

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

**Substantive Order Review Meeting  
Tuesday, 24 June 2025**

Virtual Meeting

<b>Name of Registrant:</b>	<b>Kerry Jayne Birdsall</b>
<b>NMC PIN:</b>	91F0015E
<b>Part(s) of the register:</b>	Registered Nurse – Adult RN1 – 18 August 1994
<b>Relevant Location:</b>	Falkirk, East Dunbartonshire and North Lanarkshire
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Rachel Cook (Chair, lay member) Jennifer Portway (Lay member) Richard Luck (Registrant member)
<b>Legal Assessor:</b>	Charlotte Mitchell-Dunn
<b>Hearings Coordinator:</b>	Khatra Ibrahim
<b>Order being reviewed:</b>	Suspension order (6 months)
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	<b>Striking-Off order to come into effect on at the end of 6 August 2025 in accordance with Article 30 (1)</b>

## **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 Ms Birdsall's registered email address by secure email on 20 May 2025.

The panel took into account that the Notice of Meeting provided details of the review, that the review meeting would be held no sooner than Monday 23 June 2025 and inviting Ms Birdsall to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Birdsall 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 strike Ms Birdsall off the NMC register. This order will come into effect at the end of 6 August 2025 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 9 January 2025.

The current order is due to expire at the end of 6 August 2025.

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, a registered nurse:*

*Whilst working at Caledonian Court Care Home;*

*1. During the night shift of 13/14 August 2022,*

- a. Pre-potted medication for one or more residents,*
- b. left medication for one or more residents unattended on the drugs trolley,*
- c. did not administer medication that was due, to one or more residents,*
- d. incorrectly signed that you had administered medication which was due to one or more residents,*
- e. ...*
- f. your actions at 1d and ~~1e~~ were dishonest in that you intended others to believe that you had administered medication to one or more patients and/or that one or more residents had refused medication, when you knew that this was not the case. (in respect of charge 1d)*

*2. Whilst working at Mavis Bank Care Home,*

- a. ...*
- b. ...*
- c. ...*

*3. Whilst working at The Village Care Home,*

- a. ...'*

The original panel determined the following with regard to impairment:

*'The panel next went on to decide if as a result of the misconduct, Ms Birdsall's fitness to practise is currently impaired.*

*In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:*

*'The question that will help decide whether a professional's fitness to practise is impaired is:*

*“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”*

*If the answer to this question is yes, then the likelihood is that the professional’s fitness to practise is not impaired.’*

*Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They 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/their fitness to practise is impaired in the sense that S/He/They:*

- 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

*The panel was satisfied that all four limbs above are engaged in this case. it considered each of the limbs in turn.*

*On whether patients were put at unwarranted risk of harm as a result of Ms Birdsall's misconduct, the panel noted that there is no evidence suggesting actual harm came to any of the residents. However, the panel was of the view that Ms Birdsall's conduct – in particular, leaving unpackaged medication unattended on a trolley – placed residents at significant risk of harm. The panel considered that some of the residents on the ward were mobile and could have taken any of the unpackaged medication left unattended when it was not prescribed to them.*

*The panel was satisfied that Ms Birdsall's misconduct brought its reputation into disrepute, and that confidence in the nursing profession would be undermined if its regulator did not find charges relating to fundamental safe medicines practices and dishonesty serious.*

*Further, the panel was also satisfied that Ms Birdsall misconduct had breached the fundamental tenets of the nursing profession, namely adequate and safe medicines management, keeping accurate records of patient care and remaining honest in her nursing practice.*

*On dishonesty, the panel found that Ms Birdsall's actions – namely the signing of Resident C and Resident D's MAR charts – were dishonest attempts to indicate that she had administered medication when she has not.*

*The panel next considered whether Ms Birdsall is liable, in the future, to put patients at unwarranted risk of harm, bring the nursing profession into disrepute, breach one of the fundamental tenets of the nursing profession and act dishonestly, pursuant to Grant. In reaching its decision, the panel also considered the principles derived from Cohen, namely:*

- Whether the concern is easily remediable;*
- Whether it has in fact been remedied; and*
- Whether it is highly unlikely to be repeated.*

*The panel was of the view that the clinical concerns surrounding Ms Birdsall's medicines practice are remediable with sufficient retraining and appropriate competency assessments. The panel considered that the dishonesty concern is more difficult to remedy. However, it was of the view that, as the dishonesty stems from Ms Birdsall's poor medicines practice, the concern is remediable. However, the panel was of the view that Ms Birdsall would need to demonstrate sufficient insight and strengthening of her practice (in relation to medicines management) before it can be satisfied that the concerns have been remedied.*

*The panel then considered Ms Birdsall's contemporaneous reflection, which demonstrated some insight into her actions. However, the panel considered that Ms Birdsall has since not engaged with the NMC and has not provided any evidence of further insight, remediation or any strengthening of her practice, particularly in relation to her medicines management. Consequently, the panel has no opportunity to assess whether Ms Birdsall has strengthened her practice. The panel noted that Ms Birdsall expressed a desire to leave nursing practice, but also that she has not removed herself from the nursing register. The panel was satisfied that, whilst Ms Birdsall appears to show some insight, the concerns have not been remedied.*

*On whether it is likely to be repeated, the panel determined that, in the absence of any engagement, evidence of strengthened practice or sufficient remediation from Ms Birdsall, the conduct is highly likely to be repeated.*

*Based on the above, the panel determined that Ms Birdsall is liable, in the future, to put patients at unwarranted risk of harm, bring the nursing profession into disrepute, breach one of the fundamental tenets of the nursing profession and act dishonestly, pursuant to Grant. Accordingly, the panel determined that a finding of impairment is necessary on the grounds of public protection.*

*The panel bore in mind 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 nursing and midwifery professions and upholding the proper professional standards for members of those professions.*

*The panel next considered whether a finding of impairment is necessary on public interest grounds. It considered that a reasonable, well-informed member of the public would be very concerned if a finding of impairment was not made against Ms Birdsall, following a finding against her in relation to her poor medicines practice and her dishonesty. The panel reminded itself of the NMC's overarching objectives, and it concluded that public confidence in the profession and the NMC as its regulator would be undermined if a finding of impairment was not made in this case.*

*Accordingly, the panel determined that Ms Birdsall's fitness to practise is also impaired on the grounds of public interest.*

*Having regard to all of the above, the panel was satisfied that Ms Birdsall's fitness to practise is currently impaired.'*

The original panel determined the following with regard to sanction:

*'Having found Ms Birdsall's 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 Sanctions Guidance (SG). The decision on sanction is a matter for the panel independently exercising its own judgement.*

*The panel took into account the following aggravating features:*

- *Conduct which put patients at risk of suffering harm.*

*The panel also took into account the following mitigating features:*

- *The incidents occurred over one shift;*
- *[PRIVATE];*
- *Some evidence of Ms Birdsall's insight on her failings, and her acknowledgement of the impact of her failings on the residents and colleagues.*

*The panel then considered the NMC Guidance, "Considering sanctions for serious cases" (SAN-2) on factors determining the seriousness in cases of dishonesty. The Guidance stated:*

*"Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:*

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to people receiving care*
- *...*
- *vulnerable victims*
- *personal financial gain from a breach of trust*
- *direct risk to people receiving care*
- *premeditated, systematic or longstanding deception*

*Dishonest conduct will generally be less serious in cases of:*

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *incidents outside professional practice"*



*Addressing the above bullet points, the panel determined that Ms Birdsall did not cover up her failings. The panel was satisfied that, whilst the incident occurred in a care home where all patients are vulnerable, Ms Birdsall did not seek to abuse their vulnerability in her misconduct. The panel was also satisfied that Ms Birdsall did not have any personal financial gain from her dishonesty. The panel was of the view that Ms Birdsall's misconduct was not premeditated and was instead a one-off incident where she exercised poor medicines practice.*

*However, the panel acknowledged that there was a direct risk to people receiving care, and the incident did occur within Ms Birdsall's professional practice.*

*Taking all the above factors into account, the panel concluded that Ms Birdsall's dishonesty falls on the lower end of the seriousness spectrum, in accordance with the NMC Guidance on seriousness.*

*The panel then went on to consider the appropriate and proportionate order to impose, in light of its findings on impairment, the aggravating and mitigating factors identified as well as the less serious nature of Ms Birdsall's dishonesty.*

*The panel first considered whether to take no action but concluded that this would be inappropriate in view of the public protection and public interest concerns identified in this 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 risk of repetition identified, an order that does not restrict Ms Birdsall'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 a caution order would be inappropriate in view of the public protection 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 Ms Birdsall'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 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;*
- ...*
- Potential and willingness to respond positively to retraining;*
- ...*
- ...*
- ...*
- Conditions can be created that can be monitored and assessed.*

*The panel is of the view that Ms Birdsall's failings are remediable, and conditions could be formulated to address the concerns. The panel considered that there are identifiable areas of clinical concerns, namely Ms Birdsall's medicines practice and the dishonesty that is intrinsically linked with her medicines practice.*

*However, the panel was not satisfied that these conditions would be workable, as Ms Birdsall has not engaged with the NMC. The panel has no evidence before it that, if conditions were to be imposed, that Ms Birdsall is willing to respond positively and comply with the conditions imposed, and that those conditions can be sufficiently monitored and assessed. The panel determined that, in light of Ms Birdsall's lack of engagement, a conditions of practice order would not be appropriate or workable in this case.*

*The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:*

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *...*
- *...*
- *...*

*Balancing all of these factors, the panel has concluded that a suspension order would be the appropriate and proportionate sanction. The panel was satisfied that the facts found proved related to a single instance of misconduct where a lesser sanction is not sufficient, and the panel determined that there is no evidence of Ms Birdsall's having harmful deep-seated personality or attitudinal problems. The panel also noted that it has no evidence before it of repetition since the incident, albeit it acknowledged that it has no information in relation to Ms Birdsall's current nursing practice.*

*Further, the panel considered that this suspension order would sufficiently protect the public and is necessary to mark the importance of maintaining public confidence in the profession, namely to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.*

*The panel noted the hardship such an order may cause Ms Birdsall. However, this is outweighed by the public interest in this case.*

*The panel determined that a suspension order for a period of six months was appropriate in this case to address the public interest in this case. The panel was also of the view that this would give Ms Birdsall sufficient time to re-engage with the NMC, as well as reflect and gain insight into her failings. The panel concluded that this would also allow Ms Birdsall adequate time to remediate and strengthen her practice, if she wishes to continue nursing.'*

## Decision and reasons on current impairment

The panel has considered whether Ms Birdsall'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 and an email to Ms Birdsall's NMC Case officer dated 31 January 2025, where she states:

*'Good afternoon*

*I have no interest in attending a meeting. I would like to remove my name from the nursing register*

*Regards*

*Kerry Birdsall'*

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 Birdsall's fitness to practise remains impaired.

The panel noted that the original panel found that Ms Birdsall had insufficient insight. and provided a suggested list of what a reviewing panel would be assisted by, as follows:

*"Any future panel reviewing this case would be assisted by:*

- Full engagement from Ms Birdsall in future NMC proceedings;*
- A statement detailing Ms Birdsall's future intention in relation to her nursing career;*
- A detailed reflective piece demonstrating Ms Birdsall's insight and remediation into her failings;*

- *Any evidence of continuous professional development and relevant retraining in relation to medicines management; and*
- *Testimonials from Ms Birdsall's employer in relation to any relevant clinically-related work or other employment undertaken"*

Ms Birdsall has not provided any evidence from the suggested list as set out by the previous panel.

~~At this meeting the panel noted the original panel's recommendations, including a reflection, plans.~~

This panel has no evidence before it to suggest that Ms Birdsall has undertaken any additional learning or reflections, nor has she demonstrated any evidence of strengthening of practice since the original substantive meeting. The panel appreciated that Ms Birdsall has not been able to work in a nursing role as a result of her suspension, but she has not evidenced the steps taken to maintain her knowledge. In particular there is no evidence of continuous professional development, relevant retraining and remediation in relation to medicines management, as suggested by the original panel.

The panel also considered Ms Birdsall's email dated 31 January 2025, in which she states she has '*no interest in attending*' any NMC related meetings or hearings, and that she wishes to remove her name from the register.

On the basis of Ms Birdsall's lack of remediation, and the limited nature of her engagement, the panel considered that Ms Birdsall has demonstrated insufficient insight regarding the facts found proved by the previous panel.

The panel considered whether the concerns are likely to be repeated and determined that, in the absence of any engagement, insufficient insight, lack of evidence of strengthened practice or evidence of sufficient remediation from Ms Birdsall, the conduct is highly likely to be repeated.

Based on the above, the panel determined that Ms Birdsall remains liable, in the future, to put patients at unwarranted risk of harm, bring the nursing profession into disrepute, breach one of the fundamental tenets of the nursing profession and act dishonestly, pursuant to *Grant*. Accordingly, the panel determined that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel next considered whether a finding of impairment is necessary on public interest grounds. It considered that a reasonable, well-informed member of the public would be very concerned if a finding of impairment was not made against Ms Birdsall, following a finding against her in relation to her poor medicines practice and her dishonesty. The panel reminded itself of the NMC's overarching objectives, and it concluded that public confidence in the profession and the NMC as its regulator would be undermined if a finding of impairment was not made in this case.

Accordingly, the panel determined that Ms Birdsall's fitness to practise is also impaired on the grounds of public interest. Having regard to all of the above, the panel was satisfied that Ms Birdsall's fitness to practise remains impaired.

### **Decision and reasons on sanction**

Having found Ms Birdsall'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. The findings of the original panel include dishonesty which this panel considered to be a serious finding.

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 Birdsall'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 Birdsall'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 conditions of practice on Ms Birdsall's registration would be a sufficient and appropriate response. The panel was not satisfied that a conditions of practice order would be workable as Ms Birdsall has not engaged throughout the entirety of these proceedings, bar her email dated 31 January 2025 requesting that her name is removed from the nursing register. The panel has no evidence before it that, if conditions were to be imposed, that Ms Birdsall is willing to respond positively and comply, and that those conditions can be sufficiently monitored and assessed. The panel determined that, in light of Ms Birdsall's lack of engagement, a conditions of practice order would not be appropriate or workable in this case.

The panel went on to consider a suspension order.

The panel reminded itself of the legal advice it received that a suspension order must serve a useful purpose. If the panel concludes that continuing a suspension order is unlikely to result in the professional returning to safe unrestricted practice within a reasonable period of time, it should ensure that [the professional is removed from the register](#).

The panel considered the NMC guidance which enables removal from the register when there is a substantive order in place – Rev 2h. Having considered this guidance and the

specific details of this case the panel considered it was not appropriate for Ms Birdsall to leave the register by way of a lapse with impairment, on the basis that there was nothing to which her lack of progress or engagement could reasonably be attributed. The panel therefore concluded that enabling Ms Birdsall's registration to lapse with impairment was not a suitable outcome.

The panel next considered a Striking Off order.

As stated Ms Birdsall has not engaged with these proceedings despite being given the opportunity since January 2025. Her only engagement has been to request that her name be removed from the Register.

In view of Ms Birdsall's non engagement and request for her name to be removed from the register, the panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances.

Having determined that Ms Birdsall's fitness to practice remains impaired and taking into account that Ms Birdsall has not positively engaged nor evidenced sufficient insight into her previous failings and has not remediated and strengthened her practice, the panel concluded that the only appropriate sanction in these circumstances was a Striking Off order

The panel determined that the only appropriate sanction that would adequately protect the public and serve the public interest, including confidence in the regulator, was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 6 August 2025 in accordance with Article 30(1).

This decision will be confirmed to Ms Birdsall in writing.

That concludes this determination.