

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

Substantive Hearing

11 – 14 January 2021, 6 April 2021, 28 – 31 March, 1 & 14 April 2022

Virtual Hearing

Name of registrant: Alina-Denisa Neacsu

NMC PIN: 16H0409C

Part of the register: Registered Midwife
Midwifery – 11 August 2016

Area of registered address: London

Type of case: Misconduct/Lack of knowledge of English

Panel members: Nicola Jackson (Chair, Lay member)
Catherine Cooper (Registrant member)
Christine Moody (Lay member)

Legal Assessor: Ben Stephenson

Hearing Coordinator: Parys Lanlehin-Dobson (11- 14 January 2021),
Roshani Wanigasinghe (6 April 2022)
Leigham Malcolm (28 – 31 March & 1 April 2022)
Jasmin Sandhu (14 April 2022)

Nursing and Midwifery Council: Represented by Dominic Bardill & James
Edenborough, NMC Case Presenters

Mrs Neacsu: Present and represented by Laura Bayley, of
Crucible Chambers
Not present but represented in absence by
Laura Bayley (14 April 2022)

No case to answer: 6b (first part), 7b (first part) & 8b (first part)

Facts proved: 1, 2, 5a, 6c, 7c, 8c, 10, 11b, 12b & 13b

Facts not proved: 3, 4a, 5b, 11a, 12a & 13a

Facts partially proved:	4b, 6a, 7a, 8a, 6b, 7b, 8b & 9
Fitness to Practise:	Impaired
Sanction:	Conditions of practice order with a review (12 months)
Interim Order:	Interim conditions of practice order (18 months)

Decision and reasons on application for hearing to be held in private

At the outset of the hearing Ms Bayley, on your behalf, made a request that this case be held partly in private on the basis that matters relating to your [PRIVATE] will be raised during proceedings. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules).

Mr Bardill, on behalf of the Nursing and Midwifery Council (NMC), indicated that he supported the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that matters relating to your [PRIVATE] will be raised during proceedings the panel determined to hold such parts of the hearing in private, in order to keep your [PRIVATE] matters out of the public domain.

Details of charge

'That you, a registered Midwife:

- 1) Do not have the necessary knowledge of English to practise safely and effectively.*
- 2) Between 10 July 2018 and 21 August 2018 worked as a Practice Nurse at Paddington Green Health Centre when you were not entered on the Nursing and Midwifery Council's register as a Nurse.*

- 3) *Between 10 July 2018 and 21 August 2018 worked beyond your scope of practice as a registered Midwife at Paddington Green Health Centre.*

- 4) *On 31 July 2018 at a consultation with Patient A:-*
 - a) *failed to advise the patient that they should receive a typhoid vaccination.*

 - b) *failed to administer a typhoid vaccination or to record why that vaccination was not administered.*

- 5) *On 31 July 2018 at a consultation with Patient B:-*
 - a) *failed to advise the patient that they should receive a Meningitis ACWY vaccination.*

 - b) *failed to administer a Meningitis ACWY vaccination or record why that vaccination was not administered.*

- 6) *On 12 July 2018 at a consultation with Patient C:-*
 - a) *failed to advise the patient that they should receive a yellow fever vaccination or record any such advice.*

 - b) *failed to administer a yellow fever vaccination or record why that vaccination was not administered.*

 - c) *failed to record that you had given malaria prevention advice.*

- 7) *On 12 July 2018 at a consultation with Patient D:-*
 - a) *failed to advise the patient's parent that the patient should receive a yellow fever vaccination or record any such advice.*

b) *failed to administer a yellow fever vaccination or record why that vaccination was not administered.*

c) *failed to record that you had given malaria prevention advice.*

8) *On 12 July 2018 at a consultation with Patient E:-*

a) *failed to advise the patient's parent that they should receive a yellow fever vaccination or record any such advice.*

b) *failed to administer a yellow fever vaccination or record why that vaccination was not administered.*

c) *failed to record that you had given malaria prevention advice.*

9) *On 24 July 2018 at a consultation with Patient F failed to identify and/or record, which country the patient was travelling to so that the correct vaccination advice could be provided to the patient.*

10) *On 15 August 2018 at a consultation with Patient G administered Hepatitis A and Typhoid vaccinations when these were not necessary.*

11) *On 20 July 2018 at a consultation with Patient H:-*

a) *failed to administer, or record the administration of, a Hepatitis A vaccination; or*

b) *failed to record why a Hepatitis A vaccination was not administered.*

12) *On 17 July 2018 at a consultation with Patient I:-*

- a) *failed to administer, or record the administration of, a Hepatitis A vaccination; or*
- b) *failed to record why a Hepatitis A vaccination was not administered.*

13) *On 17 July 2018 at a consultation with Patient J:-*

- a) *Failed to administer, or record the administration of, a Hepatitis A vaccination;
or*
- b) *failed to record why a Hepatitis A vaccination was not administered.*

AND in light of the above, your fitness to practise is impaired by reason of your lack of knowledge of English in respect of charge 1 above and your misconduct in respect of charges 2 to 13 above.'

Admissions to the charges

The panel heard from Ms Bayley who informed the panel that you made admissions to a number of the charges and partial admissions to other charges.

Ms Bayley submitted that the panel could accept admissions to part of the charge as admission to the charge in its entirety.

Ms Bayley submitted that in relation to charge 4b, you deny that you failed to administer the typhoid vaccination and accept that you failed to record that it was administered.

In relation to charge 6a, you deny that you failed to advise Patient C that they should receive a yellow fever vaccination and accept that you failed to record your advice. In relation to charge 6b you deny that you failed to administer a yellow fever vaccination and

accept that you failed to record why that vaccination was not administered. You admitted to charge 6c in its entirety.

In relation to charge 7a, you deny that you failed to advise Patient D's parent and accept that you failed to record that you advised them that Patient D should receive a yellow fever vaccination. In relation to charge 7b, you deny that you failed to administer a yellow fever vaccination and accept that you failed to record that it was not administered. You admitted to charge 7c in its entirety.

In relation to charge 8a, you deny that you failed to advise Patient E's parent that Patient E should receive a yellow fever vaccination and accept that you failed to record any such advice. In relation to charge 8b, you deny that you failed to administer a yellow fever vaccination and accept that you failed to record that it was not administered. You accepted charge 8c in its entirety.

In relation to charge 9, you deny that you failed to identify which country Patient F was travelling to and accept that you failed to record it so that the correct vaccination advice could be provided.

You admitted charges 10, 11b, 12b and 13b in their entirety.

The panel therefore finds elements of charges 4b, 6a, 6b, 7a, 7b, 8a, 8b and 9 proved by your partial admissions. It also found charges 6c, 7c, 8c, 10, 11b, 12b and 13b proved in their entirety, on the basis of your full admissions.

Decision and reasons on application of no case to answer

The panel considered an application from Ms Bayley that there is no case to answer in respect of charges 3, 4a, 4b, 6a, 6b, 7a, 7b, 8a, 8b, 9, 11a, 12a and 13a. This application was made under Rule 24(7).

The panel considered Ms Bayley's submission that a whole charge could be accepted as admitted on the basis of a partial admission. However, the panel decided that it was necessary and fair to consider each part of the relevant charge.

Ms Bayley submitted that the NMC had not produced any or any sufficient evidence such that a reasonable panel, properly directed, could find the above charges proved, on the balance of probabilities. She therefore invited the panel to find no case to answer in relation to those charges.

With specific attention to charge 3, Ms Bayley highlighted that the evidence presented by the NMC demonstrated that a midwife's scope of practice is limited only by the nature of their role and the training and competencies they have achieved. She stated that there was no evidence before the panel that any of the tasks undertaken by you at the Paddington Green Surgery were outside the scope of your practice. Further, if the Panel was to accept her submission on charge 3, she would invite it to consider, under Rule 24(8), whether charge 2 is capable of supporting a finding of misconduct, giving rise to a finding of current impairment of fitness to practice. Ms Bayley argued that if you cannot be said to be acting outside the scope of your competence, there can be no misconduct in performing the duties of a practice nurse; because as the term 'practice nurse' is not a protected title, there is no impediment to you taking on that role.

Mr Bardill submitted that there was sufficient evidence before the panel upon which it could find the above charges proved, on the balance of probabilities. He invited the panel to find that there is a case to answer, in all instances.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel has taken account of all of the evidence presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer.

The panel has carefully considered the submissions of no case to answer by Ms Bayley in relation to the alleged failures on your part, set out in charges 4 – 13 which concern travel vaccinations. The panel took into account the NMC Code, the evidence of Ms 1 and Dr 2, the evidence in relation to the job description and your curriculum vitae (CV). The panel decided that there is evidence that could establish a duty on your part to act or not to act as alleged.

In relation to whether or not there was sufficient evidence to support a case to answer, the panel made the following decisions.

'That you, a registered Midwife:

1) ...

2) *Between 10 July 2018 and 21 August 2018 worked as a Practice Nurse at Paddington Green Health Centre when you were not entered on the Nursing and Midwifery Council's register as a Nurse.*

3) *Between 10 July 2018 and 21 August 2018 worked beyond your scope of practice as a registered Midwife at Paddington Green Health Centre.'*

In its considerations the panel took account of the NMC Code, in particular Section 13 'Preserve Safety', and the NMC's guidance 'Practising as a midwife in the UK', particularly the section titled 'Scope of Practice', as well as the witness evidence of Ms 1 and Dr 2. The panel also noted Ms Bayley's submission that:

'There is no evidence to suggest that there were any concerns about Mrs Neacsu's competencies in the tasks (with the exception of those forming charges 4 to 13)'

The panel considered charges 4 to 13 to be a significant number of allegations all illustrative of concerns around your competencies, and relevant to the issue of your scope of practice.

The panel decided that there is a case to answer in respect of charge 3. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Given that the panel has decided that there is a case to answer for charge 3, Ms Bayley's application for no case to answer in respect of impairment in charge 2 falls away at this stage.

4) On 31 July 2018 at a consultation with Patient A:-

a) failed to advise the patient that they should receive a typhoid vaccination.

The panel took account of the evidence before it, including the consultation record for Patient A, where there was no record of advice given. In view of the evidence, the panel decided that there is a case to answer in relation to Charge 4a. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

b) failed to administer a typhoid vaccination or to record why that vaccination was not administered.

The panel took into account the evidence before it including the witness statement of Dr 2 which stated:

'The registrant should have recommended the typhoid vaccine to Patient A, administered it, if consent was provided, and then recorded this. Had the patient refused the vaccine or the registrant not given it, the registrant should have recorded the reason why.'

The panel was of the view that there was sufficient evidence to support the first element of Charge 4b and that there is a case to answer.

5) ...

a) ...

b) ...

6) *On 12 July 2018 at a consultation with Patient C:-*

a) failed to advise the patient that they should receive a yellow fever vaccination or record any such advice.

The panel bore in mind your admission that you failed to record that you advised Patient C as to the yellow fever vaccination. It also took account of the witness evidence and the patient notes, where it is indicated that Patient C was travelling to Sudan with Patient D and E. Dr 2 stated that yellow fever vaccination was, at the time, recommended for travel to Sudan, therefore, Patients C, D and E should have been advised by you to receive the vaccine.

The panel decided that there was sufficient evidence to support the first element of charge 6a and it was not prepared to accede to an application of no case to answer.

b) failed to administer a yellow fever vaccination or record why that vaccination was not administered.

The panel bore in mind that Dr 2, in her written statement, has not suggested that you should have administered the yellow fever vaccination, only that you should have advised it. The panel reached the view that the evidence in relation to charge 6b is tenuous and, therefore, there was not a realistic prospect that it could find the facts of the first element

of charge 6b proved. The panel found that there was no case to answer for the first element of charge 6b.

c) ...

7) *On 12 July 2018 at a consultation with Patient D:-*

a) *failed to advise the patient's parent that the patient should receive a yellow fever vaccination or record any such advice.*

The panel was of the view that for the same reasons as given above in relation to charge 6a, there was sufficient evidence to support charge 7a at this stage and, as such, it was not prepared, based on the evidence before it, to accede to an application of no case to answer.

b) *failed to administer a yellow fever vaccination or record why that vaccination was not administered.*

The panel noted your admission to failing to record that you administered a yellow fever vaccination. Taking account of all the evidence before it, and for the same reasons noted above at 6b, the panel decided that there was not a realistic prospect that it would be able to prove that you failed to administer a yellow fever vaccination. The panel therefore decided to accede to an application of no case to answer.

c) ...

8) *On 12 July 2018 at a consultation with Patient E:-*

a) failed to advise the patient's parent that they should receive a yellow fever vaccination or record any such advice.

The panel was of the view that for the same reasons as given above in relation to charge 6a, there was sufficient evidence to support charge 8a at this stage and, as such, it was not prepared, based on the evidence before it, to accede to an application of no case to answer.

b) failed to administer a yellow fever vaccination or record why that vaccination was not administered.

The panel noted your admission to failing to record that you administered a yellow fever vaccination. Taking account of all the evidence before it, and for the same reasons noted above at 6b, the panel decided that there was not a realistic prospect that it would be able to prove that you failed to administer a yellow fever vaccination. The panel therefore decided to accede to an application of no case to answer.

c)

9) On 24 July 2018 at a consultation with Patient F failed to identify and/or record, which country the patient was travelling to so that the correct vaccination advice could be provided to the patient.

The panel took account of Patient F's records in which only Africa the continent, had been recorded as the area of travel. The panel also took into account the evidence of Dr 2 who stated that you should have specified which country in Africa Patient F was travelling to so that the correct vaccination advice could be provided to the patient. The panel decided that there was sufficient evidence to support a case to answer for the first element of this charge.

10) ...

11) On 20 July 2018 at a consultation with Patient H:-

- a) failed to administer, or record the administration of, a Hepatitis A vaccination;
- or

The panel took account of Patient H's record as well as the witness statement of Dr 2, in which she stated:

'The template ... indicated that hepatitis A is recommended for travel to the Philippines, however, there is no record to indicate that the vaccine was actually administered nor is there a record as to why it was not.'

The panel was of the view that on the evidence before it, there is a case to answer in relation to Charge 11a.

b) ...

12) On 17 July 2018 at a consultation with Patient I:-

- a) failed to administer, or record the administration of, a Hepatitis A vaccination;
- or

The panel took account of the patient records as well as the witness statement of Dr 2, in reference to Patients I and J, in which she stated:

'It appears ... that the vaccine was recommended for both patients but there is no record as to whether or not it had been given. The registrant should have either given the vaccination to both patients and recorded this in their respective records or, if the vaccine was not in stock, recorded this and made

arrangements for the patients to return and have the vaccine when it was available.'

The panel was of the view that there were several strands of evidence that could support this charge. On the evidence before it, the panel decided not to accept the application of no case to answer in relation to Charge 12a.

b) ...

13) On 17 July 2018 at a consultation with Patient J:-

a) Failed to administer, or record the administration of, a Hepatitis A vaccination;

Or

For the same reasons as set out above in relation to Charge 12a, the panel was of the view that there was sufficient evidence that could support Charge 13a. The panel therefore decided that there is a case to answer in respect of Charge 13a.

b) ...

Application to adjourn

Subsequent to announcing its decision as to Ms Bayley's submissions on no case to answer, the panel heard an application to adjourn.

The application was made by Ms Bayley on the basis that [PRIVATE] would not be able to give evidence in the time remaining in which to conclude this hearing. Ms Bayley therefore requested that the hearing be adjourned until such time that [PRIVATE], and that a resuming hearing is listed for five days.

Mr Bardill supported the adjournment application.

The panel accepted the advice of the legal assessor.

The panel took account of Ms Bayley's submissions and considered that in view of your circumstances it would not be fair to you for the hearing to proceed. The panel therefore decided to adjourn until such time that [PRIVATE].

Hearing resumed - 28 March 2022

Background

You entered the NMC register as a registered midwife on 11 August 2016. In December 2016 you commenced working as a Health Care Assistant (HCA) post at Hendon Way Surgery.

In April 2017 you commenced employment at Hendon Way Surgery as a practice midwife alongside your role as an HCA. In July 2017 until April 2018, you were additionally employed by the Welcome GP practice as a locum midwife to undertake smear tests.

On 13 February 2017 you applied for registration as a registered nurse via the European Union (EU) route. On 14 October 2017 the NMC advised you that your application to join the register as a registered nurse had been closed due to outstanding documents. In July 2018 you commenced employment as a practice nurse at Paddington Green Health Centre ('the Practice').

The NMC received two referrals, the first came from the Care Quality Commission (CQC) on 21 December 2017 and the second from the practice on 23 August 2018.

Decision and reasons on facts

The panel has already found charges 6c, 7c, 8c, 10, 11b, 12b & 13b proved in their entirety, by way of your admissions. It has also found elements of charges 4b, 6a, 6b, 7a, 7b, 8a, 8b & 9 proved on the basis of your admissions.

In reaching its decisions on the disputed charges, the panel took into account all the oral and documentary evidence in this case together with the submissions made by both Ms Bayley, on your behalf, and Mr Edenborough (on behalf of the NMC).

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 a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard evidence from the following witnesses called on behalf of the NMC:

- Ms 1- Practice Manager at Paddington Green Health Centre;
- Dr 2 - Registered General Practitioner at Paddington Green Health Centre.

The panel also heard evidence from you under oath.

Before making any findings on the facts, the panel took account of all of the evidence before it and accepted the advice of the legal assessor. The panel then considered each of the disputed charges and made the following findings:

Charge 1

- 1) *Do not have the necessary knowledge of English to practise safely and effectively.*

In relation to charge 1, the panel took account of all of the evidence before it, in particular your IELTS test results from 10 October 2018.

The panel took account of the positive evidence from your employer around your proficiency of the English Language, and it also bore in mind that there was no evidence of concerns raised by your colleagues or patients at the time you were practising in the UK. It also took note of the studies you have undertaken at an advanced level in the medium of the English language but it considered that these did not concern healthcare.

In relation to the IELTS test the panel noted your evidence that you resented having to take the test and that you were nervous. However, the result of the test, in the panel's view, demonstrated a '*bad fail*' rather than a '*near miss*'. It is not disputed that in the intervening period you have not taken a further test. The panel bore in mind that since 2019 you have been unable to practise in the UK as a midwife, and further, apart from a period of three months you have not been in the UK for several years.

Taking all of these matters into account, particularly your failure to achieve the required IELTS score, the panel found charge 1 proved.

The panel found Charge 1 Proved.

Charge 2

- 2) *Between 10 July 2018 and 21 August 2018 worked as a Practice Nurse at Paddington Green Health Centre when you were not entered on the Nursing and Midwifery Council's register as a Nurse.*

The panel took account of the job description for the role of Practice Nurse which had been sent by the practice to the agency. The panel accept your evidence that you did not have sight of the job description. The panel accept your evidence that whilst working at the practice you introduced yourself to colleagues and service users as a practice midwife, and at no stage sought to mislead anybody with regard to your status. However, the panel is satisfied that the practice employed you as a practice nurse and that is the role you

undertook. It is not in dispute that you were not entered on the NMC register as a nurse. This charge is therefore found proved as a matter of fact.

The panel found Charge 2 proved

Charge 3

- 3) *Between 10 July 2018 and 21 August 2018 worked beyond your scope of practice as a registered Midwife at Paddington Green Health Centre.*

The panel took account of the NMC's definition of a midwife's scope of practice:

'A midwife's 'scope of practice' might be taken to mean 'the range of things that the midwife has the skills, knowledge and proficiency to do' and it should not be confused with 'protected function' which means 'something that only midwives can legally do.

The standards of proficiency and the Code are important factors in thinking about scope of practice. A midwife's scope of practice may change depending on the nature of their roles and the learning they have undertaken. The Code requires midwives not to practise outside of their skills, knowledge or competence. It is important that providers of maternity services are mindful of this professional duty when they deploy midwives'.

The panel noted that you were able to evidence that you were competent to carry out all of the tasks that you undertook at the practice. The panel also accepted your oral evidence that you always introduced yourself as a practice midwife.

Midwifery is a protected title, and there was no evidence before the panel that you undertook any task that you should not have under the title of midwifery. In your case, you have certificates to evidence that you are competent in all of the tasks that you undertook, the panel determined that you did not act outside of your scope of practice as a midwife.

Somebody acting outside their scope of practice would be working without proper training or certification, which you did not. You shared your qualifications with the practice and at no time did you represent yourself as a registered nurse.

The panel was not satisfied that you worked beyond your scope of practice.

The panel found Charge 3 not proved.

Charge 4

4) On 31 July 2018 at a consultation with Patient A:-

Charge 4 a

a) failed to advise the patient that they should receive a typhoid vaccination.

The panel took account of the evidence before it, including the consultation record for Patient A. The panel noted that the consultation record for Patient A states that a typhoid vaccination was recommended. The panel also accepted your oral evidence, which it considered to be detailed and consistent, that having advised on the typhoid vaccine, you recorded that you recommended it. During your lengthy oral evidence to the panel you consistently reported that you advised patients by discussing the key points from the relevant website, and then recording that the vaccine had been recommended. The panel noted that neither you nor Patient A could recall the consultation in detail.

On the evidence before it the panel found Charge 4a not proved.

The panel found Charge 4a not proved.

Charge 4b

b) failed to administer a typhoid vaccination or to record why that vaccination was not administered.

You admitted that you did not record why a typhoid vaccine was not administered to Patient A.

The panel determined that the NMC had not provided sufficient evidence that Patient A ought to have received a typhoid vaccination. There was no evidence before the panel that a typhoid vaccination was required for travel to Ethiopia at the time of the consultation. Further, the panel accepted your oral evidence that the vaccination was only one to be considered. The panel determined that in the absence of a requirement for Patient A to have received the typhoid vaccine, there cannot have been a duty on you to administer the vaccine.

The panel found Charge 4b proved only in relation to your admission to failing to record why the vaccine was not administered.

Charge 5

5) On 31 July 2018 at a consultation with Patient B:-

Charge 5a

a) failed to advise the patient that they should receive a Meningitis ACWY vaccination.

In relation to charge 5a the panel took account of all of the evidence before it, in particular Patient B's Consultation Information Sheet and the oral evidence of Dr 2.

Patient B's Consultation Information Sheet does not indicate whether or not a meningitis vaccine had been advised.

Dr 2 in her oral evidence was clear that Patient B ought to have received the meningitis vaccine. In response to questions by the panel Dr 2 set out that the time period for Patient

B's previous meningitis vaccine to be effective had passed, and therefore he was due to receive a booster of the meningitis vaccine.

The panel noted your evidence that you were unaware of the precise date of Patient B's previous vaccination and therefore whether the booster was due at the time of the telephone consultation. However, Dr 2's evidence was that the date was March 2013 and by any calculation was outside the 5 year immunity period.

The panel bore in mind that Dr 2 was an experienced GP. In view of her evidence that Patient B ought to have received the meningitis vaccine and given that in your written response and oral evidence, you thought the vaccine was not required at the time of the consultation, the panel found Charge 5a proved.

The panel found Charge 5a proved.

Charge 5b

b) failed to administer a Meningitis ACWY vaccination or record why that vaccination was not administered.

Again, the panel took account of Patient B's Consultation Information Sheet. The sheet indicates that the consultation took place via telephone, which is consistent with the oral evidence that you gave. Given that the consultation took place via telephone, the panel determined that the meningitis vaccine could not have been administered. Further, the panel finds that you were not under a duty to record not administering a vaccine during a telephone consultation.

The panel found Charge 5b not proved.

Charge 6

6) On 12 July 2018 at a consultation with Patient C:-

Charge 6a

- a) failed to advise the patient that they should receive a yellow fever vaccination or record any such advice.*

You admitted that you failed to record any such advice. The panel noted that Patient C is the parent of Patients D and E.

The panel considered whether there was insufficient evidence before it to prove that you failed to advise Patient C that they should receive the yellow fever vaccine.

The panel noted that there was no documentation regarding yellow fever in the patient's notes. The panel took account of your oral evidence in which you stated that you did advise Patient C to have the yellow fever vaccine. The panel considered your oral evidence to be consistent with a note of Patient C's telephone call to the NMC which stated that Patient C believed that the yellow fever vaccination had been recommended and advised.

In view of the evidence before it, the panel determined that the NMC had produced insufficient evidence for it to determine that you failed to advise Patient C that they should receive the yellow fever vaccine.

The panel found Charge 6a proved only in so far as you failed to record that you advised Patient C that they should receive a yellow fever vaccine.

b) ...

c) ...

Charge 7

7) *On 12 July 2018 at a consultation with Patient D:-*

Charge 7a

a) failed to advise the patient's parent that the patient should receive a yellow fever vaccination or record any such advice.

You admitted that you failed to record any such advice.

The panel considered whether there was insufficient evidence before it to prove that you failed to advise Patient D that they should receive the yellow fever vaccine.

The panel noted that there was no documentation regarding yellow fever in the patient's notes. The panel took account of your oral evidence in which you stated that you did advise Patient D's parent that Patient D should have the yellow fever vaccine. The panel considered your oral evidence to be consistent with a note of Patient C's telephone call to the NMC which stated that Patient C believed that the yellow fever vaccination had been recommended and advised for herself and her son, Patient D.

In view of the evidence before it, the panel determined that the NMC had produced insufficient evidence for it to determine that you failed to advise Patient D's parent that Patient D should receive the yellow fever vaccine.

The panel found Charge 7a proved only in so far as you failed to record that you advised Patient D's parent that Patient D should receive a yellow fever vaccine.

b) ...

c) ...

Charge 8

8) *On 12 July 2018 at a consultation with Patient E:-*

Charge 8a

a) failed to advise the patient's parent that they should receive a yellow fever vaccination or record any such advice.

You admitted that you failed to record any such advice.

The panel considered whether there was insufficient evidence before it to prove that you failed to advise Patient E that they should receive the yellow fever vaccine.

The panel noted that there was no documentation regarding yellow fever in the patient's notes. The panel took account of your oral evidence in which you stated that you did advise Patient E's parent that Patient E should have the yellow fever vaccine. The panel considered your oral evidence to be consistent with a note of Patient E's telephone call to the NMC which stated that Patient E believed that the yellow fever vaccination had been recommended and advised.

In view of the evidence before it, the panel determined that the NMC had produced insufficient evidence for it to determine that you failed to advise Patient E's parent that Patient E should receive the yellow fever vaccine.

The panel found Charge 8a proved only in so far as you failed to record that you advised Patient E's parent that Patient E should receive a yellow fever vaccine.

b) ...

c) ...

Charge 9

- 9) *On 24 July 2018 at a consultation with Patient F failed to identify and/or record, which country the patient was travelling to so that the correct vaccination advice could be provided to the patient.*

You admitted that you failed to record which country the patient was traveling to, and instead recorded the continent of Africa.

The panel considered whether you failed to identify which country the patient was traveling to. The panel took account of Patient F's consultation sheet as well as your oral evidence in which you stated that the patient was traveling to Nigeria.

The destination on Patient F's consultation sheet is recorded as 'Africa'. However, the panel heard from you and Dr 2 that it was not possible to give advice on vaccinations relevant to specific countries without selecting the specific country on the advice website. The panel accepted your evidence that you must have identified the specific country to be able to give the advice but recorded it incorrectly in the notes as 'Africa'.

The panel found Charge 9 proved only in that you failed to record which country the patient was traveling to.

- 10) ...

Charge 11

- 11) *On 20 July 2018 at a consultation with Patient H:-*

Charge 11a

a) *failed to administer, or record the administration of, a Hepatitis A vaccination; or*

You admitted that you failed to record the administration of a Hepatitis A vaccination.

The panel considered whether you failed to administer the Hepatitis A vaccination.

The panel took account of your oral evidence in which you stated that you did not administer a Hepatitis A vaccine because there was a national shortage and there was none in stock.

There was consistent documentary and oral evidence before the panel that there were indeed national shortages of the Hepatitis A vaccine at that time. The panel had regard to the witness statement of Ms 1 which read:

'Four patients were due a Hepatitis A vaccine which was not administered and the registrant had not recorded why. We believed that this was due to a national shortage of the vaccine at the time but it would have been helpful for this to have been recorded.'

Further, in her oral evidence Dr 2 confirmed that the Hepatitis A vaccine was out of stock frequently in 2018.

The panel consider that the dates on which you are charged with failing to administer Hepatitis A vaccines were consistent with the time period in which there is evidence that there were shortages. On the evidence before it the panel is not satisfied that you failed to administer Hepatitis A vaccines.

The panel found Charge 11a not proved.

b) ...

Charge 12a

12) *On 17 July 2018 at a consultation with Patient I:-*

a) *failed to administer, or record the administration of, a Hepatitis A vaccination; or*

In addition to the reasons set out for Charge 11a, the panel noted the content of a telephone note between the NMC and the parent of Patients I and J in which she stated *'that she thinks the registrant told her that the vaccine was not currently available'*.

The panel found Charge 12a not proved.

Charge 13a

1) *On 17 July 2018 at a consultation with Patient J:-*

a) *Failed to administer, or record the administration of, a Hepatitis A vaccination;*
or

The panel found Charge 13a not proved for the same reasons as set out for Charge 12a.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts, in all charges found proved apart from charge 1, amount to misconduct and, if so, whether your fitness to practise is currently impaired. 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.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it has borne in mind that there is

no burden or standard of proof at this stage, and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration of misconduct. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

Mr Edenborough stated that in relation to charge 1, there could be no misconduct. He submitted however, that the remaining charges did amount to misconduct.

On the issue of impairment Mr Edenborough addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council and (2) Grant* [2011] EWHC 927 (Admin).

Mr Edenborough highlighted that your failure of the IELTS test in 2018 was a bad one. He also highlighted that since 2018 you have had limited exposure to English and, for these reasons, you must be currently impaired in relation to charge 1 and your lack of knowledge of English.

Mr Edenborough referred the panel to the relevant sections of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code) which the NMC consider you to have breached. He noted that charges found proved included a lack of accurate record keeping, which, he submitted had potential to impact future decisions around any care provided, and therefore created a risk. In these circumstances, he invited the panel to find your fitness to practise currently impaired.

Ms Bayley accepted that charge 1 amounted to impairment. Ms Bayley submitted that the clinical allegations do not meet the threshold for serious misconduct. She submitted that the panel should exercise caution around accumulating a number of non-serious findings of misconduct to create serious misconduct.

Decision and reasons on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

The panel accepted the advice of the legal assessor who referred to the cases of *CHRE v Grant* and *Schodlok v GMC* [2015] EWCA Civ 769. He advised the panel to be very cautious regarding aggregating a number of instances of non-serious misconduct to amount collectively to serious misconduct.

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. The panel was of the view that your actions did fall significantly short of the standards expected of a registered midwife, and that your actions amounted to breaches of the following sections of the Code:

6 Always practise in line with the best available evidence

To achieve this, you must:

6.1 make sure that any information or advice given is evidence-based, including information relating to using any healthcare products or services;

10 Keep clear and accurate records relevant to your practice.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

In relation to charge 2, the panel considered there to be no evidence before it that you presented yourself as a practice nurse. The panel noted that you did not have sight of the job description and it was satisfied that you were unaware that you were employed as a practice nurse. The panel was reassured by the fact that you have since undertaken a nursing qualification in Romania, meaning that you can gain entry to the Register as a nurse, subject to meeting the language requirements. The panel determined that charge 2 did not amount to misconduct.

On the evidence before it the panel considered that charge 4b was a recording omission and did not amount to misconduct.

In relation to charge 5a, the panel reached the view that you failed to give correct advice, which could have resulted in patient harm and was not evidence based, and as a result, this did amount to misconduct.

In relation to charges 6a, 6b and 6c, the panel bore in mind that although you did not make a record of it, you did provide advice regarding Yellow Fever and Malaria. The panel reached the view that these charges were not serious enough to amount to misconduct.

On the evidence before it the panel considered that charge 9 was also a recording omission and did not amount to misconduct.

In relation to charge 10 the panel bore in mind that patients have the right to request and decline treatment. There was no evidence of harm before the panel or any evidence that the patient did not request this treatment. The panel reached the view that charge 10 did not amount to misconduct.

The panel considered the issues in charges 11b, 12b and 13b to be serious, as they were related to failures to record that vaccines were not given. As no records were made, the administration of the vaccines may not have been rescheduled and the patients may not

have received them. The panel reached the view that charges 11b, 12b and 13b were sufficiently serious to amount to misconduct.

Decision and reasons on impairment

In relation to charge 1, the panel took account of Ms Bayley's acceptance that your fitness to practise is likely to be found currently impaired in relation to charge 1:

'Having heard all of the evidence in the case, and in light of the panel's findings of fact, it is accepted that Ms Neacsu's fitness to practise is likely to be found to be currently impaired by reason of her lack of knowledge of English.'

The panel considered that the result of the IELTS test in 2018 was a *'bad fail'*. Further, since 2018 you have not been living or working in the UK and have had limited exposure to English. The panel noted that you had undertaken educational qualifications in the medium of English, but that these did not relate to healthcare. For these reasons the panel determined that you are currently impaired in relation to charge 1 and your lack of knowledge of English.

The panel next went on to decide if as a result of the misconduct identified, your fitness to practise is currently impaired.

Midwives occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust Midwives with their lives and the lives of their loved ones. 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 judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* 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.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'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) ...*

The panel finds that patients were put at risk of harm as a result of your misconduct. Further, your misconduct breached the fundamental tenets of the midwifery profession and brought its reputation into disrepute.

The panel reached the view that your fitness to practise is currently impaired as a result of your misconduct at charges 5a, 11b, 12b and 13b. Whilst your misconduct is remediable, there was no evidence before the panel of any training around the issues identified, nor have you been practising as a midwife for some time.

The panel considered you to have some insight. You told the panel that you know that you must keep records of care provided. However, the panel was of the view that your reflection into the incidents was indicative of developing, but incomplete insight.

The panel considered that your misconduct related to basic nursing and midwifery skills which must be undertaken to the necessary standards. In the absence of any further training around the issues, and given your incomplete insight, the panel determined that there is a risk of repetition, and that your fitness to practise is currently impaired. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel decided that your fitness to practise is currently impaired.

Hearing resumed - 14 April 2022

The hearing resumed on 14 April 2022. Mrs Neacsu was not present but had indicated to Ms Bayley that she was content for the hearing to proceed in her absence today.

Sanction

The panel considered this case very carefully and decided to make a conditions of practice order for a period of 12 months, with a review. The effect of this order is that Mrs Neacsu's name on the NMC register will show that she is subject to a conditions of practice order and anyone who enquires about her registration will be informed of this order.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC.

Submissions on sanction

It was submitted by Mr Edenborough that the appropriate and proportionate order in this case is a suspension order with a review. He submitted that a period of 12 months would provide '*proper protection*' to the public, bearing in mind that Mrs Neacsu has not been immersed in an English-speaking environment for quite some time.

Mr Edenborough submitted that if the panel decides to make a conditions of practice order, conditions such as those in the current interim conditions of practice order should be considered, as well as conditions requiring training and a personal development plan (PDP).

Ms Bayley submitted that given the panel's finding on current impairment, taking no action or imposing a caution order would be inappropriate.

Ms Bayley submitted that the risks in this case can be mitigated by a conditions of practice order and that there are identifiable areas in Mrs Neacsu's practice which are capable of remediation. Whilst Mrs Neacsu initially demonstrated some resistance to undertaking the IELTS test as set out in her interim conditions of practice order (first imposed in March 2019), she has not been able to complete the test due to COVID-19 delays and [PRIVATE]. Ms Bayley informed the panel that Mrs Neacsu does intend to return to the UK to practise as a registered midwife. Further, Mrs Neacsu is aware that she may need to complete a return to practice course as well as an IELTS test and is prepared to do so.

Ms Bayley stated that Mrs Neacsu is represented and so will be supported in returning to safe practice. She further stated that Mrs Neacsu has engaged with the NMC, has given evidence, and has answered the panel's questions during that evidence. She stated that aside from this case, there are no previous regulatory findings against Mrs Neacsu.

Ms Bayley submitted that a conditions of practice order, with a review, would be appropriate and proportionate to protect the public. She also submitted that there is a public interest in allowing a midwife of this skill and competence to return to safe practice. Ms Bayley invited the panel to consider a period of 12 months to allow Mrs Neacsu sufficient time to complete her [PRIVATE], pass the IELTS test, and secure a midwifery role.

The panel accepted the advice of the legal assessor who referred it to Article 29 of the 'Nursing and Midwifery Order 2001' (the Order) as well as to the NMC's SG.

Decision and reasons on sanction

Having found Mrs Neacsu's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. 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 SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel had regard to the NMC guidance on aggravating features and mitigating factors, however, considered that there were no aggravating features or mitigating factors present in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the public protection and public interest issues previously outlined.

It then considered the imposition of a caution order but again determined that, due to the public protection and public interest issues identified, an order that does not restrict Mrs Neacsu's practice would not be appropriate in the circumstances.

The panel next considered whether placing conditions of practice on Mrs Neacsu'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 had regard to the SG which outlines that a conditions of practice order may be appropriate where the following are present:

- *'No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.'*

The panel was of the view that the above are engaged in this case.

It determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. On the basis of all the evidence before it, the panel was satisfied that Mrs Neacsu would be willing to comply with conditions. Whilst it noted that Mrs Neacsu has been subject to an interim conditions of practice order since 25 March 2019 and is yet to comply with those conditions, the panel took into account that Mrs Neacsu has not been in the UK and has [PRIVATE]

In addition, the panel had regard to the fact that these incidents happened over three years ago and that other than this case, there are no previous regulatory findings against Mrs Neacsu. The panel also bore in mind Mrs Neacsu's engagement in the process. Further, it took into account that over 500 of Mrs Neacsu's patient records were investigated and only four contained errors.

Taking into account all of the above, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order would be disproportionate and would not be a reasonable response in the circumstances of this case given that the public would be sufficiently protected by a conditions of practice order. Furthermore, the panel was of the view that, providing there are appropriate safeguards in place, it was in the public interest to allow a midwife of this experience to return to safe practice.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered midwife.

The panel determined that the following conditions are appropriate and proportionate in this case:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must not practise as a registered midwife until you have secured either:
 - a. An overall score of at least 7 in the IELTS examination, achieving at least 6.5 in the writing section and at least 7 in the reading, listening and speaking sections, or
 - b. A grade B in the Occupational English Test (OET) or
 - c. Any other test approved by the NMC to demonstrate the necessary knowledge of the English

2. You must work with your line manager/mentor/supervisor to create a personal development plan (PDP). Your PDP must address the concerns about your record keeping and giving evidence-based advice. You must:
 - Meet with your line manager/mentor/supervisor at least every month to discuss your clinical caseload and progress towards achieving the aims set out in your PDP.
 - Send your case officer a copy of your PDP within six weeks of commencing employment as a midwife.
 - Send your case officer a report from your line manager/mentor/supervisor prior to any review hearing. This report must show your progress towards achieving the aims set out in your PDP.

3. You must keep the NMC informed about anywhere you are working by:

- a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.
4. You must keep the NMC informed about anywhere you are studying by:
- a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
5. You must immediately give a copy of these conditions to:
- a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity
6. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.

7. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
 - a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The panel decided to make this conditions of practice order, with a review, for a period of 12 months.

Before the order expires, a panel will hold a review hearing to see how well Mrs Neacsu has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- An updated reflective piece
- Testimonials from an employer
- Evidence of any further training or assessment
- Mrs Neacsu's attendance at any future review hearing

This will be confirmed to Mrs Neacsu in writing.

Interim order

As the conditions of practice order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is

necessary for the protection of the public, is otherwise in the public interest or in Mrs Neascu's own interests until the conditions of practice order takes effect.

Submissions on interim order

The panel took account of the submissions made by Mr Edenborough, who submitted that an interim order is necessary to protect the public and is otherwise in the public interest. He submitted that an interim conditions of practice order for 18 months is necessary to cover any possible appeal period. He stated that an interim conditions of practice order would be appropriate as it would be consistent with the panel's decision to impose the substantive conditions of practice order.

Ms Bayley indicated that she did not object to an interim conditions of practice order, on the same terms as the substantive conditions of practice order.

The panel heard and accepted the advice of the legal assessor.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and that it is otherwise in the public interest. The panel had regard to the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months in order to allow sufficient time if an appeal is made.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after Mrs Neascu is sent the decision of this hearing in writing.

That concludes this determination.