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Midwife Julia Duthie's case

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Nadine Edwards reports on Julia's six year pursuit of justice

Over the last few years, AIMS has published a number of reports about the cases of experienced midwives with unblemished records who have found themselves defending their knowledge and practice before their UK regulatory body, the Nursing and Midwifery Council (NMC).[1,2,3,4] There are many more midwives who we know about.

There are also endless examples of midwives falling foul of their regulatory bodies and sometimes even being criminalised[5] in many high income countries. This is not a new phenomenon[6] and it is one we recently devoted an entire AIMS Journal to.[7] As we have said again and again, one of the reasons for this is the ongoing struggle between obstetric and midwifery ideology and where women's rights fit into this. It is clear from listening to some of the midwifery cases at the NMC that midwives' practice is often judged by medical standards and that supporting women's decisions where these fall outside these standards is seen as a failure to 'inform' them well and often enough to make the 'right' decisions.

This report on Julia Duthie's case is the most recent. And, as with other reports, if we were to include all that had happened in her case, the details would fill a book. But even the summary below demonstrates very clearly the difficulties just described. It shows inequity, impropriety, how unjust the regulatory system can be and how the careers and lives of experienced and conscientious midwives can be devastated. Independent midwives have been particularly vulnerable to these kinds of enquiries. For example, in this and other cases that we have witnessed, there have been obvious negative comments made and biases against independent midwives and judgements appear to have been made before evidence is heard. A letter sent to the NMC regarding the hearing is included on page 12.

The impact of years (in Julia's case, six) of fighting to clear one's name and practice cannot be underestimated. Negative consequences for these midwives are too numerous to debate here, but include the destruction of relationships, the introduction of fear-based midwifery practice, a decrease in midwifery knowledge and skills (as many fear practising outside protocols and guidelines), a decrease in respect for women's circumstances and their decisions, and a negative emotional and financial impact on the midwife and her family.

Chronology of events

19 June 2007 A pregnant woman expecting her second breech baby phones Julia. Her first baby was born by caesarean section - and although the baby was well, the baby's head got stuck during the

caesarean and a drug had to be given to relax her uterus. She was given Julia's number by her Community Midwife because her local hospital does not support vaginal breech birth. Julia suggests that the woman visit another hospital 20 miles away as she knows that vaginal breech births have been suppor ted there. Julia explains that although she has completed extra training to attend breech births, she had not yet done so in a homebirth setting.

26 June 2007 The woman phones Julia again, wanting to meet.

4 July 2007 Julia meets with the woman and again suggests the second hospital.

25 July 2007 The woman phones Julia while she is on holiday. She is in the 36th week of her pregnancy and leaves a message saying she'd like Julia to be her midwife.

6 August 2007 Julia books the woman on her return from holiday and says she will do her best to find a second midwife with breech birth experience. Over the next days and weeks she contacts 24 midwives and enquires via the independent midwives group, IMUK. No-one is available due to summer holidays, or being on call and living over three hours away.

Over this time, Julia is also communicating with Maria Patterson (MP), Supervisor of Midwives and Community Matron in the woman's locality, who Julia knows and who is supportive. MP looks into providing support as Julia lives an hour from the woman. MP says that the woman can call the hospital if necessary and someone will come out, and that if Julia wants a second midwife, the Supervisor of Midwives oncall will come. Julia again suggests that the woman visit the hospital supportive of vaginal breech birth and is happy to support her there.

13 August 2007 The woman makes an appointment to visit the second hospital and meet the Delivery Suite Coordinator/Supervisor of Midwives, Carol Axon (CA) and a doctor. Julia receives a call from CA to say that the woman has cancelled; CA also emails MP to let her know.

14 August 2007 Julia visits the woman who tells her that she cancelled the hospital visit because her young daughter would not be allowed into the delivery suite because of the noise of other women. As the woman is using hypnotherapy and wants her daughter nearby (the second hospital is 20 miles away from her home), she decides she doesn't wish to give birth there.

17 August 2007 CA at the second hospital says she is experienced in breech births and invites Julia to meet with her and go over some scenarios.

22 August 2007 Julia visits CA to demonstrate what she would do in various scenarios. CA later writes to the LSA Midwifery Officer, Val Beale (VB) and says that Julia is well informed. Julia discusses the woman's case with CA and lets her know that the woman does not wish to have any vaginal examinations (VEs). As Julia leaves, CA asks if she can send Julia a write-up of their meeting and Julia agrees. [This is later used by CA to claim that Julia agreed to her sending a supervisory plan of support, i.e. a care plan for the woman.]

22 August 2007 MP, Community Matron at the local hospital, leaves the woman a phone message and writes to her to ask if she can visit her at home.

23 August 2007 MP visits the woman and is the first person from the NHS that the woman likes, trusts and feels supported by. A plan is agreed.

24 August 2007 Julia receives an email from CA saying, 'As agreed, I have written a Supervisory Plan of Support.' It includes four-hourly VEs, despite Julia having explained that the woman does not agree to VEs. CA also tells Julia in the care plan to pre-warn the ambulance service about the forthcoming birth, but when asked for the non-emergency number by Julia, CA replies by email that she does not have it. [It is not usual practice in either area to pre-warn the ambulance service. They say it is pointless as they will not keep an ambulance on standby; the only valid reason is if the post code will not find the place. In the event, the ambulance, when called, arrives promptly within eight minutes.] Julia contacts MP and is told that the hospital switchboard would be able to put her through to the ambulance service. [When Julia calls on her way to the birth, the switchboard operator is not able to put her through and does not have the number. Julia explains this to CA the day before the baby is born. CA finally sends the number to Julia the next afternoon, whilst the woman is giving birth. This becomes one of the allegations in her NMC case - that she did not pre-warn the ambulance service.]

24 August 2007 The woman phones Julia after having had a scan. The woman reports that all is well, the placenta and baby are in a good position but the weight of baby is estimated at 10 1/2 pounds. The woman is upset because the obstetrician is graphic about the problems this could cause, says that the risk of scar rupture is five times more and talks of 'rivers of blood'. Julia suggests contacting Mary Cronk, a midwife and expert in breech birth. The woman also reports to Julia that she has received CA's care plan, on the same day as Julia. They discuss the care plan on the phone. The woman is using hypnotherapy, she does not want to be asked questions, so in terms of Julia being aware of possible signs of scar rupture, the woman agrees that she will report any scar pain. Julia is used to avoiding VEs, so is supportive of the woman's wishes to avoid them.

24 August 2007 MP puts herself on-call for Julia and the woman over the Bank Holiday long weekend, after which a few Independent Midwives will be available to be a second midwife. MP has also done extra training in breech birth, but has not attended any.

28 August 2007 Julia visits the woman, who has spoken with Mary Cronk. Mary is generally positive about large breech babies, as this means the large bottom makes plenty of room for the baby's head, and

that if the baby's bottom does not descend in either 1st or 2nd stage of labour a caesarean section is advisable. The woman is happy with this.

2 September 2007 Julia phones the woman to see how she is as she has been 'niggling'. The woman is worried about 'niggling' in case it is a sign that a caesarean is needed as Mary Cronk explains that a stop start labour is a sign that a caesarean is necessary. Julia offers to visit, sets off for the woman's home and on the way phones the second midwife to say that the woman is considering a caesarean section and that she might not be needed. Julia informs the woman that she can still have a positive birth by caesarean section, but the woman decides against this. Julia suggests to the woman that they talk to Mary Cronk. Mary's response is that the 'niggling' isn't a warning sign, it's her body preparing for labour; but that once in established labour, if it stops, this is an indication for a caesarean section. The woman calls Julia that evening to say her waters have broken and Julia goes out to her. Julia phones CA and the second midwife (who lives two hours away). Julia arrives and all is well with the woman and the baby. Julia remains at the woman's house overnight, though labour is not yet established (because she lives an hour away).

3 September 2007 Next morning the woman and her husband are happily using hypnotherapy techniques and do not raise the subject of transferring to hospital. [In her evidence three years later, the woman says that she had been asking to transfer to hospital for a caesarean section.] The second midwife goes to a friend's house.

By 2pm the woman is in established labour and Julia asks the second midwife to return. She phones CA to let her know what is happening. CA asks if Julia has performed VEs. Julia has not and CA asks her how she will obtain a baseline for the woman's labour. Julia explains that her contractions have increased from being irregular and one to two in ten minutes, to regular and three in ten minutes, and that changes in the baby's position and other signs will indicate progress. If in four hours she feels that there has been no progress, she will recommend a VE to the woman. [Later, in her statement, CA claims that Julia said she would carry out a VE immediately following the phone conversation. In the event, the baby is being born and the ambulance has been called before four hours have passed.]

By 3pm the second midwife returns and the woman is doing well using hypnotherapy, with her husband providing prompts. She is kneeling and Julia listens in to the baby every 15 minutes. The heart rate remains within normal limits. The bag of waters becomes visible, then the baby's knee, then the legs are born. The baby's navel appears and there is a large, fat cord. [Julia has photos of this as the woman wanted a camera to be used. These are later used as evidence when VB (the LSAMO who referred Julia to the NMC and who the NMC uses as their exper t witness at the hearing) claims that a knee presentation is an indication to immediately call an ambulance. This is not the case and the photos show all to be progressing well, with no reason to call an ambulance.] All continued to be completely normal, with good colour, tone and progress until the baby's upper body becomes visible. With the next contraction Julia expects the baby's arms to appear, but sees nothing. She feels for the baby's arms, they are not in front of the baby's chest or face, but behind the baby's neck. The Løvset manoeuvre (turning the baby) is the correct procedure when this happens and Julia attempts this to no avail. She then tries another

manoeuvre to try to free the baby's arms. Within 60 seconds of finding the arms behind the baby's neck, Julia asks the second midwife to call an ambulance and the hospital, which is a mile and a half away. She does this.

The Supervisor of Midwives at the hospital wants to talk to Julia while she is working to free the baby, so the second midwife holds the phone to her ear. The supervisor offers to send out support and Julia expects a doctor to arrive. Twenty minutes later, two Supervisors of Midwives arrive and refuse to help with manoeuvres to free the baby. By this time, the baby's arms are out, but the head is not. Julia and the second midwife continue to try to free the baby. Julia is aware the baby has died.

As soon as the baby is born the NHS midwives start resuscitation, which continues in the ambulance. [Later the two midwives are called as witnesses and both appeared to have forgotten that Julia assisted with the resuscitation.] Julia goes in the ambulance with the baby, as she is still assisting with the resuscitation, and the second midwife follows in another ambulance with the mother. In the hospital a doctor continues with resuscitation to no avail. He then tells the husband that his baby was stillborn. The husband joins his wife while she is being sutured and asks Julia to stay with their baby so that he is not alone. The second midwife joins Julia.

After suturing, the baby is taken to the woman and her husband and they invite Julia and the second midwife to join them. The woman states that she is happy that she gave birth at home.

4 September 2007 Julia is suspended by the LSAMO (VB) for not following CA's care plan. Julia phones CA to tell her what VB has told her. Julia has in fact carried out the plan, except for pre-warning the ambulance service, which CA was aware of 20 hours before the bir th. The recommended four hourly VEs in established labour were irrelevant because the woman was in established labour for less than four hours and had declined them. CA says she cannot talk any further as she will be part of the investigation and says that this will done by a Supervisor of Midwives from another area rather than by VB. [However, VB does carry out the investigation.] Julia visits the woman in the evening and she and her husband are both shocked and upset that Julia has been suspended. Julia asks VB if she could meet as soon as possible, so that she can describe events.

6 September 2007 Julia visits the woman at home (she continues to visit the woman each week until November and then for tnightly until mid December, to support her). The woman invites her to the baby's burial on 27 October. At Julia's last visit in December, the woman gives her a beautifully wrapped rose quartz heart.

12 September 2007 VB meets with Julia in Julia's home. She informs her that the investigation has to be completed within 20 days. [It takes two months.] She interviews Julia and leaves saying that she will need a statement from Julia at some point, but later fails to request one.

5 October 2007 Julia becomes aware that she has been suspended illegally. VB had suspended her (under an obsolete rule) pending a decision on whether or not to refer to the NMC. As this is outside the regulatory framework (which only permits suspension with referral to the NMC), it is difficult to

challenge and repeated enquiries by Julia and her husband to the NMC result, perversely, in the NMC pressing VB for a formal referral.

11 October 2007 In response to pressure from the NMC, VB emails, formally notifying the NMC that she has suspended Julia and is completing her investigation and will send a referral within 14 days. [At this point she still has two key witnesses to interview and at no point does she talk to the woman.] Julia's name is removed from the NMC online register - even though the NMC has not received VB's report and the NMC is aware that Julia's suspension is illegal.

22 October 2007 Julia sends a pre-action letter for judicial review to the LSA and the NMC regarding her illegal suspension.

25 October 2007 Julia receives a letter from the NMC saying that VB's complaint has been received, but that it will be dropped if it does not receive the full referral by 31 October 2007 and Julia's name will be returned to the online register. The letter states however, 'that would not in itself cancel the LSAMO suspension.'

26 October 2007 The LSA's lawyers reply saying Julia's unlawful suspension has been revoked. They admit fault and agree to pay Julia for loss of earnings over that time.

30 October 2007 VB formally suspends Julia and makes a referral one day before the deadline. She has not interviewed the woman or come back to Julia for a statement or to gain more information about the contradictions between Julia's and CA's version of events. The allegations in the referral are based on CA's evidence. Julia is given no opportunity to comment on these until three years later, by which time the woman has changed her story.

31 October 2007 Julia begins to prepare for her NMC Interim Order hearing where an NMC Committee will decide whether or not to continue her suspension.

25 November 2007 The woman sends Julia a very supportive email to give to the NMC and a copy of an email that she has sent to her MP asking for his help in shining a light on the injustice and scapegoating of Julia. [Both of these emails were read into the public record in their entirety by Julia's barrister during the hearing.]

27 November 2007 On the day of the Interim Order hearing the NMC has still failed to find a 'due regard' midwife member for the Panel, so phones round to find someone.

This results in a less favourable 'due regard' midwife for Julia as this midwife has not had a chance to read the large bundle of papers thoroughly and does not specialise in homebirth. Finally, in the afternoon when the case begins, the NMC lawyer, Mr Hafejee, reads out confidential, personal information about the woman from the bundle of papers, which everyone had been told not to share. A member of the press is clearly in attendance at this hearing and these details are repor ted in the woman's local newspaper two days later. Julia is unable to give her side of the story at the Interim Order hearing, as 'this is not a

fact finding exercise' but based on the initial allegations. In this case, these are based on CA's statement, so the NMC decides to continue VB's suspension of Julia with an Interim Suspension Order. Suspensions are required to be reviewed at set intervals, but this does not always happen.

29 November 2007 Julia visits the woman unaware of the newspaper article. The woman shows it to her and then marks up inaccuracies and says she will talk to her MP about it. The woman feels she can no longer walk down the street without thinking that people know private things about her. Had Julia known that she could have applied to have had the hearing in camera (in private with no members of the public or press present), she would have requested this, but she was not informed about this possibility. She does request all future Interim Order hearings to be in camera, in order to protect the woman.

21 May 2008 Interim Order hearing. Julia's suspension continues.

3 September 2008 Interim Order hearing. Julia's suspension continues.

17 December 2008 Interim Order hearing. Julia's suspension continues.

22 April 2009 Interim Order hearing. Julia's suspension changed to Conditions of Practice because Professor Lesley Page gives evidence, having written an Expert Report showing that there has been a systems' failure within the NHS. Following this hearing the Conditions of Practice are seen as unworkable, as they are understood to mean that Julia is to be under a supervisor with experience of high-risk midwifery care whenever she practises. This is referred back to the NMC for another hearing.

20 May 2009 Interim Orders can only last for 18 months before having to be referred to the High Court to ask for permission to continue. The High Court judge allows an extension of a further 12 months on the understanding that the NMC clarifies the ambiguity in the Conditions of Practice within a month.

18 June 2009 An NMC Panel clarifies the Conditions of Practice so that they are workable. This takes many months to put in place because Julia has to find a new Supervisor of Midwives. The Head of Midwifery says that the local supervisors are too busy and involved in the case, so can no longer provide supervision. Eventually, Professor Paul Lewis, who works in a different Trust, offers to be Julia's supervisor.

4 November 2009 Julia receives a letter of referral to the NMC Competence and Conduct Committee and a list of allegations.

9 June 2010 Julia's lawyer applies for a cancellation of the hearing due to lack of evidence, as the NMC will not be presenting oral evidence from the woman. Julia's lawyer argues that, without this oral evidence, the NMC will not be able to support its allegation that the registrant's fitness to practise is impaired by reason of misconduct and that the hearing should not be held and the matter closed. This is not accepted by the NMC and it responds by adding extra allegations, and gets the woman and her husband to agree to give evidence (the woman via a video link). These extra allegations use a great deal of the Panel's time but are later thrown out, disproved, or do not amount to misconduct.

28 July 2010 A pre-hearing meeting takes place to object to the NMC using VB (Julia's LSAMO who investigated the case locally and referred Julia to the NMC) as the Expert Witness. The objection is overruled by the NMC Panel.

16 August 2010 The 10-day hearing begins. The NMC does not present oral evidence from the second midwife who was present at the birth as the hearing is at a time when she had previously said she would be unavailable. The case is not completed and a date is set to resume the hearing on 3 November for a further eight days.

12 November 2010 After eight days the case is not completed but adjourned, so that the Panel can decide if a sanction should be imposed. Meanwhile the NMC barrister puts a case for Julia being re-suspended and this is accepted by the Panel.

21 February 2011 At this one-day hearing, three of Julia's clients give evidence in support of Julia. The case is still not completed, but is again adjourned - until 8 March.

8 March 2011 The case is finally completed. Julia is struck off and a Suspension Order made as Julia's legal team has already stated that it will appeal the Striking-off Order.

Appeals to the High Court have to be made within 21 days and are costly, but Julia's legal funding ran out in November 2010. As Julia is her family's main earner, her income is by now so low that she is entitled to claim legal aid. This takes two appeals and her income being scrutinised before it is agreed. Despite applying within the 21 days, it takes 14 months to get a date for the High Court hearing. Meanwhile, Julia is unable to work.

1 May 2012 Julia's High Court three-day hearing begins.

31 October 2012 Julia finally receives the High Court's judgement. The judgement revokes the NMC decision and points out where mistakes have been made. It revokes the Striking-off Order and returns Julia to Interim Conditions of Practice. It throws out par ts of the charge because it says that the NMC Panel came to the wrong conclusion in weighing up the evidence. The Court is unable to throw out the remaining proven allegations, but states that they had no impact on the outcome and requests that a fresh NMC Panel should consider these.

8 July 2013 The NMC begins to offer dates for a hearing. This is finally set for 12-14 November, more

than a year after the High Court judgement.

12-14 November 2013 Julia's Supervisor of Midwives, Professor Paul Lewis, gives evidence and Julia provides a written statement. The new NMC Panel decides that her fitness to practise is not impaired. She is now free to practise again as a midwife without restrictions, having spent more than six years either suspended or under Conditions of Practice that severely restricted which women she could look after.

The NMC's role is to protect the public. Condemning committed and experienced midwives does not achieve this. If safety is genuinely the concern of the NMC, of the supervisory system and of senior midwives, they would facilitate rather than obstruct initiatives that provide greater safety for women and babies. For example, in one case, when an independent midwife was asked to support a woman having twins at home, an NHS Supervisor of Midwives and two local NHS midwives were able to support her. In another example, a senior midwife set up a rota of experienced midwives to work with an independent midwife to attend a woman having a breech bir th at home, but the LSAMO refused to allow this. In order to ensure safety, the NMC and the supervisory structure need to align themselves with midwifery knowledge and skills. If NICE Guidelines are the main judge of a midwife's practice, this is clearly not the case.

Surely we should be supporting any midwife to set up as safe circumstances as possible for every woman, [8] whatever decisions the woman makes, rather than wasting public time and money by hounding the very midwives who attempt to do this.

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