

Nursing and Midwifery Council

Registrations Appeal Hearing Friday, 30 July 2021

Nursing and Midwifery Council
Virtual Hearing

Name of appellant:	Lina Kirdeike
Type of case:	Registrations appeal
Panel members:	Michael McCulley (Chair, Lay member) Hayley Ball (Registrant member) Rama Krishnan (Lay member)
Legal Assessor:	Andrew Reid
Panel Secretary:	Xenia Menzl
Nursing and Midwifery Council:	Represented by Rebecca Penfold, Case Presenter
Mrs Kirdeike:	Present and unrepresented
Decision:	Appeal dismissed

Decision and reasons

The panel decided to dismiss your appeal against the decision of the Assistant Registrar of the Nursing and Midwifery Council (NMC).

This appeal is made under Article 37 of the Nursing and Midwifery Order 2001 (the Order).

Article 9(2)(ba) of the Nursing and Midwifery Order 2001, states that one of the requirements of registration is that an applicant must satisfy the Registrar that they have the necessary knowledge of English.

The Assistant Registrar therefore required you to complete an English language test, namely the academic version of the International English Language Testing System (IELTS) and obtain a score of at least 7 in each section of the test (6.5 in writing is now accepted), or to complete the Occupational English Test (OET) and attain at least level B in each section (C+ is now accepted in the writing section).

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

Background

Ms Penfold presented the background to your case. She informed the panel you first applied for registration on 6 January 2020.

You trained as a nurse outside of the United Kingdom (UK) in Lithuania. On 13 October 2020 your qualification was fully recognised by the NMC. A 'language evidence assessment' pack was then sent to you so that you could provide evidence that you met the English language requirements for registration.

You provided the following evidence to the NMC:

- City & Guilds Level 1 Award: ESOL – listening and speaking (29 March 2016)
- QA Level 3 Award: Emergency First Aid at Work (15 August 2018)

- Certificate of attendance: Health & Safety, COSHH and Infection Control course (7 February 2018)
- Certificate of attendance: End of Life Care (8 March 2018)
- Supporting letter from employer (25 November 2020)

On 18 January 2021, an Assistant Registrar considered your evidence and decided that it did not meet the requirements as set out in NMC Guidance. The Assistant Registrar decided that you should take the academic IELTS or an OET and meet the required scores in order to demonstrate that you have the necessary knowledge of English to be able to practise safely and effectively. A letter was sent to you advising you of the Assistant Registrar's decision.

You have not sat any test and have instead, on 11 February 2021, appealed the decision of the Assistant Registrar in a Notice of Appeal (NOA).

In the reason for your appeal you state:

'I would like to appeal to you decision and the possibility of obtaining a PIN number. During all this time (2y years) I have intensively collected all the necessary documents, which proved that i'm a graduate of the nurse in Lithuania (EU). I spend a lot of time, money and nerves to get the necessary documents, some even 2 times. During all this time no one has informed me that certificates from other institutions are not suitable (I have Level 2: speaking, listening, reading and writing skills from Boston College). I think I was given too short a time for the IELTS test because it's a very high level and it gives me to be too heavy.' [sic]

Submissions

Ms Penfold stated that, on 6 July 2021, you submitted a number of additional City & Guilds ESOL Skills for life Certificates. These are dated between 2013 - 2016 and covered speaking, listening, reading, and writing.

Ms Penfold invited the panel to dismiss your appeal. She asked the panel to decide if it was satisfied that you are able to communicate in English to the required level in line with

the NMC guidance. In order to be capable of safe and effective practice you must satisfy the NMC language requirement. The requirement is not simply knowledge of English, it is *'a knowledge of English which is necessary for the safe and effective practice of nursing or midwifery in the United Kingdom.'*

Ms Penfold reminded the panel that the onus is on you to provide the panel with evidence that you are capable of communicating in English at a safe and effective level. She stated that the guidance is set out to ensure that all applicants, across the world, when applying to join the NMC register are able to communicate in English to a required standard to protect and mitigate against risk as well as upholding the high standards expected of registered nurses and midwives.

Ms Penfold submitted that the evidence provided by you does not meet the evidence requested and does not meet paragraph 17 or 16 of the NMC guidance.

Ms Penfold submitted that the oral evidence given by you today demonstrates that your English language is not at the required level. She reminded the panel that in your oral evidence today you yourself stated that the IELTS test is 'too hard'.

You gave evidence under affirmation.

You told the panel that you are currently working in a nursing home. You were working night shifts, however have moved to day shifts two to three months ago. You stated that this means that you have more opportunities to spend time talking to residents, their relatives and staff at the home. You said that you have no problem with communication and if you get anything wrong you quickly inform yourself through looking up the correct terminology online. You stated that you *'like the job'* and *'looking after people'* and that you would *'like to help more'*.

You explained that you looked at the IELTS test but that you think it is too hard for you to achieve within 6 months. You acknowledged that the language requirements are quite high and that your English is not yet at that level.

When asked by Ms Penfold why it is important that you show that you have a sufficient level of English to provide safe and effective care, you stated that you understand your colleagues and residents and that they can understand you, but that working in an English speaking environment will give you the opportunity to practice your English language skills. You stated that it would be important for you to work as a nurse.

You accepted that you have not worked as a registered nurse in an English speaking country but that you would like to try. You stated that you talk with the nurses at the home and inform them about the residents' wellbeing and any changes that occur during your shift. You said that you work closely with the residents and are therefore able to inform the nurse about any changes.

You stated that you write updates in the patient notes on an iPad. You stated that this is important information that might be accessed by a nurse or a doctor to give them a better picture of a patient's wellbeing.

When asked by the panel if you feel comfortable using the English language and if you would understand the notes of a doctor or a nurse you said '*I hope so*'. However, when the panel went into more detail about medical language and common medical terms you acknowledged that you had difficulty explaining their meaning. You stated that you understood what the words meant, but were not able to express their meaning. However, you stated that if you had any questions you would ask another staff member to explain to you.

When asked if you think you need assistance should the appeal be allowed and you started working as a nurse you stated that you think you will need help. You said that nursing in Lithuania might be different from nursing in the UK and that you would therefore need support when you start working as a nurse. You acknowledged that you need more practice in speaking in English.

You then explained what you have learned at Boston College and that you have reached Level 2 in their English language course. When asked what reading material you were provided with you said that you were given books provided by the teacher.

When asked what field of nursing you would prefer you stated that you had worked in a mental hospital for about ten years in Lithuania. You said that this is the field of nursing you would like to practise in here in the UK.

When asked by the panel what part of the IELTS test you found most difficult you stated that speaking was your weakest skill. You acknowledged, that you have not looked at the details of the IELTS test, and that you have been told by others that the test is difficult. You stated that your first language is Lithuanian and your second language is Russian and that you came to the UK in 2011, at that time you did not speak any English. You stated that you started a course in English in 2012 and finished at level two in 2013.

You acknowledged that you need more help to practise speaking English, but that you have the opportunity now that you are working day shifts at the nursing home, which will provide you with more opportunity to interact with residents, their relatives and other health professionals.

The panel accepted the advice of the legal assessor.

The panel considered the evidence before it. You had not provided the panel with any further documentation to support your appeal.

Panel's decision

The panel had regard to *Article 9(2)(ba)* of the Order and the relevant NMC guidance.

The panel noted that the types of evidence the NMC will accept according to paragraph 17 of the guidance:

17.1 Evidence type 1: Recent achievement of the required score in the International English Language Testing System (IELTS) or in one of the other English language tests accepted by the NMC. You must achieve the required score in reading, writing, listening and speaking.

17.2 Evidence type 2: Completion of a pre-registration nurse, midwife or nursing associate programme that was taught and examined in English, composed of at least 50 percent clinical interaction, and at least 75 percent of the clinical interaction

with patients, service users, their families and other healthcare professionals took place in English.

17.3 Evidence type 3: Recent practice for one year in a majority English speaking country.'

The panel noted the evidence provided by you and decided that you have not provided any of the above. It acknowledged that you have been practicing as a care assistant in the UK. However, it was of the view that this is not equivalent to the evidence stated in paragraph 17.3, as you have not practiced as a registered nurse for one year in a majority English speaking country.

The panel then considered if there is further alternative evidence to demonstrate that you have the required level of English to provide safe and effective practice.

The panel considered whether you were able to demonstrate the necessary knowledge of English in all four competencies of: Reading; Writing; Listening, and Speaking.

The panel considered your letter of appeal, which you have confirmed you have written yourself. It noted that you acknowledged that you did use an online translation tool to write the letter when there were words you did not know in English. The panel was of the view that the letter is written in an understandable language, however that there were parts of the letter that were difficult to understand. The panel was of the view that some elements of the letter did suggest that further learning was required.

The panel then considered your listening skills. It was of the view that you broadly understood straightforward questions. However, it also noted that your friend, who was there to support you, did assist you with some questions. The panel also noted that when your friend was asked not to give this assistance, as the purpose of the hearing is to establish if you have the necessary knowledge of English, there were prolonged pauses before your answers and at times you did not answer the question asked at all. The panel was of the view that you struggled at times to respond in a conversational way and it was evident that you had difficulties understanding more complicated questions.

The panel then considered your speaking skills. The panel noted that you accepted that speaking was your least developed competency with regards to communicating in English. As described above, the panel found that some of your answers did not come easily to you and at times it was hard to understand what you were trying to say. When asked about common medical terms and if you were able to explain them to the panel you acknowledged that you did understand the meaning of them, but had difficulties explaining their meaning in English. The panel acknowledged that this was a stressful situation, that you stated that you were nervous and that this can affect a person's ability to speak and understand in a second language. However, the panel was not reassured that should you find yourself in a stressful and difficult situation in a clinical setting, that you would be able to communicate effectively with the patients, their family or your colleagues.

The panel noted that your reading skills were not tested at the hearing itself however, you were not able to convey the level of reading you were required to do at your language course at Boston College. Further, the panel noted that one of the reasons for your appeal was that you said that you were not given enough time to prepare for the IELTS test. You thought that you had two months to undertake the learning and take the IELTS test. However, during questioning and when directed to the relevant parts of the letter, it was pointed out to you that the letter stated a period of six months. The panel was not reassured by this and was of the view that your reading competency is not to the required standard.

In addition, the Panel noted that you were unable to clearly answer questions when asked as to why it is important that nurses are required to have a certain level of competence in English. The Panel considered that you did not appear to fully understand the necessity of competence in English for safe and effective practice and to ensure public protection.

The panel was therefore of the view that you did not provide it with sufficient evidence, in your documentation nor in your oral evidence, that you have the necessary level of English to be a safe and effective practitioner at this moment in time.

The panel therefore decided to dismiss your appeal, to uphold the decision of the Assistant Registrar, thereby refusing your application to the NMC register.

This will be confirmed to you in writing.

That concludes this determination.