

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

**Substantive Order Review Hearing  
Friday 14 April 2023**

Virtual Hearing

<b>Name of registrant:</b>	<b>Suzanne Andrea Millar</b>
<b>NMC PIN:</b>	96Y0050E
<b>Part(s) of the register:</b>	Registered Midwife – October 1999 Registered Nurse – Sub Part 1 Adult Nursing – November 2018 Registered Specialist Community Public Health Nurse – July 2004 Community Practitioner Nurse Prescriber – July 2004 Nurse Independent/Supplementary Prescriber – October 2010
<b>Relevant location:</b>	Brent
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Vicki Wells (Chair, Registrant member) Bernadette Nipper (Registrant member) Alan Greenwood (Lay member)
<b>Legal Assessor:</b>	William Hoskins
<b>Hearings Coordinator:</b>	Sherica Dosunmu
<b>Nursing and Midwifery Council:</b>	Represented by Sam Smart, Case Presenter
<b>Ms Millar:</b>	Present and represented by Melanie Williamson, Counsel instructed by Thompsons Solicitors
<b>Order being reviewed:</b>	Conditions of practice order (12 months)
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	<b>Conditions of practice order (12 months)</b>

## **Decision and reasons on review of the substantive order**

The panel decided to extend the current conditions of practice order for a further 12 months.

This order will come into effect at the end of 27 May 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 28 April 2022.

The current order is due to expire at the end of 27 May 2023.

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 midwife:*

- 1. On 15 January 2017 between 16:00 hours and 20:30 hours, whilst caring for Patient A:*
  - a. failed to identify a deterioration in Patient A's Cardiotocography recording;*
  - b. failed to escalate to colleagues changes in Patient A's Cardiotocography recording;*
  - c. failed to document the changes in Patient A's Cardiotocography recording;*

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

The original panel determined the following with regard to impairment:

*'The panel finds that Patient A and Baby A were put at a real risk of harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the midwifery profession and therefore brought its reputation into disrepute.*

*Regarding insight, the panel considered that you have shown significant insight into your own state of mind at the time of your misconduct and were able to articulate what the circumstances were, how you felt and what you would now do differently. However, the panel was of the view that you were not able to demonstrate that you have gained insight into the misinterpretation of the CTG which is a basic midwifery skill. The panel was of the view that you were not able to explain why you misread the CTG and failed to recognise that it was deteriorating. The panel was therefore of the view that you have demonstrated only some insight.*

*The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel accepted your statement that you have taken further courses, but do no longer have access to these records. The panel was of the view that you were able to identify your personal failings in not speaking up when you needed a break and [PRIVATE] to be able to deliver a high standard of care. It concluded that you have addressed this part of your failings. However, the panel was of the view that there is no evidence before it to demonstrate that you have addressed the failings in your basic midwifery skills and competencies, have undertaken further training in reading CTGs, escalation of concerns and record keeping. It was therefore of the view that you have not yet fully remediated your practice.*

*Therefore, the panel is of the view that there is a risk of repetition based on the developing insight and the lack of full remediation. 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 well-being 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.*

*In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.*

*Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.'*

The original 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 your 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 your

*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 your 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, in particular:*

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to retraining;*
- Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- The conditions will protect patients during the period they are in force; and*
- Conditions can be created that can be monitored and assessed.*

*The panel considered that all the above was applicable in your case.*

*The panel therefore determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you would be willing to comply with conditions of practice.*

*The panel had regard to the fact that, other than these incidents, you have had an unblemished career of 20 years as a midwife. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to practise as a midwife.*

*Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.*

*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 your case.*

*Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the midwifery profession, and will send the public and the profession a clear message about the standards of practice required of a registered midwife.*

*The panel was of the view that there were no concerns regarding your nursing practice. It therefore determined that any conditions imposed only apply to your midwifery practice.*

*The panel determined that the following conditions are appropriate and proportionate in this case:*

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

*These conditions only apply to your midwifery practice.*

- 1. You must ensure that you are supervised any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, a registered midwife of at least a band 6.*

2. *You must be supervised during any Cardiotocography (CTG) recording, including interpretation of and documentation of findings by another registered midwife until signed off as competent by your supervisor, line manager, mentor or deputy.*
3. *You must work with your supervisor, line manager mentor or deputy to create a personal development plan (PDP). Your PDP must address the concerns identified, particularly in relation to CTG, and should include the completion of an appropriate electronic fetal monitoring course. You must:*
  - a) *Send your case officer a copy of your PDP within 4 weeks of creation.*
  - b) *Meet at least monthly with your supervisor, line manager mentor or deputy to discuss your progress towards achieving the aims set out in your PDP.*
  - c) *Send your case officer a report from supervisor, line manager mentor or deputy before any review hearing. This report must show your progress towards achieving the aims set out in your PDP.*
4. *You must keep us informed about anywhere you are working by:*
  - a) *Telling your case officer within seven days of accepting or leaving any employment.*
  - b) *Giving your case officer your employer's contact details.*
5. *You must keep us informed about anywhere you are studying by:*
  - a) *Telling your case officer within seven days of accepting any course of study.*
  - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*
6. *You must immediately give a copy of these conditions to:*
  - a) *Any organisation or person you work for.*
  - b) *Any agency you apply to or are registered with for work.*
  - c) *Any employers you apply to for work (at the time of application).*

- d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
  - e) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity*
7. *You must tell your case officer, within seven days of your becoming aware of:*
- a) *Any clinical incident you are involved in.*
  - b) *Any investigation started against you.*
  - c) *Any disciplinary proceedings taken against you.*
8. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
- a) *Any current or future employer.*
  - b) *Any educational establishment.*
  - c) *Any other person(s) involved in your retraining and/or supervision required by these conditions*

*The period of this order is for 12 months.*

*Before the order expires, a panel will hold a review hearing to see how well you have 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:*

- *Your attendance at the review hearing, in person or virtually;*
- *References from any work undertaken, whether paid or voluntary; and*
- *Any evidence of professional development and training.'*

## **Decision and reasons on current impairment**

The panel has considered carefully whether your 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 correspondence with the NMC regarding your representation. It has taken account of the submissions made by Mr Smart on behalf of the NMC and Ms Williamson on your behalf. The panel also heard oral evidence from you under affirmation.

Mr Smart outlined the background of the case and reminded the panel of the decision taken at the substantive hearing.

Mr Smart submitted that a finding of impairment might be justified in this case. He referred the panel to the findings at the substantive hearing in respect of impairment. He stated that the previous panel found that you showed considerable insight but were not able to demonstrate that you gained insight into the misinterpretation of the CTG, were unable to explain why you misread the CTG and did not recognize the deterioration. He submitted that there is some suggestion in the evidence today that you have not dealt with this. He submitted that some form of reflective statement or evidence dealing with the deficiencies in your interpretation of the CTG back in 2017 may have been appropriate in this case. He also stated that the previous panel did not find that you addressed the failings in your basic midwifery skills and competencies by undertaking further training in CTG interpretation, escalation of concerns and record keeping. He submitted that evidence of remedial efforts in relation to escalation and record keeping has still not been demonstrated. He stated that the previous panel indicated that a review would be assisted by references from any work you have undertaken, but you have not provided this to the panel today.

Mr Smart referred the panel to the four limbs of the test set out by Dame Janet Smith in the fifth Shipman report and adopted in *Grant*:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) Has in the past brought and/or is liable in the future to bring the profession into disrepute;*
- c) Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession;*
- d) Has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

Mr Smart invited the panel to apply this test today to decide whether you have discharged the evidential burden and demonstrated that your fitness to practise is no longer impaired.

In respect of sanction, Mr Smart submitted that if the panel were to find that your fitness to practise is impaired it must choose the least restrictive sanction that adequately protects the public and meets the public interest. He submitted that given the background to this case it is likely that the continuation of the current conditions of practice order would be appropriate.

Ms Williamson referred the panel to correspondence demonstrating your attempts to obtain a midwifery position. She stated that you have faced difficulty in being able to gain employment because of the conditions imposed and as a result, you have not been able to demonstrate compliance with the conditions. She stated that in the current climate, Trusts and hospitals are not prepared to provide a supervisor. She submitted that you have not breached any of the conditions as you have not been acting in a position as a midwife being supervised.

Ms Williamson submitted that you have recognised your failings from January 2017 and you have tried very hard to remediate this. She indicated that you have undertaken online training in relation to CTGs. She submitted that you have considered how to get back into practising as a midwife, and considered a return to practice course initiative with NHS England but have not been able to obtain this.

In respect of impairment, Ms Williamson submitted that you are not currently impaired as you have done the best you can to obtain employment without success and you have even attempted to obtain voluntary work. She stated that you now work as a sex and health education team leader training people and have responsibilities in terms of safeguarding, and there have been no complaints.

In relation to sanctions, Ms Williamson submitted that the conditions of practice order should run until 28 May 2023 and that should be the end of the matter as you are no longer impaired.

You gave evidence under affirmation.

You stated that you have undertaken an online training course with E Learning for Health in relation to CTG interpretation and indicated that it was the only training you could access. You stated that you attempted to access another training programme called K2, however as you no longer work for the Trust you did not have access to this.

You stated that you qualified as a midwife in 1999 and would love to be able to continue to be a midwife as it is your passion and your reason for being. You stated that you have had positive experiences as a midwife and want to continue to deliver care to mothers and babies.

You explained that you considered a return to practice course initiative with NHS England but have not been able to obtain this.

You stated that you have been looking for a substantive role as a midwife as you do not believe you would get the support you require working as an agency midwife. You explained that you have applied for 20 band 5 and band 6 midwifery positions with no success. You stated that currently you work within schools in Westminster and Kensington and Chelsea as a sex and health education team leader who delivers educational sessions to young people, nurses and teachers and you also have with safeguarding responsibilities.

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 your fitness to practise remains impaired. The panel noted that the original panel at the substantive hearing found that you demonstrated insight into your own state of mind at the time of your misconduct, but today you did not demonstrate that you have gained further insight into the previous failings.

The panel took into account that you have completed online training in relation to CTG interpretation. However, the panel was of the view that it was not presented with sufficient evidence to determine that you are now competent in this area.

In its consideration of whether you have addressed the failings identified in your practice, the panel took into account your current role as a sex and health education team leader, which involves some documentation and escalation of safeguarding concerns. However, the panel was of the view that your current role did not give you the opportunity to demonstrate all the skills required of a competent midwife. The panel also bore in mind that you have made some attempts to regain employment as a midwife. Notwithstanding this, the panel found that you have not yet complied with the conditions of practice order and not yet demonstrated effective steps taken to evidence competence in the areas of failing in your midwifery practice.

In light of this, the panel had insufficient evidence before it to allay its concerns that you may currently pose a risk to patient safety. The panel determined that there is a risk of repetition should you be permitted to practise as a registered midwife without restriction. Therefore, the panel decided that a finding of 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 your fitness to practise remains impaired.

### **Decision and reasons on sanction**

Having found your 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 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 your 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 your 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 further conditions of practice order on your 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 was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that, with appropriate safeguards, you should be able to return to practise as a midwife.

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 your case.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make 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 27 May 2023. It decided to confirm 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.

*These conditions only apply to your midwifery practice.*

1. You must ensure that you are supervised any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, a registered midwife of at least a band 6.
2. You must be supervised during any Cardiotocography (CTG) recording, including interpretation of and documentation of findings by another registered midwife until signed off as competent by your supervisor, line manager, mentor or deputy.
3. You must work with your supervisor, line manager mentor or deputy to create a personal development plan (PDP). Your PDP must address the concerns identified, particularly in relation to CTG, and should include the completion of an appropriate electronic fetal monitoring course. You must:
  - a) Send your case officer a copy of your PDP within 4 weeks of creation.
  - b) Meet at least monthly with your supervisor, line manager mentor or deputy to discuss your progress towards achieving the aims set out in your PDP.
  - c) Send your case officer a report from supervisor, line manager mentor or deputy before any review hearing. This report must show your progress towards achieving the aims set out in your PDP.

4. You must keep us informed about anywhere you are working by:
  - a) Telling your case officer within seven days of accepting or leaving any employment.
  - b) Giving your case officer your employer's contact details.
  
5. You must keep us informed about anywhere you are studying by:
  - a) Telling your case officer within seven days of accepting any course of study.
  - b) Giving your case officer the name and contact details of the organisation offering that course of study.
  
6. You must immediately give a copy of these conditions to:
  - a) Any organisation or person you work for.
  - b) Any agency you apply to or are registered with for work.
  - c) Any employers you apply to for work (at the time of application).
  - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
  - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity
  
7. You must tell your case officer, within seven days of your becoming aware of:
  - a) Any clinical incident you are involved in.
  - b) Any investigation started against you.
  - c) Any disciplinary proceedings taken against you.

8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
  - b) Any educational establishment.
  - c) Any other person(s) involved in your retraining and/or supervision required by these conditions.

The period of this order is for 12 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 27 May 2023 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have 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:

- Evidence of competence in the interpretation, documentation of CTG recordings and escalation of concerns;
- Testimonials from current line manager (in any role) to include evidence of competence in documentation and escalation;
- Evidence of professional development and training;
- A reflective piece to demonstrate developing insight to include what you would now do differently.

This will be confirmed to you in writing.

That concludes this determination.