

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Order Review Meeting**

7 July 2020

Virtual Meeting

Name of registrant:	Teresa Bernadine McLaughlin
NMC PIN:	79B1397E
Part(s) of the register:	Registered Nurse (Sub Part 1) Adult Nursing – July 1982 Registered Midwife – November 1987
Area of Registered Address:	Surrey
Type of Case:	Misconduct
Panel Members:	Christina McKenzie (Chair, Registrant member) Richard Lyne (Registrant member) Seamus Magee (Lay member)
Legal Assessor:	Angus Macpherson
Panel Secretary:	Caroline Pringle
Order being reviewed:	Suspension order (6 months)
Fitness to Practise:	Impaired
Outcome:	Striking-off order to come into effect at the end of 25 August 2020 in accordance with Article 30(1)

Decision on proof of service

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

The panel accepted the advice of the legal assessor. The panel noted that under the recent amendments made to the Rules during the Covid-19 emergency period, a notice of hearing or meeting can be sent to a registrant's registered address by recorded delivery and first class post or to a suitable email address on the register.

The panel noted that notice of this substantive order review meeting was sent to Miss McLaughlin by email to her address on the register on 1 June 2020. The notice informed Miss McLaughlin that her suspension order would be reviewed at a meeting on or after 6 July 2020, unless she asked for the review to take place at a hearing. Miss McLaughlin has not responded to the notice of meeting and has not requested that this review take place at a hearing.

In these circumstances, the panel was satisfied that the notice was sent more than 28 days in advance of this meeting and had been served in accordance with the Rules. The panel was also satisfied that it was appropriate to proceed with this review at a meeting as it had no reason to believe that referring this matter to a hearing would result in Miss McLaughlin's attendance or engagement.

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 25 August 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a six month suspension order imposed by a Fitness to Practise panel on 27 January 2020. The current order is due to expire at the end of 25 August 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 whilst working a night shift at the Royal Surrey County Hospital on 30/31 March 2018, in relation to Patient A:

- 1) *Incorrectly identified the perineal tear as a first degree tear when it was a second degree tear;*
- 2) *Failed to identify that the tear required suturing;*
- 3) *...*
- 4) *Failed to ensure that a fellow midwife or doctor checked that the perineum did not require repair;*
- 5) *Failed to monitor blood loss;*
- 6) *Failed to conduct timely and frequent observations in respect of the Patient, post-delivery;*
- 7) *Failed to escalate the Patient after recording a blood pressure reading of 95/60 and a pulse of 100 bpm;*
- 8) *Failed to recognise that there was only one placenta;*
- 9) *Failed to identify Patient A's deteriorating condition;*
- 10) *Failed to keep adequate records in respect of the Patient in that:*
 - a) *You did not sign the Perineal Trauma Assessment and Repair Proforma to confirm that the tear did not require suturing;*

- b) *You did not ensure that your assessment at a) was signed as having been second checked;*
 - c) *You did not time the entry of observations on the Summary of Delivery;*
 - d) *You did not record any observations on the MEOWS chart;*
 - e) *You did not time an entry in the Labour Record regarding asking the doctor to review the Patient;*
 - f) *...*
 - g) *You did not record whether there had been a discussion with the Patient regarding the decision that the perineum required no repair;*
 - h) *You did not record that the Patient had been warned of the risks of opting for a physiological third stage of labour;*
- 11) *Had made an entry in the Patient's Labour Record that you had requested the doctor to review the Patient;*
- 12) *...*

AND in light of the above, your fitness to practise is impaired by reason of your misconduct.

The substantive panel determined the following with regard to impairment:

The panel found that limbs a, b and c of the Grant test were engaged in Ms McLaughlin's case and that Patient A was put at risk and suffered harm as a result of Ms McLaughlin's misconduct. Also, Ms McLaughlin's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding the issue of insight, the panel considered that there has been no evidence before it that Ms McLaughlin has any remorse or insight into her failings. She has not demonstrated an understanding of how her

actions put Patient A at risk of harm, nor has she demonstrated an understanding or any reflection as to how to prevent her omissions recurring. The panel took into consideration Ms McLaughlin's reflection of the incident and that it was a busy shift. However the panel is of the view that Ms McLaughlin has a tendency to deflect blame onto others for her own actions. Ms McLaughlin is an experienced midwife and the panel is in no doubt that it is the professional responsibility of a registered midwife to take responsibility for their actions. The panel was not satisfied that Ms McLaughlin has any insight into her professional responsibilities in this matter.

The panel was satisfied that the misconduct in this case is capable of remediation. It bore in mind the evidence of Ms 4 who stated that this event was not formally registered as a serious incident and that if Ms McLaughlin had not been an agency midwife the matter would have been dealt with in house through remedial support and training. Nevertheless Ms McLaughlin's misconduct involves widespread failings in basic areas of midwifery practice. Therefore, the panel carefully considered the evidence before it in determining whether or not Ms McLaughlin has remediated her practice. The panel took into account that there was no evidence before it that Ms McLaughlin had taken any steps to remediate her midwifery practice. The panel noted Ms McLaughlin had stated that she would not be practising midwifery in the future. However, she may always have a change of heart.

The panel is therefore of the view that there is a real risk of repetition of the misconduct identified in Ms McLaughlin's case were she to return to midwifery practice. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC to protect, promote and maintain the health, safety, and wellbeing of the public and patients, and to uphold and protect the wider public interest.

This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel had regard to the serious nature of Ms McLaughlin's failings and determined that public confidence in the profession would be undermined if a finding of current impairment was not made. For this reason, the panel determined that a finding of current impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that Ms McLaughlin's fitness to practise is currently impaired on both public protection and public interest grounds.

The substantive 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 seriousness of the 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 again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Ms McLaughlin's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where 'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that Ms McLaughlin's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Ms McLaughlin's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG.

Whilst the panel accepts that the failings in this case are capable of remediation, Ms McLaughlin has expressed a wish to not return to midwifery practice. Under these circumstances it is difficult to see how the panel could frame conditions which are workable, practical or would adequately protect the public or the public interest issues raised in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- A single instance of misconduct but where a lesser sanction is not sufficient;*
- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident;*
- In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with Ms McLaughlin remaining on the register. Although Ms McLaughlin's misconduct was serious, it was an isolated set of events in an otherwise long unblemished career.

The panel accepted the NMC's sanction bid in this case for a suspension order for a period of six months with a review. The panel agreed and formed its own view that a six month suspension order would address

the public protection and public interest issues raised in this case. The six month suspension will be reviewed by a future panel and will give Ms McLaughlin sufficient time either to re-engage with the process or to maintain her expressed wish to retire from the midwifery profession. Ms McLaughlin must understand that if she fails to engage with the process a future reviewing panel will have limited options available to it.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Ms McLaughlin's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction. The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered midwife. The panel noted the hardship such an order will inevitably cause Ms McLaughlin. However, this is outweighed by the public interest in this case.

The panel determined that a suspension order for a period of up to six months was appropriate in this case to mark the seriousness of the misconduct.

At 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.

If Ms McLaughlin decided to re-engage with the process a future panel reviewing would be assisted by:

- *Full reflection from Ms McLaughlin into the issues that have been raised in this case;*
- *Evidence of remediation.*

Decision on current fitness to practise

The panel considered carefully whether Miss McLaughlin's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined it as a registrant's suitability to remain on the register without restriction. In considering this case, the panel carried out a comprehensive review of the order in light of the current circumstances. It noted the decision of the last panel. However, it exercised its own judgment as to current impairment.

The panel had regard to all of the documentation before it, including the decision and reasons of the substantive panel in January 2020. The previous reviewing panel had indicated that this panel would be assisted by a full reflection from Miss McLaughlin into the issues that have been raised in this case, as well as evidence of remediation. Despite this guidance, Miss McLaughlin has not engaged with the NMC and has not provided this, nor any other information.

The panel 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 Miss McLaughlin's fitness to practise remains impaired. It noted that the substantive panel was not satisfied that Miss McLaughlin had any insight into her failings. It also did not have any evidence that Miss McLaughlin had taken any steps to remediate her practice. This panel was in an identical position. It had no new information from Miss McLaughlin, no evidence of any insight, and no evidence of any remediation. In these circumstances, the panel determined that the risk of repetition identified by the substantive panel in January 2020 remained, and therefore a finding of current impairment continued to be required to protect the public.

The panel was also satisfied that a finding of current impairment on public interest grounds continued to be required to maintain standards, and to maintain confidence in the midwifery profession and in the NMC as a regulator.

Determination on sanction

Having found Miss McLaughlin'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 Articles 29 and 30 of the Order. The panel also took into account the NMC's Sanctions Guidance and bore 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 risk of repetition identified. Taking no further action would not restrict Miss McLaughlin's practice and would therefore not protect the public. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel also decided that a caution order would be inappropriate for the same reasons.

The panel next considered the imposition of a conditions of practice order. The panel was of the view that the nature of Miss McLaughlin's misconduct could be addressed by conditions of practice. However, it was also mindful that in order for conditions to be workable, a registrant must be willing to engage with them. Miss McLaughlin informed the substantive panel that she had retired from the midwifery profession in June 2018 to *'pursue other interests outside of "health and social care"'* and would be happy to remove herself from the register. Miss McLaughlin did not attend her substantive hearing and her disengagement with the regulatory process has continued. For these reasons, the panel concluded that a conditions of practice order would not be workable.

The panel then moved on to consider the imposition of a further period of suspension. It noted that Miss McLaughlin had previously stated that she has left the profession, is not

working as a midwife, and does not intend to engage with the NMC proceedings in the future. There has been no further engagement from Miss McLaughlin since her substantive hearing and nothing to undermine her previously stated intentions. Miss McLaughlin has not demonstrated any insight or remediation so far and the panel had no reason to believe that a further period of suspension would result in her re-engagement, or produce any evidence of insight or remediation in the future. In these circumstances, the panel considered that a further period of suspension would serve no useful purpose.

The panel therefore concluded that the only sanction which would protect the public and satisfy the public interest was a striking-off order. It recognised that the purpose of sanction is not to be punitive. However, the panel also bore in mind that all registered nurses and midwives have a duty to co-operate with their regulator, and to reflect and learn when mistakes are made. The NMC can only be an effective regulator if the individuals on its register respect and comply with the NMC's requirements. Miss McLaughlin has not demonstrated any evidence of insight or remediation, and does not intend to in the future. The substantive panel noted in its previous decision that, if Miss McLaughlin did not re-engage with this process, then a future reviewing panel would have limited options available to it. This panel concluded that Miss McLaughlin's persistent lack of engagement with the regulatory process has reached a stage where her behaviour is fundamentally incompatible with remaining on the NMC register, and that public confidence in the NMC and its processes could only be maintained by a striking-off order.

Accordingly, the panel determined to make a striking-off order. This will come into effect upon the expiry of the existing suspension order, namely at the end of 25 August 2020

This decision will be confirmed to Miss McLaughlin in writing.

That concludes this determination.