

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

**Substantive Order Review Hearing
Thursday 22 August 2024**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant: Albena Karagyozyova

NMC PIN 14G0434C

Part(s) of the register: Registered Nurse (Sub Part 1)
Adult Nursing – July 2014

Relevant Location: Kent

Type of case: Lack of knowledge of English

Panel members: Peter Wrench (Chair, Lay member)
Jane Jones (Registrant member)
Tricia Breslin (Lay member)

Legal Assessor: Peter Jennings

Hearings Coordinator: Sophie Cubillo-Barsi

Nursing and Midwifery Council: Represented by Ed Carey, Case Presenter

Miss Karagyozyova: Not present and unrepresented at the hearing

Order being reviewed: Suspension order (9 months)

Fitness to practise: Impaired

Outcome: **Suspension order extended for 9 months to come into effect at the expiry of the current order in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Karagyzova was not in attendance and that the Notice of Hearing had been sent to Miss Karagyzova's registered email address by secure email on 18 July 2024.

Further, the panel noted that the Notice of Hearing was also sent to Miss Karagyzova's representative at the Royal College of Nursing (RCN) on the same date.

Mr Carey, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor concerning the requirements of service.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Karagyzova's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Karagyzova has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Karagyzova

The panel next considered whether it should proceed in the absence of Miss Karagyzova. The panel had regard to Rule 21 and heard the submissions of Mr Carey who referred the panel to a letter from the RCN, dated 21 August 2024, which confirmed:

'The Registrant will not be attending the hearing, nor will they be represented. No disrespect is intended by their non-attendance. The Registrant has received the

notice of hearing and is happy for the hearing to proceed in their absence. They are keen to engage with the proceedings.'

In light of this communication, Mr Carey invited the panel to find that Miss Karagyozyova had voluntarily absented herself from today's hearing and that it should proceed in her absence.

The panel accepted the advice of the legal assessor concerning the matters it should take into account when considering whether to proceed in the registrant's absence.

The panel has decided to proceed in the absence of Miss Karagyozyova. In reaching this decision, the panel has considered the submissions of Mr Carey, the written representations from the RCN on Miss Karagyozyova's behalf, and the advice of the legal assessor. It has had particular regard to relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Karagyozyova;
- Miss Karagyozyova, via her representative, has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- The panel has the benefit of the written representations and other material provided on Miss Karagyozyova's behalf;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the review of the case in accordance with the statutory requirements.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Miss Karagyozyova.

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

The panel received written representations from the RCN applying for parts of this case to be held in private on the basis that proper exploration of Miss Karagyzova's case may involve reference to [PRIVATE]. The application was made pursuant to Rule 19.

Mr Carey supported this application.

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.

Having heard that reference may be made to Miss Karagyzova's [PRIVATE], the panel determined to go into private session as and when such issues arise. It considered that Miss Karagyzova's right to privacy in relation to these matters justified this course and outweighed the public interest in holding those parts of the hearing in public.

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order for nine months.

This order will come into effect at the end of 27 August 2024, in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the tenth review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 28 July 2017. The order was reviewed on 16 August 2018, 27 February 2019, 17 July 2019, 16 January 2020 and 21 July 2020, and on each occasion, was extended for six months. On 18 January 2021, the panel decided to extend the suspension order for a period of nine months. The order was reviewed on 19 October 2021 and then on 19 October 2022, and on both occasions the suspension order was extended for a period of 12 months. On 17 November 2023, the suspension order was extended for a further nine months.

The current order is due to expire at the end of 27 August 2024.

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

The charges found proved by way of admission which resulted in the imposition of the current substantive order were as follows:

'That you, a registered nurse:

- 4. Do not have the necessary knowledge of the English language to practise safely and effectively;*

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

The panel was aware that a finding was made in relation to another matter which an earlier panel has since found no longer gives rise to impairment.

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

'The panel considered whether your fitness to practise remains impaired.

The panel noted that the last reviewing panel found that you had not met the required standard of English Language requirements. At this hearing the panel took account of your efforts to pass the required English language tests in September 2023. In its consideration of whether you have taken steps to strengthen your practice, the panel considered your employment at the pharmacy to improve your spoken English. The panel took account of your continued engagement with your studies and your determination to achieve the required level of English.

The last reviewing panel determined that there was an ongoing risk to the public as you had not achieved the required score in the NMC approved language tests. Today's panel has heard and received some new information provided by you regarding your OET examination results and a testimonial from your employer at the pharmacy, however your examination results for all the components are not sufficient to meet the NMC's English language requirements.

The panel noted that you had exceeded the standards for the writing component and were within half a mark of the speaking component of the OET exam. However, the scores for reading and listening fell far short of the required standard set by the NMC. The panel noted that you have passed an English proficiency test for your British citizenship. However, it bore in mind that the standard of English required for this test is different to that required by the NMC guidance and the standard required of a practising nurse.

The panel considered the NMC's Guidance on registration language requirements (June 2023). It took into account paragraph 4 and 5 which state:

'Types of evidence we will accept

4. You must demonstrate competence in:

- 4.1. reading;*
- 4.2. writing;*
- 4.3. listening, and*
- 4.4. speaking.*

5. We will consider the evidence we receive against the following criteria:

- 5.1. whether it is recent, objective and independent*
- 5.2. 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*
- 5.3. whether we can readily verify it'*

The panel took into account that these provisions are in addition to the paragraphs in the guidance which deal with the English language test result such as the OET. The panel examined all the evidence before it, including your bundle of documents. However, it was not satisfied from the material before it that there was evidence which fulfilled the criteria in paragraph 4 and 5 as set out above. Despite being suspended from practice, paragraph 5.2 envisages that a registrant can demonstrate the required standard of English language while working in a non-

registered role in a healthcare setting or similar. There was no such evidence before the panel.

In light of this, this panel determined that your fitness to practise remains impaired due to your 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. The panel also finds that your fitness to practise is impaired on grounds of public interest as the public would expect that a nurse should be able to communicate effectively.

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.

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

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

'The panel first considered whether to take no action but concluded that this would be inappropriate in view of the concerns identified in this 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 due to the public protection and public interest issues identified, such an order would not be appropriate in the circumstances.

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 considered the risks in relation to your English speaking, reading and listening skills. The panel explored what the potential risks would be in a nursing environment, without proficient levels of English. The panel considered the following examples from the fitness to practise library guidance (Reference: FTP-2e) as

potential risks if you were allowed to practice as a nurse without the required level of English in speaking, listening and reading:

- poor handover of essential information about patient treatment or care to other health professionals because of an inability to speak English.*
- serious failure(s) to give appropriate care to patients because of an inability to understand verbal or written communications from other health professionals (or patients themselves).*
- drug error(s) caused by a failure to understand or inability to read prescriptions.*

The panel considered conditions involving supervision but decided that such supervision will need to be direct and constant in order to manage the potential risks presented by these language deficits.

As you have still not achieved the required standard of English the panel determined that there could be no workable conditions of practice to mitigate for the risks identified.

The panel considered the imposition of a further period of suspension. It was of the view that a nine-months suspension order would allow you further time to complete your studies and achieve the standards required in the English language test. The panel considered that it will be disproportionate to order the maximum 12 months, with nine-months reflecting the hard work you have already undertaken with regard to your English language. The panel was of the view that a suspension order will protect the public from the potential risks identified and uphold the public interest in this case.

The panel took into account your personal circumstances and concluded that a further nine-month suspension order would be the appropriate and proportionate response and afford you adequate time to provide evidence addressing these concerns. If you are able to pass an NMC recognised English language test before the next scheduled review, you can request an early review.

The panel considered proportionality in coming to this decision and took into account that you will be prevented from practising and earning an income from your profession. However, the panel concluded that the need to protect the public and uphold the public interest outweighs your interest in this regard.

The panel was of the view that a striking off order was unnecessary and disproportionate.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 27 November 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.

Any future panel reviewing this case would be assisted by:

- *Evidence of passing the English language competency test to meet the required standards of the NMC.*
- *Other evidence as outlined in the NMC's revised guidance.'*

Submissions on impairment and sanction

Mr Carey invited the panel to find that Miss Karagyzova's fitness to practise remains currently impaired. He acknowledged that the concerns in Miss Karagyzova's case are of 'some age' and that previously, Miss Karagyzova has been able, on occasion, to meet the standard required for some of the components of the examination, namely for speaking in 2020 and writing in 2022. However, Mr Carey submitted that upon taking the OET examination, following each review hearing, Miss Karagyzova has failed to meet the standards required for at least three of the four components of the examination and therefore has not yet met the required standard of English knowledge overall. He further noted that in her most recent test, all four component areas fell below the standard required.

Mr Carey submitted that both allowing the order to lapse (after making a finding of impairment) or imposing a striking-off order, are options available to the panel today. However, he acknowledged that Miss Karagyozyova has not previously been specifically warned that her name may be removed from register and asked the panel to exercise caution in this regard. Mr Carey said that the NMC was not advocating a particular outcome at this hearing, so long as Miss Karagyozyova was not able to practise until her English had reached the required standard. In answering questions from the panel, Mr Carey stated that it would not be appropriate for reviews to run indefinitely as this incurs costs to the NMC.

Ms Khan, on behalf of Miss Karagyozyova, submitted in writing that Miss Karagyozyova had taken a further OET examination on 3 August 2024, and achieved some improvement in her scores. She continues to work on her English language practice to meet the standards required and is keen to return to nursing practice and will continue her attempts at the OET examination until successful.

The panel heard and accepted the advice of the legal assessor concerning impairment and the panel's powers in relation to sanction.

Decision and reasons on current impairment

The panel has considered carefully whether Miss Karagyozyova's 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. It has taken account of the submissions made by Mr Carey and the written representations and supporting documents from the RCN.

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 NMC's guidance on 'Not having the necessary knowledge of English' (FTP-2e), states:

'...decision makers will consider language testing results as the primary measure of whether the nurse, midwife or nursing associate has the necessary knowledge of English to practise safely.'

The panel had regard to the NMC's guidance in relation to 'Registration language requirements', which provides specific information on the required tests and scores:

'11. You can meet the required scores across two sittings of the same test. You cannot combine OET and IELTS test scores when combining tests. You must take the two test sittings within twelve months of each other, and you must have been tested in all four sections both times.'

11.1. IELTS: you must achieve at least 7 for reading, listening, and speaking, and at least 6.5 for writing, in at least one of the two test sittings. You must not score below 6.5 for listening, reading, and speaking, or below 6 for writing, in either of the two test sittings.'

11.2. OET: you must achieve at least grade B (350-440) for reading, listening, and speaking, and at least grade C+ (300-340) for writing, in at least one of the two test sittings. You must not score below grade C+ (300-340) for listening, reading, and speaking, or below grade C (250-290) for writing, in either of the two test sittings'

The panel noted that in her last OET examination, Miss Karagyozyova scored the following:

- Listening – 270
- Writing – 250
- Reading – 240

- Speaking – 330

Whilst the panel acknowledged the efforts which continue to be made by Miss Karagyozyova in order to improve her English knowledge, it determined that the scores achieved by her in her OET examination are each significantly lower than the minimum score set out in the NMC's guidance. In this regard, the panel again considered the guidance on 'Not having the necessary knowledge of English' (FTP-2e), which states:

'Examples of language concerns that could place the public at risk of harm include:

- *poor handover of essential information about patient treatment or care to other health professionals because of an inability to speak English*
- *serious record keeping errors or patterns of poor record keeping because of an inability to write English*
- *serious failure(s) to give appropriate care to patients because of an inability to understand verbal or written communications from other health professionals (or patients themselves).*
- *drug error(s) caused by a failure to understand or inability to read prescriptions.'*

The panel was of the view that the above guidance related to fundamental aspects of nursing practice. The panel is aware that it should reach its decision in light of the evidence as a whole and it is not limited to a consideration of the OET results. However, Miss Karagyozyova has not been able to meet the minimum score required at the OET examination, and the panel has little other material evidencing her abilities in the English language. She has therefore been unable to demonstrate that she has the necessary knowledge of English to practise safely. The panel therefore determined 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 both to protect patients and to meet 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.

It concluded that a member of the public would expect to be treated and cared for by a nurse who was able to understand the English language sufficiently to practice safely and effectively.

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

Decision and reasons on sanction

Having found Miss Karagyzova's 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 seriously considered whether to take no action and to allow the current order to lapse upon its expiry. In this regard, the panel had sight of the NMC's guidance on *'allowing orders to expire when a nurse or midwife's registration will lapse.'*

The panel acknowledged that this is the tenth review and that the allegations arose nine years ago, with the substantive hearing concluding seven years ago. It noted that since that time, Miss Karagyzova has continued to fully engage with the regulatory process. However, Miss Karagyzova's registration on the NMC register remains active only by reason of the presence of the substantive order. Allowing the order to lapse, after having made a finding of impairment, would mean that Miss Karagyzova's name would be removed from the NMC register. Should Miss Karagyzova then decide to reapply to the register, the Registrar would be made aware of the finding of impairment, and it would be for Miss Karagyzova to satisfy the Registrar that she has the necessary knowledge of English in order to practise safely.

Allowing the order to lapse would also mean there would no longer be a requirement for review hearings to take place, which the panel have noted from Miss Karagyzova's latest correspondence, is causing her [PRIVATE]. However, it does not seem that Miss

Karagyzova and her representatives have given active consideration to this, and the panel has not received any representations from them concerning this possibility.

The panel noted that in the course of ten review hearings, Miss Karagyzova does not seem to have been previously warned explicitly that coming off the register in this way was an active possibility. Furthermore, it seemed to the panel that her and her representative's assumption was that the outcome of today's hearing would be a further period of suspension. Given Miss Karagyzova's continuing engagement and attempts to meet the scores required, and her express resolve to continue to try to meet the required standard, the panel was of the view allowing the order to lapse would be, at this time, inappropriate and unfair.

The panel next considered making a caution order but determined that, due to the seriousness of the concerns and the public protection issues identified, an order that does not restrict Miss Karagyzova's 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 a conditions of practice order on Miss Karagyzova's registration would be a sufficient and appropriate response. It determined that a conditions of practice order would not be workable in Miss Karagyzova's case and that any conditions which could be formulated would be tantamount to a suspension order. The panel was therefore not able to formulate conditions of practice that would adequately address the concerns relating to Miss Karagyzova's lack of knowledge of English.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Miss Karagyzova's further time to study and make a further attempt to pass an OET examination before the next review hearing. The panel concluded that a further nine-month period of suspension would be the appropriate and proportionate response.

The panel did consider imposing a striking-off order but determined that such a sanction would be disproportionate at this time. Miss Karagyzova is continuing to make efforts to improve her knowledge of the English language and the public can be adequately

protected by a suspension order. Furthermore, a striking off order would mean that Miss Karagyozyova would not be able to reapply for readmission to the register for at least five years.

The panel determined therefore that extending the present suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. The extended period will take effect from the date the current suspension order would have expired, namely the end of 27 August 2024 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 extend the order, or make a different order, it may revoke the order, or reduce its length, or it may replace the order with another order for the remainder of its current term. At the next review hearing, a panel will have all options available to it, including imposing a striking-off order or allowing the order to lapse, resulting in Miss Karagyozyova's name being removed from the NMC's register.

Any future panel reviewing this case would be assisted by:

- Evidence of passing the English language competency test to meet the required standards of the NMC.
- Other evidence as outlined in the NMC's revised guidance.
- Submissions in relation to the implications of the option of Miss Karagyozyova's name been removed from the register, if she has been unable to pass the English language competency test before the next review hearing.

This will be confirmed to Miss Karagyozyova in writing.

That concludes this determination.