

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

**Substantive Order Review Hearing
Monday, 25 September 2023**

Virtual Hearing

Name of Registrant: Rositsa Manolova

NMC PIN 11H0063C

Part(s) of the register: RN1: Registered Nurse (Sub Part 1)
Adult – 8 August 2011

Relevant Location: Kent

Type of case: Lack of knowledge of English

Panel members: John Penhale (Chair, lay member)
Tanya Tordoff (Registrant member)
Matthew Wratten (Lay member)

Legal Assessor: Marian Gilmore, KC

Hearings Coordinator: Tom Kerr

Nursing and Midwifery Council: Represented by Terence Merck, Case Presenter

Mrs Manolova: Present and represented by Deborah Tomkinson,
instructed by The Royal College of Nursing (RCN)

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on
at the end of 28 October 2023 in accordance with
Article 30 (1)**

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Ms Tompkinson, on your behalf, made a request that matters relating to your [PRIVATE] in this case be held in private. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Merck, on behalf of the NMC (Nursing and Midwifery Council) indicated that he had no objections to the application to the extent that any reference to your health or personal life should be heard in private.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session when issues are raised in connection with your [PRIVATE] in order to protect your privacy.

Decision and reasons on review of the substantive order

The panel decided to confirm the current suspension order.

This order will come into effect at the end of 28 October 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 27 September 2019. The original order was confirmed and extended by a reviewing panel on 22 September 2020. On 16 September 2021, a further reviewing panel had confirmed and extended the 2020 order by 12 months. The order was confirmed on 24 October 2022.

The current order is due to expire at the end of 28 October 2023.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charge found proved by way of admission which resulted in the imposition of the substantive order was as follows:

'That you, a registered nurse:

1. Do not have the necessary knowledge of English to practise safely and effectively.'

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

'The panel considered whether Mrs Manolova's fitness to practise remains impaired.

The panel noted the last reviewing panel found that Mrs Manolova's fitness to practise remained impaired as she had not yet passed an NMC recognised language test or provided other evidence of proficiency in the English language.

The panel in its decision took account of the NMC Guidance on registration language requirements.

The panel acknowledged Mrs Manolova's past circumstances and the historical difficulties she has had in demonstrating the required level of English language competency. It took into account her recent email dated 6 September 2022 in which she said:

"..."

At this hearing the panel took account of Mrs Manolova efforts to pass the required English language tests in August 2022. In its consideration of whether she has taken steps to strengthen her practice, the panel considered the testimonials provided by her English teacher and from her manager. The panel took account of her continued engagement with her studies and her expressed determination to achieve the required level of English.

The panel noted that Mrs Manolova's English teacher at Escape Campus language school said the following in an email dated 31 August 2022:

"..."

The panel further considered an email dated 7 September 2022 from Mrs Manolova's previous manager at Rockdale House, Sevenoaks, in which he wrote the following:

"..."

The panel was encouraged by the positive testimonials on Mrs Manolova's behalf and her efforts. However, it noted from the recent test results in August 2022, that she had not yet achieved the required score in the NMC approved language tests. In light of this, this panel determined that Mrs Manolova's fitness to practise remains impaired due to her not having the required level of English necessary for her to practise safely and effectively. The registrant indicated in her email dated 6 September 2022 that she was due to re-take the Occupational English Test (OET) on

24 September 2022 but no results for these tests (if taken) have been received from Mrs Manolova for consideration by the panel. The panel therefore decided that a finding of continuing impairment is necessary on the ground of public protection, as a lack of accurate and clear communication with patients could compromise their health, safety and wellbeing. The panel also finds that Mrs Manolova's fitness to practise is impaired on grounds of public interest, as a reasonable and informed member of the public would expect that a nurse should be able to communicate effectively and would be concerned to see that Mrs Manolova had been declared fit to practise.

For these reasons, the panel finds that Mrs Manolova's fitness to practise remains impaired.'

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

'The panel is of the view that Mrs Manolova is trying hard to achieve the required results as detailed in her email dated 6 September 2022, and that she is taking steps to remain engaged in a healthcare setting by working as a carer in a care home. The panel acknowledged the added pressure she had experienced due to the Covid-19 pandemic and personal circumstances.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Manolova further time to achieve the standards required in the English language tests. Taking all the circumstances into consideration, the panel concluded that a further twelve-month suspension order, to take effect from 28 October 2022 after this current suspension order expires, would be the appropriate and proportionate response and would afford Mrs Manolova adequate time to continue her improvement of her English language skills. If Mrs Manolova is able to pass an NMC recognised English language test before the next scheduled review or if any other requirements to the tests were to change, she, and or the NMC, can request an early review under Article 30 (7) of the Order.

The panel was of the view that a striking off order under Article 29 (6) of the Order was unnecessary and disproportionate, as Mrs Manolova's English language skills have improved, albeit very slowly, and her efforts to do so appear to have been well motivated and have been progressing. Therefore, in the panel's judgement, a striking-off order at this stage would be punitive.'

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 the documentation before it, including the NMC bundle, your reflective piece, testimonials from a former manager, and your recent and historical English Language Test results. It has taken account of the submissions made by Mr Merck on behalf of the NMC and the submissions by Ms Tomkinson your behalf.

Mr Merck provided a summary of the background to the case. He guided the panel through the decision of the previous panel and called the panel's attention to the fact that the previous panel had made a finding of impairment on the grounds of public protection and the wider public interest.

Mr Merck provided the panel with the background facts of the case and directed the panel to the relevant pages in the NMC bundle and to the review decisions of previous panels. Mr Merck submitted that your English language competency remains under consideration today as you have still not yet scored the pass grades as required by the NMC.

Mr Merck acknowledged the progress made by you; he referred the panel to the most recent OET Test results dated 12 July 2023 which showed that you had scored 360 in your English Speaking score (the requirement being a pass mark of 350). Mr Merck added that you had only scored 250 in your English Writing test (the requirement being 300) your

English Reading test was 200 and Listening was 220. Mr Merck submitted that these results did not meet the standard required by the NMC.

Mr Merck submitted that your fitness to practise remains impaired, as you have not yet attained the requisite English language test level required by the NMC and therefore you remain a risk or potential risk to patients in your care if you were to return to unrestricted practice.

Ms Tomkinson submitted that you accepted that you do not meet the English language requirements as set-out by the NMC, and that you agreed that suspension order should be continued today. She added that you had been 'striving' to try and improve your English language skills but with 'mixed results'. Ms Tomkinson told the panel that whilst your English Listening had improved and that you had reached the minimum pass grades in the speaking and writing English tests but had ongoing problems with the listening and reading English elements.

Ms Tomkinson submitted that you had self-funded your one-to-one tuition, [PRIVATE]. She added that you have shown insight and 'real commitment', despite not being 'there yet'.

Ms Tomkinson told the panel that you had been fully compliant with the order and are trying to improve yourself.

Ms Tomkinson submitted that she and the RCN are concerned that two of your scores had 'gotten worse' since the test in July 2023. [PRIVATE].

Ms Tomkinson submitted that a continuation of the Suspension Order would allow for a fuller investigation as to why you are failing in some areas and succeeding in others.

Ms Tomkinson concluded by stating that you are a committed nurse who is no threat to the public or to residents but struggles to perform in an exam environment. Ms Tomkinson added that there have never been any concerns raised in connection with your ability to engage with residents, relatives, or with the public.

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 noted the last reviewing panel found that your fitness to practise remained impaired as she had not yet passed an NMC recognised language test or provided other evidence of proficiency in the English language.

The panel in its decision took account of the NMC Guidance on registration language requirements.

The panel took into account your recent email (undated) which stated:

'Dear Sir/Madam

I hope you would kindly consider what follows.

In 1993 I received my Diploma in Nursing and worked in University Hospital in the Critical Care Unit as an anaesthetic and ISU Nurse with a dynamic multidisciplinary team.

As an anaesthetic Nurse I worked in Libya for 18 months in the Intensive Care Unit. In both places of employment I did not encounter any issues of concern. I conducted my clinical delivery of care in the most safest way.

When I arrived in UK to continue my career I had to work as a carer for 10 months in order to adapt with English language and the system of care. I do understand I had difficulties in settling in a new country. So I provided my care services in a Medical Centre and nursing homes in Hildenborough, Tonbridge and Sevenoaks, Kent. Again I did provide an excellent care.

In 2010 I received my PIN by the NMC. and in 2011 I was employed as a registered nurse in Nursing Care Homes in Sevenoaks for 9 years. There were not any specific concerns in the delivery of clinical care practices.

During the time of employment I studied my English language in secondary colleges, private tuition on a one to one session on line learning which I found beneficial for my needs.

I took my International English language Test examination but could not cope with the academic part and therefore I switched over to study Occupations English Test examination which was conducive to my nursing career.

During my preparation for the exam [PRIVATE].

During the course of my caring duty [PRIVATE].

Previous year [PRIVATE].

It was a very traumatic experience.

Upon partake my second attempt for my O.E.T. examination I reduced my hours work to 2 nights a week so as I can have enough time to prepare for my exam. [PRIVATE].

The last four years of [PRIVATE] has upset the equilibrium of my life. Despite all the calamities I continue my English language study with the help and support of my colleagues.

I feel more confident and competent in my reading- writing and fluent speaking.

I do appreciate the importance of good level of English language in my profession. Living and working for 15 years in UK has mast [sic] certainly enhanced my command of my competency.

I shall continue to build up and achieve my objective of success in my O.E.T. examination.

It is a shame, despite I have spent 30 years of my life in the caring profession I am still a carer. Since I stepped down 4 years ago I feel I am losing touch with my real potential and I am restricted to provide my best to my patients.

I am extremely frustrated- underfunctioning [sic] and undervalued. Many times I questioned myself, now I am nearly 60 years old and only have 7years to retirement should I still remain a carer?

I am already [PRIVATE]. I desperately would like to return to my practice which I always adored and cherished.

I do hope the panel will understand my predicament I underwent and get me back to the best level of functioning.

Yours Sincerely

Rositsa Manolova.'

At this hearing the panel took account your efforts to pass the required OET tests in July 2023. In its consideration of whether you had taken steps to strengthen your practice, the panel considered the testimonials provided by your previous manager, and your continued determination to achieve the required level of English.

The panel further considered an email dated 6 September 2023 from your previous manager at both Pinhurst Nursing Home and Rockdale House, Sevenoaks, in which she stated:

'I first met Rositsa at Pinhurst Nursing Home, Sevenoaks. I was the manager of the home and Rositsa was employed as a nurse. Pinehurst House cared for 30 frail elderly residents who required nursing care. She cared for the residents to a high standard and used her clinical skills to resident's advantage. Rositsa had responsibility for ordering and administering the monthly drug order. She was able to communicate effectively with residents and relatives and on one occasion a relative was so grateful for her coaching in undertaking her husband's PEG feeds thus enabling him to go home. I was always confident that residents were given the highest possible care and she could be relied on to do everything to make the residents comfortable. When I moved on Rositsa continued to be employed as a Nurse until the home was eventually closed due to structural subsidence problems.

Our paths crossed again in 2019 when I was a trustee of Rockdale House , a residential home for 50 residents, and as a result of the sudden departure of the manager was appointed as the Registered Manager of the home until a new manager could be found.

Rositsa was employed as an Carer initially and then promoted to a Senior Carer in charge of the night shift. A demotion to carer was due to the fact her Nursing Registration had been suspended at this time to give her the opportunity to improve her English. Despite this she always ensures the residents are cared for to a high standard. With her nursing experience she is able to help with early diagnosis of illnesses and issues related to falls/ accidents. This in turn supports the staff to recognise when the injury, illness or accident is serious. As a Senior

Carer she is responsible for running the shift, administering medication and calling medical and ambulance staff as needed. Rositsa is popular with the residents who are relieved and reassured when she was on duty as they felt confident with her care.

During the pandemic Rositsa was given the responsibility of undertaking the COVID testing ensuring Rockdale House met all Government guidelines. It was her job to inform the relatives and visitors of new instructions as they arose especially when visiting resumed. She had no problems with communicating with the people and residents she tested and instructed.

I was manager of the home for 2 years leaving to have a knee replacement in 2022. Rositsa is still employed as a senior at the home undertaking night duty. I have kept in touch with her and realise how much she wants to resume her nursing career. She feels that all her Nursing training that she has undertaken for many decades is not being utilised in a residential placement. I know she longs to get back into nursing.

Rosalynde Ward.'

The panel noted from the most recent test results in July 2023, that you had not yet achieved the required score in the NMC approved language tests. In light of this, this panel determined that your fitness to practise remains impaired due to you not having the required level of English necessary for you to practise safely and effectively.

The panel therefore decided that a finding of continuing impairment is necessary on the ground of public protection, as a lack of accurate and clear communication with patients could compromise their health, safety and wellbeing. The panel also finds that your fitness to practise is impaired on grounds of public interest, as a reasonable and informed member of the public would expect that a nurse should be able to communicate effectively and would be concerned to see that you had been declared not fit to practise.

For these reasons, the panel finds your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your 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 mandatory requirements the NMC has for English language. 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 due to the public protection and public interest issues identified, such an order would not be appropriate in the circumstances as it came with no ability for the NMC to monitor the Registrant's progress and was, therefore, a sanction that permitted a return by you to immediate, but unmonitored, practice. The panel considered this would be a risk to the health, safety and well-being of the public and that a reasonable and informed member of the public would also draw the same conclusion.

The panel next considered whether a conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind that you have still not achieved the required standard of English and there could be no workable conditions of practice to allow for a sufficient and evidenced improvement by you whilst not working as a nurse. The panel considered that any work you would undergo as a nurse whilst also continuing to attempt to improve your English would be contrary to protecting the public.

The panel noted that you have tried hard to achieve the pass grade in English and have funded one-to-one tuition (as outlined in the oral submissions of your legal representative). The panel further noted that you have engaged with the NMC fully up until this point. The

panel also acknowledged the added pressure you had experienced in relation to [PRIVATE].

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow you further time to try to achieve the standards required in the English language tests. The panel noted that twelve months would also allow the RCN to further investigate any other, background, cause as to why you are failing certain sections of the testing. Taking all the circumstances into consideration, the panel concluded that a further twelve-month suspension order, to take effect from 28 October 2023 after this current suspension order expires, would be the appropriate and proportionate response and would afford you adequate time to continue your improvement of your English language skills and for the RCN to arrange for [PRIVATE].

The panel were concerned that that despite your best efforts, you have still not shown enough improvement in your English language skills. The panel seriously considered a striking-off order as your case could become a time-bound matter eventually but took the view today, that a striking-off order would be overly punitive given your request for additional time to carry out further investigations into [PRIVATE] which may be hindering your ability to pass the OET test.

A future panel may be assisted in its deliberations by reviewing the following information:

1. Evidence of which investigations are taking place in relation to your difficulties with the required learning despite efforts.
2. An up-to-date testimonial from your current employer detailing how you are progressing in your employment.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 28 October 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.

This will be confirmed to you in writing.

That concludes this determination.