

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

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

Virtual Hearing

Name of Registrant: Rositsa Manolova

NMC PIN 11H0063C

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

Relevant Location: Kent

Type of case: Language impairment

Panel members: Anthony Griffin (Chair, lay member)
Rosalyn Mloyi (Registrant member)
Susan Ellerby (Lay member)

Legal Assessor: Mark Piercy

Hearings Coordinator: Aditya Kaushik

Nursing and Midwifery Council: Represented by Stephanie Stevens, Case Presenter

Mrs Manolova: Not present and not represented at the hearing

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order extended by 12 months, to come into effect at the end of 28 October 2024, in accordance with Article 30(1)(a) of the Order.**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Manolova was not in attendance and that the Notice of Hearing had been sent to her registered email address by a secure email on 02 October 2024.

Ms Stevens, 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 ('the Rules').

The panel accepted the advice of the legal assessor.

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

In light of the information available to it, the panel was satisfied that Mrs Manolova was served with the Notice of Hearing in accordance with Rules 11 and 34 of the Rules.

Decision and reasons on proceeding in the absence of Mrs Manolova

The panel next considered whether it should proceed in Mrs Manolova's absence. The panel had regard to Rule 21 of the Rules and heard the submissions of Ms Stevens, who invited the panel to continue in Mrs Manolov's absence. Ms Stevens submitted that Mrs Manolova had voluntarily absented herself from the hearing.

Ms Stevens referred the panel to the email communication dated 15 October 20204 sent by the Royal College of Nursing ('RCN'). The relevant portion of the said communication is produced below:

' ...

*Our member will not be attending the hearing nor will they be represented. No disrespect is intended by their non-attendance. Our member has received the notice of hearing and is happy for the hearing to proceed in their absence.....
.....'*

Ms Stevens also pointed out that the incidents in the present matter relate to 2019 and the current order of suspension would anyway expire shortly on 28 October 2024. She therefore, submitted that there is a need for expeditious disposal of the case and an adjournment of the present review would not serve any useful purpose. Consequently, Ms Stevens invited the panel to proceed in the absence of Mrs Manolova.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William) (No.2)* [2002] UKHL 5.

The panel has decided to proceed in the absence of Mrs Manolova. In reaching this decision, the panel has considered the submissions of Ms Stevens and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Mrs Manolova received the notice of hearing and she had full knowledge about today's hearing.
- In the written communication dated 15 October 2024, sent by the RCN on behalf of Mrs Manolova, there is a clear indication that Mrs Manolova is content for this hearing to proceed in her absence.
- There is no application for an adjournment made on behalf Mrs Manolova, and
- There is no reason to suppose that an adjournment would secure her attendance at some future date.

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

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order by 12 months.

This order will come into effect at the end of 28 October 2024 in accordance with Article 30(1)(a) of the Nursing and Midwifery Order 2001 ('the Order').

This is the fifth 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 current order is due to expire at the end of 28 October 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 are as follows:

'That you, a registered nurse:

1. Do not have the necessary knowledge of English 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 fourth reviewing panel determined the following with regard to impairment:

'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:

‘...’

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.’

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

‘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 your health 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 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 any other testing necessary.

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 any background cause 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.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Manolova'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 ability to practise kindly, safely, and professionally.

The panel has had regard to all the documentation before it, including the NMC bundle and the on-table papers sent by the RCN on Mrs Manolova's behalf. It heard the submissions made by Ms Stevens on behalf of the NMC. Ms Stevens provided a brief background of the case and gave an account of the original panel's decision on impairment and sanction imposed on Mrs Manolova.

Ms Stevens submitted that this is the fifth review of the original substantive order and at each of the previous reviews Mrs Manolova's suspension has been extended by a period

of 12 months. She emphasised that the previous reviewing panels have held Mrs Manolova impaired on the grounds of both public protection and public interest for having failed to pass the English language test approved by the NMC.

Ms Stevens drew the panel's attention to:

- Mrs Manolova's consistent engagement with the NMC in providing her up-to-date OET results.
- Mrs Manolova's admission of the charges found to be proved against her.
- Mrs Manolova's persistent efforts to improve her English language skills and clear the OET exams but the same having resulted in mixed results.
- A comparison of the OET results achieved by Mrs Manolova, available to the last reviewing panel and those available to this panel:

	Reading	Listening	Speaking	Writing
OET results (August 2023) before the fourth reviewing panel	200	220	330	250
OET results (September 2024) before this panel	120	250	220	200

Based on the above, Ms Stevens submitted that Mrs Manolova's performance in reading, speaking, and writing has worsened since the last review.

Ms Stevens referred the panel to the email dated 15 October 2024 sent by Mrs Manolova to RCN where she attributed her failure to achieve the desired score in the OET to her full-time night duty and the resulting tiredness impacting her ability to study.

Ms Stevens further submitted that Mrs Manolova has followed the suggestions of the previous panel and provided an up-to-date testimonial which stated that Mrs Manolova's English verbal and written skills have improved. However, Ms Stevens submitted that Mrs Manolova's recent OET results suggest the opposite.

Ms Stevens also pointed out that the result of investigation by the RCN into any health reasons affecting Mrs Manolova's ability to achieve the required score in the OET has also returned negative. Mrs Manolova has failed thrice in the last three years to achieve the required score in the OET, and there was an indication of a trend of her worsening performance in the OET.

Ms Stevens submitted that in view of the above the risk to the public from allowing Mrs Manolova to return to unrestricted practice has not decreased. Therefore, she invited the panel to make a finding of impairment on the ground of public protection. Ms Stevens also submitted that effective and clear communication is essential to practise safe and kind nursing. Mrs Manolova's inability to achieve the required level of proficiency in English language raises a question of wider public interest. Therefore, Ms Stevens invited the panel to make a finding of impairment on the ground of public interest as well.

As to sanction, Ms Stevens submitted that NMC's position in the matter is neutral. Ms Stevens referred the panel to the options available to it in deciding the relevant sanction, should the panel make a finding of impairment.

Ms Stevens submitted that it is accepted that Mrs Manolova has engaged with the NMC on a regular basis and made persistent efforts to achieve the required score in the OET. However, she has not been able to achieve the required score in the OET. Ms Stevens also drew the panel's attention to the case of *Abbas v the NMC* [2019] EWHC 971 (Admin) which highlights the importance of length of time a substantive order has been in place and lack of progression on the part of a registrant.

The panel also noted the representation from the RCN dated 15 October 2024, which included the following:

'....

We acknowledge that the original period of this Order is due to end [sic] October 2024. However, as the Registrant has not passed assessment in English Language the registrant acknowledges her fitness is impaired because she has not met the required standard but will be receiving paid tuition to help her to meet the required standard which is something she was unable to explore in the past. The Registrant advises she has made improvements over time and would like the Panel to extend the current Order to allow her further time to take the English Language assessment to meet the required standard and return to nursing.

....'

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 the question as to whether, based on the evidence before it, Mrs Manolova can practise kindly, safely, and professionally. To determine this question, the panel directed its assessment to the following key considerations:

- Compliance with the NMC Guidance on registration language requirements, last updated on June 2023 (NMC Guidance)
- Steps taken by the registrant to strengthen their skills and keep up-to date with knowledge, and
- The issues of public interest and public protection

The panel first considered the NMC Guidance referred to above and observed that Mrs Manolova has failed to achieve the score required as per the NMC guidance in the different sections of the OET to allow her to practice unrestricted. The panel noted that even through a wide range of factors could affect a candidate's performance in a particular examination, however, there is clear evidence that Mrs Manolova's performance in reading, speaking, and writing sections of the OET has declined since the last review. The

panel found it useful to refer the above comparison table to reflect on Mrs Manolova's performance in the OET.

This panel was mindful of the observations made by the last panel about the investigation into Mrs Manolova's health to see if her repeated failures in achieving the required score at the OET was due to some health reasons. However, this panel has not found any health reasons affecting Mrs Manolova's performance at the OET.

The panel also had regard to the testimonial dated 20 September 2024 given in support of Mrs Manolova. The panel noted that the said testimonial is indicative of Mrs Manolova's determination to succeed in the profession of nursing and that it states that Mrs Manolova's English verbal and written skills have improved over time. However, in light of the above comparison table, the panel found Mrs Manolova's scores have declined in three sections.

Following the above discussion, the panel determined that Mrs Manolova's current fitness to practise remains impaired due to her failure to achieve the required score in the NMC approved language tests.

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.

Decision and reasons on sanction

Having found Mrs Manolova'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 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.

The panel next 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 Mrs Manolova's progress and was, therefore, a sanction that permitted Mrs Manolova's return 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 order on Mrs Manolova's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable, and workable. The panel bore in mind that Mrs Manolova has still not achieved the required standard of English and there could be no workable conditions of practice to enable adequate protection of the public.

The panel next considered extending the current suspension order. The panel noted, that Mrs Manolova in her email dated 15 October 2024 addressed to the RCN has stated, that she has left her job to concentrate on preparing for the OET and has also chosen a school to pursue a preparatory course for the OET. The panel also noted the written submissions filed by the RCN on behalf of Mrs Manolova which state that she will be receiving paid tuition to help her achieve the required OET score.

The panel was of the view that a suspension order would allow Mrs Manolova further time to try to achieve the standards required in the English language tests.

At this juncture, the panel reminded itself that Mrs Manolova has been under suspension for over four years and the aggravating factors that led to her suspension have not been mitigated. That the current suspension order is the only reason for Mrs Manolova being retained on the register as a registered nurse, her registration fee having lapsed in August 2019. Therefore, it was mindful of the sanction of allowing the current suspension order to lapse on its expiry, as per the NMC guidance Rev-3h. However, as noted above, given Mrs Manolova's level of engagement with the NMC and her persistent efforts at clearing the OET, the panel decided that allowing the order to lapse would not be the appropriate sanction at present.

For the reasons above, the panel also determined that a striking off order, as a sanction, would be unduly punitive at this stage.

Accordingly, the panel determined to extend the current suspension order by a further period of 12 months as it would be the appropriate and proportionate response. The panel concluded that an extension of the current suspension order would be enough to address the issues of public protection and public interest identified in the present case.

This extension of 12 months will come into effect on the expiry of the current suspension order, namely by the end of 28 October 2024, in accordance with Article 30(1)(a) of the Order.

The panel also concluded that any future reviewing panel should seriously consider the sanctions of either allowing the order to lapse on its expiry or a striking off order, if Mrs Manolova is unable to achieve the required score in a NMC approved English language test before the date of the next review.

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 Mrs Manolova in writing.

That concludes this determination.