

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

**Substantive Order Review Hearing
Thursday 6 April 2023**

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: Shaun Donnellan (Chair, lay member)
Helen Eatherton (Registrant member)
Jodie Jones (Registrant member)

Legal Assessor: Andrew Young

Hearings Coordinator: Maya Khan

Nursing and Midwifery Council: Represented by Dominic Bardill, Case
Presenter

Mrs Neacsu : Not present and not represented

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice (12 months) to come
into effect on 18 May 2023 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 Mrs Neacsu was not in attendance and that the Notice of Hearing had been sent to Mrs Neacsu's registered email address on 7 March 2023.

Mr Bardill, 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 heard and 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 means of joining the virtual hearing and, amongst other things, information about Mrs Neacsu's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In light of all of the information available, the panel was satisfied that Mrs Neacsu 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 Mrs Neacsu

The panel next considered whether it should proceed in the absence of Mrs Neacsu. The panel had regard to Rule 21 and heard the submissions of Mr Bardill who invited the panel to proceed in the absence of Mrs Neacsu.

Mr Bardill referred to an email from the NMC case officer dated 5 April 2023 which stated:

'Although the Registrant is represented, we have not heard from either of them since before the notice was issued. Due to this I am not expecting the REG or REP to attend the hearing tomorrow.'

Mr Bardill informed the panel that Mrs Neacsu was present at the original hearing. He said that efforts were made this morning to contact the NMC case officers however there was no response. He said there is a chance that Mrs Neacsu may not be in the UK and on the NMC register she is registered as not practising. He submitted that there was no information before the panel to support that an adjournment today would secure her attendance on some future occasion.

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

The panel decided to proceed in the absence of Mrs Neacsu. In reaching this decision, the panel considered the submissions of Mr Bardill. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Neacsu;
- There is no reason to suppose that adjourning the hearing would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the substantive order.

In these circumstances, the panel decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Neacsu.

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

At the outset of the hearing, Mr Bardill made a request that the entirety of this case be held in private on the basis that proper exploration of Mrs Neacsu's case involves reference to matters relating to her health and personal circumstances. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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 there will be reference to Mrs Neacsu's health and personal circumstances, which are inextricably linked to the case, the panel determined to hold the entirety of the hearing in private.

Decision and reasons on review of the substantive order

The panel decided to extend and vary the current conditions of practice order for a further 12 months.

This order will come into effect at the end of 18 May 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 14 April 2022. The current order is due to expire at the end of 18 May 2023.

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:

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.*

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

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.*
 - 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.*
 - 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.*

c) led 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:-

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

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

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

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

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 and your misconduct'

The original panel determined the following with regard to impairment:

'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...

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.'

The original 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 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; 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 been on maternity leave.

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.'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Neacsu '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 Mr Bardill.

Mr Bardill outlined the background of the case and reminded the panel of the decision taken at the substantive hearing. He went through the charges found proved, partially proven and admitted at the substantive hearing.

Mr Bardill submitted that the decision as to whether Mrs Neacsu 's fitness to practise remained impaired was a matter for the panel. Mr Bardill reminded the panel that Mrs Neacsu had not engaged with the NMC since the original hearing and she may not be living in the UK.

Mr Bardill informed the panel of Ms Neacu's previous mitigating circumstances.

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Mr Bardill submitted that a significant period of time has now passed since Mrs Neacsu has practised as a midwife. He said that Mrs Neacsu has not complied with the Registrar's direction to undertake an International English Language Testing System

("IELTS") test. He submitted that there have been no material changes in the circumstances of this case and there is nothing to demonstrate Mrs Neacsu has strengthened her practice, therefore repetition of the type of conduct that led to the finding of lack of English and poor record keeping is likely. He submitted that as a result, since Mrs Neacsu is still likely to put patients at risk of harm should she be allowed to practise unrestricted, a finding of impairment on public protection grounds is necessary. Additionally, he submitted that public confidence in the profession would be damaged in the circumstances of this case where there has been findings against the registrant and limited insight, maintenance of skills and knowledge or strengthened practice.

Mr Bardill submitted that Mrs Neacsu 's fitness to practise remains impaired. He submitted that the conditions of practice order should continue for a period of 12 months.

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 practise.

The panel considered whether Mrs Neacsu 's fitness to practise remains impaired.

The panel noted that Mrs Neacsu has not engaged with the NMC since the original hearing. She has not complied with the condition imposed by the original substantive hearing panel, namely to undertake and sufficiently pass either an IELT examination or to pass the Occupational English Test (OET) or any other test approved by the NMC to demonstrate the necessary knowledge of English that would allow her to practise safely as a midwife and to engage with the NMC. There was limited insight, remorse and remediation on Mrs Neacsu 's part. In these circumstances, the panel considered that Mrs Neacsu remained liable to put patients at risk of harm, through her limited knowledge of English and poor record keeping. The panel considered that a risk of repetition was likely, and therefore determined that a finding of impairment remained 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 practise. 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 Mrs Neacsu 's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Neacsu '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 seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Neacsu '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 Mrs Neacsu 's misconduct 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 Mrs Neacsu '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 took into account that the regulatory concerns related to Mrs Neacsu 's lack of English and her record keeping. The panel was of the view that a conditions of practice order remains sufficient to protect patients. It took into account Mrs Neacsu 's mitigating circumstances which may have impacted her lack of engagement with the NMC and the absence of any evidence of remediation.

The panel considered a further 12 months conditions of practice order in the same terms would allow Mrs Neacsu the opportunity to make contact with the NMC and address the concerns.

The panel considered a suspension order before finalising its decision and concluded, given Mrs Neacsu 's personal circumstances, that a suspension order would be disproportionate at this time.

Accordingly, the panel determined, pursuant to article 30(1), to impose a conditions of practice order for a period of 12 months from the expiry of the current order. The conditions are as follows:

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 notify in writing the NMC within 28 days of the receipt of this letter of your intentions in relation to your future career as a midwife within the UK.
2. Depending on (1) above you must show evidence that you have kept up to date with midwifery practice.
3. 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.

4. 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.

5. 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.

6. 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.
7. 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
8. 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.
9. 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 extend and vary this conditions of practice order, with a review, for a period of 12 months.

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
- Your attendance at any future review hearing.

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 with another order.

This will be confirmed to Mrs Neacsu in writing.