

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

Substantive Order Review Meeting

23 April 2019

Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE

Name of registrant: Sylvia Samuels

NMC PIN: 77E2664E

Part(s) of the register: Registered Nurse - Adult (RNA)
11 June 1979
Sub Part 1

Area of Registered Address: England

Type of Case: Lack of Competence

Panel Members: Julia Whiting (Chair, Registrant member)
Heather Moulder (Registrant member)
Claire Corrigan (Lay member)

Legal Assessor: Iain Ross

Panel Secretary: Maya Hussain

Order being reviewed: Suspension order, 12 months

Fitness to Practise: Impaired

Outcome: Striking off order to come into effect on 3 June 2019 in accordance with Article 30 (1)

Decision on Service of Notice of Meeting:

The panel considered whether notice of this meeting has been served in accordance with the rules. Rules 11A and 34 of the *Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended* state:

'11A.(1) Where a meeting is to be held in accordance with rule 10(3), the Conduct and Competence Committee or the Health Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

*34.(3) Any other notice or document to be served on a person under these Rules may be sent by—
(a) ordinary post'*

The letter of notice of this substantive meeting was sent to Ms Samuels address on the register on 6 March 2019. Ms Samuels was also sent a previous letter dated 13 February 2019 notifying her that she is required to contact her NMC case officer by 27 February 2019. The panel is satisfied that the notice was sent more than 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

The panel accepted the advice of the Legal Assessor.

In the light of all of the information available, the panel was satisfied that Ms Samuels has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules).

Decision and reasons on review of the current order:

The panel decided to impose a striking off order. This order will come into effect on 3 June 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the third review of an order originally imposed as a conditions of practice order by a panel of the Conduct and Competence Committee on 2 November 2015 for 12 months. That order was first reviewed on 27 October 2016 and extended for a period of 18 months. The order was next reviewed on 31 May 2018 and replaced with a suspension order for a period of 12 months. The current order is due to expire on 3 June 2019.

The panel is reviewing the current suspension order pursuant to Article 30(1) of the Order. At the substantive hearing, the panel found the following charges proved:

That you, whilst employed by Rotherham District Hospital NHS Trust as a Band 6 Midwife and whilst undergoing a period of supervised practice between 5 May 2013 and 21 June 2014 at the Antenatal Day Unit at Rotherham Hospital, failed to demonstrate the standards, knowledge, skills and judgement required to practise as a Band 6 Midwife, in that:-

1. On or around 17 October 2013 you:-
 - 1.1. Did not highlight patients who required extra input into their care such as serial scans and blood tests;
 - 1.2. ...
 - 1.3. Did not demonstrate that you were aware of basic antenatal clinic processes and protocols including customised growth charts and/or normal Down Risk Factor ('DRF') results and/or the need for additional scans;

- 1.4. Were unable to recognise patients who required their blood samples to be taken for Quadruple Screening;
 - 1.5. Were unable to identify patients who needed Triple Testing;
 - 1.6. Did not demonstrate that you were able to counsel patients in relation to the screening tests;
 - 1.7. Were unable to plot growth on a customised growth chart.
 - 1.8. Were unable to identify scans requiring action from or review by an Obstetrician;
 - 1.9.
 - 1.10. Inadequately completed blood forms;
 - 1.11. ...
 - 1.12. ...
2. On 24 October 2013 you:
- 2.1. Were unable to formulate an action plan for a fetus whose growth had crossed centiles on a growth chart;
 - 2.2. Were unaware of the follow-up protocol;
 - 2.3. ...
 - 2.4. Did not fill in an antenatal summary in a patient's main hospital notes.
3. On 28 October 2013 you:
- 3.1. Did not demonstrate knowledge of basic midwifery practise and drug administration in that you did not know midwives were able to administer medication or which medication they were able to administer;
 - 3.2. Did not demonstrate that you were able to assess patient notes and/or give plans of care in that you:

- 3.2.1. Did not note that a patient had had a growth chart produced, a 20 week scan and a Consultant appointment booked.
 - 3.2.2. Did not demonstrate that you knew why the patient needed to be seen by a Consultant
 - 3.2.3. Were unable to formulate a plan of care for a patient with an estimated fetal weight just above the 90th percentile
 - 3.2.4. Did not know the normal range for a two hour glucose tolerance test result or where to find it.
 - 3.2.5. Did not know the protocol if growth had crossed two centiles at a patient's next visit.
4. On 6 May 2014, you did not record the heart rate when auscultating a patient's fetus.
5. On 8 May 2014, you:
 - 5.1. Performed inadequate venepunctures on two patients.
 - 5.2. Did not escalate a patient's abnormal fetal heart rate.
6. On various shifts in May 2014, including but not limited to the following dates, you exhibited poor time management:
 - 6.1. 13 May 2014
 - 6.2. 20 May 2014
7. On 23 May 2014, you inadequately completed patient documentation.
8. ...

9. ...

10. On 17 June 2014, you:-

10.1. Ordered incorrect bloods to be taken from a patient

10.2. Did not check the relevant pre-eclampsia protocol for the patient's condition

11. On 20 June 2014 you ordered incorrect bloods to be taken from a patient

12. You failed to complete successfully 150 hours of supervised practice.

And in light of the above your fitness to practise is impaired by reason of your lack of competency'.

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

'The panel today took account of the fact that this is the first time that you have attended your NMC proceedings. However, the panel considered that there has been no change in your circumstances save for the passage of time. This is a lack of competency case. The panel had no information before it that you had remediated the wide ranging shortcomings found proved by the substantive panel. The panel was concerned from your oral submissions that you demonstrated very little insight into your failings and had not accepted the substantive panel's findings. It considered that the absence of any information to suggest that you have attempted to remediate your shortcomings or provide any further information regarding insight into the implications of your failings since the substantive hearing. In the panel's view there remains a risk of repetition of the errors that led to the previous findings of lack of competence which could, put patients at risk of harm and bring the profession into disrepute.

In addition, the panel has not been provided with any evidence that you have complied with the existing conditions of practice order nor any evidence that you

have undertaken any of the recommendations outlined by the substantive panel or first reviewing panel. For this reason the panel determined that your fitness to practise remains impaired on the grounds of public protection. The panel also concluded that a finding of impairment continues to be necessary in the wider public interest, as the concerns identified in your practice have not yet been remedied and confidence in the profession and in the NMC's ability to maintain standards would be undermined if your fitness to practise is not found to be currently impaired.

The panel therefore determined that your fitness to practise remains currently impaired.'

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

'The panel first considered taking no action and allowing the current order to expire. In light of the seriousness of the failings and the likelihood of repetition, this sanction would be wholly inappropriate as it would not restrict your practice and would not protect the public or the wider public interest.

The panel next considered whether to replace the existing order, on its expiry, with a caution order. Given that since the substantive hearing you have not provided any evidence of remediation in relation to your nursing practice, the panel has decided that such an order would not be appropriate or proportionate as it would allow you to practise unrestricted and, as such, would not protect the public or the wider public interest.

The panel next considered whether a conditions of practice order remains appropriate and proportionate sanction. You have not practised as a registered nurse for some 25 years and if you were to return to practice now, you would be required to complete a return to practice course. To date, you have not taken any steps to find employment. The panel noted that your preference is to return to midwifery practice. The panel considered that you would need to be directly supervised at all times in your midwifery practice in order to ensure patient

safety. The panel bore in mind the high level of supervision that you were given as a midwife previously and also took into account your statement at this hearing that you would not wish to be “scrutinised” in your midwifery practice. The panel was therefore not satisfied that you would be willing or able to engage with required conditions of practice. Further, the panel considered that you have not shown any insight or remediation into the failings identified by the panel at your substantive hearing. Moreover, the fact you made no attempt to comply with the conditions of practice or suggestions made to you demonstrated in the panel’s view a significant lack of insight. In all the circumstances the panel considered that a conditions of practice order is no longer the appropriate order in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel was satisfied that the only practical and proportionate sanction available to it at this time is a suspension order and that this would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for a period of 12 months. The panel determined that a period of 12 months would give you time to fully reflect upon your practice and for you to develop insight.

The panel considered the imposition of a suspension order to be the most appropriate and proportionate sanction available. This suspension order will take effect upon the expiry of the current conditions of practice order, at the end of 2 June 2018 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001.

The panel had regard to the option of making a striking off order but determined that this would be disproportionate at this time.

This panel has determined that a future reviewing panel would be assisted by you attending the hearing and providing the following information:

- A reflective piece, using a recognised model, and referencing the NMC Code, which demonstrates your understanding of the impact of your failings on patients, colleagues and the midwifery profession;
- Evidence of any relevant training you have undertaken which addresses the deficiencies found in this case;
- Evidence of how you have addressed and maintained your clinical knowledge;
- Testimonials from any paid or unpaid work undertaken; and
- Your engagement with the review hearing process, either in person, by email or by letter.'

Decision on current fitness to practise

The panel has considered carefully whether Ms Samuels' 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. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel considered all of the documentation before it.

The panel accepted the advice of the Legal Assessor and exercised its own independent judgment in relation to this case.

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 bore in the mind the reasons why the original substantive panel and the previous reviewing panels found Ms Samuels fitness to practise impaired.

The panel noted that Ms Samuels has not engaged with the NMC or provided any new information since the last review hearing on 31 May 2018.

This panel were mindful that Ms Samuels' evidence given at the last hearing showed limited insight and a failure to accept the concerns at the substantive panel. In addition, it was clearly set out at the last reviewing panel what steps were required to address the panel's remaining concerns. There is no evidence before this panel that any of those steps towards remediation have been taken and therefore in the absence of this there remains a real risk of repetition. The panel therefore concluded that Ms Samuels' fitness to practise remains impaired on public protection and public interest grounds.

Determination on sanction

Having found Ms Samuels' fitness to practise is 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 29 of the Order. The panel has also taken into account the NMC's Sanctions Guidance 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 and may have a significant financial impact and may cause hardship. The panel took into account the principle of proportionality, balancing protection of the public as well as the wider public interest against Ms Samuels own interests.

The panel first considered whether to take no action and allow the current order to lapse at its expiry. The panel has identified an ongoing risk of repetition and risk of harm to patients given the lack of any new information in respect of Ms Samuels' fitness to practise. In the absence of any information which would indicate a positive change in circumstances, the panel concluded that taking no action would be wholly inappropriate as it would be insufficient to protect the public and satisfy the public interest in the maintenance of public confidence in the profession.

The panel next considered whether to replace the current order with a caution order. However, for the reasons as set out above, the panel concluded that a caution order would neither be sufficient to protect the public nor would it be in the public interest as it

would allow Ms Samuels to return to unrestricted practice and it would not protect the public or the wider public interest.

The panel next considered whether a conditions of practice order was an appropriate or proportionate response in this case. The panel referred to the previous review meeting's decision on 31 May 2018 in relation to conditions of practice, in particular as also noted by the previous reviewing panel, that Ms Samuels did not wish to be 'scrutinised' in her midwifery practice. Therefore, this panel could not be satisfied that Ms Samuels would comply with any conditions imposed. In the circumstances, the panel has concluded that it would not be possible to formulate appropriate and workable conditions.

The panel went on to consider the imposition of a further period of suspension. In so doing, it noted that Ms Samuels has now been subject to substantive orders since 2 November 2015 and that this was now her third review. The panel noted that Ms Samuels was provided with clear information by the previous panel at her last review hearing as to what would assist a future panel when determining her fitness to practise. Ms Samuels has failed to comply with the recommendations and has not provided any evidence of remediation to the NMC.

The panel noted the lack of information into Ms Samuels' current situation, level of insight or remediation and that Ms Samuels' only engagement was her attendance at the last review hearing on 31 May 2018. The panel is of the view that a further period of suspension would serve no useful purpose and would not be sufficient to satisfy the public interest.

The panel next considered a striking off order. Ms Samuels has not engaged with the NMC since her last review hearing. Therefore the panel has no evidence to suggest that she would engage in the future. Ms Samuels has shown limited insight into her failings and there is evidence of attitudinal issues illustrated by her unwillingness to accept the substantive panel's findings, or accept the need for her practice to be subject to any restriction. This combined with her limited engagement with the regulator means there remains a real risk of harm to the public if she were to practise unrestricted and her continued impairment is fundamentally incompatible with remaining on the register.

The panel is of the view that a striking off order is the only order sufficient both to protect the public and to satisfy the public interest.

The panel therefore imposed a striking off order, which will come into effect on 3 June 2019.

This decision will be confirmed to Ms Samuels in writing.

That concludes this determination.