

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

**Substantive Order Review Hearing
Thursday 16 September 2021**

Virtual Hearing

Name of registrant: Ms Gabriela Carmen Calescu

NMC PIN: 15A0598C

Part(s) of the register: Registered Nurse – Sub part 1
Adult nursing – January 2015

Area of registered address: Italy

Type of case: Misconduct/Lack of knowledge of English

Panel members: Gregory Hammond (Chair, Lay member)
Claire Clarke (Registrant member)
Peter Wrench (Lay member)

Legal Assessor: Trevor Jones

Panel Secretary: Kevin Toskaj

Nursing and Midwifery Council: Represented by Beverley Da Costa, Case
Presenter

Ms Calescu: Not present and not represented

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Strike-off order to come into effect on 25
October 2021 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Calescu was not in attendance and that the electronic Notice of Hearing had been sent to her email address on 18 August 2021.

Ms Da Costa, 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).

The panel accepted the advice of the legal assessor.

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

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

Decision and reasons on proceeding in the absence of Ms Calescu

The panel next considered whether it should proceed in the absence of Ms Calescu. The panel heard the submissions of Ms Da Costa, who referred the panel to the numerous attempts from the NMC to contact Ms Calescu and invited the panel to continue in her absence. Ms Da Costa submitted that Ms Calescu had been notified of today's hearing and voluntarily absented herself.

Ms Da Costa submitted that there had been no engagement by Ms Calescu with the NMC in relation to today's hearing 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 Calescu. In reaching this decision, the panel has considered the submissions made by Ms Da Costa and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones (Anthony William) (No.2)* [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment had been made by Ms Calescu;
- Ms Calescu has not provided an explanation as to why she is not attending the hearing, despite being contacted by the NMC;
- There is no reason to suppose that adjourning would secure Ms Calescu's attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Ms Calescu.

Decision and reasons on review of the substantive order

The panel decided to make a striking-off order.

This order will come into effect at the end of 25 October 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 Fitness to Practise panel on 27 March 2019 for 12 months. The order was extended for a period of 6 months at a review hearing on 6 April 2020. On 17 September 2020, the suspension order was extended for a further 12 months.

The current order is due to expire at the end of 25 October 2021.

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

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

'That you, a registered nurse:

- 1. Failed to cooperate with an NMC investigation in that you refused, without good reason, to adhere to an NMC direction of 15 November 2017 to take an International English Language Testing System assessment.*

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

AND

That you, a registered nurse:

- 2. 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 was of the view that Ms Calescu's refusal to sit the IELTS assessment as directed by her regulator had the potential to negatively impact the public's perception of the nursing profession. The position today, as it was at the previous review hearing, was that there was no objective evidence before the panel that Ms Calescu had sought to obtain an independent assessment of her English language skills or any other evidence of attempts to improve her English.

The panel was of the view that Ms Calescu's lack of knowledge of the English language is remediable. However, it considered that there was no evidence before it to suggest that she had made any real attempts at remediation. There was no evidence of test scores or information that Ms Calescu had made attempts to take the IELTS test or equivalent test.

The panel was of the view that there had been no material change in circumstance since the substantive hearing. Ms Calescu has not provided evidence of insight into how her lack of the necessary knowledge of the English language might put patients at risk of harm, nor has she taken steps to remediate the concerns. The panel noted that in her email to this panel Ms Calescu had stated that she considered her knowledge of English to be sufficient. This, in the panel's view, demonstrated a concerning lack of insight into the findings of previous panels and the need for a nurse to demonstrate, when directed to do so by the NMC, their knowledge and competence in a fundamental area of nursing practice. Consequently, the panel decided that there is a risk of harm to the public should Ms Calescu be allowed to practise unrestricted.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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.

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

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

'The panel next considered whether placing a conditions of practice order on Ms Calescu's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel considered imposing a condition that would prevent Ms Calescu from practising as a registered nurse until she sat the IELTS assessment, or any other NMC approved English language test, and was able to demonstrate the required level of proficiency of the English language. However, the panel decided that such a condition of practice would amount to a suspension, and therefore would not be appropriate. It therefore decided that a conditions of practice order would not be an appropriate response nor adequately address the public interest concerns in Ms Calescu's case.

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

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Calescu further time to fully reflect on her failings. The panel concluded that a further 12 months suspension order would be the appropriate and proportionate response and would afford Ms Calescu adequate time in the light of the current Covid-19 pandemic, to further develop her insight, provide evidence of cooperation with the NMC, and to take steps towards improving her English language skills by attending classes or preparing for and sitting the IELTS test or equivalent.

The panel sought to remind Ms Calescu that it is her responsibility as a registered nurse to provide objective evidence that she has the knowledge of English which is necessary for the safe and effective practice of nursing; her belief that she speaks English correctly is not sufficient.

The panel noted that a strike-off was not a sanction available to it today in respect of charge 2 (lack of necessary knowledge of English). However, it noted that a strike off would be available to any future reviewing panel. In respect of charge 1, the panel determined that Ms Calescu's misconduct was not fundamentally

incompatible with remaining on the register and that it would be disproportionate to impose a striking-off order. The panel was satisfied that a further period of suspension would be sufficient to satisfy the public protection and public interest in this case.'

Decision and reasons on current impairment

The panel has considered carefully whether Ms Calescu'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 Da Costa 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 Da Costa submitted that there has been no material change since the original substantive hearing concluded in 2019. Ms Da Costa submitted that the knowledge of the English Language is fundamental to nursing practise; she submitted that there is no evidence before the panel to demonstrate that Ms Calescu has completed a recognised English Language test or has made any attempt to improve her knowledge of English.

Ms Da Costa 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.

With regard to sanction, Ms Da Costa invited the panel to use its discretion to impose the sanction it deems appropriate in accordance with the 'NMC's Sanctions Guidance' (SG). She submitted that Ms Calescu has had an opportunity to engage with the NMC in relation

to the completion of an English Language test since 2017 but has chosen not to, and reminded the panel that a strike-off order is a sanction available to it.

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 Calescu's fitness to practise remains impaired.

The panel noted that this case involves serious and sustained failings, over a period of time, in respect of Ms Calescu's ability to communicate adequately in the English language to be able to practise safely.

The panel decided that the failings in this case are remediable, although there is no new evidence to suggest that they have been remedied. At today's hearing there was no new evidence to demonstrate any development in terms of Ms Calescu's facility with the English language. It noted that there is no evidence that she has taken the IELTS test or has taken up the suggestions made by the previous reviewing panel on 17 September 2020. The panel further noted that correspondence from Ms Calescu in respect of previous review hearings gave rise to concerns that there might be an attitudinal aspect to this case. This is because the correspondence suggests an unwillingness to embark on a process of remedying her lack of knowledge of English or take the required examination.

In light of all these matters and her continued lack of engagement with her regulator, this panel determined that Ms Calescu has not demonstrated any insight into her failings. She has not reached the required standard of English language skill nor shown any intention to do so. This would place patients at risk of harm. 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 Calescu's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Calescu'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 but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the public protection issues identified, an order that does not restrict Ms Calescu's practice would not be appropriate in the circumstances. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice on Ms Calescu's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. It seems unlikely on the basis of the lack of any current information, that Mrs Calescu's knowledge of English is at a level to allow her to work safely under conditions. The panel further noted that the attitudinal concerns identified in Ms Calescu's past correspondence did not give the panel any confidence that Ms Calescu would be able or willing to comply with conditions imposed on her practice. In all the circumstances the panel was not able to formulate workable conditions of practice that would adequately address the concerns relating to Ms Calescu's lack of knowledge of English. The panel was of the view that any conditions it imposed, which could provide the necessary protection, would be tantamount to suspension.

The panel next considered imposing a further suspension order. The panel noted that Ms Calescu has had many opportunities to meaningfully address the findings of impairment of her fitness to practise and provide evidence of English Language improvements and the completion of an NMC approved English language test. It is now some four years since Ms Calescu was directed to take the test and she has been suspended now for two and a half years since the findings were made against her. The panel was also concerned by the evidence of attitudinal problems she has demonstrated to previous panels and her lack of insight into how vital effective communication with patients is and the risks that arise if this is not so. The panel determined that a further period of suspension would not serve any useful purpose in all the circumstances as Ms Calescu appears to have disengaged with the NMC and there is no evidence of an intention of any future engagement.

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 Calescu's name from the register. Furthermore, Ms Calescu's approach to her regulator at the substantive hearing and the two previous review hearings has raised fundamental questions about her professionalism. The panel therefore determined that it was necessary to take action to prevent Ms Calescu from practising in the future and concluded that the only sanction that would be appropriate and proportionate in the current circumstances, was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 25 October 2021 in accordance with Article 30(1).

This decision will be confirmed to Ms Calescu in writing.

That concludes this determination.