarily absented herself. She referred the panel to the previous review hearing on 25 January 2019 in which Miss Moya indicated by email dated 17 December 2018 that she no longer intends to undertake the IELTS test and she has no intention to live or return to practise as a nurse in the UK. There has been no communication since that date from Miss Moya.

The panel then considered proceeding in the absence of Miss Moya. 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 Ms Mertens. The panel accepted the advice of the legal assessor.

Miss Moya had been sent notice of today's hearing and the panel was satisfied that she was aware of today's hearing.

The panel noted Miss Moya's absence in previous proceedings and that there has been no communication from her since the last review hearing. The panel therefore concluded that she had chosen to voluntarily absent herself. The panel had no reason to believe that an adjournment would result in Miss Moya's attendance. The panel further noted that this is a mandatory review as the order is due to expire at the end of 28 October 2019. Having weighed the interests of Miss Moya in regard to her attendance at the hearing with those of the NMC and the public interest in an expeditious disposal of this hearing, the panel determined to proceed in Miss Moya'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 28 October 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the third review of a suspension order imposed on Miss Moya's registration at a hearing of the Conduct and Competence Committee on 28 June 2017 for 12 months. The order was extended for a period of 6 months at a review hearing on 15 June 2018. The order was extended further for a period of 9 months on 25 January 2019. The current order is due to expire at the end of 28 October 2019.

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

At the original hearing the substantive panel found the following charges proved:

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 second reviewing panel determined the following with regard to impairment:

‘The panel has been provided with correspondence between Ms Moya and the NMC since the last review hearing. In December 2018 Ms Moya sent an email to the NMC, which has been translated into English, in which she clearly states “I won’t take any IELTS exam in the United Kingdom nor in Spain. I want to be very clear on this. I don’t need to speak English because I don’t live there anymore”.

The previous panels considering this case determined that Ms Moya, by not having the necessary knowledge of English, is liable to put patients at an unwarranted risk of harm. This panel has not received any information to indicate that the position has changed. Accordingly, this panel decided that there remains a risk to patients, and that a finding of continuing impairment is necessary on the grounds of public protection.

The panel bore in mind that its primary function was 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 was of the view that public confidence in the profession would be undermined if a nurse without the necessary knowledge of English was allowed to practice as a registered nurse in the UK. Accordingly, the panel determined that, in this case, a finding of continuing impairment on public interest grounds is necessary.

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

The second reviewing 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 risk of repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action. The panel determined that taking no action would be insufficient for the purpose of upholding public confidence in the nursing profession and in the NMC as its regulator. The panel found that a caution order would be inappropriate for the same reasons.

The panel considered whether placing conditions of practice on Ms Moya's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated. The panel concluded that Ms Moya has demonstrated that she has no intention of taking the IELTS test and that therefore she cannot safely practise as a registered nurse in the UK. Accordingly, a conditions of practice order would not protect the public and would not be appropriate in this case.

The panel considered the imposition of a further period of suspension. The panel bore in mind that a striking-off order can only be imposed when Ms Moya has been suspended for a period of over two years. A suspension order will continue to provide protection to the public. It would also allow Ms Moya further opportunity to complete the IELTS assessment, although it appears clear that this is not her intention. The panel therefore concluded that a further 9 month suspension order was the only appropriate sanction.

Shortly before the expiry of this order another panel will review the order. Either Ms Moya or the NMC may call for an early review of the order should any new relevant information come to light.'

Decision on current fitness to practise

The panel has considered carefully whether Miss Moya'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 decisions of the previous panels. However, it has exercised its own judgment as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle. It has taken account of the submissions made by Ms Mertens.

Ms Mertens provided the background of the case and the previous reviewing panel decisions to the panel.

Ms Mertens reminded the panel of Miss Moya's clear intentions stated in her email to the NMC case officer dated 17 December 2018 that she no longer intends to undertake the IELTS test and she has no intention to live or return to practise as a nurse in the UK.

Ms Mertens submitted that there has been no communication from Miss Moya since the email dated 17 December 2018. She submitted that Miss Moya has failed to comply with the previous panel's recommendation to undertake an International English Language Testing System ("IELTS") test, and provided no evidence that she had sought to remediate the regulatory concern in this case.

Ms Mertens therefore submitted that Miss Moya's fitness to practise remains impaired, and that there are strong public protection concerns in this case. Further she submitted that there are public interest concerns in this case because members of the public expect nurses to have the necessary knowledge of English to practise safely. She invited the panel to consider all the sanctions before it today, including a striking off order in light of Miss Moya having been subject to a suspension order for a period of more than two years.

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 Miss Moya's fitness to practise remains impaired.

The panel noted that Miss Moya has not engaged with the NMC since December 2018. It noted that Miss Moya had expressed an intention to undertake the IELTS test and improve her English language skills at the original substantive hearing in June 2017 and the first review hearing on 15 June 2018. However, at present she has not complied with the recommendations made by the previous reviewing panel in January 2019, namely to undertake and sufficiently pass the IELTS test that would allow her to practise safely as a nurse. In these circumstances, the panel considered that Miss Moya remained liable to put patients at risk of harm, through her lack of effective knowledge of English. The panel considered that a risk of repetition was likely, and therefore determined that a finding of impairment remained necessary on the grounds of public protection.

The panel bore 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 noted that Miss Moya has failed to undergo the IELTS test and achieve the sufficient score. She has failed to engage with the NMC's proceedings since December 2018 when she indicated an intention not to take the IELTS test. In light of the fact that the panel had no evidence to show that Miss Moya had taken any further steps to address her language difficulties, the panel determined that a finding of impairment remained necessary on public interest grounds.

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

Decision on sanction

Having found Miss Moya'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 further action but concluded that this would be inappropriate in light of the risks identified.

The panel then considered whether to impose a caution order, but concluded that this would also be wholly inappropriate in view of the risk of repetition identified and in light of the remaining concerns in relation to Miss Moya's lack of knowledge of English. The panel determined that imposing a caution order would not restrict Miss Moya's practice or protect the public, and it would not satisfy the public interest.

The panel next considered whether to impose a conditions of practice order. The panel noted that Miss Moya has chosen to disengage with the NMC's proceedings. Due to this lack of engagement and failure to undertake the IELTS test a conditions of practice order was determined to be unworkable. In these circumstances, the panel was of the

view that a conditions of practice order would not protect the public and it would not satisfy the public interest.

The panel next considered imposing a suspension order. The panel noted that although Miss Moya had expressed an intention to improve her English language skills and undertake the IELTS test at the original substantive hearing, at present she has indicated in an email dated 17 December 2018 that she no longer wishes to undertake the IELTS test. The panel noted the public interest in ensuring that registrants do not remain subject to fitness to practise proceedings in circumstances where to do so would not facilitate their return to safe and effective practice.

The panel noted that Miss Moya has been subject to a suspension order for a period of more than two years, there is no evidence of willingness to address the regulatory concerns raised, and her failure to comply with recommendations demonstrated a serious departure from the professional standards expected of a registered nurse. The panel was of the view that the public interest would not be served by further extension of the suspension order, given the clear intention that Miss Moya no longer intends to undertake the IELTS test as stated in her email dated 17 December 2018. The panel concluded that the only sanction that would adequately protect the public and serve the public interest, which included maintaining confidence in the nursing profession and the NMC as regulator, and the upholding of proper standards of conduct and performance, was a striking-off order.

This decision will be confirmed to Miss Moya in writing.

That concludes this determination.