

# **Nursing and Midwifery Council**

**Registration Appeal Hearing  
Friday, 28 May 2021**

## **Virtual Hearing**

<b>Name of appellant:</b>	<b>Mrs Sujamathew Thekkeparambil</b>
<b>Type of case:</b>	Registration appeal
<b>Panel members:</b>	Diane Meikle (Chair, lay member) Iwan Dowie (Registrant member) Andy Thompson (Lay member)
<b>Legal Assessor:</b>	Graeme Dalgleish
<b>Panel Secretary:</b>	Melissa McLean
<b>Nursing and Midwifery Council:</b>	Represented by Gulcan Olurcan, Case Presenter
<b>Mrs Thekkeparambil:</b>	Present and represented by Cliff Beckett
<b>Decision:</b>	<b>Appeal refused</b>

## **Decision and reasons**

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

This appeal is made under Article 37(1)(za) of the Nursing and Midwifery Order 2001 ('the Order'). You have appealed the decision of the Assistant Registrar, dated 12 October 2020, that you do not have the necessary knowledge of English language to be capable of safe and effective practice.

Article 9(2)(ba) of the Order, 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 6.5 in the writing section and at least a score of 7 in the remaining sections of reading, speaking and listening, or to complete the Occupational English Test (OET) and attain at least level C+ in the writing section and a level B in the remaining sections of reading, speaking and listening.

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

## **Background**

When nurses or midwives who have trained in the EU apply for registration with the NMC, the application is processed as follows:

- *The applicant's qualification is assessed to ensure that it meets the minimum requirements of equivalent training in the UK;*

- *If the qualification meets the minimum requirements of a UK qualification it is fully recognised by the NMC;*
- *The applicant will then be required to produce evidence to show that they have the necessary knowledge of English for registration.*
- *EU applicants joining the register have been required to show that they have the necessary knowledge of English since 19 January 2016.*

*The NMC's 'Guidance on registration language requirements' is available on the NMC website, and there are a number of web pages which provide further guidance for applicants. This information taken together, sets out the NMC's requirements for applicants on how they can demonstrate that they have the necessary knowledge of English.*

You first applied to the NMC register as an EU applicant on 29 July 2019. On 17 September 2020, your qualification was fully recognised and you were required to provide evidence of English language to complete the process.

On 12 October 2020, you provided language evidence, that evidence was a declaration form completed by a Principal of the Malik Deenar School of Nursing (in India), dated 13 December 2019. This declared that the language of instruction, text material and examinations were in English. It also declared that 80% of your clinical interaction was in English. The language evidence you submitted was considered, following which, you were written to by the Assistant Registrar on 12 October 2020, requiring you to take an approved language test and achieve the required scoring. In her reasoning, the Assistant Registrar stated that the evidence submitted did not meet the NMC's criteria or the types of evidence they accept.

On 4 November 2020, you submitted a Notice of Appeal (NOA). You attached the following documents as part of your NOA:

- Joint reference of Colleague 1 (Matron/Manager) and Mr Beckett (Clinical and Educational Director) of Lakeside House dated 4 November 2020.

- Declaration form completed by a Principal of the Malik Deenar School of Nursing, dated 13 December 2019.

In your grounds of appeal, you relied on the following:

- Employment in Italy for over 6 years.
- Completion of nursing and midwife training in India, of which, 80% of clinical interaction was with patients, service users, family and healthcare professionals.
- Employment in Saudi Arabia for 4 years, over 70% of which was with spoken English.
- Employment as a care assistant in the UK since 2018.

## **Submissions**

Ms Olurcan provided the panel with written submissions. She referred the panel to the NMC Guidance on registration language requirements (“the Guidance”) ‘*Guidance on registration language requirements*. She drew the panel’s attention to paragraph 17 which sets out the following as types of evidence that the NMC will accept from applicants to demonstrate that they have the necessary knowledge of English to be able to practise safely and effectively:

*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.*

Ms Olurcan informed the panel of the NMC's position in response to the grounds of appeal. She stated that you do not specify the dates you worked in Italy or in what capacity. Further, as Italy is not on the NMC's list of accepted English-speaking countries, this would not meet the requirements of Evidence Type 3. Ms Olurcan also stated that you trained in India, which is not on the NMC's list of accepted English-speaking countries. She referred the panel to the requirements set out at paragraph 25 as a whole and paragraph 27.2 of the Guidance. Ms Olurcan submitted that the Malik Deenar School of Nursing has completed a declaration that 80% of your clinical interaction was in English, but this is not verifiable because there is no information as to what data was used to make that calculation.

Ms Olurcan stated that you do not specify the dates you worked in Saudi Arabia or in what capacity. Further, as Saudi Arabia is not on the NMC's list of accepted English-speaking countries, this would not meet the requirements of Evidence Type 3. In addition, she stated that your employment as a care assistant does not meet the requirements of Evidence Type 3, as this would require registered practice.

Ms Olurcan submitted that you have provided a positive employer reference pertaining to your role at Lakeside House. She stated that this reference attests to your command of English and is expressive as to their support of your appeal. However, references do not form part of the NMC's accepted evidence types and do not possess the objectivity of a language test.

You gave evidence under affirmation. You told the panel that you have been a staff nurse for more than 13 years, however you have also worked as a care assistant. You said that you completed your nursing studies in India in 1996. You said you worked for 4 years in Saudi Arabia as a staff nurse between 1998 and 2002; and between 2003 and 2018 you worked as a care assistant and a staff nurse in Italy. You said when you moved to the UK you checked the NMC's requirements in relation to the English Language, and was of the view that you met the criteria and therefore you submitted the relevant documentation to the NMC.

You stated that you have been working in the UK as a care assistant for the past 3 years and you are confident in the English language. You said you do not understand why you

have to take an English test as you communicate well and you are confident. You stated that you are not satisfied working as a care assistant and you can do more as a staff nurse. You said that you have worked with patients around the world and that in Saudi Arabia 70% of your communication was in English. You told the panel that your goal is to be a staff nurse and that you do not want to lose all the skills and experiences that you have gained. You said that when you studied in India it was all in English, you said you dealt with patients and doctors from various places to which the common language was English.

In response to Ms Olurcan you said that the language of instruction during your course in India was English. You said that before you were accepted onto the course you had to have an interview as well as a written exam, you said these were both in English. You told the panel that you worked as a staff nurse in Italy from 2009 to 2018. You said it took you more than 5 years to obtain your PIN in Italy as you had to study the Italian language. When asked what language you used in Italy, you stated that you used both English and Italian. You told the panel that you worked as a staff nurse in Saudi Arabia from 1998 to 2002 and that the language you used was largely in English.

You told the panel that you are currently working at Lakeside House as a care assistant and as bank staff in a local hospital. You gave the panel a background into Lakeside House and stated that although you are a care assistant you help out with nursing tasks. In response to Ms Olurcan you stated that you listen to various groups of people such as nurses, doctors, physiotherapists, patients and their families. You stated that when you first came to the UK you struggled to understand some of the British accents however now you have no issues. In relation to reading, you stated that you read different types of documents such as handover reports, training materials, care plans and nurses reports. Further, regarding writing, you stated that you write accident reports, behaviour charts and patient reports. You said that your written work is always checked by nurses. In relation to speaking, you said that you speak to your colleagues, patients and their families and doctors. You said that you speak face to face and over the phone but due to the pandemic, communication is largely over the phone. You said that there have not been any issues regarding your communication across all areas.

You said that working with elderly patients with dementia can be challenging however you have adapted and can communicate well with them. You acknowledged that as a nurse you may require a higher level of communication, however you stated that you communicate well and that you are confident in the English language. You said that you are satisfied with your level of English. You said that you do not need to complete the IELTS or the OET as you communicate well in English. Further, you stated that you have met all the NMC guidelines so you do not understand why you have been required to take an English test. You accepted that it is important for nurses to have a good level of the English language for safe practice and to minimise risks.

Ms Olurcan submitted that the NMC's position in relation to your appeal is neutral. She reminded the panel to consider the matter afresh by weighing up the evidence before it today. Ms Olurcan submitted that it is for you to satisfy the panel of your competence in English in the areas of listening, reading, writing and speaking. She further submitted that you have not provided evidence that meets the criteria set out at paragraph 17 of the Guidance, namely Evidence Types 1, 2 or 3. As such, you have not met the language requirements on paper, however she stated that the panel has had the opportunity to consider your listening, reading and speaking skills at today's hearing. She stated that the panel must consider your 'other' evidence against the criteria at paragraph 16 of the Guidance which states:

*16 We will consider the evidence we receive against the following criteria:*

*16.1 whether it is recent, objective and independent;*

*16.2 whether it clearly demonstrates that you can read, write, communicate and interact with patients, service users, relatives and healthcare professionals effectively in English as a nurse, midwife or in a role comparable to that of a nursing associate; and*

*16.3 whether we can readily verify it.*

Mr Beckett told the panel that you did not take the IELTS test due to the pandemic. He stated that there were no local institutions holding the test and therefore you were unable to book a place. He stated that your English is of a good standard and of a high level. Mr Beckett said that you work with dementia patients who have difficulties communicating but

you have communicated well in your current role as a care assistant. He stated that both he and the Matron at Lakeside House are in support of your registration appeal.

### **Panel's decision**

The panel accepted the advice of the legal assessor.

The panel had regard to the current NMC Guidance on registration language requirements which has been in place since January 2019 and was updated in July 2020.

The panel took particular account of paragraph 16 of the Guidance.

The panel carefully considered all the evidence before it, including the documentary evidence, the submissions made by both parties and your oral evidence. The panel noted the reference provided by Colleague 1 and Mr Beckett.

In addition to the documentary evidence, the panel had the opportunity to assess your communication skills throughout the hearing. It was of the view that at times during your evidence you did not answer questions coherently. The panel also noted that at times you did not answer questions directly and at times repeated yourself. It was therefore of the view that there are some concerns regarding your communication abilities in respect of listening and speaking. In relation to your writing skills, the panel took into account your NOA which contained limited written content which consisted largely of typed narrative with a few handwritten comments. The panel bore in mind that nurses are required to complete handwritten documentation. The panel was of the view that it did not have reliable or sufficient evidence in relation to your writing to be satisfied that you have the necessary knowledge of English to communicate safely and effectively. In relation to your reading, the panel was of the view that you read the passage put to you with confidence and clarity.

The panel took into account the submissions of Ms Gulcan on behalf of the NMC that the evidence you provided does not meet the requirements of Evidence Type 1, 2 or 3. It reminded itself of the NMC's overarching objective which is to protect the public and therefore you must demonstrate that you have the necessary knowledge of English to be

capable of safe and effective practice as a nurse. The panel bore in mind your oral evidence in which you stated that you do not want to complete the IELTS or the OET and that you do not understand why you are being required to.

The panel noted that being able to write, understand and relay information to colleagues and to patients is important in nursing. Further, it noted that you must demonstrate competence in all the areas of reading, writing, listening and speaking to be capable of safe and effective practice as a nurse. The panel was of the view that although you demonstrated competence in reading, the panel did not have before it sufficient or cogent evidence that enabled it to be satisfied that you were competent in the remaining areas of writing, listening and speaking such that you have demonstrated the necessary knowledge of English to practice safely as a nurse.

The panel was also of the view that there is a public interest for nurses on the NMC register to demonstrate a proficient standard of the English language. The burden of this appeal is on you. Due to the lack of cogent, reliable and verifiable evidence of proficiency in English in the areas of writing, listening and speaking, the panel concluded that you should not at this stage be admitted to the register. The panel therefore decided to refuse your appeal, thereby refusing your application to the NMC register.

This will be confirmed to you in writing.

That concludes this determination.