

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

Substantive Order Review Hearing

17 July 2019

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant: Mrs Gail Ann Walmsley

NMC PIN: 85C1136E

Part(s) of the register: Registered Nurse – sub part 1
Adult Nursing (20 January 1992)
Registered Nurse – sub part 2
Adult Nursing (11 May 1987)
Registered Midwife
Midwifery (4 January 1995)

Area of Registered Address: England

Type of Case: Misconduct

Panel Members: Cindy Barnett (Chair, Lay member)
Lucie Moore (Registrant member)
Jude Bayly (Registrant member)

Legal Assessor: Oliver Wise

Panel Secretary: Anjeli Shah

Mrs Walmsley: Not present and not represented in absence

Nursing and Midwifery Council: Represented by Sophie Stannard, Case
Presenter

Order being reviewed: Conditions of Practice Order for 3 months

Fitness to Practise: Impaired

Outcome: Striking-off Order to come into effect at the end
of 23 August 2019 in accordance with Article
30 (1)

Service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Walmsley was not in attendance and she was not represented in her absence.

The panel was informed that the notice of this hearing was sent to Mrs Walmsley on 4 June 2019 by recorded delivery and first class post to her registered address.

The panel accepted the advice of the legal assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (“the Rules”).

Proceeding in absence

The panel then considered proceeding in the absence of Mrs Walmsley. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Ms Stannard, on behalf of the Nursing and Midwifery Council (“NMC”). The panel accepted the advice of the legal assessor, which included reference to the cases of *R v Jones (No 2)* [2002] UKHL 5, *Tait v Royal College of Veterinary Surgeons* [2003] UKPC 34 and *GMC v Adeogba* [2016] EWCA Civ 162.

Ms Stannard submitted, on behalf of the NMC, that Mrs Walmsley did not attend the original substantive hearing, and she had not attend the three subsequent review hearings. She submitted that Mrs Walmsley had voluntarily absented herself and that it would be in the interests of justice to proceed in her absence. Ms Stannard submitted that an adjournment would not secure Mrs Walmsley’s attendance at a hearing on a future date given her absences at previous hearings.

The panel noted that Mrs Walmsley had not been engaging with these proceedings. The panel noted that there had been no request for an adjournment and did not consider that there was any information to suggest that an adjournment would secure Mrs Walmsley’s attendance at a hearing on a future date. The panel considered that Mrs Walmsley had voluntarily absented herself from today’s hearing. The panel had regard to the public interest in the expeditious disposal of these proceedings. The panel therefore determined that it would be in the interests of justice to proceed in the absence of Mrs Walmsley.

Decision and reasons on application under Rule 19

Ms Stannard, on behalf of the NMC, made an application for parts of this hearing to be heard in private, on the basis that there would be reference to Mrs Walmsley's health. This application was made pursuant to Rule 19 of the Rules.

The panel accepted the advice of the legal assessor. While Rule 19 (1) provides, as a starting point, that hearings shall be conducted in public, Rule 19 (3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there would be reference to Mrs Walmsley's health, and noting that the documentation before the panel made substantial reference to her health and personal circumstances, the panel determined to hold any parts of the hearing relating to Mrs Walmsley's health and personal circumstances in private.

Decision and reasons on review of the current order:

The panel decided to impose a striking-off order. This order will come into effect at the end of 23 August 2019 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (“the Order”).

This is the fourth review of a substantive order. A panel of the Conduct and Competence Committee originally imposed a suspension order for a period of three months on 21 July 2016. That order was reviewed and replaced with a conditions of practice order for 18 months on 20 October 2019. A panel of the Fitness to Practise Committee reviewed that order on 12 April 2018 and imposed a conditions of practice order for a further 12 months. That order was reviewed and extended for three months on 12 April 2019. The current order is due to expire at the end of 23 August 2019.

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 Registered Midwife by Sheffield Teaching Hospitals NHS Foundation Trust, on 6 August 2014, when caring for Patient A when she attended the Triage Unit at the Royal Hallamshire Hospital:

1. *Demonstrated poor communication with Patient A in that you:*
 - a. *Did not introduce yourself;*
 - b. *Did not ask Patient A her name;*
 - c. *Were rude and/ or dismissive and/ or abrupt;*
2. *Did not perform an adequate risk assessment of Patient A in that, you:*
 - a. *Did not carry out, or in the alternative record, observations of Patient A’s respiration;*
 - b. *Did not carry out, or in the alternative record, an abdominal palpation of Patient A;*
 - c. *Did not calculate, or in the alternative record, a Maternity Early Warning Score for Patient A;*

- d. *Did not record who Patient A's lead carer was;*
- e. ...
- f. *Did not question Patient A about her foetal movement, or in the alternative, did not record the details of Patient A's observations of her foetal movement;*
- g. *Did not carry out observations of the foetal heartbeat, or in the alternative:*
 - i. *did not record the method with which you monitored foetal heart rate;*
 - ii. *did not record how long the heart rate was observed for;*
 - iii. ...
- h. ...

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

“The panel bore in the mind the reasons why the original substantive panel and the previous reviewing panel found Mrs Walmsley's fitness to practise impaired.

The panel noted that Mrs Walmsley has not engaged with the NMC or provided any new information since the last review hearing.

Mrs Walmsley has not provided any evidence of any remediation. In the absence of any evidence of remediation there remains a real risk of repetition and, as a result, harm to patients if she were to return to practice without restriction.

The panel determined that there was no information before it upon which it could be satisfied that Mrs Walmsley's fitness to practise is no longer impaired. The panel was of the view that the public interest has been served by the original suspension order. The panel therefore concluded that Mrs Walmsley's fitness to practice is impaired on public protection grounds alone.”

The third reviewing panel went on to determine the following with regard to sanction:

“The panel next considered the current conditions of practice order. The panel was of the view that a conditions of practice order remains sufficient to protect patients during the period they are in force. The panel is mindful that Mrs Walmsley has indicated that she has retired from practising as midwife due to ill health. It noted that no further information had been provided by Mrs Walmsley in relation to this. The panel were referred to the guidance published by the NMC in relation to the Substantive Order Reviews specifically dealing with nurses and midwives who do not wish to continue practising. The panel was of the view that if Mrs Walmsley provides evidence that she will not be returning to work as a midwife, then it may be appropriate to allow this order to lapse in the circumstances.

The panel considered replacing the conditions of practice order with a suspension order. However, the panel concluded that a suspension order was disproportionate in the particular circumstances of Mrs Walmsley’s case.

Accordingly, the panel determined, pursuant to Article 30(1) (c) of the Nursing and Midwifery Order 2001, to continue the conditions of practice order for a further period of 3 months, which will come into effect on the expiry of the current order. The panel considered that 3 months would allow Mrs Walmsley to engage with the NMC and provide evidence of her future intentions.

The panel considered that the public would remain suitably protected by the continuation of the following conditions:

1. Within 3 months of beginning any nursing or midwifery appointment, you must submit to the NMC a report from your line manager addressing your performance, including communication with patients and the making and recording of observations.
2. Prior to any review hearing, you must provide a reflective piece regarding your misconduct which may include expressions of regret and remorse.

3. At any time that you are employed or otherwise providing nursing or 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 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 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.
5. 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.
6. 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.
7. 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 (6) 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).

Before the end of the period of the order, a panel will hold a review hearing. 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.

This order will come into effect upon expiry of the current order.

A future reviewing panel may be assisted by:

- Information from Mrs Walmsley about her future intentions with regard to returning to midwifery practice and any supporting evidence, such that the reviewing panel would be in apposition to decide whether to allow the order to lapse in accordance with NMC guidance REV-3h.”

Decision on current fitness to practise

This panel has considered carefully whether Mrs Walmsley'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. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel had regard to all of the documentation before it. It took account of the submissions made by Ms Stannard, on behalf of the NMC.

Ms Stannard submitted, on behalf of the NMC, that this panel was in a similar position to previous panels. She submitted that there was no evidence to support the fact that Mrs Walmsley no longer remains impaired. Ms Stannard submitted that there had been no material change of circumstances. She informed the panel that Mrs Walmsley had previously indicated that she had retired from practice due to ill health, but there had been no current documentation to support this. Ms Stannard submitted that whilst the NMC provides guidance on allowing orders to expire when a nurse or midwife's registration will lapse, there is no documentation or information to support the fact that Mrs Walmsley would not be returning to practice. In these circumstances, Ms Stannard invited the panel to continue the current conditions of practice order for a period of time it saw fit.

During the panel's deliberations, it was concerned by the lack of information regarding Mrs Walmsley's current intentions in relation to future nursing and midwifery practice. It asked for contact to be made with Mrs Walmsley by the NMC in order to obtain up to date information.

Ms Stannard made enquiries and informed the panel that there had been no contact from Mrs Walmsley and no up to date information to provide the panel. She noted that it had been previously accepted by the NMC and panels that Mrs Walmsley had retired in 2015 due to ill health, as was previously indicated by her husband in 2016, prior to the

original substantive hearing. Ms Stannard informed the NMC that it appeared that letters addressed to Mrs Walmsley were going to the post office without being collected by her, but they were not being redirected elsewhere. She also informed the panel that recent attempts were made to contact Mrs Walmsley by telephone and email by an NMC case officer but these had been unsuccessful.

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 Mrs Walmsley's fitness to practise remains impaired.

The panel noted that Mrs Walmsley had not been engaging with these proceedings and considered that there had been no material change of circumstances since the previous review hearing. The panel did not consider that there was any evidence to demonstrate remediation, insight and remorse by Mrs Walmsley into the original failings. The panel therefore considered that a risk of repetition remained. The panel determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing and midwifery profession and upholding proper standards of conduct and performance. The panel also determined that a finding of impairment remains necessary on public interest grounds.

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

Determination on sanction

Having found Mrs Walmsley'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 29 of the Order. The panel also took into account the NMC's Sanctions Guidance ("SG") 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 and to allow the current conditions of practice order to lapse on expiry. The panel had regard to the NMC's guidance on allowing orders to expire when a nurse or midwife's registration will lapse ("the Guidance"). This states that panels may consider that allowing an order to lapse on expiry would be appropriate in circumstances where:

- The nurse or midwife's registration is only active because of a substantive order being in place;
- The nurse or midwife does not want to continue practising;
- The public are protected as the panel have made a clear finding that the nurse or midwife's fitness to practise is currently impaired which can be drawn to the attention of any future decision maker if the nurse or midwife attempts to re-join the register.

The panel noted that Mrs Walmsley's registration fee expired in 2016, and therefore her registration had only been held effective due to the existence of a substantive order. The panel therefore noted that if it were to allow the current order to lapse on expiry, Mrs Walmsley's registration would lapse. Mrs Walmsley would be removed from the register, thereby preventing her from practising as a nurse and midwife. The panel considered that this would protect the public from the remaining risk identified.

The panel also noted that it had found Mrs Walmsley's fitness to practise remains impaired. If Mrs Walmsley were to apply for readmission to the NMC's register in the future, its finding on current impairment would be drawn to the attention of the Registrar, in considering whether Mrs Walmsley was of good health and character, and whether she was capable of safe and effective practice. The panel considered that this would provide an additional safeguard in maintaining public protection.

The panel had regard to the criteria in the Guidance which states that the nurse or midwife has indicated that they do not wish to continue practising. The Guidance states that the nurse or midwife will need to give the panel a clear explanation of their plans for the future away from nursing and midwifery. It further states that this information is likely to be available where the nurse or midwife is in contact with the NMC so it is important for panels to consider whether they are engaging with the proceedings.

The panel noted that prior to the original substantive hearing in 2016, Mrs Walmsley's husband informed the NMC that Mrs Walmsley had retired from the nursing and midwifery profession due to ill health. However since then, there had been no up to date information regarding Mrs Walmsley's health and her future intentions in relation to nursing and midwifery. This was despite the previous reviewing panel making a clear recommendation that this panel would be assisted by such information regarding Mrs Walmsley's future intentions. Mrs Walmsley had not been engaging with these proceedings, and despite the NMC making efforts to contact her, these had proved unsuccessful.

In these circumstances, the panel considered that taking no action and allowing the current conditions of practice order to lapse on expiry would protect the public. However, it would not be in the wider public interest in circumstances where Mrs Walmsley had not engaged with these proceedings and there was no recent and up to date information regarding her future intentions in relation to nursing and midwifery practice.

The panel then considered whether to impose a caution order but concluded that this would be inappropriate in view of the risk of repetition identified. A caution order would not restrict Mrs Walmsley's practice, and it would allow her to practise as a registered nurse and midwife. The panel determined that imposing a caution order would not protect the public and it would not satisfy the public interest.

The panel next considered whether to impose a further conditions of practice order. The panel noted that previous panels had been able to formulate conditions of practice orders which would protect the public. However, the panel had regard to Mrs Walmsley's lack of engagement with these proceedings since the original substantive hearing, and the lack of evidence of any remediation of the original failings. It also had

regard to the information previously provided by Mrs Walmsley's husband suggesting that she had retired from the nursing and midwifery practice. The panel therefore considered that there was no evidence to suggest that Mrs Walmsley would be willing or able to comply with conditions of practice. The panel concluded that a conditions of practice order would be unworkable and would not serve any useful purpose in the circumstances of this case.

The panel next considered whether to impose a suspension order. Given Mrs Walmsley's lack of engagement with these proceedings, and her previous indication through her husband of retirements on the grounds of ill health and no intention of returning to practice, the panel did not consider that there was any evidence to suggest that a suspension order would serve any useful purpose. The panel bore in mind that the original substantive hearing took place in 2016, after which there were three subsequent review hearings. During that period of time, there had been no evidence of Mrs Walmsley demonstrating any remediation of the original failings nor any indication of a willingness to return to practice. The panel did not consider that it would be in the public interest to impose a suspension order when there was no evidence to suggest that it would facilitate the return of Mrs Walmsley to safe and effective practice.

The panel noted Mrs Walmsley's lack of engagement throughout these proceedings and the lack of provision of up to date information regarding her future intentions. The panel acknowledged that this may well be due to her ill health, but most regrettably it had nothing before it to support this despite efforts having been made in the past and at this review hearing to obtain up to date information. The panel determined that it was now necessary to prevent Mrs Walmsley from practising in the future. The panel determined that the only sanction which would sufficiently maintain confidence in the nursing and midwifery profession, and in the NMC as a regulator, was that of a striking-off order.

In accordance with Article 30(1) of the Order, this striking-off order will come into effect on the expiry of the current conditions of practice order, namely at the end of 23 August 2019.

This decision will be confirmed to Mrs Walmsley in writing.

That concludes this determination.