

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

**Substantive Order Review Hearing
Thursday 01 December 2022**

Virtual Hearing

Name of Registrant: Livia Stanciut

NMC PIN 14K0037C

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – November 2014

Relevant Location: Herefordshire

Type of case: Lack of knowledge of English

Panel members: Michelle McBreeze (Chair, lay member)
Sally Ann Underwood (Registrant member)
James Kellock (Lay member)

Legal Assessor: Douglas Hogg KC

Hearings Coordinator: Hazel Ahmet

Nursing and Midwifery Council: Represented by Rowena Wisniewska

Livia Stanciut: Present at hearing, represented by Paul Sheppard

Order being reviewed: Suspension order (9 months)

Fitness to practise: Impaired

Outcome: **Striking off order to come into effect on 15 December 2022 with Article 30 (1)**

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

At the outset of the hearing, Ms Wisniewska made a request that this case be held partially in private on the basis that proper exploration of your case involves matters regarding your health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You indicated that you supported the application to the extent that any reference to your health should be heard in private.

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.

The panel determined to rule on whether or not to go into private session in connection with your health matters as and when such issues are raised in order to protect matters regarding your privacy.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect immediately on 15 December 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fifth review of a substantive suspension order originally imposed for a period of 9 months by a Fitness to Practise Committee on 14 February 2019. The order was then reviewed on 25 November 2019, 11 August 2020, 30 April 2021, and 4 February 2022 when the substantive suspension order was extended for nine months on each occasion.

The current order is due to expire at the end of 15 December 2022.

The panel is reviewing the order pursuant to Article 30(1)/30(2) of the Order.

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

'That you, a registered nurse:

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

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

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

'The panel considered that there has been no progress in Ms Stanciut's case since the last review. It determined that Ms Stanciut's fitness to practise remains impaired given the low scores from her most recent IELTS tests and the lack of information about her current proficiency. The panel was of the view that there is an important element of public safety in the clear communication between a nurse and patients. It determined that there remains a risk of harm should Ms Stanciut be allowed to return to nursing practice without restriction as she is not able to fully communicate in English. 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 Stanciut's fitness to practise remains impaired.'

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

'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 seriousness of the case, and the public protection issues identified, an order that does not restrict Ms Stanciut's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where 'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that Ms Stanciut's poor command of English was not at the lower end of the spectrum, and that a caution order would be inappropriate in view of the issues identified. 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 Stanciut'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 seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Ms Stanciut's lack of knowledge of English.

The panel considered the imposition of a further period of suspension.

The panel noted the previous panel's acknowledgement of the difficulty in obtaining an IELTS test session, in light of the COVID-19 pandemic. It took into account that this may still be the position, although it had not been given any confirmation of this. The panel also noted the email from Ms Stanciut's representative dated 4 February 2022 which referred to [PRIVATE].

The panel noted that concerns about Ms Stanciut's lack of knowledge of English were first raised over four years ago, and it was very concerned about the significant length of time this case has taken. It considered that whilst the COVID-19 pandemic has impacted Ms Stanciut's case in the last two years, the substantive suspension order was imposed in February 2019, so there was opportunity before the pandemic for progress to be made. The panel carefully balanced the concerns that Ms Stanciut's nursing skills may have degraded and may be difficult to strengthen given the significant passage of time, with the consideration that she hopes to take the IELTS test again in the near future.

The panel was of the view that a suspension order would allow Ms Stanciut time to address her English language skills to meet the required standards. It determined that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. The panel concluded that a further nine month suspension order would be the most appropriate and proportionate sanction available. The length of this order provides sufficient time for Ms Stanciut to take the IELTS test again in the near future without further prolonging this process excessively.

The panel gave very serious consideration to a striking off order. It considered that Ms Stanciut should be afforded the opportunity to take the IELTS again and concluded that a striking off order would be disproportionate at this time. The panel noted, however, that a future reviewing panel may seriously consider a striking off order unless there has been demonstrable progress in Ms Stanciut's case.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 15 March 2022 in accordance with Article 30(1).'

Decision and reasons on current impairment

The panel has considered carefully whether your 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, the provided IELTS results and oral responses from both you and your representative. It has taken account of the submissions made by Ms Wisniewska on behalf of the NMC and by Mr Sheppard on your behalf.

Ms Wisniewska submitted that there is no evidence that you have passed the IELTS exam with the results required to deem you sufficient to practise without any impairment. Ms Wisniewska submitted that you have not met the required standards sufficiently.

Ms Wisniewska stated that you had attempted to take the exam on the 5 November 2022, but this was cancelled. You then took the exam in Birmingham on 11 November 2022 and attained an overall grade of 4.5, whilst the NMC requires a standard score of 7 in order to deem a registrant fit to practise. Ms Wisniewska referred to the NMC code of conduct which states that a registered nurse needs to be able to communicate clearly and effectively in order to practise safely.

Ms Wisniewska stated that on the basis of the exam results, you have not met the requirements of the NMC. She further submitted that there remains impairment and invited the panel to extend the suspension order for a further 9 months. She further submitted that a suspension order would allow the public to both be protected alongside allowing you time to re-do your IELTS exam. Ms Wisniewska further highlighted the length it has been since the initial sanction, which is over 2 years, submitting that it may be beneficial to consider a striking-off-order.

Ms Wisniewska submitted also that your skill and practise within nursing may be degraded or weakened due to the lengthened period of time which you have not been practicing.

The panel also had regard to the submissions made by your representative Mr Sheppard.

Mr Sheppard stated that you needed to travel to Birmingham alone at an incredibly early hour and that such stresses would have impacted your ability to complete the exam sufficiently. He further stated that the exam was held in/near a construction site and that any individual in your position would have struggled with an exam in such an atmosphere.

[PRIVATE].

You continued on to answer questions posed by the panel.

You stated that you are currently not working and have not done so for a year [PRIVATE]. You stated that you currently volunteer for a charity hospice, and you are only able to work for short periods of once a week [PRIVATE]. You stated that you could not work as a healthcare assistant but could work as a nurse as you understand that the role of a healthcare assistant [PRIVATE], whilst nursing is mainly focused on medical administration and communication. You stated that you desire to return to nursing within a hospital and not a care home and probably care of the elderly. You stated that you had taken English language learning modules online from 2020 and are currently continuing with these. You stated that your daughter has searched for a good teacher to teach you English and started your current individual tuition in August 2022 for two lessons a week alongside homework. You stated that your current English course covers both written and oral work and that they have helped you improve your linguistic skills; [PRIVATE]. You stated that you have not attempted any mock IELTS tests despite being advised to do so by Mr Sheppard. You stated to the panel that you knew that you would need to do a return to practice programme, yet have not investigated any details regarding this, [PRIVATE]. You admitted that you have not requested any references from your charity, or previously paid work, as suggested by the previous panel.

The panel heard the closing submissions.

Ms Wisniewska submitted that there should be a further extension of a final 9-month suspension placed on you. She reminded the panel that a striking-off-order is an option, but that this is not what the NMC are requesting.

Mr Sheppard stated that you are highly qualified, a caring person, and that you need to work hard in order to return to the register. He further stated that he will aim to aid you in strengthening your English language skills and further stated that if you fail your IELTS exam again, then you should accept a striking-off-order which you concurred would be your course of action.

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 your fitness to practise remains impaired.

The panel noted that the last reviewing panel found that you had insufficient improvement.

At this hearing the panel considered whether or not you have taken steps to strengthen your practice. The panel took into account the fact that you have continued to undergo an English course with two lessons a week consisting of both written and oral skills, however, have not made sufficient progress since your first IELTS exam in 2018.

The last reviewing panel determined that your English language was not sufficient to permit practising as a registered nurse. Today's panel has heard no new information before it which significantly differs from the last. Furthermore, the panel took account to your most recent IELTS test, which shows that you have not improved your English language to the relevant standard as required by the NMC. Nurses must be able to speak, write and understand English to the required standard; if they are not, they pose a risk of harm to patients and the public. The panel therefore decided that a finding of current 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 current impairment on public interest grounds is required.

For these reasons, the panel finds that your fitness to practise remains impaired as your English language does not meet the requirements set out by the NMC.

You have failed to reach the standards of the code of conduct in the NMC; you must;

7) Communicate clearly

7.1 use terms that people in your care, colleagues and the public can understand

7.2 take reasonable steps to meet people's language and communication needs, providing, wherever possible, assistance to those who need help to communicate their own or other people's needs

7.3 use a range of verbal and non-verbal communication methods, and consider cultural sensitivities, to better understand and respond to people's personal and health needs Professional standards of practice and behaviour for nurses, midwives and nursing associates. All standards apply within your professional scope of practice.

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

7.5 be able to communicate clearly and effectively in English

10) Keep clear and accurate records relevant to your practice

Decision and reasons on sanction

Having found your 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 and would not protect the public. 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 seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your lack of knowledge of English was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 order on your 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 seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to your lack of knowledge of English.

The panel next considered imposing a further suspension order. The panel was of the view that considerable evidence would be required to show that you no longer posed a risk to the public. The panel determined that it has been a period of over 3 years since the initial suspension order has been imposed and that there has no significant improvement in your knowledge of the English language since 2018. The panel also took into consideration the fact that you have taken the IELTS exam 4 times and have significantly fallen short of the standard on all occasions, nor could it be said that there was any sustained pattern of improvement. The panel determined that a further period of suspension would not serve any useful purpose and would prolong the process excessively. The panel accepted your desire to practise as a nurse [PRIVATE], in finding good teachers and in attending English language tests. However, the panel were not convinced that your plans going forward

were substantially different to secure the substantial improvement required by the NMC, since the initial sanction was imposed. The panel determined that it was necessary to take action to prevent you 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.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 15 December in accordance with Article 30(1).

This decision will be confirmed to you in writing.

That concludes this determination.