

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

Substantive Order Review Hearing

10 February 2020

Nursing and Midwifery Council, Temple Court 13a Cathedral Road, Cardiff, CF11 9HA

Name of registrant: Diane Cocking

NMC PIN: 85I0068W

Part(s) of the register: Adult Nurse (28 November 1988)
Registered Midwife (1 April 2002)

Area of Registered Address: Wales

Type of Case: Misconduct

Panel members: John Penhale (Chair, lay member)
Judith Robbins (Registrant member)
Janine Ellul (Registrant member)

Legal Assessor: Charles Parsley

Panel Secretary: Rob James

Nursing and Midwifery Council: Represented by Richard Webb, Case
Presenter

Registrant Mrs Cocking not in attendance nor represented

Order being reviewed: Suspension Order (6 months)

Fitness to Practise: Impaired

Outcome: Striking off order to come into effect at the end
of 20 March 2020 in accordance with Article 30
(1)

Service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Cocking was not in attendance, nor was she represented in her absence.

The panel was informed that the notice of this hearing was sent to Mrs Cocking on 23 December 2019 by recorded delivery and first class post to her registered address. Further, the panel noted that notice of this hearing was also sent to Mrs Cocking's representative at Thompson's solicitors on 23 December 2019.

The panel accepted the advice of the legal assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

Proceeding in absence

The panel then considered proceeding in the absence of Mrs Cocking. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Mr Webb, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Mr Webb made an application for the hearing to proceed in the absence of Mrs Cocking. He referred the panel to an email dated 7 February 2020 from Mrs Cocking which stated:

“will not be attending a hearing next week, after 3 years of stress during the Nmc hearings, I would like closure on it. I will never subject myself to attending a public hearing, and any further stress.”

Mr Webb submitted that there has not been a response from Mrs Cocking's legal representative and that the order is not due to expire until 20 March 2020 which means that there is time for the hearing to be relisted.

During its deliberation, the panel was of the view that it was necessary that Mrs Cocking should be contacted in order for more clarification on her position in relation to her Midwifery career. Mrs Cocking was therefore contacted and responded to an email to the NMC Case Coordinator. The email stated:

“further to our telephone conversation, I am confirming that I will not be returning to nursing and agree to allow the suspension to relapse.”

Mrs Cocking had been sent notice of today's hearing and the panel was satisfied that she was aware of today's hearing and it is of the view that she had chosen not to attend. The panel, therefore, concluded that she had chosen voluntarily to absent herself. The panel had no reason to believe that an adjournment would result in Mrs Cocking's attendance. Having weighed the interests of Mrs Cocking with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mrs Cocking's absence.

Decision and reasons on review of the current order:

The panel decided to make a striking off order. This order will come into effect at the end of 20 March 2020 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second review of a suspension order, originally imposed by a Fitness to Practise panel on 19 February 2019 for a period of six months. The order was reviewed on 8 August 2019 and extended for a further six months. The current order is due to expire at the end of 20 March 2020.

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 Midwife on 1 January 2017

1. In relation to Patient A

(a) Failed to promptly detect an abnormal CTG

(b) Failed to promptly escalate an abnormal CTG

(c) Failed to document adequately or at all entries in Patient A’s notes in a timely manner

And in light of the above your fitness to practice is impaired by reason of your misconduct.”

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

“The panel noted that there was nothing provided by Mrs Cocking to demonstrate that she has developed insight into her previous failings or remediated them. The

panel was concerned that Mrs Cocking appears to have disengaged. In light of this the panel determined that there remains a risk of repetition and therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel had borne in mind that its primary function was 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 required.

For these reasons, the panel finds that Mrs Cocking's fitness to practise remains impaired."

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

"The panel considered substituting the current suspension order with a conditions of practice order however concluded that, due to Mrs Cocking's lack of engagement, this would be inappropriate. The panel had no information as to whether she would be willing to comply with conditions and therefore workable conditions could not be formulated that would sufficiently protect the public or address the public interest.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Cocking further time to fully reflect on her previous failings and demonstrate developed insight and remediation. The panel concluded that a further 6 month suspension order would be the appropriate and proportionate response and would afford Mrs Cocking adequate time to re-engage with the proceedings.

Before the end of the period of the order, a panel will hold a review meeting to this order. At the review meeting the panel may extend or revoke the order, or it

may replace the order with another order. A future reviewing panel may be assisted by:

- *Mrs Cocking's re-engagement*
- *A further reflective piece addressing the impact of her misconduct on Patient A and her baby, colleagues, the wider public, and the reputation of the profession.*
- *Mrs Cocking's attendance at a review hearing either in person or via a video link.*
- *Up to date testimonials, and references from any paid or voluntary work*
- *Evidence of how Mrs Cocking has kept her clinical knowledge up to date."*

Decision on current fitness to practise

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

The panel has had regard to all of the documentation before it. It has taken account of the submissions made by Mr Webb.

Mr Webb outlined the background of the case along with the findings of the previous panels. He submitted that Mrs Cocking remains impaired due to the fact that the concerns in relation to her nursing practice remain. He referred the panel to an email from Mrs Cocking dated 7 February and also the NMC guidance entitled "Allowing orders to expire when a nurse or midwife's registration will lapse". He submitted that, if the panel did allow the order to lapse, Mrs Cocking's conduct would remain on the NMC register. However, Mr Webb also submitted that it would appear that Mrs Cocking is still contesting her previous misconduct.

The panel had regard to the email from Mrs Cocking dated 7 February 2020. This stated:

“I apologise for being last minute however unison do not appear to be providing representation anymore. Please forward this to the correct person. It is with sadness that I am informing you I will not be attending a hearing next week, after 3 years of stress during the Nmc hearings, I would like closure on it. I will never subject myself to attending a public hearing, and any further stress, I have been a nurse for 35 years and my calling was to help the patients, I have only ever worked to the best of intentions. My actions were not due to a lack of knowledge but because of the conditions I found myself working in to look after all the patients, this included 9 hours before a comfort break for myself. My records were up to date prior to the transfer to labour ward, and revisiting them later did not add significant details to affect patient management.

The paediatric review confirmed sadly the cause of death was congenital abnormality. I take pride that I have saved the lives of many during my ccu nursing, and only 2 weeks prior to this case saved a baby and mum having a placental abrupt ion when her door to Caesarean delivery time was within 30 minutes, there are many others I can recall.

However, this investigation is not good for my mental wellbeing and I need to move forward, and so require closure to the case please.”

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 Mrs Cocking’s fitness to practise remains impaired.

The panel had regard to the insight of Mrs Cocking. It took account of the fact that the substantive hearing had taken place by way of Consensual Panel Determination (CPD) which meant that Mrs Cocking admitted all of the charges put to her by the NMC and also admitted that her fitness to practise was currently impaired. The panel noted Mrs Cocking's comments in the email dated 7 February 2020 and was of the view that her insight may have gone backward in some regard. It would appear that Mrs Cocking has failed to accept that her actions were not of the standard required of a Registered Midwife and noted that she has sought to minimise her failings by referring to other issues including the conditions that she was working in.

Having had regard to Mrs Cocking's comments, the panel noted that the failings that led to her referral to the NMC were serious. It had regard to the fact that Mrs Cocking has failed to provide to this panel any evidence that she has remediated her failings. The previous panel was of the view that various responses including re-engagement with the NMC, attendance at the review hearing, a reflective piece, testimonials and evidence of how Mrs Cocking has kept her clinical evidence up to date would be of assistance to this panel. Mrs Cocking has not complied with this request. Her only engagement with the NMC is via an email, the contents of which has suggested to the panel that her insight has not continued to develop but has appeared to deteriorate.

The panel noted a pattern of previous clinical concerns which had been addressed on two occasions through the midwifery supervisory process and on the third occasion led to a referral to the NMC. Her failings on a fourth occasion led to the current referral to the NMC.

The panel was of the view that a Registered Midwife of her experience should be able to understand how her failings had had an effect on her colleagues, the patients in her care and the reputation of the midwifery profession. This does not appear to be the case with Mrs Cocking. It is of particular concern that notwithstanding this history, Mrs Cocking has failed to demonstrate an appropriate level of insight.

The last panel determined that Mrs Cocking remained liable to repeat matters of the kind found proved. This panel has heard no new information that may enable it to make

a different finding. In light of this the panel determined that Mrs Cocking remains 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 had borne in mind that its primary function was 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 due to the seriousness of the charges found proved.

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

Determination on sanction

Having found Mrs Cocking'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 29 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 and had regard to the NMC guidance entitled "Allowing orders to expire when a nurse or midwife's registration will lapse". The panel took account of the requirements in the guidance namely;

- the nurse or midwife's registration is only active because of the substantive order being in place,
- the nurse or midwife doesn't want to continue practising, and
- the public are protected because the panel have made a clear finding that the nurse or midwife's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse or midwife attempts to re-join the register.

The panel had regard to the fact that Mrs Cocking had stated, in an email dated 10 February 2020 that she would like the order to lapse and the panel also noted that the public would remain protected if it decided to take this course of action. The panel, however, took account of the lack of insight shown by Mrs Cocking in her email dated 7 February 2020 and determined that it would not satisfy the public interest to allow the order to lapse as this would not reflect the seriousness of her misconduct.

The panel then considered whether to impose a caution order but concluded that this would be inappropriate in view of the risk of repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel considered substituting the current suspension order with a conditions of practice order. It noted that Mrs Cocking's failings were clinical and, in light of this, there may be conditions of practice that could be formed that would protect the public. However, it noted Mrs Cocking's comments that she no longer wished to practise as a Registered Midwife and, taking into account future non-compliance, determined that conditions of practice were not appropriate.

The panel next considered imposing a further suspension order. The panel noted that Mrs Cocking has not shown remorse for her misconduct and has continued to blame other factors for her failings. Further, Mrs Cocking's insight appears to have regressed. The panel was of the view that considerable evidence would be required to persuade it that Mrs Cocking no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances.

The panel noted the basis upon which the CPD was approved and that it clearly anticipated further engagement from Mrs Cocking and the steps she would need to take to reflect upon her failings and remediate her practice. As noted, she has failed to take any of these steps which were envisaged by the previous reviewing panel.

The panel reminded itself of the sanctions guidance in relation to striking off orders which states:

- Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?
- Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?
- Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?

The panel had regard to the overarching objectives of the NMC which include protection of the public, promoting and maintaining public confidence in the professions and maintaining proper professional standards.

In all the circumstances, the panel determined that it was necessary to take action to prevent Mrs Cocking from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This decision will be confirmed to Mrs Cocking in writing.

That concludes this determination.