

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

**Substantive Order Review Hearing
Wednesday, 22 March 2023**

Virtual Hearing

Name of Registrant: Halina Sowinska

NMC PIN 07A0064C

Part(s) of the register: Registered Nurse – Sub-part 1
Adult Nursing – January 2007

Relevant Location: Roehampton

Type of case: Misconduct/Lack of knowledge of English

Panel members: Judith Webb (Chair, Lay member)
Lorraine Shaw (Registrant member)
Kevin Smyth (Lay member)

Legal Assessor: Charles Parsley

Hearings Coordinator: Philip Austin

Nursing and Midwifery Council: Represented by Simon Gruchy, Case Presenter

Mrs Sowinska: Present but unrepresented

Order being reviewed: Suspension order (3 months)

Fitness to practise: Currently Impaired

Outcome: **Striking-off order to come into effect upon expiry of the current order, namely, at the end of 1 May 2023, in accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

The panel decided to impose a striking-off order. This order will come into effect at the end of 1 May 2023, in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (“the Order”).

This is the fifth review of a substantive suspension order originally imposed by a panel of the Fitness to Practise Committee (“FtPC”) for a period of 12 months on 3 July 2019. This was first reviewed on 23 June 2020 by a panel of the FtPC and a new suspension order was imposed for a period of 6 months. The suspension order was reviewed for a second time on 29 December 2020, and a panel of the FtPC imposed another suspension order for a further 12 months. The suspension order was reviewed for a third time on 21 December 2021, when a panel of the FtPC imposed another suspension order for a period of 12 months. At the last review hearing on 21 December 2022, a panel of the FtPC imposed another suspension order for a period of 3 months.

The current order is due to expire at the end of 1 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:

“That you, a registered nurse:

- 1. Failed to cooperate with an NMC investigation in that you have refused, without good reason, to take an International English Language Testing System assessment.*

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

AND

That you, a registered nurse:

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

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

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

“The panel noted that the last reviewing panel found that Mrs Sowinska had limited insight. At this hearing the panel noted that Mrs Sowinska has not shown any further insight into her actions and no evidence of successfully completing an approved English language test that is recognised by the NMC.

In its consideration of whether Mrs Sowinska has taken steps to strengthen her practice, the panel had no evidence before it demonstrating that Mrs Sowinska’s English language skills were at the required level to override the concerns found proved. The panel noted that positive testimonials from colleagues could have demonstrated that you have taken steps to strengthen her practice.

The last reviewing panel determined that Mrs Sowinska was liable to repeat matters of the kind found proved. Today’s panel has received no new information and Mrs Sowinska has not followed up with the recommendations given by the last panel. In light of this, this panel determined that Mrs Sowinska is 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.

For these reasons, the panel finds that Mrs Sowinska fitness to practise remains impaired.”

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

“Having found Mrs Sowinska’s fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the ‘NMC’s Sanctions Guidance’ (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

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

The panel next considered whether a conditions of practice on Mrs Sowinska’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 is mindful that any conditions imposed must be proportionate, measurable and workable. It was mindful that the main issue in this case was with regard to Mrs Sowinska’s knowledge of the English language and not a defined area of clinical practice. The panel was therefore not able to formulate conditions of practice that would adequately address the concerns relating to Mrs Sowinska’s lack of knowledge of English. It also noted that as Mrs Sowinska has not been engaging with the NMC, she has not demonstrated a willingness to comply with any conditions that would address the misconduct highlighted in this case.

The panel considered the imposition of a further period of suspension. It was of the view that a further period of suspension would allow Mrs Sowinska not only further time to successfully complete an English language test approved by the NMC but also time to further develop her insight in relation to her misconduct. The panel concluded that a further three month suspension order would be the appropriate and proportionate response.

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. Accordingly, the panel determined a suspension order would provide Mrs Sowinska with an opportunity to engage with the NMC. It considered this to be the most appropriate and proportionate sanction available.

The panel did consider a striking-off order in light of her misconduct as well as the fact that she has been suspended (for over two years). Due to the length of Mrs Sowinska's suspension it is now open to this panel to strike her off on the basis of her lack of knowledge of English as well as her misconduct. Were Mrs Sowinska to have been in attendance today the panel would have given serious consideration to a striking-off order on the basis that no progress had been made since the original determination. However, it was of the view that a striking-off order would be disproportionate at this stage in light of Mrs Sowinska's recent engagement indicating that she was going to attend today's hearing and the panel not knowing the reason for her non-attendance at today.

It is for this reason that the panel has decided to extend the order for a short period of three months in order that Mrs Sowinska has a final opportunity to engage with proceedings.

This suspension order will take effect upon the expiry of the current suspension order, namely at the end of 1 February 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.

Any future panel reviewing this case would be assisted by:

- *Evidence of successful completion of an English language test that is approved by the NMC;*
- *A reflective piece from Mrs Sowinska that demonstrates her understanding of what happened on 11 November 2017, and what steps she has taken to ensure that the concerns identified would not be repeated in similar set of circumstances in the future;*
- *Mrs Sowinska setting out what steps she has taken to keep her knowledge and nursing skills up to date. For example, by way of course attendance or E-learning etc.”*

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. It has taken account of the oral submissions made by Mr Gruchy, on behalf of the NMC, and the oral submissions from you, in support of your case.

Mr Gruchy submitted that there is no new evidence before this panel to suggest that your practice has improved to a point where it can be said that you no longer present a risk to patient safety. He submitted that the persuasive burden is on you to demonstrate that you are no longer currently impaired.

Mr Gruchy submitted that there is essentially no update to provide since the last review hearing. He submitted that you still do not appear to understand the issues present in this case, and that is the underlying feature.

Mr Gruchy submitted that you have not taken any steps to follow the recommendations made by previous panels; you have not undertaken an English language test approved by the NMC, provided any reflective pieces or shown any remorse or insight. Therefore, he submitted that there evidently remain concerns around your ability to perform your role as a registered nurse both safely and effectively.

In taking account of the above, Mr Gruchy submitted that you remain currently impaired on both public protection and public interest grounds. He submitted that you continue to present a risk of unwarranted harm to patients in your care, should you be permitted to return to nursing practice at this point. Mr Gruchy submitted that a fully informed member of the public would expect the NMC to take action in restricting your nursing practice, given the outstanding concerns identified.

Mr Gruchy submitted that it is a matter for the panel as to what sanction to impose in this case. He invited the panel to consider whether a suspension order remains appropriate, given the number of extensions, with no attempt by you to demonstrate any insight or address the outstanding concerns.

At the start of your submissions, you explained to the panel that you had difficulties in attending the previous hearing. You said that you were waiting for someone to contact you, but this contact never came and this is the reason you did not attend.

You told the panel that nothing has changed in the five years since your nursing practice has been restricted. You stated that it is important for you to return to the nursing profession; you still do not understand why you have been suspended at all, let alone for as long as you have been.

You informed the panel that you were a registered nurse in Poland for 25 years, prior to coming to the UK. You said you have been a registered nurse in the UK for 13 years, and

you have never had any problems before. You stated that if your English was that bad, you would not have successfully obtained British citizenship.

You submitted that if you have done something wrong, the NMC should have told you in 2017 when they began their investigation.

You told the panel that you have a clear conscience and believe you did everything to the best of your abilities in respect of your nursing career. You reiterated that you have done nothing wrong, and have never been told by the NMC what it is expecting you to do to allow you to return to the nursing profession. You stated that the investigation into your conduct was not fair or just; you have not had the opportunity to discuss the events with those that referred you to the NMC, and you feel like you have been the subject of discrimination.

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 was aware that, through your own admission, no new evidence had been provided demonstrating any attempts to address the deficiencies in your nursing practice. It noted that you continue to reiterate that you have done nothing wrong, and that your nursing practice has been unjustly restricted.

The panel considered you to have remained steadfast in your denials regarding the outstanding serious concerns raised in respect of your nursing practice. You do not believe that you lack the necessary knowledge of English to perform a nursing role, and relied on the fact that you have British citizenship. However, the panel considered this to be completely different from the concerns raised about your nursing practice. It was of the view that a registered nurse needs to have a sufficient command of the English language

in order to deal with every aspect of the job, including emergency situations where there is a serious risk of harm.

The panel noted that you have made no attempts to comply with any of the recommendations made by previous panels of the FtPC. It was satisfied that you had made no attempts to reflect on the incidents or developed your insight further. Since 2020, you have not made any further attempts to complete an English language test that has been approved by the NMC, nor do you appear to understand the necessity to complete such a test successfully in order to demonstrate your ability to communicate effectively with others in English so as to practise safely.

Despite the recommendations of previous panels, you have not sought to furnish the panel with a reflective piece demonstrating your understanding of what happened on 11 November 2017, or state what steps you have taken to ensure that the concerns identified will not be repeated. Given that you have been suspended for almost four years, you have also not provided any evidence or information of any attempts to keep your nursing knowledge or skills up to date. The panel considered you to have been given ample opportunity to improve your nursing practice, and it found you to have made no progress in doing so since the concerns were identified.

In the absence of any evidence to the contrary, the panel could not be satisfied that you no longer pose a risk to patient safety. It had no evidence before it to suggest that the risk of harm had reduced. Therefore, the panel considered there to be a real risk of repetition of the events and a risk of significant harm to patients in your care, should you be permitted to return to unrestricted nursing practice. The panel decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objective of the NMC: to protect, promote and maintain the health, safety and well-being of the public and patients and the wider public interest which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. As you have not yet addressed the concerns identified by the previous panel, this panel determined that, in these circumstances, a finding of continuing impairment on public interest grounds is required. It was of the view that a fully informed

member of the public, aware of all the evidence presented in this case, would be concerned by your behaviour and subsequent inactions, and would expect a panel to make a finding that your fitness to practise remains impaired, in absence of any new evidence to the contrary.

For these reasons, the panel finds that your fitness to practise remains impaired on the grounds of public protection and it is also in the public interest.

Decision and reasons on sanction

Having found your fitness to practise as a registered nurse to be 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 impose a caution order but concluded that this would be inappropriate in view of the risks identified and the seriousness of the case, as this would not place any restrictions on your clinical nursing practice. The panel took account of the SG which 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 did not consider this case to be towards the lower end of the spectrum of fitness to practise. It decided that it would be neither proportionate, nor in the public interest to impose a caution order.

The panel next considered substituting the current suspension order with a conditions of practice order. It is mindful that any conditions imposed must be relevant, proportionate, measurable and workable.

The panel determined that no practical or workable conditions could be formulated at this time that would adequately protect patients or sufficiently address the public interest elements of the case. The panel considered that whilst there is a clear, identifiable area of concern, specifically your failure to demonstrate your ability to communicate effectively with others in English, you could not practise as a registered nurse to the requisite

standards without this having been addressed. Furthermore, your ongoing failures to cooperate with your regulator's request to undertake an English language test approved by the NMC could also be indicative of a deep-seated attitudinal issue. This is amplified by your repeated failure to provide a reflective piece and your lack of demonstrating any insight into the impact on others of the concerns about your practice.

In light of the above, the panel was of the view that a conditions of practice order would not adequately capture the outstanding concerns involved in this case. It determined that this sanction would be neither appropriate, nor proportionate.

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

The panel was aware that the determinations from previous hearings would have been provided to you, yet you persisted with saying that you are unclear as to why your nursing practice had been restricted. You stated at this hearing "*If I did anything wrong, please tell me*" despite this having been made clear to you from the outset what the concerns are.

The panel was concerned that you still appeared to have no understanding or comprehension of what was happening at these hearings. The panel noted that the concerns were first raised in 2017, some five and a half years ago. This is now your fifth substantive order review hearing, and the previous FtPC panel did explain in their reasons what a future reviewing panel might consider if no new attempts to rectify the concerns were made. The panel considered you to have not used the time since the imposition of the first suspension order to properly address the concerns identified.

You indicated that you want to return to the nursing profession, but the panel noted from its decision on impairment that you have not made any attempts to address the outstanding concerns identified, despite having ample opportunity to do so. Due to the lack of apparent insight and lack of proactive steps taken to address these concerns, the panel determined that it was no longer in the public interest to grant you further time to do so.

Over nearly four years, you have failed to address the concerns about your nursing practice and have provided no information about attempting to keep your knowledge and

training up to date during that time. In those circumstances, the panel determined that returning to the nursing profession is not possible.

In taking account of the evidence provided, the panel was of the view that it would not be in the public interest to continue with these matters indefinitely, and that this process should be brought to a conclusion. Therefore, in having regard to the above, the panel was not satisfied that a further suspension order would sufficiently address the wider public interest elements of this case as it would not serve any useful purpose. You had been afforded many opportunities by previous panels to develop your insight and address the outstanding concerns. However, you have failed to take any proactive steps, let alone address them. This inability to recognise the serious concerns and seek to address them demonstrates a lack of understanding and appreciation that is key to safe and effective nursing practice. This is not compatible with the behaviours expected of a registered nurse. The panel determined that it was now necessary to take action to prevent you from practising as a registered nurse in the future and concluded that the only sanction that both protects the public and serves the wider public interest was a striking-off order.

This decision will be confirmed to you in writing.

That concludes this determination.