

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Meeting
4 - 5 March 2020

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

Name of registrant:	Diana Georgiana Calin
NMC PIN:	16B0088C
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (3 February 2016)
Area of Registered Address:	Romania
Type of Case:	Misconduct/Lack of Competence/Lack of Knowledge of English
Panel Members:	John Vellacott (Chair, Lay member) Amy Lovell (Registrant member) Jocelyn Griffith (Lay member)
Legal Assessor:	Nigel Ingram
Panel Secretary:	Edmund Wylde
Facts proved:	All
Fitness to practise:	Impaired
Sanction:	Striking-Off Order
Interim Order:	Interim Suspension Order (18 months)

Details of charge:

That you a registered nurse:

- 1) *Failed to cooperate with an NMC investigation in that you did not, without good reason, adhere to an NMC direction of 8 May 2018 to take an International English Language Testing System (IELTS) assessment. [PROVED]*
- 2) *Did not declare you were on the UK register of nurses and midwives, maintained by the NMC, in your application to the Nursing and Midwifery Board of Ireland on 1 March 2018 ('the application'). [PROVED]*
- 3) *Your action in charge 2 was dishonest in that you knew you were on the register of nurses and midwives maintained by the NMC. [PROVED]*
- 4) *Incorrectly answered 'no' on the application to the question: 'Has your registration or license to practise ever been cancelled, suspended or removed for any reason?' [PROVED]*
- 5) *Your response in Charge 4 was dishonest in that you knew your registration had been suspended by way of an Interim Order dated 19 December 2017. [PROVED]*
- 6) *Incorrectly answered 'no' on the application to the question: 'Are there any special conditions or restrictions currently attached to your registration certificate or license to practise?' [PROVED]*
- 7) *Your response in Charge 6 was dishonest in that you knew your registration was currently suspended by way of an Interim Order dated 19 December 2017. [PROVED]*

AND in light of the above your fitness to practise is impaired by reason of your misconduct.

AND

That you, a registered nurse:

- 8) *Do not have the necessary knowledge of English to practise safely and effectively. [PROVED]*

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

AND

That you, a registered nurse failed to demonstrate the standard of knowledge, skill and judgment required to practise effectively as a Band 5 registered nurse between 27 March 2017 and 16 June 2017 in that you:

- 9) *Did not pass the Basic Life Support Test on:*

- a) *7 April 2017. [PROVED]*
- b) *21 April 2017. [PROVED]*
- c) *11 May 2017. [PROVED]*

- 10) *Were unable to demonstrate on more than one occasion that you could adequately check a person's respiratory rate. [PROVED]*

- 11) *Were unable to demonstrate on more than once occasion that you could manually check a person's pulse. [PROVED]*

12) *Were unable to demonstrate you could check a person's temperature using a tympanic ear thermometer. [PROVED]*

13) *Were unable to demonstrate that you could satisfactorily complete the observation charts on patients to gain the correct NEWS score. [PROVED]*

14) *Did not demonstrate that you could escalate concerns about a patient autonomously. [PROVED]*

15) *Did not demonstrate that you could provide safe care to and management of patients. [PROVED]*

AND in light of the above your fitness to practise is impaired by reason of your lack of competence and/or lack of knowledge of English.

Decision on Service of Notice of Meeting:

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 Conduct and Competence Committee or the Health 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 letter of notice of this substantive meeting was sent to Mrs Calin's address on the register on 24 January 2020. The panel is satisfied that the notice was sent more than 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

The panel also noted that there has been no response from Mrs Calin in relation to the notice of this meeting.

Background

Mrs Calin was first entered on the Register maintained by the NMC on 3 February 2016.

Mrs Calin trained in Romania where she completed her initial qualification on 18 August 2015. She was employed as a registered band 5 nurse by the Frimley Health NHS Foundation Trust (the Trust) from the 27 March 2017 to the 16 June 2017.

The allegations concern Mrs Calin's inability to pass the Basic Life Support training on three separate occasions during April and May 2017. Concerns were also raised during her probationary period concerning Mrs Calin's clinical practice as well as regarding her English comprehension and ability to converse with patients, relatives and colleagues effectively.

Mrs Calin remained under supervision throughout her employment with the Trust.

The Trust arranged for a probationary review hearing to discuss Mrs Calin's ability to communicate in the English language. The hearing was initially scheduled for 8 June 2017, but she was unable to attend on this date. It was rescheduled for 16 June 2017. Mrs Calin was not in attendance at this hearing so it proceeded in her absence. Following this hearing, her contract was terminated.

Mrs Calin appealed this decision, but did not attend the appeal hearing which took place on 12 September 2017 and the decision of her employer was upheld. Mrs Calin was subsequently referred to the NMC on the 4 December 2017.

While the matter was under investigation a referral was received from the Director of Regulation at the Nursing and Midwifery Board of Ireland to inform the NMC that Mrs Calin had tried to apply to come on their register but failed to mention she was on the UK register, or that she was on an interim order at the time.

Decision on the findings on facts and reasons

The panel accepted the advice of the legal assessor.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged. In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case.

The panel considered each charge and made the following findings:

Charge 1:

- 1) *Failed to cooperate with an NMC investigation in that you did not, without good reason, adhere to an NMC direction of 8 May 2018 to take an International English Language Testing System (IELTS) assessment.*

This charge is found proved.

The panel reminded itself that, for an alleged “failure” to be proved, there must be a duty upon Mrs Calin, which her actions have subsequently breached. It considered it to be clear that Mrs Calin, as with all registrants, is under a duty to comply and cooperate with her regulator – the NMC – and any directions which that regulator makes.

The panel had sight of the witness statement of Mr 1, a case investigator at the NMC, in which it is stated:

On 8 May 2018, the NMC sent [Mrs Calin] a letter of notice of direction to take and [sic] International English Language Testing (IELTS) assessment.

...

On 2 July 2018, [Mrs Calin] contacted the NMC via email confirming that she had received the notice letter and discussed whether she would be able to practice [sic] as a Healthcare Assistant in the UK. The NMC responded by attaching the notice letter again for [Mrs Calin's] reference.

...

On 23 July 2018 [Mrs Calin] called the NMC expressing her concerns about the investigation process. She confirmed receipt of the IELTS instruction letter... [She] explained that she did not want to sit the IELTS assessment because her English level was not high enough.

...

On 8 October 2018 the NMC sent [Mrs Calin] a further letter of notice of direction to take an IELTS assessment and to share the results with the NMC.

The panel took into account that it has no evidence before it that Mrs Calin has undertaken an IELTS assessment to date. The panel also has no evidence before it as to any good reason why Mrs Calin has not done so.

The panel considered it to be clear that, having received the relevant direction from the NMC, Mrs Calin has not undertaken such an assessment and has therefore failed to cooperate with the NMC investigation accordingly.

It therefore found this charge to be proved.

Charge 2:

2) *Did not declare you were on the UK register of nurses and midwives, maintained by the NMC, in your application to the Nursing and Midwifery Board of Ireland on 1 March 2018 ('the application').*

This charge is found proved.

The panel had sight of the relevant application form from Mrs Calin to the Nursing and Midwifery Board of Ireland on 1 March 2018. On the requisite page, under the heading "I hold, or have previously held registration with the following competent authority", Mrs Calin has written in the details only of the relevant Romanian authority, with no mention of the NMC.

The panel therefore found this charge to be proved.

Charge 3:

3) *Your action in charge 2 was dishonest in that you knew you were on the register of nurses and midwives maintained by the NMC.*

This charge is found proved.

The panel considered it to be clear that Mrs Calin knew that she was on the register of nurses and midwives maintained by the NMC. She had previously corresponded with the NMC, prior to this application on 1 March 2018, and had in fact attended and engaged with an interim order hearing on 19 December 2017.

The panel further determined that not declaring her registration with the NMC, in full knowledge of its existence, when filling out an application form was plainly misleading on the part of Mrs Calin. A reasonable and informed member of the public would be in no doubt that such conduct was dishonest.

There is no information before the panel from Mrs Calin to rebut such a conclusion.

The panel therefore found this charge to be proved.

Charge 4:

4) Incorrectly answered 'no' on the application to the question: 'Has your registration or license to practise ever been cancelled, suspended or removed for any reason?'.

This charge is found proved.

The panel had sight of the relevant application form from Mrs Calin to the Nursing and Midwifery Board of Ireland on 1 March 2018. On the requisite page, under the heading 'Has your registration or license to practise ever been cancelled, suspended or removed for any reason?' Mrs Calin has marked the box labelled "No".

The panel bore in mind that Mrs Calin was made subject to an interim suspension order on 19 December 2017. Her indication on the application form was therefore incorrect.

The panel therefore found this charge to be proved.

Charge 5:

5) Your response in Charge 4 was dishonest in that you knew your registration had been suspended by way of an Interim Order dated 19 December 2017.

This charge is found proved.

The panel considered it to be clear that Mrs Calin knew that she was subject to an interim suspension order – she had attended and engaged with the interim order

hearing on 19 December 2017 and had been sent a decision letter confirming the outcome (an interim suspension order) on 27 December 2017.

The panel further determined that not declaring this restriction, in full knowledge of its existence, when filling out an application form was plainly misleading on the part of Mrs Calin. A reasonable and informed member of the public would be in no doubt that such conduct was dishonest.

There is no information before the panel from Mrs Calin to rebut such a conclusion.

The panel therefore found this charge to be proved.

Charge 6:

6) Incorrectly answered 'no' on the application to the question: 'Are there any special conditions or restrictions currently attached to your registration certificate or license to practise?'

This charge is found proved.

The panel had sight of the relevant application form from Mrs Calin to the Nursing and Midwifery Board of Ireland on 1 March 2018. On the requisite page, under the heading 'Are there any special conditions or restrictions currently attached to your registration certificate or license to practise?' Mrs Calin has marked the box labelled "No".

The panel bore in mind that Mrs Calin was made subject to an interim suspension order on 19 December 2017 – a restriction attached to her registration certificate. Her indication on the application form was therefore incorrect.

The panel therefore found this charge to be proved.

Charge 7:

7) Your response in Charge 6 was dishonest in that you knew your registration was currently suspended by way of an Interim Order dated 19 December 2017.

This charge is found proved.

The panel considered it to be clear that Mrs Calin knew that she was subject to an interim suspension order – a restriction attached to her registration certificate. She had attended and engaged with the interim order hearing on 19 December 2017 and had been sent a decision letter confirming the outcome (an interim suspension order) on 27 December 2017.

The panel further determined that not declaring this restriction, in full knowledge of its existence, when filling out an application form was plainly misleading on the part of Mrs Calin. A reasonable and informed member of the public would be in no doubt that such conduct was dishonest.

There is no information before the panel from Mrs Calin to rebut such a conclusion.

The panel therefore found this charge to be proved.

Charge 8:

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

This charge is found proved.

The panel had sight of the witness statement of Ms 2, a practice development nurse at the Trust, in which it is stated:

As part of my role I went and introduced myself to [Mrs Calin]. I noticed right away that her English was not very good.

...

Her verbal and written communication was very limited. We advised [Mrs Calin] that she would benefit from trying to read English books, watch English programs in order to improve her basic day to day communication. [Mrs Calin] stayed in accommodation with another nurse who was from the same country as her and we advised her to practice [sic] speaking in English with her to help improve on this.

...

The trust ran a basic English course for foreign nurses in order to help with day to day English language and to help improve their understanding of it. [Mrs Calin] was scheduled to attend the course in June 2017, however [she] never attended this.

I had a meeting with [Mrs Calin] on 22/05/2017...

...

It was very difficult to understand what she was saying during this meeting and I did have big concerns about her English... [Mrs Calin] also said that she found it easier to speak in her own language and not English. I mentioned to [Mrs Calin] the level of support she had been given in relation to assisting with her grasp of English. She had not done any studying in her own time and had not read the hospital English book I had asked her to read.

The panel considered the minutes of the meeting between Ms 2 and Mrs Calin on 22 May 2017, the details of which are analogous to those in the statement quoted above.

The panel had sight of the statement of Ms 3, Matron for Elderly Care at the Trust, in which it is stated:

I had an informal chat with [Mrs Calin] on 19th May 2017...

During this meeting I asked [Mrs Calin] what you would do if someone said “cardiac arrest” and her reply to this was “what is cardiac arrest?” This is very basic and it is a well-known phrase used throughout the world? [sic]

...

When [Mrs Calin] was asked a question she would always say she understood when it was obvious that she did not understand. We were not used to a nurse requiring this level of support.

We have had other overseas nurses who have struggled with English, however they have been like sponges taking everything in and want to learn so quickly. The difference with [Mrs Calin] was unbelievable she was not like this at all. [sic] She never helped herself and had a poor attitude. At one point I advised [Mrs Calin] to speak with a new overseas nurse who worked on another ward but she never did this either? [sic] I don't think the issues with [Mrs Calin] were just concerning her grasp of English as she was able to speak it when she wanted to.

The panel also considered the minutes of the meeting between Ms 3 and Mrs Calin on 19 May 2017, the details of which are analogous to those in the statement quoted above. During this meeting, Mrs Calin repeatedly states that others “talked too fast” and she did not understand them.

The panel has no evidence before it that Mrs Calin has completed an IELTS assessment to the requisite standard to demonstrate a competent knowledge of the English language.

Taking all the above into account, the panel found the charge to be proved.

Charge 9:

9) *Did not pass the Basic Life Support Test on:*

- a) *7 April 2017.*
- b) *21 April 2017.*
- c) *11 May 2017.*

This charge is found proved.

The panel had sight of the statement of Ms 4, who indicated that Mrs Calin was not able to pass the Basic Life Support Test on the dates as alleged in charge 9; Ms 4 was also one of the assessors at Mrs Calin's assessment on 11 May 2017. The panel also had sight of the "Adult resuscitation level 2 assessment summary", which confirms this fact.

On 7 April 2017, Mrs Calin was "unable to use the defibrillator in the AED part of the Resus session". On 21 April 2017, Mrs Calin was unable to "repeat back the acronym 'DRAB' or explain its meaning" or to "articulate how to put a crash call within the trust, initially thinking stating '999' despite attending previous training" [sic]. On 11 May 2017, Mrs Calin was unable to "demonstrate confirmation of cardiac arrest and required several prompts to support", or "demonstrate effective chest compressions (rate, depth and position). It was also "evident that [Mrs Calin] was unsure of where to place the defibrillator pads and could not articulate when a shock could be given", and "an unsafe amount of time passed before [Mrs Calin] placed the defibrillator pads on" – "she also required several prompts and therefore this element of the assessment could not be passed."

Taking all the above into account, the panel found this charge to be proved.

Charge 10:

10) Were unable to demonstrate on more than one occasion that you could adequately check a person's respiratory rate.

This charge is found proved.

The panel had sight of the statement of Ms 2, in which it states:

On one occasion I attended ward G6 to see how [Mrs Calin] was getting on. I noticed that she was not doing full set of observations. We went into the office to practice some basic observations. [sic]

...

The next observation [Mrs Calin] was asked to carry out was to check the respiratory rate. [Mrs Calin] did not know how to do this as well. This is again a very basic task and I have showed her how to do it.

...

Two days later I have tried observations with [Mrs Calin] again...

[Mrs Calin] was once again unable to check respiratory rate and I have again explained to her how to do it.... I once again demonstrated to her how to count respiratory rate, repeating the instructions I gave to her 2 days ago.

The panel bore in mind that there is no information before it to challenge the accuracy of this account. It is clear from the evidence provided that, on more than one occasion, Mrs Calin was unable to demonstrate that she could adequately check a person's respiratory rate.

The panel therefore found this charge to be proved.

Charge 11:

11) Were unable to demonstrate on more than once occasion that you could manually check a person's pulse.

This charge is found proved.

The panel had sight of the statement of Ms 2, in which it states:

On one occasion I attended ward G6 to see how [Mrs Calin] was getting on. I noticed that she was not doing full set of observations. We went into the office to practice some basic observations. [sic]

...I asked her to manually check my pulse which is a very basic task for nurses. She was unable to do this and was feeling for my pulse in different aspects of my lower arm. I had to demonstrate to her how to do this properly and it took a while to get this.

...

Two days later I have tried observations with [Mrs Calin] again...

It took a few attempts as well before [Mrs Calin] was able to count my pulse manually.

The panel bore in mind that there is no information before it to challenge the accuracy of this account. It is clear from the evidence provided that, on more than one occasion/more than once, Mrs Calin was unable to demonstrate that she could manually check a person's pulse.

The panel therefore found this charge to be proved.

Charge 12:

12) Were unable to demonstrate you could check a person's temperature using a tympanic ear thermometer.

This charge is found proved.

The panel had sight of the witness statement of Ms 2, in which it is stated:

Another basic check that [Mrs Calin] was asked to demonstrate on me was to check my temperature using a tympanic ear thermometer. She was also unable to do this and did not put the thermometer in my ear properly.

...

This is a very basic check and [Mrs Calin] struggled with it which again had me very worried.

In her supplementary witness statement, Ms 2 confirms this account, writing:

On 12 May 2017 I decided to reassess [Mrs Calin] on her vital signs skills. [Mrs Calin] was not able to insert the tympanic thermometer properly.

The panel bore in mind that there is no information before it to challenge the accuracy of this account. It determined that, from the evidence provided, Mrs Calin was unable to demonstrate that she could check a person's temperature using a tympanic ear thermometer.

The panel therefore found this charge to be proved.

Charge 13:

13) Were unable to demonstrate that you could satisfactorily complete the observation charts on patients to gain the correct NEWS score.

This charge is found proved.

The panel had sight of the statement of Ms 2, in which it is written:

I told the senior sister that [Mrs Calin] cannot be doing observations on patients unsupervised. It was agreed that [Mrs Calin] would always work with a Band 6 nurse on the ward. I actually said to the Matron at one point I am convinced [Mrs Calin] is not a nurse as she was unable to carry out very basic nursing tasks.

In the "Learning Log for Supporting Nurses with identified learning points", dated 10 May 2017, it is noted that "When I gave her another example of obs to plot down on the NEWS chart [Mrs Calin] was unable to calculate the correct score."

Furthermore, in Ms 3's statement, it is written that:

[Mrs Calin] did not have a grasp of the very basic nursing tasks such as completing the observation charts to gain the correct NEWS score and escalate if they are outside the expected boundaries. She would say she understood what

she was being told and would then go away and do something completely different.

In the statement of Ms 5, a Ward Senior Sister at the Trust, it is noted that Mrs Calin

did not appear to full understand the NEWS scoring system or what to do in an emergency situation... [she] was also unable to act promptly if a patient's condition deteriorated suddenly.

The panel bore in mind that there is no information before it to challenge the accuracy of these accounts. It determined that, from the evidence provided, it is more likely than not that Mrs Calin was unable to demonstrate that she could satisfactorily complete the observation charts on patients to gain the correct NEWS score.

The panel therefore found this charge to be proved.

Charge 14:

14)Did not demonstrate that you could escalate concerns about a patient autonomously.

This charge is found proved.

The panel considered Ms 3's statement, in which it is written that:

[Mrs Calin] did not have a grasp of the very basic nursing tasks such as completing the observation charts to gain the correct NEWS score and escalate if they are outside the expected boundaries. She would say she understood what she was being told and would then go away and do something completely different.

In the statement of Ms 5, it is noted that Mrs Calin

did not appear to full understand the NEWS scoring system or what to do in an emergency situation... [she] was also unable to act promptly if a patient's condition deteriorated suddenly.

The panel also took into account the minutes of a meeting between Ms 3 and Mrs Calin on 19 May 2017. It is noted there that “the previous week when we talked about what to do if [Mrs Calin] is asked to put out a 2222 call her answer concerned me” [sic]. Mrs Calin confirms that she would call 2222 if asked to put out a NEWS call, but then does not give the specific bed-and-ward identificatory numbers, as is required – only the ward number.

The panel bore in mind that there is no information before it to challenge the accuracy of these accounts. It determined that, from the evidence before it, it is more likely than not that Mrs Calin did not demonstrate that she could escalate concerns about a patient autonomously.

The panel therefore found this charge to be proved.

Charge 15:

15)Did not demonstrate that you could provide safe care to and management of patients.

This charge is found proved.

In the statement of Ms 3, it is written that:

[Mrs Calin] was always assigned to another member of staff and was never left on her own. This was due to her lack of understanding of how to provide basic

nursing care to patients at all times. This was to protect patients as well as herself.

Ms 6, the Head of Nursing at the Trust, notes in her statement that:

I have 12 records of working that [Mrs Calin] completed and a further 16 learning logs, which were completed by [Mrs Calin] and the staff supporting her. She was also supervised all the time she was at Frimley. We would not normally have someone receiving that level of supervision for 10 weeks.

In Ms 5's statement, it is written that:

I did not feel confident leaving [Mrs Calin] to work alone due to her performance as a nurse.

The panel also had sight of the minutes of a meeting between Ms 3 and Mrs Calin on 19 May 2017. It is indicated there that Mrs Calin was told by another nurse to stay with a patient, who had a high falls risk due to his continual wandering of the ward, and that Mrs Calin subsequently left that patient unsupervised. He fell, luckily not injuring himself.

The panel bore in mind that there is no information before it to challenge the accuracy of these accounts. It determined that, from the evidence before it, it is more likely than not that Mrs Calin did not demonstrate that she could provide safe care to and management of patients.

The panel therefore found this charge to be proved.

Current impairment:

Having made its finding on all the facts, the panel then moved on to consider, whether the facts found proved amount to misconduct and a lack of competence - and, if so, whether Mrs Calin's fitness to practise is currently impaired, by reason of misconduct, lack of competence, or lack of knowledge of English. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Decision on misconduct and lack of competence

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel had regard to the terms of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) (the Code), specifically:

Practise effectively

6 Always practise in line with the best available evidence

To achieve this, you must:

6.2 maintain the knowledge and skills you need for safe and effective practice

7 Communicate clearly

To achieve this, you must:

7.4 check people's understanding from time to time to keep misunderstanding or mistakes to a minimum

7.5 be able to communicate clearly and effectively in English

8 Work cooperatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

8.4 work with colleagues to evaluate the quality of your work and that of the team

Preserve safety

13 Recognise and work within the limits of your competence

To achieve this, you must:

13.1 accurately assess signs of normal or worsening physical and mental health in the person receiving care

Promote professionalism and trust

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times...

22 Fulfil all registration requirements

To achieve this, you must:

22.1 meet any reasonable requests so we can oversee the registration process

As regards to the issue of misconduct, the panel was of the view that Mrs Calin's actions, in respect of charges 1 – 7, did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mrs Calin, in not cooperating with a direction by her regulator and separately acting in a seriously dishonest fashion, breached fundamental tenets of the nursing profession. The panel had no doubt that a fellow professional would consider Mrs Calin's actions found proved in charges 1-7 to be "deplorable". Furthermore, her misconduct placed patients at a risk of harm; were her dishonest application not appropriately brought to the attention of the NMC, Mrs Calin may have been permitted to work unrestricted in Ireland, when an investigation into her nursing practice in the United Kingdom was underway and she was subject to an interim suspension order.

The panel found that Mrs Calin's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

The panel turned its attention to the issue of lack of competence. The NMC has defined a lack of competence as:

A lack of knowledge, skill or judgment of such a nature that the registrant is unfit to practise safely and effectively in any field in which the registrant claims to be qualified or seeks to practice.

In considering whether the facts found proved (in respect of charges 9-15) amount to a lack of competence, the panel concluded that Mrs Calin breached the aforementioned paragraphs of the Code, which is the standard by which every registered nurse is measured.

The panel bore in mind, when reaching its decision, that Mrs Calin should be judged by the standards of the reasonable average Registered Nurse and not by any higher or more demanding standard.

Mrs Calin's actions in charges 9-15 relate to basic areas of nursing and clinical skills – in some cases after a demonstration of such skills had recently occurred. Regardless of any lack of understanding of English, a registrant ought to know how to check a patient's pulse, for example.

Taking into account the reasons given by the panel for the findings of the facts, the panel has concluded that Mrs Calin's practice was below the standard that one would expect of the average Registered Nurse, acting in the role that Mrs Calin was in. She is currently unfit to practise safely and effectively in the field of Adult Nursing.

In all the circumstances, the panel determined that Mrs Calin's performance demonstrated a lack of competence.

Decision on impairment

The panel first considered the evidence it had received in respect of Mrs Calin's knowledge of the English language. It took into account its previous findings at the factual stage, in respect of charge 8.

The panel further considered that there was no evidence before it that Mrs Calin had taken sufficient steps to improve her English skills to the required standard; Mrs Calin does not apparently have the requisite for effective communication, as demonstrated by the fact that she, a registered nurse, had to ask what a "cardiac arrest" was. The panel bore in mind that a lack of effective communication will negatively affect patients, relatives, and the wider professional community. It considered that effective communication is a fundamental tenet of the nursing profession, and that Mrs Calin has, in her circumstances, breached that tenet. The panel concluded that it would be unsafe for a registered nurse to practise without evidence of effective oral communication and reading skills.

With regard to the public interest, the panel considered that the public would expect registered nurses to have an appropriate knowledge of English, in order to communicate with patients, patients' relatives, and the wider professional community.

The panel therefore determined that Mrs Calin's fitness to practise is currently impaired by reason of her lack of appropriate knowledge of the English language.

The panel next went on to decide if, as a result of her misconduct and lack of competence, Mrs Calin's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure

that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) in reaching its decision, in paragraph 74 she said:

In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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; and/or*
- b. *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. *has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

The panel considered that all four limbs of the *Grant* “test” were engaged in this case. It reminded itself of its determination in respect of Mrs Calin’s misconduct and lack of competence. The panel considered that Mrs Calin’s failings put patients at an unwarranted risk of harm, brought the nursing profession into disrepute, breached fundamental tenets of the nursing profession, and that she acted dishonestly.

There is no evidence before this panel of any insight by Mrs Calin into her failings, nor any remorse by her for their occurrence. Furthermore, the panel has seen no information to suggest that Mrs Calin has remediated her practice in respect of her lack of competence, or addressed the dishonesty charges or non-compliance with the NMC direction, at all.

The panel noted that Mrs Calin has sought to blame others for her actions, indicating that she did not receive support. This is contrary to the evidence before the panel which demonstrates that Mrs Calin was supported to a degree above and beyond what is expected with regards to registered nurses.

Taking all the above into account, the panel considered there to be a high risk of repetition of Mrs Calin’s misconduct and lack of competence. It therefore decided that a

finding of impairment is necessary on the grounds of public protection, in respect of these matters.

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. The panel determined that, in this case, a finding of impairment on public interest grounds was required, to declare and uphold the standards of behaviour and conduct expected of a registered nurse, and to maintain public confidence in the nursing profession and the NMC as regulator. An informed member of the public would, in particular, be appalled by Mrs Calin's dishonest misconduct in applying to join another nursing register when in full knowledge that she was suspended from nursing in the United Kingdom.

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

Determination on sanction:

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Calin off the register. The effect of this order is that the NMC register will show that Mrs Calin has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor. It bore in mind the NMC's Sanction Bid (Striking-Off Order), but was not bound by such a bid. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the Sanctions Guidance ("SG") published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel considered the aggravating factors in this case to be as follows:

- Mrs Calin failed to take an IELTS assessment as directed by her regulator – the NMC;
- Mrs Calin made a dishonest application to another regulator;
- Mrs Calin remained under sustained and close supervision during her time at the Trust;
- Mrs Calin demonstrated poor insight into her failings while at the Trust; and
- Mrs Calin sought to blame others for her English language problems and seemingly was not willing to learn.

The panel found there to be no mitigating factors in this case. The fact that Mrs Calin has no previous regulatory referrals in respect of her practice is what is expected of a registered nurse and does not amount to mitigation.

The panel first considered whether to take no action or impose a caution order but concluded that neither of these course of actions would be appropriate in view of the seriousness of the case, the risk of repetition identified, and the panel's finding of impairment on public protection grounds. The panel decided that it would be neither proportionate nor in the public interest to take no further action or impose a caution order; such sanctions would not adequately protect the public.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. In the light of the nature of totality of the charges found proved, the panel concluded that there are no practical or workable conditions that could be formulated. The panel had no confidence that Mrs Calin would engage with a conditions of practice order. Furthermore the panel concluded that the placing of conditions on Mrs Calin's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Mrs Calin's failings amounted to a course of conduct, not a single incident of misconduct or lack of competence. There is evidence of a deep-seated attitudinal issue, as Mrs Calin has sought to blame others for her failings and has acted in a seriously dishonest fashion. Mrs Calin failed to comply with a direction from her regulator, and did not engage with the assistance offered to her when she was employed at the Trust. There is no evidence of any insight on Mrs Calin's part into her behaviour and its impact on others and public confidence in the nursing profession. The panel considered there to be significant risk of repetition, and a real risk to patients.

The panel had sight of the NMC guidance on dishonesty. It considered that Mrs Calin breached her duty of candour in seeking to apply to another nursing regulator in a wilfully misleading manner. She sought to hide the allegations into her previous failings, and therefore instigated a potentially direct risk to patients – were she to practise unrestricted in Ireland when her practice had been rightfully and significantly limited in the United Kingdom. Furthermore, her dishonest misconduct was premeditated in that she deliberately filled out the relevant application form in full knowledge that what she wrote was false and misleading.

Balancing all of these factors, the panel has determined that a suspension order would not be an appropriate or proportionate sanction.

The panel bore in mind that the charges found proved in this case do not solely relate to lack of competence or lack of knowledge of English, but also to misconduct. A striking-off order is therefore a sanction available to this panel.

Mrs Calin's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Calin's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mrs Calin's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was 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.

Determination on Interim Order

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.