

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

15 April 2021
Virtual Meeting

Name of registrant: Michelle Busby

NMC PIN: 07B1750E

Part(s) of the register: Registered Midwife (September 2007)

Area of Registered Address: Somerset

Type of Case: Misconduct

Panel Members: Derek McFaul (Chair, lay member)
Jane Jones (Registrant member)
Susan Thomas (Lay member)

Legal Assessor: John Donnelly

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 27 May 2021

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 Rules').

The panel accepted the advice of the legal assessor. The panel noted that under the 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 Mrs Busby by email on 10 March 2021. The notice informed Mrs Busby that her suspension order would be reviewed at a meeting on or after 12 April 2021, unless she asked for the review to 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 noted that Mrs Busby has not responded to any communication from the NMC since February 2019 and has not requested that this review take place at a hearing. The panel was therefore satisfied that it was appropriate to proceed with this review at a meeting.

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 27 May 2021 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fourth 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. At the last review on 15 October 2020 the conditions

of practice order was replaced with a 6 month suspension order. The current order is due to expire at the end of 27 May 2021.

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, 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 last reviewing panel in October 2020 determined the following with regard to impairment:

'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.'

The last reviewing panel in October 2020 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 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.'*

Decision on current fitness to practise

This panel 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 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, the decision and reasons of the previous panels. The panel had no new information from Mrs Busby.

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 noted that it had no new information from Mrs Busby. In fact, there has been no engagement from her since the first review of this order in February 2019. At that hearing, the panel determined that while Mrs Busby had developed her insight since the original hearing, she had not yet had an opportunity to demonstrate safe and responsible practice in a clinical setting, and therefore remained liable to put patients at unwarranted risk of harm. That panel therefore replaced the original suspension order with a conditions of practice order, to enable Mrs Busby to demonstrate the required remediation in practice.

However, there was no engagement or evidence at the next review in January 2020, either from or on behalf of Mrs Busby. That panel therefore extended the conditions of practice order for another 9 months to give Mrs Busby a further opportunity to engage. Mrs Busby's lack of engagement persisted and at the next (and most recent) review the panel replaced the conditions of practice order with a suspension order to *'provide Mrs Busby with an opportunity to engage with the NMC and provide evidence of insight and remediation with regard to her misconduct'*. That panel also made a number of recommendations for information that Mrs Busby could provide to the next panel. These included Mrs Busby's engagement with the NMC, information about her future career intentions, and a reflective piece.

Mrs Busby has provided none of this information for this reviewing panel. There has been no engagement from her since the last review in October 2020. The last engagement from Mrs Busby was in February 2019.

The panel therefore concluded, there having been no material change in circumstances since the last review, that a finding of current impairment on public protection grounds continued to be required.

The panel also determined that a finding of current impairment continued to be required to uphold professional standards and to maintain confidence in the nursing profession and the regulatory process.

Determination 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 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 seriousness of the case and the public protection issues identified. Taking no further action would not restrict Mrs Busby'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 next considered a caution order but decided that this would be inappropriate for the same reasons.

The panel then considered a conditions of practice order. It noted that it may be possible to formulate conditions which would address Mrs Busby's misconduct (as previous panels had done). However, it concluded that without engagement from Mrs Busby any conditions which the panel could formulate would not be workable.

The panel then moved on to consider a further period of suspension. It noted that the last reviewing panel had imposed a suspension order to give Mrs Busby an opportunity to re-engage. Mrs Busby has not done so and it has now been over two years since she last engaged with the regulatory process. There has been no information from her

during this time regarding her future career intentions, nor any indication that she intends to remediate her practice. The panel bore in mind that the charges in this case date back to 2015 and Mrs Busby has now been subject to NMC sanctions for almost three years. These sanctions have not resulted in Mrs Busby remediating her misconduct and this panel had no information to suggest that she intends to. In these circumstances, the panel concluded that a further period of suspension would serve no useful purpose. It determined that Mrs Busby's continued lack of engagement had reached a point where it was fundamentally incompatible with remaining on the register. In these circumstances, the panel determined that the only sanction which would adequately protect the public and uphold the public interest was a striking-off order.

This decision will be confirmed to Mrs Busby in writing.

That concludes this determination.