

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

**Substantive Order Review Meeting
8 March 2022**

Virtual Meeting

Name of registrant: Sandra Henry

NMC PIN: 97B0788E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult (10 February 2001)
Registered Midwife

Area of registered address: England

Type of case: Misconduct

Panel members: Deborah Hall (Chair – Registrant member)
Alex Forsyth (Lay member)
Carla Hartnell (Registrant member)

Legal Assessor: Graeme Henderson

Hearings Coordinator: Vicky Green

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: Suspension order with a review (6 months) to
come into effect on at the end of 24 April 2022
in accordance with Article 30 (1)

Decision and reasons on service of Notice of Meeting

In response to the COVID-19 crisis, emergency changes were made to the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules). The emergency changes allow for the Notice of Meeting (the Notice) to be sent by the Nursing and Midwifery Council (NMC) by email instead of by recorded delivery post. This email must be sent securely to a registered email address for the registrant and/or representative.

The panel noted that Notice had been sent to Miss Henry's confirmed registered email address on 28 January 2022.

The panel took into account that the Notice provided details of the substantive order being reviewed and that the NMC proposed that this review would take place by way of a meeting. The panel had regard to the Notice in which it was stated that if Miss Henry did not request a hearing, a private meeting will go ahead no sooner than Monday 7 March 2022.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Henry has been served with notice of this meeting in accordance with the requirements of Rules 11 and 34.

Decision and reasons on review of the substantive order

The panel decided to replace the current conditions of practice order with a suspension order for a period of 6 months with a review.

This order will come into effect at the end of 24 April 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive conditions of practice order originally imposed for a period of 24 months by a Fitness to Practise Committee panel on 26 March 2019 by way of consensual panel determination. On 17 March 2021 the reviewing panel decided to vary the conditions of practice order for a further 12 month period.

The current order is due to expire at the end of 24 April 2022.

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, a registered nurse and midwife:

- 1) *On the night shift of 4-5 June 2016, in relation to Mother A and/or Baby A;*
 - a) *Between 19:26 and 23:00 did not complete an assessment of the cardiotocograph (“CTG”).*
 - b) *Between 23:00 and 00:00;*
 - i) *Did not make an assessment of the decelerations on the CTG.*
 - ii) *Did not escalate concerns about the fetal heart rate to the labour ward coordinator and/or obstetric registrar.*
 - iii) *Did not request a fresh eyes review and/or record why a fresh eyes review was not undertaken. (as amended)*
 - c) *Between 00:00 and 01:00;*
 - i) *Did not complete the CTG assessment tool.*
 - ii) *Did not record the fetal heart rate accurately.*
 - d) *At 01:30 did not make a record of what the fetal heart rate was when it was noted to be less than 100 bpm.*
 - e) *Did not maintain adequate records in that you;*
 - i) *Did not document why there was a delay recommencing the CTG at around 20:48.*

- ii) *Did not complete all entries on the vaginal examination sticker.*
- iii) *Did not document any care given to Mother A between 02:45 and 05:45.*
- iv) *Did not use the SBAR when taking back care of Mother A at 03:20.*
- v) *Did not record any observations on the MEOWS chart between 04:30 and 07:30.*
- vi) *Did not commence a fluid balance chart.*
- vii) *Did not accurately record Baby A's oxygen saturations.*
- f) *Did not take and/or record observations of Baby A.*

2) *On the night shift of 25-26 June 2016, in relation to Mother B and/or Baby B;*

- a) *Between 20:25 and 22:00 did not observe and/or assess the CTG.*
- b) *Between 22:00 and 23:00 incorrectly classified the CTG.*
- c) *Did not escalate concerns regarding the CTG on one or more occasions.*
- d) *Did not follow up with the registrar when they did not return 30 minutes after an obstetric review as planned.*
- e) *Did not continuously record the fetal heart rate when the epidural was being sited.*
- f) *Did not challenge the registrar's decision not to obtain a further fetal blood sample after the initial sample was rejected by the analyser.*
- g) *Did not ensure that an arterial blood sample was taken from Baby B.*
- h) *Did not take Baby B's heart rate when he collapsed.*
- i) *Did not maintain adequate records in that you;*
 - i) *Did not document conversations you had about Mother B and/or Baby B's care.*
 - ii) *Did not record that there was a prolonged deceleration at 22:45.*
 - iii) *Did not make a record of the fetal heart rate when the epidural was being sited.*
 - iv) *Did not make any entries in the records between 23:39 and 00:56.*
 - v) *Did not record that you had escalated concerns about the CTG to the labour ward coordinator.*
 - vi) *Did not record on the MED chart what drugs you supplied and/or administered under your midwife exemption.*

vii) *Did not record any care provided to Mother B postnatally between 02:09 and 07:30.*

viii) *Did not ensure retrospective entries were clearly marked as retrospective.*

ix) *Did not record that you had requested a senior midwifery review.*

3) *On the night shift of 26-27 June 2016, in relation to Mother C and/or Baby C;*

a) *Did not carry out adequate observations of Baby C in that you;*

i) *Did not monitor Baby C's temperature after he was noted to be hypothermic.*

ii) *Did not take any vital signs after the initial ones.*

b) *Did not provide and assistance to Mother C with breastfeeding.*

c) *Did not maintain adequate records in that you;*

i) *Did not record your discussions with the labour ward coordinator and/or paediatric doctor.*

ii) *Did not document your actions up to and during the resuscitation of Baby C.*

4) *During an interview with Colleague A, incorrectly assessed/classified Mother B's CTG for the period between;*

a) *20:25 and 22:00 on 25 June 2016.*

b) *22:00 and 23:00 on 25 June 2016.*

c) *23:00 and 00:00 on 25 June 2016.*

d) *00:00 and 01:00 on 26 June 2016. (as amended)*

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

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

'The panel had regard to Miss Henry's reflective accounts addressing the issues in relation to her nursing practice. However, the panel determined that Miss

Henry has not presented any evidence of reflection or remediation of her midwifery practice. The panel noted that it was not provided any evidence from Miss Henry to suggest that she has attempted to remediate the errors to which the charges found proved relate. The panel was of the view that although Miss Henry is unable to work as a midwife as a result of the restriction on her midwifery practice, this should not have prevented Miss Henry from keeping her knowledge up to date or from undertaking relevant training in order to address the issues identified.

The panel is of the view that Miss Henry needs further time to demonstrate that she has fully remediated the identified failings and show that she is capable of safe practice in the midwifery profession. In addition, Miss Henry needs to demonstrate what she has learnt during her period of restriction and how this has impacted on both her nursing and midwifery practice. In light of this, this panel determined that Miss Henry is 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.

In its consideration of whether Miss Henry has remediated her practice, the panel took into account that Miss Henry has complied with some conditions in relation to her nursing practice, however, she has not been able to fully remediate her midwifery practice as a result of the restriction on it.

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 and midwifery professions 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 Miss Henry's fitness to practise remains impaired.'

The first reviewing 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 Miss Henry's practice would not be appropriate in the circumstances. The SG state 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 Miss Henry'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 imposing a varied conditions of practice order on Miss Henry's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. It determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel noted Miss Henry's compliance with the current substantive conditions of practice order as well as Miss Henry's engagement with the NMC. However, it is of the view that a varied conditions of practice order would afford Miss Henry the opportunity to demonstrate that she is able to practise safely as a midwife. It is also of the view that a conditions of practice order is sufficient to protect patients and the wider public interest.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Miss Henry's case because there have been no concerns or issues raised regarding Miss Henry's practice as a nurse.

Accordingly, the panel determined, pursuant to Article 30(1)(a) to extend and vary a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 24 April 2021. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

- 1. When employed as a midwife, you must not work as the sole midwife in any setting.*
- 2. When employed as a midwife, you must ensure that you are working at all times on the same shift as a registered midwife, but not necessarily directly supervised.*
- 3. When employed as a midwife, you must not independently interpret CTG unsupervised until you have been assessed by a mentor who must be a registered midwife as competent to do so. Such supervision of CTG interpretation must consist of working under the direct observation of a registered midwife nominated by your employer.*
- 4. You must undertake and provide evidence to the NMC of a recognised course in CTG interpretation within one month of returning to midwifery practice.*
- 5. You must undertake and provide evidence to the NMC of training in the observations and recognition of deterioration of women and babies, within one month of returning to midwifery practice.*

6. *Within your midwifery practice you must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the following:*
 - a) *Fetal monitoring and escalation and communication of concerns.*
 - b) *Maternal and new born observations and escalation and communication of concerns.*
 - c) *Recognition of the deteriorating woman and baby and escalation and communication of concerns.*
 - d) *Record keeping.*
7. *You must provide a further reflective piece including how the failings in this case in relation to observation, escalation of concerns, record-keeping and communication impacted on both your nursing and midwifery practice.*
8. *When working as a midwife you must meet with your line manager, mentor or supervisor (or their nominated deputy) monthly, to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan. You must ask your mentor to note these in a report and you must forward a copy of this report to your case manager prior to any review hearing or meeting.*
9. *You must tell the NMC within seven 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.*
10. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within seven days of you receiving notice of them.*

11. (a) *You must within seven 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.*

(b) *You must within seven days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.*

12. *You must immediately tell 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 (7) above, to them:*

a) *Any organisation or person employing, contracting with, or using you to undertake nursing or midwifery work.*

(b) *Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing or midwifery services.*

(c) *Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment.*

(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).*

The period of this order is for 12 months.

The panel noted that, if Miss Henry believes there has been a material change of circumstances, in which case she can ask for an early review.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 24 April 2021 in accordance with Article 30(1).

Before the expiry of the varied order, a panel will hold a review hearing to see how well Miss Henry has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- *Miss Henry's attendance at any future hearings.*
- *Evidence of compliance with this conditions of practice order and of Miss Henry's ability to sustain safe practice as a midwife.*
- *Evidence of any additional relevant training (including certificates) Miss Henry has undertaken to keep her midwifery skills and nursing knowledge up to date.*
- *A clear indication as to Miss Henry's intentions in respect of her midwifery career.'*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Henry'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, including the NMC bundle and an on table document which contained an email from the NMC to Miss Henry dated 3 March 2022 reminding her of this review.

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 Miss Henry's fitness to practise remains impaired.

The panel noted that the last panel varied the conditions of practice order and made some recommendations as set out below:

'Any future panel reviewing this case would be assisted by:

- *Miss Henry's attendance at any future hearings.*
- *Evidence of compliance with this conditions of practice order and of Miss Henry's ability to sustain safe practice as a midwife.*
- *Evidence of any additional relevant training (including certificates) Miss Henry has undertaken to keep her midwifery skills and nursing knowledge up to date.*
- *A clear indication as to Miss Henry's intentions in respect of her midwifery career.'*

The panel had sight of an email from the NMC to Miss Henry dated 3 March 2022 in which the monitoring and compliance officer stated the following:

'I am yet to hear anything back from you in regards to your review meeting, taking place on or after Monday 7 March 2022.'

If you have any documentation that you want the panel to see at your review meeting, please can you forward it to me before 3pm on Friday 4 March 2022.'

The panel noted that there had been no response to this email and that Miss Henry had not provided any evidence of compliance with the conditions of practice order, or provided any information in response to the previous panel's recommendations. The panel had particular regard to condition 7 as set out below:

7. You must provide a further reflective piece including how the failings in this case in relation to observation, escalation of concerns, record-keeping and communication impacted on both your nursing and midwifery practice.

As Miss Henry has not provided a further reflective piece, the panel found that she had breached condition 7.

The panel noted that the last reviewing panel found that Miss Henry had not provided any evidence of reflection or remediation of her midwifery practice, or any evidence that she had addressed the concerns identified in the charges found proved. The panel noted that it had no evidence of Miss Henry's current employment or practice as a nurse or midwife. Having received no further evidence from Miss Henry, the panel determined that the concerns remain and the risk of repetition of the misconduct remains. The panel had regard to the charges found proved and was of the view that these are serious and the concerns relate to basic skills both in nursing and midwifery. In the absence of any evidence that Miss Henry has fully reflected on her shortcomings and strengthened her practice, the panel found that there remained a risk of harm to patients if she were to practise without restriction.

The panel 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 Miss Henry's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Henry'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' (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 allow the order to lapse but concluded that this would be inappropriate in view of the seriousness of the charges and the public protection concerns identified. The panel found that there is a risk of repetition of the lack of competence and a consequent risk to patients if Miss Henry were to practise without restriction. The panel therefore determined that taking no action would not protect the public and it would not be in the public interest.

It then considered the imposition of a caution order but again determined that, for the same reasons as set out above, an order that does not restrict Miss Henry's practice would not be appropriate in the circumstances.

The panel next considered whether imposing a conditions of practice order on Miss Henry's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel noted that Miss Henry has been subject to a conditions of practice order for three years and has provided no evidence of compliance with the conditions since they were varied at the last review hearing. The panel considered that a conditions of practice order is no longer workable given Miss Henry's lack of engagement and

apparent unwillingness to comply with the order. The panel had already noted that she was in breach of the conditions. The panel therefore concluded that a conditions of practice order is no longer appropriate in this case. The panel concluded that, given Miss Henry's lack of progress and engagement, no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel determined therefore 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 the period of 6 months with a review, which would provide Miss Henry with an opportunity to engage with the NMC, reflect on her misconduct, provide evidence of how she has strengthened her practice and clarify her future intentions in relation to both her midwifery and nursing registration. It considered this to be the most appropriate and proportionate sanction available.

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:

- Miss Henry's engagement with the NMC and these proceedings.
- Evidence of how she has kept her nursing and midwifery knowledge up to date, including evidence of relevant training and CPD activity.
- Testimonials or references from a line manager or supervisor from any paid or unpaid employment, particularly within a caring role.
- Reflective statement that includes into Miss Henry's misconduct (preferably using a recognised model).
- A statement outlining her future intentions in relation to her midwifery registration.
- Confirmation of Miss Henry's work activities, paid or unpaid, since the last review hearing in 2021.

This will be confirmed to Miss Henry in writing.

That concludes this determination.