

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

**Substantive Order Review Hearing
Monday 15 April 2024**

10 George Street, Edinburgh, EH2 2PF

Name of Registrant: **Bogdan Constantin Benta**

NMC PIN 16B0052C

Part of the register: Nursing, Sub part 1
RN1, Registered Nurse – Adult (2 February 2016)

Relevant Location: London

Type of case: Lack of knowledge of English

Panel members: Darren Shenton (Chair, lay member)
Carole McCann (Registrant member)
David Anderson (Lay member)

Legal Assessor: Marian Gilmore KC

Hearings Coordinator: Leigham Malcolm

Nursing and Midwifery Council: Represented by Alastair Kennedy, NMC Case Presenter

Mr Benta: Attended virtually, unrepresented

Order being reviewed: Conditions of Practice Order (6 months)

Fitness to practise: Impaired

Outcome: **Conditions of Practice Order (6 months) to come into effect at the end of 24 May 2024 in accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

The panel decided to extend and confirm the current conditions of practice order.

This order will come into effect at the end of 24 May 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the sixth review of a substantive conditions of practice order originally imposed by a panel of Conduct Competence Committee on 25 April 2017 for a period of 3 years. The Order was reviewed by a panel of the Fitness to Practise Committee on 15 May 2020 when the conditions of practice order was varied and further imposed for a period of 9 months. A review was held on 15 January 2021, where the conditions of practice was further varied and imposed for a period of 12 months. A further review was held on 14 January 2022 where the Fitness to Practise Committee decided to confirm and extend the existing conditions to practise. At the fourth review on 11 October 2022 the order was extended for a further 12 months and the conditions were again varied. The order was last reviewed on 17 October 2023 where it was extended for a period of six months.

The current order is due to expire at the end of 24 May 2024.

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

The charge found proved which resulted in the imposition of the substantive order were as follows:

'That you, a Registered Nurse:

- 1. Do not have the necessary knowledge of English to practise safely.*

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

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

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 that the last reviewing panel found that you had developing insight. At this hearing, the panel heard that you acknowledged not having the necessary standard of English language required of a registered nurse and that you have not taken the OET yet.

In its consideration of whether you have taken steps to strengthen your standard of English language, the panel took into account your submissions and the changes in your private life, it noted that you appear to be dedicating a considerable amount of time to preparing for the OET. The panel also noted that you say you are committed to improving your standard of English language. However, the panel noted that you have not completed your course or yet booked a date for your exam.

In light of this, this panel determined that you are 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 your fitness to practise remains impaired.

The previous reviewing panel determined the following with regard to 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 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 seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG 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 considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether imposing a conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel noted that the original substantive order had been made in April 2017 and since then there has been insufficient improvement in your English. The panel also took into account that you are still studying and preparing for the OET. It noted that you had temporarily stopped your preparation because of changes in your personal circumstances and that you are now juggling work and childcare alongside studying. The panel was therefore of the view that there is no evidence before it to suggest that you have stopped trying to comply with the existing conditions.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest. In this case, there are conditions that could be formulated which would protect patients during the period they are in force.

The panel gave careful consideration to Mr Edwards' submissions. The panel are concerned about the lack of progress since the substantive order was originally imposed in 2017. However, given the change in circumstances, the panel was of the view that to impose a suspension order or a striking-off order would be disproportionate and would not be a reasonable response in the circumstances of your case at this stage.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of six months, which will come into effect on the expiry of the current order, namely at the end of 24 November 2023. This will give you the time you requested to complete your current English course and take the exam. The panel decided to impose the following conditions (which do not vary your current order) which it considered are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

- 1. You must not practise as a nurse until:
 - i. You have passed a test which satisfies the NMC's English Language requirements.*
 - ii. You have provided a copy of the relevant certificate to the NMC and received confirmation from the NMC that they have received it.**

- iii. *Your fitness to practise is confirmed as 'not impaired' by a Fitness to Practise Committee in a future substantive order review.*
2. *Until such time as confirmation as detailed in 1(c) is obtained, you must tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed to them:*
 - a. *Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services.*
 - b. *Any prospective employer (at the time of application) where you are applying for any nursing appointment.*
 - c. *Any educational establishment at which you are undertaking a course of study connected with nursing, or any such establishment to which you apply to take a course (at the time of application).*
 3. *You must keep us informed about anywhere you are working by:*
 - a) *Telling your case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your case officer your employer's contact details.*
 4. *You must keep us informed about anywhere you are studying by:*
 - a) *Telling your case officer within seven days of accepting any course of study.*
 - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*
 5. *You must immediately give a copy of these conditions to:*
 - a) *Any organisation or person you work for.*

- b) *Any agency you apply to or are registered with for work.*
 - c) *Any employers you apply to for work (at the time of application).*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
6. *You must tell your case officer, within seven days of your becoming aware of:*
- a) *Any clinical incident you are involved in.*
 - b) *Any investigation started against you.*
 - c) *Any disciplinary proceedings taken against you.*
7. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
- a) *Any current or future employer.*
 - b) *Any educational establishment.*
 - c) *Any other person(s) involved in your retraining and/or supervision required by these conditions*

The period of this order is for six months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 24 November 2023 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- *Evidence of your professional development, including documentary evidence of completion of the above-mentioned English language courses and take the OET exam,*
- *Testimonials from your employer with reference to your English language skills, and*
- *Your attendance at a future hearing.*

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, your current job description, and a reference from your current manager and confirmation of your Occupational English Test (OET) booking for 18 May 2024. It has taken account of the submissions made by both Mr Kennedy, on behalf of the NMC, and by you.

Mr Kennedy outlined the background to your case. He highlighted the finding of the previous panel; that both your insight and language proficiency are developing.

Mr Kennedy referred the panel to confirmation of your Occupational English Test (OET) booking for 18 May 2024 and acknowledged that you had also provided your current job description a reference from your current manager. He submitted that until such time that you are able to demonstrate that you meet the required standard of English, you remain impaired.

You told the panel that you had completed your online course in English language and communication in January 2024 and that you have booked an OET exam for 18 May 2024

and you hope to pass the exam and begin working as a registered nurse. Until then, you are working as a support worker. You further told the panel that the OET examinations are held twice monthly at locations including Liverpool, Manchester, and London. You are only able to attend the Liverpool and Manchester exam centres due to your family circumstance and the cost of travelling to London. Therefore, this has limited your access to examination dates.

You told the panel that once you have passed the OET, your current employer will provide you with all the necessary training to practise as a registered nurse, a role you are keen to fulfil.

You told the panel that there is no limit to the number of times that you can sit the OET. If you fail, then you will retake the test, but having undertaken your English course and a number of practice examinations, you are confident that you will be successful in the May OET. You have told the NMC that the results of the OET examination will be available to you 17 days after sitting the exam.

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 that you completed your online English course in January 2024 and are due to retake the OET in May 2024. In the absence of any independent and verifiable evidence that you have passed an approved language test, as required, the panel determined that you have not demonstrated a level of competence in your knowledge and understanding of the English language as required by the NMC.

The panel considered that an ability to communicate clearly in English is a fundamental requirement of a nurse practising safely and effectively. The panel envisaged a number of

situations where patients would be placed at a potential risk of harm, should your inability to communicate clearly in English not be rectified.

The panel considered there to remain a potential risk of harm to patients given your lack of proficiency in the English language. The panel therefore decided that a finding of continuing impairment remains necessary on the grounds of public protection.

The panel noted that the matters that gave rise to the original allegation was your unsuccessful attempt to undertake the IELTS test in October 2016. Since that date you unsuccessfully undertook an English proficiency examination in September 2020.

Since the last substantive review you have completed a course to improve your language skills and have arranged to sit the OET in May 2024. Whilst the panel recognised that you have had a number of personal issues and Covid that have impacted on your progress, it was concerned that during the seven years that these matters have been under consideration you have only undertaken one language proficiency examination in September 2020.

The panel considered this to demonstrate continued, but limited, insight to your language proficiency requirements given the length of time that these matters have been under consideration. The panel considered that the language deficiency in your case was remediable and that you have provided evidence of your ongoing learning and your date of an exam to demonstrate the required proficiency.

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 a finding of continuing impairment on public interest grounds is also required because the public would expect you to have the necessary level of English to practise safely and effectively as a nurse.

For these reasons, the panel finds that your fitness to practise remains impaired on both public protection and public interest grounds.

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 public protection concerns. 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 concerns, an order that does not restrict your 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 imposing a further conditions of practice order on your registration would remain a sufficient and appropriate response to manage the risk identified. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel bore in mind that the original and substantive sanction was imposed on 25 April 2017, and that you have been subject to and complied with a conditions of practice order continually since that date.

The panel observed that you did not provide any independent evidence of meaningful professional development. However, in response to panel questions, you outlined the role you undertake as a support worker to assist registered nurses in their care of residents at the home.

The panel was sympathetic to your earlier personal circumstances and appreciated that there have been events since 2017, such as the Covid-19 pandemic, which may have

disrupted your development and progress. However, the panel considered there to be a strong public interest in protecting the time and resources of the NMC.

The panel determined that it would be possible to formulate appropriate and practical conditions which would sufficiently manage the risk identified. The panel therefore decided that a further conditions of practice order is sufficient to protect patients and the wider public interest.

The panel was of the view that to impose a suspension order or a striking-off order would be disproportionate and would not be a reasonable response in the circumstances of your case in view of your upcoming test on 18 May 2024. However, the panel emphasised that your conditions of practice order cannot be continued indefinitely, and that any future panel would have all available sanction options open to it.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of six months, which will come into effect on the expiry of the current order, namely at the end of 24 May 2024. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

‘For the purposes of these conditions, ‘employment’ and ‘work’ mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, ‘course of study’ and ‘course’ mean any course of educational study connected to nursing, midwifery or nursing associates.

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- iii. Your fitness to practise is confirmed as 'not impaired' by a Fitness to Practise Committee in a future substantive order review.
2. Until such time as confirmation as detailed in 1(c) is obtained, you must tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed to them:
 - a. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services.
 - b. Any prospective employer (at the time of application) where you are applying for any nursing appointment.
 - c. Any educational establishment at which you are undertaking a course of study connected with nursing, or any such establishment to which you apply to take a course (at the time of application).
3. You must keep us informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.
4. You must keep us informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
5. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.

- c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
6. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.
7. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for six months. The panel considered that six months would be sufficient for you to undertake the OET exam, obtain the results and, if required, undertake any necessary remedial action before a future reviewing panel.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 24 May 2024 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Evidence that you have been undertaking continued professional development
- Up-to-date testimonials from your employer with specific reference to your English language skills
- Attendance at a future hearing

This will be confirmed to you in writing.

That concludes this determination.