

**Nursing and Midwifery Council  
Fitness to Practise Committee**

**Substantive Order Review Hearing**  
Friday 15 January 2021

**Virtual Hearing**

<b>Name of Registrant:</b>	<b>Delia Maria Naghi</b>
<b>NMC PIN:</b>	15A0012C
<b>Part(s) of the register:</b>	Registered Nurse – sub part 1 Adult Nursing (2 January 2015)
<b>Country of registered address:</b>	Romania
<b>Type of case:</b>	Lack of competence and lack of knowledge of English
<b>Panel members:</b>	Avril O'Meara (Chair, Lay member) Deirdre O'Donnell (Registrant member) Sadia Zouq (Lay member)
<b>Legal Assessor:</b>	Suzanne Palmer
<b>Panel Secretary:</b>	Kevin Toskaj
<b>Nursing and Midwifery Council:</b>	Represented by Iulia Saran, Case Presenter
<b>Ms Naghi:</b>	Not present and not represented
<b>Order being reviewed:</b>	Suspension order (3 months)
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	<b>Striking-off order to come into effect on 9 February 2021 in accordance with Article 30(1)</b>

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Ms Naghi was not in attendance and that the Notice of Hearing had been sent to Ms Naghi's email address by secured encrypted email on 8 December 2020. There had been no response to that notice or to subsequent email correspondence asking her to confirm whether or not she proposed to attend.

Ms Saran, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Saran referred the panel to a witness statement from an officer of the NMC confirming that the notice of hearing had been sent by electronic email to Ms Naghi's registered email address on 8 December 2020. She submitted that service was effected in accordance with the Rules as there is a statement proving that an email was sent from the NMC and there is no requirement to prove that a registrant has received the notice.

The panel took into account the advice of the legal assessor in relation to Rules 11, 21 and 34. She advised that she took a different view from Ms Saran of the interpretation of Rule 34(4). Rule 34(4) provides that:

- "The service of any notice or document under the Rules may be proved by –*
- (a) A confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service;*
  - (b) A confirmation of receipt of the notice or document sent by electronic mail; or*
  - (c) A signed statement from the person sending by ordinary post or delivering the notice in accordance with this rule".*

The legal assessor advised that it was her view that the effect of Rules 34(4)(b) and (c) was that, unlike the position with postal service, a statement from the person sending the notice was not sufficient to prove effective service in the case of an emailed notice of

hearing. In those circumstances, her view was that the Rules required evidence in the form of confirmation of receipt of the notice, for example an electronic delivery notification. Ms Saran took a different view, which was that the words “or delivering” in Rule 34(4)(c) were wide enough to permit proof of service by a statement showing that the email was sent. The legal assessor advised that there was not, to her knowledge, any case law on this issue, the amendment to the rules permitting email service having been made recently. She advised the panel that there were competing interpretations of the effect of Rule 34(4) and that it was a matter for the panel to determine the approach it should take.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and access code for the virtual hearing and, amongst other things, information about Ms Naghi’s right to attend, be represented and call evidence, as well as the panel’s power to proceed in her absence.

The panel noted that the email had been sent to what was clearly, on the basis of the available documentation, an active email address for Ms Naghi. Ms Naghi had in the past used that address to correspond with the NMC, including an email as recently as October 2020. The panel noted that for postal service, the Rules did not require proof of delivery or receipt, only proof of posting. The panel considered that the Rules left some room for ambiguity. However, it was prepared in the circumstances to give a broad interpretation to the words “or delivering the notice” in Rule 34(4)(c), and to find that they were sufficient to allow service to be proved by a statement confirming that the notice was sent by email.

In the light of all of the information available, the panel was therefore satisfied that Ms Naghi has been served with notice of this hearing by email in accordance with the requirements of Rules 11 and 34.

### **Decision and reasons on proceeding in the absence of Ms Naghi**

The panel next considered whether it should proceed in the absence of Ms Naghi. The panel had regard to Rule 21 and heard the submissions of Ms Saran who invited the panel to continue in the absence of Ms Naghi. Rule 21 states:

*'(2) Where the registrant fails to attend and is not represented at the hearing, the Committee -*  
*(a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;*  
*(b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined*  
*notwithstanding the absence of the registrant; or*  
*(c) may adjourn the hearing and issue directions.'*

Ms Saran submitted that there had been no engagement at all by Ms Naghi with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Naghi. In reaching this decision, the panel has considered the submissions of Ms Saran and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It determined that:

- Ms Naghi has not engaged with the NMC since an email dated 22 October 2020 in which she stated that it was now more than three years *'... since I was continuously blamed by the NMC... Why do you think I would like to return to the UK as a nurse?????????'*;
- Ms Naghi was given the opportunity to engage with this hearing, both by the emailed notice and by other email communications with her;
- Ms Naghi has not responded to any of the emails sent to her about this hearing;
- In the circumstances the panel considers that Ms Naghi has chosen not to attend or participate and has voluntarily absented herself from the hearing;

- Based on her earlier correspondence, Ms Naghi has now returned to Romania and is living and working there with no intentions to return to the UK;
- No application for an adjournment has been made by Ms Naghi;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case given that the current order is due to lapse on its expiry at the end of 9 February 2021.

In these circumstances, although the panel acknowledged that there would be some disadvantage to Ms Naghi inherent in proceeding in her absence, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Ms Naghi.

### **Decision and reasons on review of the substantive order**

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

The panel decided to impose a striking-off order on the expiry of the current suspension order, which is due to expire at the end of 9 February 2021.

This order will come into effect at the end of 9 February 2021 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a suspension order, originally imposed by a panel of the Fitness to Practise Committee on 11 October 2018, for a period of 12 months. At the first review on 30 October 2019, the suspension order was extended for a further 12 months. On 2 October 2020, a suspension order was imposed for a further three months.

The charges found proved which resulted in the imposition of the substantive order were as follows:

*That you, a registered nurse:*

- 1) *Whilst working at the Great Western Hospital NHS Foundation Trust ('the Trust'), failed to demonstrate the standard of knowledge, skill and judgement required for practice without supervision as a Registered Nurse. In particular, from January 2017 to June 2017, you:*
  - a) *Did not achieve all of the required core standards of the 'Stepping Up' preceptorship programme within the probation period;*
  - b) *Did not fully meet your 'Week 10 Expectations';*
  - c) *On or around 28 February 2017, did not demonstrate adequate time management when administering a drugs round;*
  - d) *On or around 1 March 2017, inappropriately cleaned a patient with Clinell cleaning wipes and left a commode unattended with its brakes off;*
  - e) *...;*
  - f) *On 11 May 2017:*
    - i) *removed a patient's bandage incorrectly in that you did not do this aseptically; and/or*
    - ii) *inappropriately attempted to administer PRN medication in addition to analgesia to the same patient.*
  - g) *On an unknown date, did not act with appropriate care and/or urgency when instructed to retrieve medication for a patient with Deep Vein Thrombosis;*
  - h) *On an unknown date, attempted to incorrectly administer intravenous antibiotic medication;*
  - i) *On an unknown date, inappropriately attempted to take a patient's blood sugar readings from that patient's thumb.*

2) *Do not have the necessary knowledge of English to practice safely and effectively.*

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

*'The panel considered whether Ms Naghi's fitness to practise remains impaired.*

*The panel had regard to the information before it, noting that since the previous review hearing, there had been occasions between January and April 2020, where Ms Naghi had been in contact with the NMC in relation to a matter separate from her substantive order and the ongoing fitness to practise concerns in her case. Aside from that correspondence, Ms Naghi had not engaged with the NMC since the previous review hearing. There was no information before the panel to suggest that Ms Naghi had developed insight into her failings, nor any evidence to suggest that she had taken any steps to remediate the concerns in this case. The panel also had no information to suggest that Ms Naghi had undergone an NMC approved English language test, or that she had taken any steps to improve her English language skills.*

*Given the lack of evidence of insight and remediation on Ms Naghi's part, the panel considered that a risk of repetition remains, and that Ms Naghi remains liable to put patients at risk of harm by reason of her lack of competence to practise safely as a nurse, and by reason of her lack of sufficient knowledge of English. The panel therefore determined that a finding of impairment remains 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. Whilst the panel noted Ms Naghi's correspondence with the NMC in relation to a separate matter, it considered that she had not*

*engaged with these proceedings in order to address the ongoing concerns. The panel considered that registrants have a duty to engage with their regulator. The panel considered that the burden was upon Ms Naghi to satisfy the panel that she was no longer impaired. It considered that Ms Naghi's lack of meaningful engagement with these proceedings, in terms of providing evidence for the panel to consider, demonstrated a disregard for the NMC as a regulator. The panel therefore determined that a finding of impairment remains necessary on public interest grounds, in order to maintain confidence in the nursing profession and in the NMC as a regulator.*

*For these reasons, the panel finds that Ms Naghi's fitness to practise remains impaired.'*

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

*'The panel next considered whether to impose a further suspension order. The panel considered that a suspension order would protect members of the public from the outstanding risks identified with Ms Naghi's practice.*

*The panel noted that the previous reviewing panel decided to impose a suspension order, and stated the following in its determination:*

“The panel was of the view that a further suspension order would be an appropriate and proportionate response. A period of 12 months would allow Ms Naghi a further opportunity to reengage with the NMC, her regulator. Further, this period will allow Ms Naghi further time to begin to develop her insight, undertake any relevant training which address the concerns found proved and successfully pass an NMC approved English language test, should she decide to do so.”

*The panel was disappointed that Ms Naghi had failed to use the opportunity given to her to engage with the NMC and to provide this panel with evidence of insight, remediation and of any steps taken to improve her English language skills.*

*The panel noted that it does not have the option to impose a striking-off order in Ms Naghi's case, as she has not been subject to substantive orders of suspension or conditions of practice for a continuous period of two years. However, the panel wished to emphasise to Ms Naghi, that if she continues not to meaningfully engage with these proceedings, and not to demonstrate evidence of any steps she has taken to remediate her clinical practice, a future reviewing panel may decide that a striking-off order is appropriate at that stage, as the next reviewing panel will have this sanction available to it.*

*The panel has concluded that a suspension order is the only appropriate and proportionate sanction in the circumstances of this case. This suspension order will give Ms Naghi a further, and perhaps final, opportunity to meaningfully engage with these proceedings, and to demonstrate evidence of insight, remediation and improvement of her English language skills.*

*The panel decided to impose this suspension order for a period of three months. The panel considered that this was a sufficient period of time for Ms Naghi to engage with the NMC, to undertake an English language test and provide results of this to a future panel and to provide additional evidence of insight and remediation.'*

## **Decision and reasons on current impairment**

The panel has considered carefully whether Ms Naghi'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. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement 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 Saran on behalf of the NMC who directed the panel to the relevant pages in the NMC bundle and provided it with the background facts to the case and the decisions of previous reviewing panels.

Ms Saran submitted that a finding of impairment remains necessary on the grounds of public protection and is also otherwise in the public interest. She submitted that the charges proved are likely to be repeated as there has not been any evidence received by the NMC in relation to any insight or remediation.

Ms Saran referred the panel to *Cohen v General Medical Council [2008] EWHC 581* and *CHRE v Nursing & Midwifery Council, Paula Grant [2011] EWHC 927*, setting out principles when approaching a finding of impairment.

With regard to sanction, Ms Saran invited the panel to use its discretion to impose the sanction it deems appropriate in accordance to the 'NMC's Sanctions Guidance' (SG). She submitted that Ms Naghi has had an opportunity to engage with the NMC during this suspension order but has chosen not to, and reminded the panel that a strike off order is a sanction available to it. Ms Saran submitted that a further suspension order may not serve any useful future purpose given Ms Naghi's disengagement with the NMC and submitted that a strike off order may be necessary in those circumstances.

The panel heard and 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 considered whether Ms Naghi's fitness to practise remains impaired.

The last reviewing panel determined that Ms Naghi was liable to repeat matters of the kind found proved. Today's panel has not received any new material information that would undermine that decision. The panel noted that this case involves serious and sustained failings, over a period of time, in respect of Ms Naghi's clinical competence and her ability to communicate adequately in the English language to be able to practise safely. These failings occurred despite supervision and support during her probationary period, and despite a transfer to a less clinically demanding setting during that probationary period.

The panel considered that the failings in this case are remediable, although they have not yet been remedied. The panel further noted that previous panels had identified concerns about Ms Naghi's apparent lack of remorse and insight, and about an absence of evidence of any steps taken by her to acknowledge and remedy the failings identified. At today's hearing there was no new evidence to demonstrate any further development in terms of insight or remorse, or to demonstrate any attempts to remedy the issues of concerns or to update or develop Ms Naghi's clinical knowledge or skills or her facility with the English language. If anything, it seemed likely that (as previous panels had identified) her language skills would, if anything, have deteriorated since her return to Romania.

The panel further noted that the email from Ms Naghi to the NMC dated 22 October 2020 gave rise to concerns that there might be an attitudinal aspect to this case. That email suggested an unwillingness to embark on a process of remedying her clinical practice in order to prevent any future recurrence of the issues identified.

In light of all these matters, this panel determined that Ms Naghi is still liable to repeat matters of the kind found proved. Any repetition would place patients at risk of harm and would bring the profession into disrepute. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne 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 determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

## **Decision and reasons on sanction**

Having found Ms Naghi'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 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 or to impose a caution order, but concluded that both of these would be inappropriate in this case. The panel noted that it had found current impairment and a risk of harm to patients if Ms Naghi were to resume unrestricted practice at this stage. No further action or a caution order would not provide protection to the public and would not adequately reflect the serious and sustained nature of the failings in order to satisfy the wider public interest considerations in this case.

The panel next considered whether a conditions of practice order on Ms Naghi's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the serious and wide-ranging nature of the issues identified at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. It further noted that Ms Naghi appears to be working in Romania now. It seems unlikely, on the basis of a lack of any current information, that her knowledge of English is at a level to allow her to work safely even under conditions. The panel further noted that the attitudinal concerns identified in Ms Naghi's recent email communication did not give the panel any confidence that Ms Naghi would be able or willing to comply with conditions imposed on her practice. In all the circumstances the panel was not able to formulate conditions of practice that would adequately address the concerns relating to Ms Naghi's lack of competence and lack of knowledge of English. Moreover, in light of Ms Naghi's apparent settled intention not to return to nursing in the UK, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a further suspension order. The panel noted that Ms Naghi has had many opportunities to engage with the NMC and provide evidence of further training and the completion of an NMC approved English language test. The panel determined that a further period of suspension would not serve any useful purpose in all the circumstances as there has been a lengthy duration of disengagement with the NMC and there appears to be no intention of any future engagement, highlighted by Ms Naghi's email dated the 22 October 2020.

In these circumstances the panel considered that the situation had now become incompatible with ongoing registration and required finality. There has been an absence of any evidence of progress, meaningful engagement, or remediation since the substantive hearing over two years ago. Given the tone of Ms Naghi's email on 22 October 2020, this situation is unlikely to change. There are also concerns about Ms Naghi's professionalism and attitude.

The panel noted that the previous reviewing panel when deciding to impose a short suspension order, stated the following in its determination:

*'The panel noted that it does not have the option to impose a striking-off order in Ms Naghi's case, as she has not been subject to substantive orders of suspension or conditions of practice for a continuous period of two years. However, the panel wished to emphasise to Ms Naghi, that if she continues not to meaningfully engage with these proceedings, and not to demonstrate evidence of any steps she has taken to remediate her clinical practice, a future reviewing panel may decide that a striking-off order is appropriate at that stage, as the next reviewing panel will have this sanction available to it.'*

The panel considered that this had effectively put Ms Naghi on notice that a further absence of engagement could result in her permanent removal from the register. Despite this she had not engaged with or provided any new information for this hearing to demonstrate insight or remediation. On the contrary, she had sent an email suggesting no intention to engage any further with the process.

In all the circumstances, the panel considered that although a further period of suspension could protect the public, public confidence in the profession and the regulatory process would not be upheld by a lesser sanction than to remove Ms Naghi's name from the register. The panel therefore determined that it was necessary to take action to prevent Ms Naghi from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

The panel therefore concluded that the only appropriate and proportionate sanction was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 9 February 2021 in accordance with Article 30(1).

This decision will be confirmed to Ms Naghi in writing.

That concludes this determination.