

**Nursing and Midwifery Council  
Fitness to Practise Committee  
Substantive Order Review Meeting  
19 September 2019**

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

<b>Name of registrant:</b>	Noelia Serrano Martinez
<b>NMC PIN:</b>	16D0078C
<b>Part(s) of the register:</b>	Registered Nurse - Sub Part 1 Adult Nurse (4 April 2016)
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Lack of knowledge of English
<b>Panel Members:</b>	Malcolm Davidson (Chair, Lay member) Emily Davies (Registrant member) Jocelyn Griffith (Lay member)
<b>Legal Assessor:</b>	Ben Stephenson
<b>Panel Secretary:</b>	Alison Martin
<b>Order being reviewed:</b>	Suspension Order (6 months)
<b>Fitness to Practise:</b>	Impaired
<b>Outcome:</b>	Striking-off order to come into effect at the end of 2 November 2019 in accordance with Article 30 (1)

## **Service of Notice of Hearing**

The panel considered whether notice of this meeting has been served in accordance with the rules. Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended state:

**‘11A.(1)** Where a meeting is to be held in accordance with rule 10(3), the [Fitness to Practise] Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

**34.(3)** Any other notice or document to be served on a person under these Rules may be sent by—

(a) ordinary post’

The panel accepted the advice of the legal assessor.

The panel noted that the notice of this hearing was sent to Miss Serrano Martinez on 2 August 2019 by recorded delivery and first class post to her registered address. This letter informed Miss Serrano Martinez that her order would be reviewed at a meeting on or after 16 September 2019. Royal Mail “Track and Trace” was unable to confirm whether the notice has been delivered to Miss Serrano Martinez.

The panel was satisfied that the notice was sent more than 28 days in advance of this meeting. The panel therefore determined that notice had been served in accordance with Rules 11A and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

**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 2 November 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 panel of the Conduct and Competence Committee on 30 March 2017 for a period of 12 months. This order was reviewed at a meeting conducted by the Fitness to Practise Committee on 29 March 2018, when a panel imposed a further suspension order of 12 months. This order was reviewed at a hearing conducted by the Fitness to Practise Committee on 2 April 2019, when a panel imposed a further suspension order of 6 months. The current order is due to expire at the end of 2 November 2019.

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

The charge found proved 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*

*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:

*“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 first considered whether Miss Serrano Martinez’s fitness to practise remains impaired.*

*The panel had regard to the NMC's guidance on registration language requirements, updated in January 2019. It noted that there are three types of evidence which are accepted by the NMC, and demonstrate the necessary knowledge of English to practise safely in the UK. They are:*

- Recent practice for one year in a majority English-speaking country*
- Completion of a pre-registration nurse, midwife or nursing associate programme, taught and examined in English.*
- Achievement of the required score in the International English Language Testing System (IELTS) test or any other English language tests accepted by the NMC. The required score must be achieved in reading, writing, listening and speaking.*

*The panel considered that, despite being provided ample opportunity to engage and to provide evidence of the IELTS test that Miss Serrano Martinez says she has completed, no evidence of this has been provided to date. It was not satisfied therefore, that the requirements have been met for Miss Serrano Martinez to practise safely and effectively in the UK.*

*The panel considered that a lack of knowledge of the English language is remediable. In its consideration of whether Miss Serrano Martinez has remedied her practice the panel took into account the limited evidence before it. This included a written statement from Miss Serrano Martinez, claiming to have passed the required IELTS test in March 2017. It noted that this is the most recent correspondence the NMC has had with her. The panel was therefore not satisfied that there has been any new information or evidence submitted since that meeting to alter the previous panel's decision on impairment. There remains a risk of harm to the public if Miss Serrano Martinez were permitted to practise as a nurse without restriction. Further, the panel bore in mind that the wider public interest includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance and determined that a finding of*

*continuing impairment is necessary on the grounds of public protection, and is otherwise in the public interest.”*

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

*“The panel first considered whether to take no action and allow the order to lapse, but concluded that this would be inappropriate in view of the public protection concerns identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.*

*The panel then considered whether to impose a caution order, however concluded that this would be inappropriate given the particular circumstances of Miss Serrano Martinez’ lack of knowledge of the English language. The panel concluded that a caution order would neither protect the public, nor address the public interest concerns in this case as Miss Serrano Martinez would be allowed to practise unrestricted.*

*The panel moved on to consideration of a conditions of practice order, however was not satisfied that workable conditions could be formulated given that Miss Serrano Martinez has not yet met the required standard of English to practise as a nurse in the UK. Furthermore, due to lack of engagement it was not confident that Miss Serrano Martinez would abide by proposed conditions.*

*The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would enable the public to remain protected and would allow Miss Serrano Martinez a further opportunity to engage with her regulator. The panel concluded that a further 6 month suspension order would be the appropriate and proportionate response and would afford Miss Serrano Martinez adequate time to either submit her IELTS results or allow her time to undertake the IELTS, or another NMC-recognised English language assessment.*

*Before the end of the period of suspension, another panel will review the order. At the review hearing, the panel may revoke the order, extend the order or may replace the order with another type of order. This panel reminds Miss Serrano*

*Martinez that a future reviewing panel will have all of the sanctions available to it, including that of a striking-off order.'*

### **Decision on current impairment**

The panel has considered carefully whether Miss Serrano Martinez'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.

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 first considered whether Miss Serrano Martinez's fitness to practise remains impaired.

The panel had regard to the NMC's guidance on registration language requirements, updated in January 2019. It noted that there are three types of evidence which are accepted by the NMC, and demonstrate the necessary knowledge of English to practise safely in the UK. They are:

- Recent practice for one year in a majority English-speaking country
- Completion of a pre-registration nurse, midwife or nursing associate programme, taught and examined in English.
- Achievement of the required score in the International English Language Testing System (IELTS) test or any other English language tests accepted by the NMC. The required score must be achieved in reading, writing, listening and speaking.

The panel noted that Miss Serrano Martinez has not engaged with the NMC since 7 March 2018, a period of 18 months. Most recently the NMC had contacted Miss Serrano Martinez by email on 4 July 2019 and 2 August 2019 and provided her with copies of correspondence sent to her by recorded delivery and first class post to her registered address.

The panel was of the view that, despite being provided with ample opportunity to engage with the NMC and to provide evidence that she has completed and passed an IELTS test, to date Miss Serrano Martinez has not provided evidence of this. It was not satisfied therefore, that the requirements have been met for Miss Serrano Martinez to practise safely and effectively in the UK.

The panel considered that a lack of knowledge of the English language is remediable but has not yet been remedied. In its consideration of whether Miss Serrano Martinez has remedied her practice the panel took into account it had no new evidence before it to suggest Miss Serrano Martinez has completed an accepted English language test to the required standard, nor has she demonstrated that her English language skills have reached the required standard in reading, writing, listening and speaking.

The panel was satisfied that there had been no new information or evidence provided by Miss Serrano Martinez since 7 March 2018. The panel determined therefore that there remains a risk of harm to the public if Miss Serrano Martinez were permitted to practise as a nurse without restriction. In the absence of any evidence of remediation, the panel concluded that Miss Serrano Martinez's fitness to practise remains impaired on the grounds of public protection. The panel bore in mind that the wider public interest includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. It determined that a finding of continuing impairment on public interest grounds is also required.

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

Having found Miss Serrano Martinez's fitness to practise is 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 30 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 but concluded that this would be inappropriate in view of the public protection concerns identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution order, however it concluded that this would be inappropriate given the particular circumstances of Miss Serrano Martinez's lack of knowledge of the English language. The panel concluded that a caution order would neither protect the public, nor address the public interest concerns in this case as Miss Serrano Martinez would be allowed to practise unrestricted.

The panel moved on to consideration of a conditions of practice order, however the panel was not satisfied that workable conditions could be formulated given that Miss Serrano Martinez has not yet demonstrated that she has the required standard of English to practise as a nurse in the UK. Furthermore, due to Miss Serrano Martinez's lack of engagement, the panel was not confident that she would abide by a conditions of practice order.

The panel next considered imposing a further suspension order. The panel noted that Miss Serrano Martinez has failed to engage with her regulator for 18 months. Further Miss Serrano Martinez has provided no evidence that she has completed an accepted English language test to the required standard. The panel was of the view that clear evidence would be required to show that Miss Serrano Martinez no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose and would also undermine public confidence in the NMC as regulator. The panel determined that it was necessary to take action to prevent Miss Serrano Martinez from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest is a striking-off order.

This decision will be confirmed to Miss Serrano Martinez in writing.

That concludes this determination.