Nursing and Midwifery Council

Registrations Appeal Hearing
Monday 28 June 2021

Virtual Hearing

Name of appellant:	Barbara Maja Fall
Type of case:	Registrations appeal
Panel members:	Mahjabeen Agha (Chair, Lay member) Mandy Renton (Registrant member) Wendy Teresa West (Lay member)
Legal Assessor:	Nigel Mitchell
Panel Secretary:	Parys Lanlehin-Dobson
Nursing and Midwifery Council:	Represented by Gulcan Olurcan, Case Presenter
Mrs Fall:	Present and not represented
Decision:	**Appeal dismissed**

Decision and reasons

The panel decided to dismiss your appeal against the decision to send an EU Alerts via the Internal Market Information (IMI) System.

"*Until 31 December 2020, the NMC was required to inform every other member state, via the European Commission (EC)'s IMI System, of any sanction imposed which restricted or prohibited a registrant's practice. The NMC lost all access to this system on 1 January 2021 when the UK's departure from the EU came into effect.*

The IMI system is an electronic method for a regulatory authority in one EU member state to communicate information to all other regulatory authorities across the EU. It enables regulatory bodies to communicate quickly and easily with their counterparts abroad.

When the NMC had access to the IMI System, it was the responsibility of a Hearings Support Officer (HSO) to create, send, update, withdraw or close an alert as appropriate, within three calendar days of a restrictive or prohibitive sanction start/end date. It was also the responsibility of the HSO to prepare and send written notification to registrants of alert activity specific to them, again, within three calendar days.

Alerts were also required to be sent on each subsequent occasion where a substantive order was reviewed, and the outcome of that review meant that a registrant remained subject to a restriction or prohibition. The new alert would reflect the most up-to-date position and new date of expiry.

Once a HSO had logged in to the IMI system, the entries were completed by either choosing from a list of options, or by inputting information manually as required. The latter relates only to the registrant's name, case reference number, address of the authority/court and other contact details. The section that deals with the restriction or prohibition, allows only for choices from a drop down menu, and the section that deals with the 'reason for the restriction/prohibition', allows only a choice of two options; (a) or (b).

Option (a) was, "substantial reasons concerning the practice of the professional" and would be selected when a restriction was placed on a registrant's practice. The only other choice was option (b) which was used for administrative reasons such as non-payment of fees."

In reaching its decision, the panel considered all of the evidence in this case, as well as your oral evidence, and the submissions of Ms Olurcan, on behalf of the NMC and your own submissions.

Background

You were the subject of fitness to practise proceedings. It was alleged that your fitness to practise was impaired on the grounds that you didn't have the necessary knowledge of English for safe and effective practice. On 10 August 2018, at a substantive hearing, your fitness to practise was found to be impaired and you were sanctioned to a suspension order for a period of 12 months.

The substantive suspension order was reviewed on two subsequent occasions, on 2 August 2019 and 5 August 2020 respectively. On each occasion, the order was extended for a further period of 12 months. Your appeal is against the sending of EU Alerts following the decisions of previous panels.

Submissions

Ms Olurcan outlined the background to the case. She referred the panel to the following grounds on which you wished to appeal:

- Ground 1 – *"Those alerts create wrong opinion of me not only in UK but also in all countries of UE*". *"They create opinion that I did something wrong in law."*

- Ground 2 – *"Currently alerts have been sent 3rd time in the period of the last 3 years."*

- Ground 3 – *"In opinion of mine and not only alerts are further part of victimisation process I have been going through during a last few years."*

- Ground 4 – *"Furthermore, alerts are sent when midwife or nurse did error connected with midwifery profession, sending alert regarding my case, and*

putting me in between people with misconduct allegations is unfair and wrong."

Ms Olurcan reminded the panel that it should only allow the appeal if it is satisfied that either;

- the alert was sent in error; or
- the contents of it are inaccurate.

She submitted that the burden is on you to satisfy the panel and or provide evidence to support the above two grounds.

It was Ms Olurcan's submission that the appeal should be dismissed as the four grounds upon which you appeal are without merit. She submitted that it was, at that time, a legal requirement for the NMC to comply with the EU Directive. When your substantive suspension order was extended, a new alert requirement was triggered.

She further submitted that the HSO selected the appropriate option at the *'reason for the restriction/prohibition'* section of the form. As option (a) is the selection required for notifying member states of a restriction/prohibition on a registrant's practise, there is no other appropriate option that could've been selected. Option (b) was not relevant in the circumstances of this case.

Ms Olurcan submitted that the function of the IMI System is for one EU member state to communicate information to all other regulatory authorities across the EU. It enables regulatory bodies to communicate quickly and easily with their counterparts abroad. The NMC did not send these alerts, other than in accordance with the legislation and for no other reason other than to fulfil a mandatory obligation. They were not sent with an intention to victimise you.

To conclude Ms Olurcan submitted that the NMC were required to comply with the EU Directive to send alerts in circumstances where a registrant's practice had been restricted or prohibited.

You gave evidence under affirmation. You were assisted at times by a Polish interpreter.

You told the panel that you only became aware of the EU alerts a few years after they had been sent. You said that you are not clear as to why the alerts were sent and why the NMC informed the EU member states of your suspension, as it related to your knowledge of English and not your clinical practice and because of this you believe the EU alerts to be inaccurate.

You told the panel that you do not believe that your knowledge of the English language affects your ability to practise as a midwife because there are plenty of Polish women in the UK who need midwives that speak Polish.

Panel's decision

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

The panel had regard to the grounds on which it must consider your appeal namely that it must be satisfied of the following in order to allow your appeal:

- the alert was sent in error; or
- the contents of it are inaccurate.

The panel took into account that the onus was on you to satisfy the panel on those grounds.

The panel decided that you were unable to demonstrate that the alerts were sent in error. The panel accepted that the NMC had at the time a legal requirement to comply with the EU Directive, and inform the EU member states of your suspension. The panel had regard to your concern that the EU Alerts do not provide details of the suspension and that the suspension was made in relation to your knowledge of English and not the conduct of your clinical practice as a midwife. However it was the restriction or prohibition on your practice that obligated the NMC to send the alerts. The NMC had a duty to inform the EU member states, at that time that you were subject to a suspension order and prohibited from practice.

The panel determined that at the relevant times you were prohibited from practice and therefore the contents of the alerts were accurate.

The panel noted the decision of the fitness to practise panel, relating to your suspension and your knowledge of the English language. The panel reminded itself that there would be a risk of harm if a nurse or midwife were allowed to practise in the United Kingdom without having the necessary knowledge of English and that any member of the public would expect a nurse or midwife in the UK to have the required level of English in order to communicate with them and others to provide safe care.

Taking the above into account the panel decided to dismiss your appeal.

This will be confirmed to you in writing.

That concludes this determination.