

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

Substantive Order Review Meeting

Wednesday 13 September 2023

Virtual Meeting

Name of registrant:	Shari Connolly
NMC PIN:	08G0573E
Part(s) of the register:	Registered Midwife: (15 October 2008)
Relevant Location:	Isle of Wight
Type of case:	Misconduct
Panel members:	Museji Ahmed Takolia CBE (Chair, Lay member) Allwin Mercer (Registrant member) Suzanna Jacoby (Lay member)
Legal Assessor:	John Donnelly
Hearings Coordinator:	Monsur Ali
Order being reviewed:	Conditions of practice order (6 months)
Fitness to practise:	Impaired
Outcome:	Order to lapse upon expiry in accordance with Article 30(1), namely at the end of 29 October 2023

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mrs Connolly's registered email address by secure email on 24 July 2023.

The panel took into account that the Notice of Meeting provided details of the review including the time, date, and the fact that this meeting would be heard virtually.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Connolly has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to allow the current order to lapse. This order will come into effect at the end of 29 October 2023 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 conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 31 March 2021. This was reviewed at a substantive order review meeting on 18 March 2022. On 20 April 2022, this was reviewed at a substantive order review hearing and the panel decided to confirm the conditions of practice order. This order was last reviewed on 15 March 2023 where the panel decided to confirm and continue the order for a further six months.

The current order is due to expire at the end of 29 October 2023.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges 1, 2 and 4 found proved which resulted in the imposition of the substantive order were as follows:

'That you, whilst employed as a Registered Midwife by Isle of Wight NHS Trust between 2 March 2016 and 5 March 2016:

- 1) *Failed to monitor Patient 1's condition during labour, in that you:*
 - a) *Did not document an ongoing management plan after Patient 1 was transferred to the Labour Ward;*
 - b) *Did not auscultate the maternal pulse every hour from 21:30 hrs on 3 March 2016 to 00:10 hrs on 4 March 2016;*
 - c) *Did not record the maternal pulse every hour during the first stage of labour;*
 - d) *Did not record the maternal pulse every 30 minutes during the second stage of labour;*
 - e) *Were unable to differentiate between the maternal heartbeat of patient 1 and foetal heartrate of baby 1 during patients 1 labour;*
 - f) *Did not record the frequency and length of contractions every 30 minutes or at all;*

- 2) *Failed to monitor or adequately monitor the condition of Baby 1 during labour, in that you:*
 - a) *Did not document the pattern of foetal movements on 3 March 2016;*
 - b) *Failed to take any or any adequate action when there was a change in the foetal heart rate of 20 or more heart beats per minute in particular;*
 - i) *On 3 March 2016 at 23:40 hrs and 23:45 hrs;*
 - c) *Failed to auscultate the fetal heartrate for a minute every 15 minutes;*
 - d) *Failed to identify an anomaly in the foetal heart rate in the second stage of labour at 23:45 hours on 3 March 2016;*

- e) *Did not implement Electronic Foetal Monitoring (EFM) when there was a change of more than 15 bpm in the recording of the foetal heartrate on 3 March 2016;*
 - f) *Did not take any action or adequate action when there was a deceleration in the foetal heart on 3 March between 23.14 and 23.46 hours;*
 - g) *Failed to refer Patient 1 for an obstetric review on 4 March 2016 at 00:20 hrs;*
- 3) [...]
- 4) *Failed to appropriately escalate the deceleration of foetal heart rate below 110 beats/minute in a timely manner to a doctor;*
- 5) [...]
- 6) [...]

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 next went on to decide if as a result of the misconduct, your fitness to practise is currently impaired.

Midwives occupy a position of privilege and trust in society and are expected at all times to be professional and uphold the standards of care. Patients and their families must be able to trust midwives with their lives and the lives of their loved ones. To justify that trust, midwives must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- 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 medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...*

The panel finds that patients were put at 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 took account of your impressive reflective statement. It considered, however, that you had failed to reflect on the standards and importance of good accurate documentation and record keeping, a crucial aspect of safe and effective midwifery practice. Besides your widespread failings, the panel was of the view that the record keeping you demonstrated at the time of the incidents fell below the standards expected, and there is no evidence that it has yet been sufficiently addressed.

The panel further noted that while you demonstrated good insight into many of the factors surrounding the incidents you failed to provide an explanation as to why exactly the incidents occurred, or what changes you have since made in your life or midwifery practice to prevent this from happening again.

The panel also took into account the numerous positive testimonials along with the local action plan and other evidence of remediation provided by you. The panel noted that there was no evidence that your midwifery practice has been supervised, observed and reported upon since the incidents. The panel considered that without some form of supervised practice and a satisfactory report, it could not be satisfied that you would not repeat your failings, nor that you are now capable of safe and effective midwifery practice.

The panel determined that you have carried out some remediation but it could not be satisfied that you have remediated to the extent that it is very unlikely that there will be repetition of the failure demonstrated in this case. 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 midwifery professions and upholding the proper professional standards for members of those professions. The panel considered that your failings in this case were so basic, numerous, and serious that public confidence in the profession would be undermined if a finding of impairment were not made. It 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:

'Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered the following to be aggravating features in your case:

- Failure to escalate concerns in relation to Patient 1 to a doctor in a timely manner;*
- The multiple and wide ranging failures to undertake basic midwifery tasks;*
- Failure to take appropriate action, or seek support, in view of your poor state of health.*

The panel also considered the following to be mitigating features in your case:

- *You subsequently completed a local action plan implemented by the Trust;*
- *You have developed a good level of insight;*
- *You remain employed by the Trust;*
- *The incidents occurred some time ago and you have since carried out significant remediation;*
- *No subsequent regulatory concerns around your midwifery practice;*
- *Your attitude and empathetic manner at this hearing, particularly demonstrated by allowing interested parties to observe parts of the hearing held in private.*

The panel first considered whether to take no action. However, the panel was of the view that taking no action would do nothing to address the public protection issues identified, nor would it be proportionate in view of the seriousness of your misconduct.

It then considered the imposition of a caution order but again determined that, in view of your misconduct, 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 does not fall 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;*
- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel was also satisfied that you would be willing and able to comply with any conditions of practice.

The panel had regard to the fact that these incidents happened a long time ago and that, other than these incidents, you have had an unblemished career. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able continue 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 not be a reasonable response in the circumstances of your case in view of the significant remediation that you have undertaken and your current level of insight.

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 profession, and will send to the public and the profession a

clear message about the standards of practice required of a registered midwife.

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 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. You must ensure that you are indirectly supervised by a Band 7 Midwife any time you are working in a labour ward. Indirect supervision must consist of working at all times on the same shift as but not always directly observed.*

- 2. You must work with your nominated Band 7 supervisor to create and develop a personal development plan (PDP), primarily focused on your working in a labour ward under indirect supervision. The PDP must incorporate:*
 - a) Monthly meetings with the nominated Band 7 supervisor providing indirect supervision;*
 - b) All forms of fetal heart monitoring, in particular the use of Cardiotocography (CTG) and interpretation of CTG traces;*
 - c) The holistic care of women in labour, including observations;*
 - d) Evidence of completeness of documentation and record keeping. This may be evidence through an audit of a sample of your record keeping.*

Your personal development plan must be signed off by the Director of Nursing and Midwifery of the Trust or their deputy, and you must send the NMC a copy of it prior to any review of your case.

3. *You must complete a reflective statement on your completed PDP that outlines your continued learning and development.*
4. *Prior to any review of your case you must provide the NMC with a report from the nominated Band 7 supervisor assessing your midwifery practice in a labour ward, and signed off by the Director of Nursing and Midwifery of the Trust or their deputy.*
5. *[PRIVATE]*
6. *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.*
7. *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.*
8. *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.*

9. *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.*

10. *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.'

Decision and reasons on current impairment

This panel has considered carefully whether Mrs Connolly'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 had regard to all of the documentation before it, including the NMC bundle, which included correspondence between Mrs Connolly and the NMC.

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 Mrs Connolly's fitness to practise remains impaired.

At this meeting, the panel considered the two emails from Mrs Connolly to the NMC dated 24 July 2023. The emails state:

'As I have already stated I no longer work as a midwife, have let my registration lapse and have no intention of returning to work as a midwife. Therefore, I will not be revisiting the [sic] bundle or taking part in any review.'

'I'm not sure how what I am doing now is relevant to the panel. I can confirm that I am not working in the health environment and have no plans too.'

The panel noted that since the last review there has been limited engagement by Mrs Connolly. Further, she has not provided any evidence that she has developed insight or strengthened her practice.

Mrs Connolly has taken no steps to strengthen her practice, and therefore the panel had no evidence before it to demonstrate that Mrs Connolly had developed further insight into her misconduct. She has maintained since September 2022 that she no longer wants to practise as a midwife. Since she has not practised as a midwife for some years, Mrs Connolly has not been in a position to comply with her conditions of practice order.

In the light of the above reasons, the panel decided that there remains a risk of repetition and therefore 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 midwifery profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Mrs Connolly'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 noted that Mrs Connolly has expressed that she does not wish to remain on the register, and she has not provided any evidence that she has taken steps to strengthen her practice. The panel determined that the current conditions of practice order marks the public interest and should be left to run to the end of the order.

The panel considered the NMC guidance on allowing an order to lapse upon expiry with a finding of current impairment:

- the nurse, midwife or nursing associate's registration is only active because of the substantive order being in place,
- the nurse, midwife or nursing associate doesn't want to continue practising, and
- the public are protected because the panel has made a clear finding that the nurse, midwife, or nursing associate's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse, midwife, or nursing associate attempts to re-join the register.

The panel concluded that allowing the order to lapse at this stage would be proportionate as Mrs Connolly is no longer working as a midwife, has not renewed her registration, and the panel is satisfied that she no longer wants to practise. In these circumstances the panel believes that allowing Mrs Connolly's registration to automatically lapse at the end of the current order, would have the effect of removing her from the register. The finding of current impairment would remain on her record, leaving the public protected. Should Mrs Connolly wish to return to the register, she would have to satisfy the registrar that her fitness to practise was no longer impaired and is fit to return to midwifery.

The panel was therefore satisfied that the public would be suitably protected once the order lapses upon expiry. It determined that a striking off order would be disproportionate at this stage given the nature of the facts found proved.

In accordance with Article 30(1), the substantive conditions of practice order will lapse upon expiry at the end of 29 October 2023, namely on 30 October 2023.

This decision will be confirmed to Mrs Connolly in writing.

That concludes this determination.