

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

**Substantive Order Review Hearing
Wednesday, 16 October 2024**

Virtual Hearing

Name of Registrant: **Bogdan Constantin Benta**

NMC PIN 16B0052C

Part(s) 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: Anthony Kanutin (Chair, Lay member)
Pamela Campbell (Registrant member)
Kiran Musgrave (Lay member)

Legal Assessor: Paul Housego

Hearings Coordinator: Max Buadi

Nursing and Midwifery Council: Represented by Michael Smalley, Case Presenter

Mr Benta: Present and not represented

Order being reviewed: Conditions of practice order (6 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months)
to come into effect on 24 November 2024 in
accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

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

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

This is the seventh review of a substantive conditions of practice originally imposed by a panel of the Conduct and 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 reviewed on 17 October 2023 and 15 April 2024 where, both occasions, the order was extended for a period of six months.

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

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

The charges 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 sixth reviewing panel determined the following with regard to impairment:

'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.'

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

'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.

1. *You must not practise as a nurse until:*
 - i. *You have passed a test which satisfies the NMC's English Language requirements.*

- 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 practice safely, kindly and professionally. 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 Occupational English Test (OET) results for 18 May 2024 and a reference from your employer dated 14 October 2024. It has taken account of the submissions made by Mr Smalley on behalf of the NMC and submissions made by you.

Mr Smalley drew the panel's attention to the results of the OET you had undertaken on 18 May 2024. He submitted that based on the result, you had not met the NMC English Language requirements as set out in the guidance dated 2023. He informed the panel that you scored a "C" (250) in "Listening", a "C" (260) in "Reading", a "C+" (320) in "Speaking" and a "D" (190) in writing.

Mr Smalley highlighted to the panel the “OET Band Descriptors” for grade “C” which stated, *“Can maintain the interaction in a relevant healthcare environment despite occasional errors and lapses...”* and for grade “D” which stated, *“Frequent errors, inaccuracies and mis-or overuse of technical language can cause strain in communication.”* He reminded the panel that you are working in a healthcare setting and submitted that these results cause the NMC concern. He submitted that your fitness to practice remains impaired by reason of your lack of knowledge of English.

Mr Smalley informed the panel that he had a discussion with you prior to the hearing and in the presence of the legal assessor. He submitted that you wanted to retake the OET and requested an extension of the conditions of practice order for a further period of 12 months. Mr Smalley submitted that should you acquire the required standard of English, then the NMC’s concerns about your lack of knowledge of English would “disappear”.

Mr Smalley invited the panel to find that your fitness to practice remained impaired and to impose a further conditions of practice order for a period of 12 months.

You stated that you wanted to retake the OET exam and 12 months would be sufficient time to study. [PRIVATE].

You said that you would like more time to prepare for the exam and 12 months would be sufficient. You said that if you were to pass the exam earlier, then you would ask for an early review.

In response to panel questions, you stated that you work in a residential and nursing care home setting as a support worker caring for patients with dementia. You said that you have been a support worker for nine years starting in November 2015. You worked seven years in London and currently two years in Manchester.

You said that you have not worked as a nurse since you arrived in the United Kingdom as a volunteer. You said that when you were qualified as a nurse in Romania and worked in a neurosurgery hospital before coming to the UK.

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 the last reviewing panel noted that you were due to retake the OET in May 2024. However in the absence of any independent and verifiable evidence that you have passed an approved language test, it determined that you have not demonstrated a level of competence in your knowledge and understanding of the English language as required by the NMC.

Today's panel took account of your OET results for 18 May 2024. It bore in mind that in the NMC's guidance entitled "Guidance on registration language requirements" dated June 2023, it stated, *"For OET you must achieve at least a grade B (350 to 440) in reading, listening and speaking, and at least a grade C+ (300 to 340) in writing."*

The panel noted that in your OET you had scored a "C" (250) in "Listening", a "C" (260) in "Reading", a "C+" (320) in "Speaking" and a "D" (190) in writing. It considered that you had scored far below the minimum scores required and as a result, have been unable to demonstrate a level of competence in your knowledge and understanding of the English language as required by the NMC.

The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection for the same reasons as the previous panel.

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. It took account of paragraph 45 in the case of *Nursing and Midwifery Council v Persand [2023] EWHC 3356 (Admin)*. It particularly took account of the following, *"...if a nurse was free to practise without being subject to conditions, such a circumstance would raise concerns in the minds of a member of the public is, in my judgment, wholly insufficient."* It noted that there was nothing in your

case other than a lack of knowledge of English. As a result, the panel determined that, in this case, a finding of continuing impairment on public interest grounds is not required.

For these reasons, the panel finds that 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 considered that this would not restrict your practice. It concluded that this would be inappropriate in view of the public protection concerns. The panel decided that it would be proportionate to take no action.

The panel 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 not be proportionate to impose a caution order.

The panel next considered whether imposing a further 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 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. It was concerned that these proceedings have been ongoing for a significant period of time without a conclusion.

The panel considered allowing the order to lapse. This would have the effect that your registration with the NMC would cease as it only remains in place due to these proceedings. This would require you to re-register with the NMC. However, it is

encouraged by your consistent engagement with the NMC and the fact that you are currently working in a healthcare setting. It also noted that your personal circumstances appeared to be a factor in not completing the OET efficiently. It appears that you are now able to devote more time to preparing for the OET and expressed a commitment to pass the OET. The panel also noted that the NMC are willing to provide you with more time to pass the OET.

The panel bore in mind that there is a public interest in getting competent nurses into practice. It is satisfied that the current conditions of practice have adequately protected the public and that you continue to demonstrate your commitment to improving your English so that you can return to work as a nurse.

The panel accepted that you have been complying with current substantive conditions of practice and have been engaging well with the NMC and the process. The panel was therefore satisfied that a conditions of practice order remains appropriate, proportionate and sufficient to manage the risks identified. This will also allow you time to undertake the OET examination.

The panel was of the view that a further conditions of practice order is sufficient to protect patients. In this case, there are conditions that could be formulated which would protect patients during the period they are in force. The panel noted that this situation cannot continue indefinitely, and there needs ultimately to be a conclusion to the process. The panel highlights, that whilst not pre-empting future circumstances, you should not expect a future panel to automatically give you more time to pass the English tests.

The panel determined 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 namely, your lack of knowledge of English language.

Accordingly, the panel determined, pursuant to Article 30(1) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 24 November 2024. It decided to retain 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.

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:

- c) Telling your case officer within seven days of accepting or leaving any employment.
 - d) Giving your case officer your employer's contact details.
4. You must keep us informed about anywhere you are studying by:
- c) Telling your case officer within seven days of accepting any course of study.
 - d) 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:
- e) Any organisation or person you work for.
 - f) Any agency you apply to or are registered with for work.
 - g) Any employers you apply to for work (at the time of application).
 - h) 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:
- d) Any clinical incident you are involved in.
 - e) Any investigation started against you.
 - f) 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:
- d) Any current or future employer.
 - e) Any educational establishment.
 - f) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 12 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 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 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.

This will be confirmed to you in writing.

That concludes this determination.