

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:	Mr Fernando Saussol Sanchez
NMC PIN:	15B0306C
Parts of the register:	Registered Nurse – Sub Part 1 RNA: Adult (18 February 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
Mr Sanchez:	Not present and not represented
Nursing and Midwifery Council:	Sally Mertens, Case presenter
Order being reviewed:	Suspension Order – 3 months
Fitness to Practise:	Impaired
Outcome:	Strike 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 Mr Sanchez was not in attendance, nor was he represented in his absence.

The panel was informed that the notice of this hearing was sent to Mr Sanchez on 14 August 2019 by recorded delivery and first class post to his 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

Ms Mertens, on behalf of the Nursing and Midwifery Council (NMC), submitted that no request for an adjournment had been made by Mr Sanchez and that he had voluntarily absented himself.

The panel then considered proceeding in the absence of Mr Sanchez. 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.

Mr Sanchez had been sent notice of today's hearing and the panel was satisfied that he was or should be aware of today's hearing.

The panel noted Mr Sanchez's absence in previous proceedings and that there had been no communication from him on over three years. The panel therefore concluded that he had chosen to voluntarily absent himself. The panel had no reason to believe that an adjournment would result in Mr Sanchez'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 Mr Sanchez in regard to his 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 Mr Sanchez'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, originally imposed by a Conduct and Competence Committee on 28 June 2017 for a period of 12 months. The order was reviewed and extended for a period of 12 months on 26 July 2018. The order was reviewed and extended for a further 3 months on 17 June 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.

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;*
- 2. [Not proved]*

And, in light of the above, your fitness to practice is impaired by reason of your lack of knowledge of English at Charge 1.

The second reviewing panel determined the following with regard to impairment:

'The panel had no new information in regard to Mr Sanchez's case. There was no information to suggest that Mr Sanchez's lack of knowledge of the English language had been addressed. Further, the panel bore in mind that it had no information as to Mr Sanchez's current employment or future intentions. The

panel therefore decided 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 determined that, in this case, a finding of continuing impairment on public interest grounds is required.

For these reasons, the panel finds that Mr Sanchez'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 further action but concluded that this would be inappropriate in view of the potential risk of harm identified. The panel then considered whether to impose a caution order but also concluded that this would be inappropriate in view of the potential risk of harm identified.

The panel noted that Mr Sanchez had completely disengaged with these proceedings. The panel formed the view that a conditions of practice order would also be inappropriate as the concerns relate to Mr Sanchez's standard of English and the panel could not be satisfied that he would comply with any conditions imposed. Indeed, the panel could not identify any conditions which would meet the panel's concerns.

The panel considered that, given the lack of any new information, it had no option but to impose a further period of suspension. The panel concluded that a three month suspension order would be the appropriate and proportionate response in this matter. Three months would allow Mr Sanchez time to contact the NMC, if he wished, and to address the concerns in relation to his standard of English.

This order will be reviewed prior to its expiry.

The panel acknowledged that a striking-off order was not available to it at this time. However, a striking-off order will be available to a future reviewing panel, as

by then Mr Sanchez will have been subject to a suspension order for a continuous period of over two years.'

Decision on current fitness to practise

The panel has considered carefully whether Mr Sanchez'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, including the NMC bundle. It has taken account of the submissions made by Ms Mertens.

Ms Mertens provided a background of the case to the panel. She submitted that there has been no change in circumstances since the last review.

Ms Mertens submitted that Mr Sanchez has failed to comply with the Registrar's direction to undertake an International English Language Testing System ("IELTS") test, and provided no evidence that he had sought to remediate the regulatory concern in this case. Mr Sanchez has failed to engage with the NMC throughout since July 2016, and there is no evidence that he has complied with recommendations made by the previous panel to undertake an IELTS test.

Ms Mertens referred the panel to the previous reviewing panel's decision in June 2019 which extended the suspension order for a period of three months in order to give Mr Sanchez a further opportunity to engage with the NMC and take the required language test if he chooses. The panel has no evidence before it suggesting that Mr Sanchez has completed this.

Ms Mertens therefore submitted that Mr Sanchez'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 Mr Sanchez having been subject to a suspension order for a period of more than two years. She highlighted his persistent lack of engagement and failure to remediate the concerns relating to his knowledge of English.

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 Mr Sanchez's fitness to practise remains impaired.

The panel noted that Mr Sanchez has not engaged with the NMC since July 2016. He has not complied with the recommendations made by the original substantive hearing panel, namely to undertake and sufficiently pass an IELTS test that would allow him to practise safely as a nurse, and to engage with the NMC. In these circumstances, the panel considered that Mr Sanchez remained liable to put patients at risk of harm, through his 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 Mr Sanchez has failed to comply with the recommendations made by previous panels to undergo an IELTS test, and has failed to engage with the NMC's proceedings. In light of the fact that the panel had no evidence to show that Mr Sanchez had taken any steps to address his language difficulties, the panel determined that a finding of impairment remained necessary on public interest grounds.

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

Determination on sanction

Having found Mr Sanchez's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel had regard to its powers set out in Article 29 of the Order. The panel also took into account the NMC's

Sanctions Guidance (“SG”) and 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 first considered whether to take no action, but concluded that this would be wholly inappropriate in view of the risk of repetition identified and the seriousness of the case. The panel determined that taking no action would not protect the public and it would not satisfy the public interest.

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 Mr Sanchez’s lack of knowledge of English. The panel determined that imposing a caution order would not restrict Mr Sanchez’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 Mr Sanchez has consistently failed to engage 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 further suspension order. The panel noted Mr Sanchez’s lack of engagement with the NMC’s proceedings and the recommendations made by the previous reviewing panels. It also noted that despite the previous reviewing panel in June 2019 imposing a three month suspension to give Mr Sanchez a further opportunity to engage with the NMC, there has been no further contact from him. In these circumstances, the panel was of the view that there was a significant risk of repetition in relation to his failure to comply with directions and recommendations.

The panel determined that a further period of suspension would serve no useful purpose in bringing about Mr Sanchez’s engagement with these proceedings and remediation of his lack of knowledge of English. It 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 Mr Sanchez 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 his 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 lack of any recent engagement by Mr Sanchez. 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 Mr Sanchez in writing.

That concludes this determination.