

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

**Substantive Order Review Meeting
Thursday 15 October 2020**

Nursing and Midwifery Council
Virtual Meeting

Name of registrant: Mrs Michelle Busby

NMC PIN: 07B1750E

Part(s) of the register: Registered Midwife – October 2007

Area of registered address: Somerset

Type of case: Misconduct

Panel members: Nick Cook (Chair, lay member)
Gill Mullen (Lay member)
Susan Field (Registrant member)

Legal Assessor: Ben Stephenson

Panel Secretary: Ruth Bass

Order being reviewed: Conditions of practice order (9 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect at the end of 27 November 2020 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

Notice of this meeting was sent to Mrs Busby on 4 September 2020 by email to her email address as recorded on the Nursing and Midwifery Council's (NMC's) Register. The panel was satisfied that notice had been served, as advised by the legal assessor, in compliance and accordance with Rules 11 A and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended 2012) (the Rules).

The panel was also satisfied that this matter is suitable to be dealt with at a meeting as opposed to a hearing, taking into account Mrs Busby's continued lack of engagement.

Decision and reasons on review of the substantive order

The panel decided to replace the current conditions of practice order with a suspension for a period of 6 months. This order will come into effect at the end of 27 November 2020 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a suspension order, originally imposed by a Fitness to Practise panel on 27 April 2018 for 9 months. The suspension order was reviewed on 8 February 2019 and replaced with a conditions of practice order for a period of 12 months. The conditions of practice order was reviewed again on 14 January 2020 and continued for a period of 9 months. The current order is due to expire at the end of 27 November 2020.

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

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

That you, whilst employed as a midwife at Musgrove Park Hospital:

1. *On 23 January 2015 countersigned the pre-pack issue record form for Co-codamol for Colleague C when a verbal order has been issued and not a prescription.*
2. *On 6 April 2015 provided Co-codamol to Colleague C's husband:*

- 2.1. *When you had received a verbal order and not a prescription.*
 - 2.2. *Without a second checker.*
3. *On 29 April 2015 provided Co-codamol to Colleague C:*
 - 3.1. *Without a prescription.*
 - 3.2. *Without a second checker.*
4. *On 1 May 2015, you:*

Either:

 - 4.1. *Provided Co-codamol to Patient A:*
 - 4.1.1. *When you had received a verbal order and not a prescription.*
 - 4.1.2. *...*

Or, in the alternative:

 - 4.2. *...*
 - 4.3. *...*
5. *...*
6. *...*

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

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

The panel had regard to all of the documentation before it, which included the decision of the substantive panel and the last reviewing panel.

The panel noted that neither Mrs Busby nor her solicitor have engaged with the NMC since the last review hearing and have not provided this panel with any evidence.

Whilst the panel noted that there is no new information before it, the panel found that there is also no information to suggest that Mrs Busby has breached any of the conditions imposed by the previous panel.

The panel noted that Mrs Busby has not informed the NMC as to her current work. The panel does not have before it any evidence of whether or not Mrs Busby is working in a clinical setting, and it has no references from a current or recent employer.

There is no evidence before the panel to suggest that any positive steps have been taken by Mrs Busby in obtaining midwifery employment, or to remediate the remaining concerns identified by the previous panel. Therefore, there was no evidence to suggest that Mrs Busby had remediated the concerns identified in her midwifery practice. The panel therefore found that Mrs Busby remains liable in the future to act so as to put a patient or patients at unwarranted risk of harm; remains liable in the future to bring the midwifery profession into disrepute; and remains liable in the future to breach fundamental tenets of the midwifery profession.

Accordingly, the panel found that Mrs Busby's fitness to practise is currently impaired on public protection grounds. It also found her fitness to practice impaired on public interest grounds, given her failure to engage with her regulator since the last review hearing.

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

The panel next considered a conditions of practice order. The panel concluded that a conditions of practice order would protect the public and would be workable. In reaching this conclusion the panel adopted the reasoning of the previous reviewing panel. It reviewed the existing conditions of practice and decided that these remained appropriate without alteration. It acknowledged that Mrs Busby needed to obtain employment as a registered midwife so that these conditions could operate to help remedy the deficiencies in her performance. For these reasons it decided that a period of nine months was appropriate so as to allow her time to engage with the NMC and to find such employment and practise under the conditions imposed.

The panel considered whether a suspension order was appropriate. It concluded that currently it was not. Such an order would not assist Mrs Busby to remedy the deficiencies in her practice, and public protection and public interest concerns can be adequately maintained by a conditions of practice order. A suspension order would therefore be disproportionate at this time.

The panel directs that for a further 9 months Mrs Busby's registration will be made subject to the following conditions of practice:

- 1. You must successfully undertake and pass a face to face medication management and administration course.*
- 2. You must not administer medication unless under the direct observation of a registered midwife band 6 or above, until you are assessed as competent to do so by a sign off mentor.*
- 3. At any time that you are employed or otherwise providing midwifery services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of:*
 - a. Working at all times on the same shift as but not necessarily under the direct observation of a registered midwife of band 6 or above who is physically present in or on the same ward, unit, floor or home that you are working in or on.*
- 4. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practice:*
 - a. Medications management and administration.*
 - b. Professional boundaries.*
 - c. Managing stress at work.*
- 5. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month to discuss the standard of your*

performance and your progress towards achieving the aims set out in your personal development plan.

6. *You must forward to the NMC a copy of your personal development plan within 28 days of the date on which you take up an appointment.*
7. *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC at least 14 days before any NMC review hearing or meeting.*
8. *You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.*
9. *You must disclose a report not more than 28 days old from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to any current and prospective employers (at the time of application) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.*
10. *At least 14 days before the review of this order you must provide a reflective piece to the NMC that addresses your development in relation to:*
 - a. *Medications management and administration.*
 - b. *Professional boundaries.*
 - c. *Managing stress at work.*
11. *You must notify the NMC within 14 days of any nursing or midwifery appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer;*

12. *You must inform the NMC of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them;*
13. *You must within 14 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study;*
14. *You must immediately inform 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 at (1) to (13) above, to them:*
 - a. *Any organisation or person employing, contracting with, or using you to undertake nursing work;*
 - b. *Any agency you are registered with or apply to be registered with (at the time of application);*
 - c. *Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment; and*
 - d. *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Busby'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. 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, namely the NMC bundle.

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 Busby's fitness to practise remains impaired.

The panel had regard to the fact that Mrs Busby had not provided any evidence of insight or remediation to the last reviewing panel, and had not provided any evidence of the same to this panel either. In the absence of any evidence demonstrating that Mrs Busby's now has sufficient insight or that she has remedied the misconduct, the panel was of the view that there remains a risk of repetition. It therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

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, in this case, a finding of continuing impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Mrs Busby'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 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 seriousness of the case and the public protection issues

identified. 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 determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Busby's practice would not be appropriate in the circumstances. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether imposing a conditions of practice order on Mrs Busby's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. Although the panel was of the view that the misconduct identified was capable of remediation by way of compliance with the conditions of practice order, it determined that such an order was not workable due to Mrs Busby's continued lack of engagement with the process. Mrs Busby has not engaged with her regulatory body since the review hearing which took place on 8 February 2019. Midwives have a duty to engage with their regulatory body, and there has been no engagement from Mrs Busby, although she had initially indicated that she wished to remedy her misconduct in a midwifery setting. In light of Mrs Busby's continued non-engagement, the panel concluded that a conditions of practice order is no longer workable or the appropriate order in this case.

Due to Mrs Busby's continued failure to engage with the NMC, the panel determined that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for a period of 6 months. It was of the view that this would provide Mrs Busby with an opportunity to engage with the NMC and provide evidence of insight and remediation with regard to her misconduct. It considered this to be the most appropriate and proportionate sanction available at this stage.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely at the end of 27 November 2020 in accordance with Article 30(1).

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.

Any future panel reviewing this case would be assisted by:

- Mrs Busby's engagement;
- Mrs Busby setting out her intentions with regard to her future in midwifery; and
- A reflective piece addressing medication management and administration, professional boundaries, and managing stress at work.

This will be confirmed to Mrs Busby in writing.

That concludes this determination.