

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

**Substantive Order Review Hearing
Wednesday, 1 March 2023**

Virtual Hearing

Name of Registrant:	Pauline May Alder
NMC PIN	14D0812E
Part(s) of the register:	RM – Midwifery Registered Midwife – 12 July 2014
Relevant Location:	Oxfordshire
Type of case:	Misconduct
Panel members:	Clive Chalk (Chair, Lay member) Catherine Askey (Registrant member) Tom Ayers (Lay member)
Legal Assessor:	Charles Apthorp
Hearings Coordinator:	Amira Ahmed
Nursing and Midwifery Council:	Represented by Toby Fleming, Case Presenter
Ms Alder:	Not present and not represented
Order being reviewed:	Conditions of practice order (3 years)
Fitness to practise:	Impaired
Outcome:	Striking-Off order to come into effect on 12 April 2023 in accordance with Article 30 (1)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Alder was not in attendance and that the Notice of Hearing had been sent to Ms Alder's registered email address by secure email on 30 January 2023.

Mr Fleming, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Ms Alder's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

Decision and reasons on proceeding in the absence of Ms Alder

The panel next considered whether it should proceed in the absence of Ms Alder. The panel had regard to Rule 21 and heard the submissions of Mr Fleming who invited the panel to continue in the absence of Ms Alder. He submitted that Ms Alder had voluntarily absented herself and had not engaged with the NMC for three years.

Mr Fleming submitted that there had been no engagement at all by Ms Alder with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion. He submitted that an NMC case officer on 28 February 2023 attempted to telephone Ms Alder to check whether she would be attending the hearing but she did not answer.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Alder. In reaching this decision, the panel has considered the submissions of Mr Fleming, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Alder;
- Ms Alder has not engaged with the NMC for three years and has not responded to any of the emails sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case before the expiry of the order.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Ms Alder.

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr Fleming made a request that this case be held partly in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that 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.

The panel determined that it would go into private session [PRIVATE].

Decision and reasons on review of the substantive order

The panel decided to replace the current conditions of practice order with a striking off order.

This order will come into effect at the end of 12 April 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive order, originally imposed by a Fitness to Practise panel on 12 September 2017, at which time a 12-month suspension order was made. The order was reviewed on 11 October 2018 and extended for a further six months. That order was reviewed on 7 March 2019 and replaced with a conditions of practice order for 12 months. On 7 April 2020, a reviewing panel decided to impose a conditions of practice order for a period of three years.

The current order is due to expire at the end of 12 April 2023.

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 Community Midwife by Oxfordshire University Hospitals NHS Foundation Trust:

1. During a nightshift on 2/3 January 2016 and in relation to the care of Patient A and her baby:

1.1. Failed to undertake appropriate fetal heart rate monitoring, in that you:

1.1.1. During the first stage of labour, did not listen to the fetal heart rate immediately after contractions;

1.1.2. ...

1.1.3. ...

- 1.2. *Failed to consistently monitor fetal movements when conducting fetal heart rate monitoring;*
 - 1.3. *...*
 - 1.4. *Failed to adequately assess Patient A's meconium and/or liquor volume;*
 - 1.5. *Failed to remain in direct attendance during Patient A's established labour;*
 - 1.6. *Failed to monitor Patient A's blood pressure between 00:00 and 02:30;*
 - 1.7. *Failed to ensure that Patient A received regular bladder care between 22:00 and 02:00;*
 - 1.8. *On one or more occasions left a first year student midwife unsupervised to provide support to Patient A and/or to auscultate the fetal heart rate;*
 - 1.9. *Instructed a first year student midwife to leave gaps in Patient A's records.*
2. *Made retrospective entries in Patient A's records that were not adequately recorded as having been made retrospectively and/or by you.*

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

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

'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. [PRIVATE]. It noted that as a result of these circumstances, you have not been able to comply with the current conditions of practice order and therefore you have been unable to address the deficiencies in your practice. Further, the panel did not have any evidence before it to demonstrate that you have further developed your insight into your failings. In the absence of any material change in circumstances, the panel determined that you remain 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.

The panel had borne in mind that its primary function was 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 required. To do otherwise would seriously undermine the public's confidence in the NMC as a regulator.

For these reasons, the panel finds that your fitness to practise remains impaired.'

The third reviewing panel determined the following with regard to 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 29 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 revoke the current order, allow it to lapse or to impose a caution order. It concluded that these orders would be inappropriate in view of the risk of repetition identified. The panel decided that it would neither protect the public nor in the public interest to revoke the current order, allow it to lapse or to impose a caution order.

The panel next considered extending the current conditions of practice order. The panel was of the view that a conditions of practice order remains sufficient to protect patients and the wider public interest.

The panel did consider a suspension order but was of the view that such an order would serve no useful purpose at this time and would be disproportionate. This was in light of your engagement with these proceedings, your failings which are remediable and your evidence that you wish to return to the midwifery profession, albeit not at this time.

Accordingly, the panel determined, pursuant to Article 30(1) (c) of the Nursing and Midwifery Order 2001, to continue the current conditions of practice order for a period of three years. This period will allow you time to address [PRIVATE], give you sufficient time to develop your insight, secure employment as a registered midwife and/or within a healthcare setting, demonstrate a meaningful period of employment and begin complying with the current order. This period was also considered in light of the current restriction on travel which has now been imposed as a result of the Covid-19 pandemic which could potentially cause a delay in your efforts to return to midwifery practice. Should there be a change in circumstance before this time, you can request that this order be reviewed before it expires. This order will come into effect on the expiry of the current order.

It decided to continue the following conditions which it considered are appropriate and proportionate in this case:

- 1. 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 working at all times under the direct observation of a registered midwife of band 6 or above.*

2. *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) *Fetal monitoring;*
 - b) *Observations whilst caring for a woman in labour;*
 - c) *Contemporaneous and accurate record keeping;*
 - d) *Your professional accountability as a midwife.*

3. *You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every four weeks to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.*

4. *You must forward to the NMC a copy of your personal development plan within 28 days of the date on which these conditions become effective or the date on which you take up an appointment, whichever is sooner.*

5. *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.*

6. *You must keep a personal development log recording every time you have undertaken the care of a labouring woman, to include:*
 - a) *Fetal monitoring;*
 - b) *Maternal observations;*
 - c) *Record keeping*

which must be signed by the person who supervised you, and contain that person's comments on how you carried out the procedure(s).

7. *You must provide a copy of this personal development log at least 14 days before any NMC review hearing or meeting.*
8. *You must notify the NMC within 14 days of any midwifery appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer;*
9. *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;*
10. *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;*
11. *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 (10) 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 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).*

This decision will be confirmed to you in writing.

That concludes this determination.'

Decision and reasons on current impairment

The panel has considered carefully whether Ms Alder'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. It has taken account of the submissions made by Mr Fleming.

Mr Fleming outlined the background to the case. He submitted that there is very little information about Ms Alder's practice since the last review hearing and it is unclear whether she has practised at all as a midwife. Mr Fleming submitted that the question that must be asked is whether Ms Alder is still currently impaired. He submitted that she is currently impaired on both public protection and public interest grounds.

Mr Fleming submitted that it is up to the panel to decide on an appropriate sanction in this case. He submitted that the panel could decide to continue the current conditions of practice order or in the absence of any information from Ms Alder it could impose a more restrictive sanction.

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 Ms Alder's fitness to practise remains impaired.

The panel noted that there has been no engagement at all from Ms Alder in relation to this hearing or for the last three years. She has shown no evidence of insight, strengthening of

her practice or that she has complied with the current conditions of practice order that has been in place for the last three years. There has been no evidence of material change in Ms Alder's circumstances and therefore the panel is of the view that there is a real risk of repetition of the clinical failings.

In light of this, this panel determined that Ms Alder is still 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.

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 Ms Alder's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Alder'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 but concluded that this would be inappropriate in view of the seriousness of the case nor would it protect the public. 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 Ms Alder's 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 Ms Alder'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 a conditions of practice on Ms Alder's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

Ms Alder has stated previously that she wishes to return to midwifery, but that commitment is vague, tentative and there has been no further engagement from her in the last three years. The panel of 11 October 2018 in their determination stated a suspension would give time to Ms Alder to consider her commitment to returning to midwifery practice. Further, Ms Alder was provided, by the previous panel on 7 April 2020 a three-year time frame to address any personal circumstances, develop her insight, secure employment and begin complying with the conditions of practice order. This panel noted that no evidence has been provided by Ms Alder in relation to her taking any steps to strengthen her practice or theoretical knowledge, develop her insight or start to comply with the conditions of practice order. The panel also noted that no evidence has been provided by Ms Alder as to any reasons that have prevented her from doing so. The panel determined that this situation cannot continue indefinitely and it is not in the public interest for it to do so. In light of the complete lack of engagement by Ms Alder in relation to this hearing the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a suspension order. The panel noted the last reviewing panel in relation to the conditions of practice order it imposed, stated:

"This period will allow you time to address your difficult personal circumstances, give you sufficient time to develop your insight, secure employment as a registered midwife and/or within a healthcare setting, demonstrate a meaningful period of employment and begin complying with the current order."

The panel noted the NMC SG in particular FtP-3c which states:

“We may need to take restrictive regulatory action against nurses, midwives or nursing associates whose conduct has had this kind of impact on the public’s trust in their profession, who haven’t made any attempt to reflect on it, show insight, and haven’t taken any steps to put it right. This may mean they can’t stay on the register.”

The panel noted that a suspension order was considered the proportionate outcome during the 2017 and 2018 hearings. During the time that the substantive orders have been in place including the conditions of practice order there has been very limited evidence that Ms Alder made any attempts to reflect on her practice, develop her insight into the charges or taken any steps to put it right. The panel determined that a further period of suspension at this stage, although it could protect the public, would not be effective or proportionate in the public interest.

The panel noted that Ms Alder has not addressed any of the previous concerns or shown evidence of employment as a midwife since any of the substantive orders were imposed. In these circumstances the panel determined that a period of suspension would not serve any useful purpose.

No significant strengthening of Ms Alder’s practice has occurred since the original substantive hearing in 2017. Since that time Ms Alder has been suspended for 18 months and been subject to a conditions of practice order for almost four years. Ms Alder has not commenced working in a clinical environment during that time or engaged in meaningful development. The lack of engagement, clinical development or insight after such a significant period (five and a half years) raises fundamental concerns about Ms Alder’s professionalism and commitment to the process. The public would lack confidence in a registered professional in such circumstances and in a regulator who did not address these concerns appropriately.

The panel determined that it was necessary to take action at this time to prevent Ms Alder from practising in the future. The panel noted that a considerable amount of time had been given via various substantive orders to Ms Alder to strengthen her practice. The panel also noted the SG in relation to a striking off order. It therefore concluded that the only sanction

that would adequately protect the public, serve the public interest and maintain public confidence in the NMC as a regulator was a striking-off order. It therefore directs the registrar to strike Ms Alder's name off the register.

This striking-off order will take effect upon the expiry of the current conditions of practice order, namely the end of 12 April 2023 in accordance with Article 30(1).

This will be confirmed to Ms Alder in writing.

That concludes this determination.