

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

**Substantive Order Review Meeting
Thursday 17 August 2023**

Virtual Meeting

Name of registrant: Ana Maria Reig Torro

NMC PIN: 16C0489C

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing - March 2016

Relevant Location: Bristol

Type of case: Lack of competence/Lack of knowledge of English

Panel members: Adrian Blomefield (Chair, Lay member)
Claire Rashid (Registrant member)
Anna Ferguson (Registrant member)

Legal Assessor: Robin Ince

Hearings Coordinator: Renee Melton-Klein

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on 28 September 2023 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Miss Reig Torro's registered email address by secure email on 14 June 2023.

The panel took into account that the Notice of Meeting provided details of the review including the date (14 August 2023) after which the meeting would take place and the fact that this meeting was heard virtually.

The panel also noted that there was a letter dated 1 March 2023 which was sent to Miss Reig Torro ahead of the Notice of Meeting alerting her that the order was going to be reviewed and a further telephone call was made to Miss Reig Torro from her case officer in an attempt to contact her in regard to this meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Reig Torro has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to impose a suspension order for 12 months. This order will come into effect at the end of 28 September 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 31 August 2022.

The current order is due to expire at the end of 28 September 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:

That you, whilst employed at the Bristol Royal Infirmary, between 9 October 2017 and 20 June 2018 failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a band 5 nurse, in that you;

- 1) *On or around 8 November 2017; **(proved in its entirety)***
 - a) *Failed to appropriately dispose of a needle on an insulin pen in the sharps bin.*
 - b) *Failed to appropriately dispose of an injection in the sharps bin.*

- 2) *On or around 10 November 2017 failed to accurately verify patient identities on wristbands. **(proved)***

- 3) *On 2 December 2017*
 - a) *Did not sign Patient A's medical chart for the administration of Enoxaparin 40mg. **(proved)***

.....

- 4) *On or around 7 December 2017 **(proved in its entirety)***
 - a) *Did not administer Insulin Novomix to Patient C at 6p.m. as required/prescribed.*
 - b) *Delayed the administration of Insulin Novomix to Patient C by approximately 2.5 hours.*
 - c) *Incorrectly signed/indicated that the Insulin Novomix had been administered to Patient C at 6p.m.*

- 5) *On 10 December 2017 **(proved in its entirety)***
 - a) *Did not administer a Colomycin Nebuliser to Patient D at 8a.m. as required/prescribed.*
 - b) *Did not escalate your failure to administer the Colomycin Nebuliser to a senior member of staff/colleague.*

- c) *Did not recognise/understand that the Colomycin Nebuliser was an antibiotic.*
- 6) *On or around 13 December 2017 (proved in its entirety)*
- a) *Placed dirty commode lids on clean worktops*
 - b) *Left disconnected IV medication next to Patient E for several hours.*
 - c) *Were unable to complete nursing handovers over the telephone.*
 - d) *Did not understand nursing handovers on the ward.*
 - e) *Were unable to understand drug chart*
 - f) *Did not change Patient F's dressing*
- 7) *On 18 December 2017 you accepted the role of a band 3 nurse/Senior Nursing Assistant. (proved)*
- 8) *Between 27 December 2017 and 16 January 2018 whilst on sick leave, did not remain in contact with the Ward as required. (proved)*
- 9) *On or around 25/26 January 2018; (proved in its entirety)*
- a) *Did not attend a training session rostered for 7.5 hours.*
 - b) *Did not inform the Ward about the non-attendance of the training session.*
 - c) *Decided to go home rather than attend the ward*
- 10) *On or around 9 February 2018*
- a) *Did not complete documentation on the behaviour logs for one or more patients. (proved)*
 - b) *Did not complete documentation in care plans for one or more patients. (not proved)*
- 11) *On 10 February 2018 whilst working as a band 3 nursing assistant; (proved in its entirety)*
- a) *Disconnected IV equipment*
 - b) *Left IV equipment hanging.*

12) On or around 14/15 March 2018 failed to identify/observe that an unknown patient's oxygen saturations were at 89%. **(proved)**

13) On or around 4 May 2018 you accepted the role of a band 4 Assistant Practitioner. **(proved)**

14) On 9 May 2018 following Patient H suffering a fall; **(proved in its entirety)**

- a) Did not complete the outcome of the incident in the SWARM form.
- b) Did not respond to an enquiry/email about Patient H's fall, in that you did not respond to enquiries about;
 - i) Whether the floor was dry in the toilet.
 - ii) Whether Patient H had capacity.
 - iii) If Patient H's next of kin was notified about the fall.
 - iv) Whether Patient H was aware of how to use the call bell.
 - v) Whether Patient H used any walking aids.
 - vi) Whether Patient H was independent with their mobility.
 - vii) Whether the NEWS score was the observations were taken.
 - viii) Whether Patient H suffered any injuries
 - ix) What the result of Patient H's CT scan was.
 - x) Whether a falls risk assessment was re-assessed following the fall.
 - xi) Whether the falling star was updated to RED
 - xii) Whether other staff members were informed of the fall/increased risk.

15) On or around 15/16 May 2018;

- a) Refused to provide a handover to the nurse/staff taking over the night shift. **(proved)**
- b) Used words to the effect;
.....
 - ii. 'No update' **(proved)**

16) On or around 6 June 2018

.....

b) *Failed to follow the basic structure of care plans. (proved)*

17) *On or around 20 June 2018 failed to complete an action plan to demonstrate competency within the role of a band 4 Assistant Practitioner. (proved)*

And in light of the above your fitness to practise is impaired by reason of your lack of competence.

18) *That you, a registered nurse, do not have the necessary knowledge of English to practise safely and effectively. (proved)*

The original panel determined the following with regard to impairment:

The panel next went on to decide if as a result of the lack of competence and or lack of knowledge of English, Miss Reig Torro's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be a professional, safe, and effective practitioner. Patients and their families must be able to trust nurses 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 and nurses must ensure that they have the requisite knowledge of English.

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 potential harm as a result of Miss Reig Torro's lack of competence and lack of knowledge of English. Miss Reig Torro's lack of competence and lack of knowledge of English had breached the fundamental tenets of the nursing profession and brought its reputation into disrepute by failing to be able to communicate safely and effectively. The panel further noted that the matters found proved were in respect of a number of patients and not isolated incidents. It went on to consider whether there is a risk of repetition and in doing so it assessed Miss Reig Torro's current insight, remorse and remediation.

Regarding insight on lack of competence and lack of knowledge of English, the panel had nothing before it to demonstrate any evidence of Miss Reig Torro's insight. The panel noted that there was no evidence from Miss Reig Torro concerning how her lack of competence impacted negatively on the reputation of the nursing profession.

In relation to remorse, the panel noted that there was no evidence available to it, including any comments or reflection from Miss Reig Torro. She had not engaged with the NMC's investigation and consequently the panel has not had the benefit of hearing either directly or indirectly from her.

The panel was satisfied that the lack of competence and lack of knowledge of English in this case are capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Reig Torro has remedied her practice, The panel was of the view that Miss Reig Torro has not yet demonstrated sufficient remediation. It noted that Miss Reig Torro had not undertaken any relevant training courses, nor has she engaged with the NMC in relation to these proceedings.

The panel noted that Miss Reig Torro is currently in Spain however, she was directed to sit the English Language Assessment but failed to do so.

In addition, the panel was not in a position to assess from independent evidence whether Miss Reig Torro had successfully remediated her practice. Therefore, the panel was of the view that Miss Reig Torro had not yet been able to demonstrate that she knows exactly where to turn to should she find herself in a similar situation, and the risk of repetition had not been reduced.

The panel is therefore of the view that there is a risk of repetition. The panel 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.

The panel concluded that public confidence in the profession would be undermined if a finding of current impairment were not made in this case and therefore also finds Miss Reig Torro's fitness to practise impaired on the grounds of public interest.

The original panel determined the following with regard to sanction:

Having found Miss Reig Torro'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 took into account the following aggravating features:

- *The panel noted that there was no effort on Miss Reig Torro's behalf to engage with the notice of direction letter and five reminders sent by the NMC regarding an International English Language Test*
- *Miss Reig Torro had demonstrated no insight*
- *Miss Reig Torro's lack of competence was over a period of time and put patients at risk of suffering harm*

The panel also took into account the following mitigating features:

- The panel noted that Miss Reig Torro was compliant with the plan to downgrade her staffing level in order to address the concerns identified*
- The panel noted some positive comments from colleagues including a senior staff nurse, who commended her ‘overall attitude to work and the deliverance of her care’*

The panel had some sympathy with Miss Reig Torro’s circumstances having been successful at interview when no concerns were raised about her knowledge of the English language.

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 the public protection issues identified. 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 Miss Reig Torro’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 Miss Reig Torro’s lack of competence and 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 placing conditions of practice on Miss Reig Torro’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 noted the lack of competence could in some circumstances be addressed by conditions. However, Miss Reig Torro’s lack of knowledge of English will prevent her from practising safely.

The panel noted Miss Reig Torro has not engaged with the NMC proceedings nor does it have any evidence before it to suggest that she will comply with a conditions of practice order if imposed. The panel also noted that despite the opportunity to comply with the notice of direction to take the International English Language Test, Miss Reig Torro did not do so and she has not demonstrated safe and effective practice since the concerns have been identified. Furthermore, the panel concluded that the placing of conditions on Miss Reig Torro's registration would not adequately address the seriousness of this case and would not address the public interest issues identified at this stage.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident; and*
- In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel was satisfied that in this case, Miss Reig Torro's failings were not fundamentally incompatible with remaining on the register.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction. The panel noted the hardship such an order could potentially cause Miss Reig Torro. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse. The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of Miss Reig Torro's failings.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- *Miss Reig Torro's engagement with the NMC.*
- *Evidence of successful completion of the IELTS test to the level required by the NMC;*
- *A reflective statement from Miss Reig Torro demonstrating her understanding of the failings identified;*
- *Provide the NMC with evidence of any relevant training undertaken;*
and
- *Any testimonials from paid or unpaid employment.*

Decision and reasons lack of competence, lack of knowledge of English and impairment

In making its decision the panel bore in mind that lack of competence is defined as:

'A lack of knowledge, skill or judgment of such a nature that the registrant is unfit to practise safely and effectively in any field in which the registrant claims to be qualified or seeks to practice.'

The panel took into account the NMC's overarching objective which is to protect the public and the wider public interest. This includes the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Furthermore, in regard to lack of knowledge of English, the panel bore in mind the Nursing and Midwifery Order 2001 (the Order), which states:

'...knowledge of English... is necessary for the safe and effective practice of nursing and midwifery within the United Kingdom.'

The panel accepted the advice of the legal assessor which included reference to the relevant legal principles and case law.

The panel has considered carefully whether Miss Reig Torro'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.

With regard to its decision on lack of knowledge of English, the panel had regard to Rule 31 (6A) of the Rules:

'In determining whether a registrant's fitness to practise is impaired by reason of not having the necessary knowledge of English, the [Fitness to Practise] Committee may draw such inferences as seem appropriate to it if a registrant fails to undertake an examination or other assessment or to provide evidence of the result of that examination or other assessment in accordance with a direction made pursuant to these Rules.'

The panel bore in mind that adequate knowledge of the English language is an essential part of safe nursing practice and that the public expects registered nurses to be able to communicate safely and effectively.

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.

In deciding whether Miss Reig Torro's fitness to practise remains impaired, the panel noted that the original panel found that Miss Reig Torro had put nothing before it to demonstrate insight. At today's meeting, this panel also had nothing before it that demonstrated any further insight or engagement since the imposition of the order. The panel, therefore, was in the same position as the original panel and was of the same view that there was no evidence available to it, including any comments or reflection from Miss Reig Torro regarding insight or remorse. The panel noted that she had not engaged with the NMC's investigation, nor has she engaged in the last 12 months since the order was imposed.

The panel was satisfied that the lack of competence and lack of knowledge of English in this case are capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Reig Torro had strengthened her practice. The panel was of the view that Miss Reig Torro has not yet demonstrated sufficient remediation. It noted that Miss Reig Torro had not provided any information that she has completed any relevant training courses at the time of the imposition of the order nor in the last 12 months, nor has she engaged with the NMC in relation to these proceedings. The panel noted that Miss Reig Torro is currently in Spain; however, she was directed to sit the English Language Assessment (IELTS) but failed to do so.

The original panel determined that Miss Reig Torro was liable to repeat matters of the kind found proved. Today's panel determined that there has been no engagement or material change in this case. In light of this, the panel determined that Miss Reig Torro is still liable to repeat matters of the kind found proved. 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 because public confidence in the profession would be undermined if a finding of current impairment is not made in this case due to Miss Reig Torro's lack of remediation since the substantive hearing.

For these reasons, the panel finds that Miss Reig Torro's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Reig Torro'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 Miss Reig Torro'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 Miss Reig Torro'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 order on Miss Reig Torro'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 was of the view that lack of competence could be effectively managed by a conditions of practice order; however, Miss Reig Torro's lack of knowledge of the English language is a barrier to safely practising under a conditions of practice order. Furthermore, the panel noted Miss Reig Torro has not engaged with the NMC proceedings nor does it have any evidence before it to suggest that she will comply with a conditions of practice order if imposed. Accordingly, the panel was not able to formulate conditions of practice that would adequately address the concerns relating to Miss Reig Torro's lack of competence and lack of knowledge of English.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Miss Reig Torro further time to fully reflect on her previous failings, engage with the NMC, and sit an English language competency exam (IELTS) if she wishes to do so. The panel concluded that a further 12 month suspension order would be the appropriate and proportionate response and would afford Miss Reig Torro adequate time to further develop her insight and take steps to strengthen their practice.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 28 September 2023 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

The panel noted that at the conclusion of this further 12 months suspension order, any future reviewing panel would also have the ability to impose a striking-off sanction.

Any future panel reviewing this case would be assisted by:

- Miss Reig Torro's engagement with the NMC.
- Evidence of successful completion of the IELTS test to the level required by the NMC;
- A reflective statement from Miss Reig Torro demonstrating her understanding of the failings identified;
- Provide the NMC with evidence of any relevant training undertaken; and
- Any testimonials from paid or unpaid employment.

This will be confirmed to Miss Reig Torro in writing.

That concludes this determination.