

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

**Substantive Order Review Hearing
Monday, 13 November 2023**

Virtual Hearing

Name of registrant:	Julia Frances Black
NMC PIN:	06F0282E
Part(s) of the register:	Registered Midwife - RM Midwifery - September 2006
Area of registered address:	East Sussex
Type of case:	Determination by another regulatory body
Panel members:	Susan Ball (Chair, Registrant member) Pauline Esson (Registrant member) Bill Matthews (Lay member)
Legal Assessor:	Juliet Gibbon
Panel Secretary:	Maya Khan
Nursing and Midwifery Council:	Represented by Margaret Morrissey, Case Presenter
Mrs Black:	Not present and not represented
Order being reviewed:	Conditions of practice order (24 months)
Fitness to practise:	Impaired
Outcome:	The current conditions of practice order varied and extended for a further period of 12 months. This will come into effect on 20 December 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 Mrs Black was not in attendance and that the Notice of Hearing had been sent to Mrs Black's registered email address on 11 October 2023.

Ms Morrissey, 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 heard and 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 means of joining the virtual hearing and, amongst other things, information about Mrs Black's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In light of all of the information available, the panel was satisfied that Mrs Black 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 Mrs Black

The panel next considered whether it should proceed in the absence of Mrs Black. The panel had regard to Rule 21 and heard the submissions of Ms Morrissey who invited the panel to proceed in the absence of Mrs Black.

Ms Morrissey referred to an email from Mrs Black to her NMC case officer dated 12 November 2023 which stated:

'I am unfortunately unable to attend the hearing for Monday 13th November. I attach a statement which I hope can be forwarded to the panel, giving an update on my situation'

Ms Morrissey submitted that Mrs Black has voluntarily absented herself from today's proceedings, and that it would be in the interest of justice to proceed with the hearing today as intended.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Black. In reaching this decision, the panel has considered the submissions of Ms Morrissey, the email from Mrs Black, 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:

- Mrs Black confirmed with the NMC that she received the Notice of Hearing and is aware of today's proceedings;
- Mrs Black provided a written statement detailing her reasons for non-attendance today;
- No application for an adjournment has been made by Mrs Black; and
- There is a strong public interest in the expeditious review of the substantive order.

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

Decision and reasons on review of the substantive order

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

This order will come into effect upon expiry of the current order at the end of 20 December 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 12 December 2019. This was reviewed on 24 November 2020, when the conditions of practice order was extended for a further 12 months. The conditions of practice order was reviewed on 21 December 2021 where it was extended for a further 24 months.

The current order is due to expire at the end of 20 December 2023.

The panel began 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, a registered midwife:

- 1. Having failed to meet the required standard of competence as a midwife in New Zealand, on 8 September 2017 were made the subject of a 12 month supervision order and an associated competence programme by the Midwifery Council of New Zealand.*

And in light of the above, your fitness to practise is impaired by reason of a determination by a body responsible for the regulation of a health or social care profession other than in the United Kingdom.'

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

'The panel was of the view that there was no evidence to show that you had remediated your practice but noted that you had not yet been able to obtain employment as a registered midwife. The panel also noted that you

had stated that you have kept up date with the profession, but was of the view that there was no substantial evidence to demonstrate this.

The panel determined that as there was not a change of circumstance, a real risk of harm to the public remains. 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, given your continued engagement with the NMC process and your submission of a comprehensive and thoughtful reflective statement, a finding of continuing impairment on public interest grounds is not required.

For these reasons, the panel finds that your fitness to practise remains impaired on the grounds of public protection alone.'

The second reviewing panel determined the following with regard to sanction:

'The panel next considered whether imposing a varied 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 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 have been unable to comply with the existing conditions of practice due to your current employment status but noted that you are engaging with the NMC, and you are willing to comply with any conditions imposed.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients. In this case, there are conditions that could be formulated which would protect patients during the period they are in force.

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.

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

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

- 1. You must keep the NMC 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.**

- 2. You must keep the NMC 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.**

- 3. 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.*
4. *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;*
5. *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.*
6. *If you choose to undertake a return to practice course, you must send your case officer a report from your tutor, line manager, supervisor or another registered midwife involved in your completion of the course, which must address how you have dealt with:*
- a) *communication;*
 - b) *documentation and record keeping;*
 - c) *escalating concerns;*
 - d) *recognition of deteriorating women, pre-eclampsia; and gestational diabetes.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Black'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 Ms Morrissey and the written statement from Mrs Black.

Ms Morrissey outlined to the panel the background to the case and referred it to the decisions and reasons of the previous reviewing panel. She submitted that Mrs Black has provided a written statement which includes reflection, a detailed update on her circumstances. This statement describes her efforts to secure a clinical placement and the difficulties she has encountered attempting to secure a Return to Practise (RTP) course.

Ms Morrissey informed the panel that Mrs Black has used all her endeavours to secure employment as a midwife but has been unsuccessful. She submitted that Mrs Black has not practised as a midwife since 2017 and therefore she has not been able to comply with the conditions of practice order.

Ms Morrissey submitted that Mrs Black's written statement shows evidence of her insight and her passion to return to midwifery however there is no evidence before the panel that she has sufficiently strengthened her practice.

In regard to the appropriate sanction, Ms Morrissey submitted that the NMC's position is neutral and this is matter for the panel's independent judgement.

Mrs Black provided a written statement to her NMC case officer on 12 November 2023 titled '*Statement by Julia Black PIN: 06F0282E for hearing on Monday 13th November 2023*' which read as follows:

'I would like to start by saying that although I am unable to be present like previously, I am writing this statement "under oath"...

...Since my last hearing I can honestly say that my situation has not changed. At the last hearing a recommendation (please excuse if this is the wrong term) was made for me to apply for a Return to Practice Course

I have been unsuccessful in securing a placement for this course. I was lucky to be accepted onto two University Courses one at Greenwich University and one at Plymouth. However despite the hard work of the ladies involved in these course and lots and lots of email correspondence no trust would offer me a placement.

I show below one of my responses from East Sussex Trust who rejected me twice.

I was approached by the University of Greenwich in November of last year regarding the prospective returnee, Julia Black, as they were trying to source a placement for her. At that time, I discovered that Julia had a conditions of practice order with the NMC via the online NMC register. Having looked through the sanctions and discussing it with our Preceptorship Team, Lead Labour ward Matron and Education and Quality Lead Midwife, we were unable to provide the support that Julia would undoubtedly require. Unfortunately, this has not changed; we don't have the resources and available Supervisors at this time to provide the intense support needed when taking into account the number of learners that we are already supporting in practice, daily. I do sincerely apologise.

I would like it noted that I have never hid the conditions of practise whenever I have discussed myself or the possibility of returning or applying for a placement. Indeed I attach below part of an email trail with Plymouth University

the conditions of practice that you do a return to practice course still stand and they will be monitoring your progress ECT. We have had someone on the course before with conditions similar to you and they succeeded. I am assuming before you went to NZ you were working at the Trust who has expressed an interest in supporting you.

I will have some further dialogue with them – but I think that they may not offer a paid placement you options would be 5 to go into a non-paid placement full time – from October until Feb 24. OR to undertake the placement part time – keeping employment elsewhere to support you – receiving £1000 bursary.

I have also applied to:

Bath – 3 times, Surrey & Sussex Trust, Chichester, Exeter and Somerset and Devon, all in all I think I have made 12-15 applications, I would verify but I am unable to access my NHS Careers account at present. I think I have applied for everywhere in the South East when a vacancy has come up on the NHS Job website. Only Exeter replied. I have been in discussion with Greenwich Uni and Plymouth and I have spoken to placement Midwives who work with the trusts for placing Return to Practice Midwives. I have attended Teams meetings and also a Webinar regarding the return which was excellent. So I really just wanted to convey that I have tried...I unable to move out to where other courses are held and they are too far for me to travel, especially to the North of England. Within this area, I was fully prepared to undertake an unpaid placement such was my commitment to my return.

I had planned to type so much more but I have tried repeatedly to explain the differences with my role in NZ and here, I feel that the restrictions placed on me were too severe and I must stress that I am not underplaying my failures and as always accept my shortcomings. I explained this after my 2 day session with the NZ Council and want it noted that the next day after that I was back at work on call for labourers

and running my antenatal clinic. I was at least able to continue practising in NZ. I had once a month meetings with a midwife who was out of area, whereby we were to go through two sets of notes and I would give an update on my progress of courses. I did not need to work alongside a midwife (albeit I didn't work shifts at a hospital as I was a self-employed LMC). I was to book and pay for my courses of which I was happy to do, I would do courses here but I can't as I don't have job in the NHS. I feel aggrieved that for one review of events for my Diabetic client was held without my knowledge and I was made unaware of this; I still fail to see how a client for whom I was only a primary carer who was under the care of the Obstetrician, the Obstetrician booked her caesarean, the Obs, admitted her into hospital whereby she was automatically transferred into secondary care. After the baby was born the Paediatrician was not happy and transferred the baby to Wellington, none of this was my decision but somehow was my error and was taken into account on my hearings. My role was to refer her to Secondary care which I did immediately upon she booked with me. I reviewed her antenatally alongside the Obstetrician but only as a primary care giver.

I apologise I just needed to type that. I have nothing further to add to this statement and apologise if it is emotive but I still care deeply for the profession and still miss it.

Thank you for your time and I await to hear from you'

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 Black's fitness to practise remains impaired.

The panel considered that the regulatory concerns in this case are remediable. They relate primarily to issues of clinical competence which are capable of being addressed

through further training. The panel noted however that the concerns involved a number of aspects of basic midwifery care, including communication, documentation and record keeping, escalating concerns, recognition of deteriorating women, pre-eclampsia and gestational diabetes.

The panel next considered whether the concerns had been remedied. It took into account the new information Mrs Black provided today in her written statement.

The panel bore in mind that Mrs Black's written statement demonstrates an acceptance of her failings, remorse, and she has shown developing insight.

The panel noted Mrs Black's efforts to secure employment in a midwifery role however these have been unsuccessful. Mrs Black has not been able to provide the panel with any evidence that she is capable of safe and effective practice and has addressed the failings in her practice.

In these circumstances, the panel considered that Mrs Black remained liable to put patients at risk of harm without further training. The panel considered that a risk of repetition was likely, and therefore determined that a finding of impairment remained 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 practise. The previous reviewing panel determined that, given Mrs Black's continued engagement with the NMC process and her submission of a comprehensive and thoughtful reflective statement, a finding of continuing impairment on public interest grounds was not required. Today's panel also does not consider a finding of continuing impairment on public interest grounds is required.

For these reasons, the panel finds that Mrs Black's fitness to practise remains impaired on the grounds of public protection alone.

Decision and reasons on sanction

Having found Mrs Black'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. 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 Mrs Black's identified failings were 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 Mrs Black's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel was satisfied that a varied conditions of practice order would be sufficient to protect patients from a risk of harm in the event that Mrs Black completes the RTP course and would be sufficient to maintain confidence in the profession and uphold professional standards. It considered that a conditions of practice order would also provide Mrs Black with a further opportunity to address the identified concerns in her practice.

The panel noted that a number of potential providers of clinical placements have indicated to Mrs Black that they are unable to offer her a place because of the

conditions on her registration. However, the panel considered that the conditions were not onerous and were the minimum restriction required to protect the public from the risk of harm identified in this case. It considered that it was necessary to vary the current condition 1 (previously condition 6).

The panel considered that extending the conditions of practice order for a period of 12 months would give Mrs Black sufficient time to continue with her efforts to secure a clinical placement and to apply for a place on a RTP course.

The panel considered whether a suspension order or a striking off order would be an appropriate order in Mrs Black's case but concluded that it would be disproportionate at this time as the concerns are remediable and Mrs Black is continuing to engage and to attempt to secure a midwifery role in order to remedy them.

Accordingly, the panel determined, pursuant to Article 30(1), to impose a conditions of practice order for a period of 12 months from the expiry of the current order. The varied conditions are as follows:

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. If you undertake a return to practice course, you must send your case officer evidence of successful completion of the course that will include competencies in relation to:
 - a) communication;
 - b) documentation and record keeping;
 - c) escalating concerns;
 - d) recognition of deteriorating women, pre-eclampsia; and gestational diabetes

2. You must keep the NMC 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.
3. You must keep the NMC 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.
4. 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.
5. 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;
6. 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 panel decided to impose the conditions of practice order, with a review, for a period of 12 months.

Any future panel reviewing this case would be assisted by:

- Evidence of professional development;
- testimonials from a line manager or supervisor or university lecturer that detail your current work practices; and
- your continued engagement.

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 allow the order to lapse upon expiry, it may further extend the order or it may replace the order with another order.

That concludes this determination.

This will be confirmed to you in writing.