

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

**Substantive Order Review Hearing
Friday, 3 October 2025**

Virtual Hearing

Name of Registrant: Nicola Kerr

NMC PIN: 18L0041W

Part(s) of the register: Nursing, Sub part 1
RNA, Registered Nurse - Adult
31 January 2019

Relevant Location: Cardiff

Type of case: Misconduct

Panel members: Victoria James (Chair, Lay member)
Janet Williams (Registrant member)
Karen Naya (Lay member)

Legal Assessor: Michael Bell

Hearings Coordinator: Yousra Hassan

Nursing and Midwifery Council: Represented by Alex Radley, Case Presenter

Nicola Kerr: Not Present and unrepresented

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with Article 30 (1), namely at the end of 12 November 2025**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Kerr was not in attendance and that the Notice of Hearing had been sent to Miss Kerr's registered email address on 28 August 2025.

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

The panel accepted the advice of the legal assessor.

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

In the light of all of the information available, the panel was satisfied that Miss Kerr 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 Miss Kerr

The panel next considered whether it should proceed in the absence of Miss Kerr. The panel had regard to Rule 21 and heard the submissions of Mr Radley who invited the panel to continue in the absence of Miss Kerr. He submitted that Miss Kerr had voluntarily absented herself.

Mr Radley submitted that there had been no engagement at all by Miss Kerr with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

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

- Miss Kerr has not engaged with the NMC and has not responded to any of the correspondence sent to her about this hearing. She appears to be voluntarily absent.
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case, as this is a mandatory review of an existing order which is due to expire on 12 November 2025.

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

Decision and reasons on review of the substantive order

The panel decided to confirm the current suspension order

This order will come into effect at the end of 12 November 2025 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

The current order is due to expire at the end of 12 November 2025.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

'That you, a registered nurse,

1. Between 11 September 2021 and 12 September 2021:

1.4 .Did not increase Patient A's checks from hourly to either 15 or 30 minute checks.

2. *Between 11 September 2021 and 12 September 2021:*

2.1. *Did not offer **and/or ensure that** food and/or fluids **was offered** to Patient A;*

3. *Between 11 September 2021 and 12 September 2021:*

3.1 *Spoke to Patient A in a rude or harsh tone.*

3.2 *Did not make any assessment of Patient A when you observed him to be on the cell floor.*

3.4 *Having been absent from the nurses' office/ nurses' station between about 00.10 to 02.56, you were not available to respond to Patient A's attempts to summon help.'*

The first reviewing panel determine the following with regard to impairment:

'The panel next went on to decide whether, as a result of its finding of misconduct in respect of charge 3.4 Ms Kerr'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 and to maintain professional boundaries. 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/ 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 limbs a) to c) are engaged. The panel finds that Patient A was put at unwarranted risk of harm as a result of Ms Kerr's misconduct. Ms Kerr's misconduct had breached the fundamental tenets of the nursing profession and as well as bringing the profession into disrepute.

However, the panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel considered the evidence before it in determining whether or not Ms Kerr has taken steps to strengthen her practice. The panel acknowledges that Ms Kerr has been precluded from practising as a registered nurse. It has no evidence of any work undertaken by Ms Kerr in particular in a caring or similar environment nor any testimonials. Nor is there any evidence that Ms Kerr has engaged in any relevant learning or training to keep herself up to date.

The only evidence of insight demonstrated by Ms Kerr was minimal and there was nothing specifically related to absenting herself for a prolonged period of time from the nurse's station or of the potential impact of her absence in putting patients at risk of unwarranted harm. It further noted that the reflection before it was provided for the internal investigation in 2023 and there had been no further evidence produced by Ms Kerr. In the absence of any sufficient insight, the panel could not say that there was not a risk of repetition of misconduct in the future.

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 nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that a finding of impairment on public interest grounds is required because any reasonable member of the public would be highly concerned if Ms Kerr was allowed to practise without restrictions in the future.

Having regard to all of the above, the panel concluded that Ms Kerr's fitness to practise is currently impaired.'

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

'Having found Ms Kerr's fitness to practice 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 considered the following to be aggravating features:

- *Given its findings of impairment the panel acknowledges Ms Kerr's conduct placed a vulnerable patient at an unwarranted risk of harm;*
- *General lack of insight demonstrating into Ms Kerr's failings, specifically in respect of Ms Kerr's absence from the nurses station for a prolonged period of time;*
- *Because of the lack of engagement, the panel has no evidence of strengthened practice;*
- *The panel noted that whatever the reason for her absence from the nurses' station for three hours, she clearly prioritised that over caring for her patients*

The panel considered the following to be mitigating features:

- *The serious misconduct was a discrete incident taking place in the course of one night shift.*
- *There were numerous comments from witnesses and in the bundle that Ms Kerr was considered to be a good nurse*
- *Ms Kerr had limited experience having spent the bulk of her career practising in the prison environment.*
- *The prison environment presented a number of challenges not least of which were a prevalence of poor working practices and inadequate staffing levels (which were increased following the incident)*
- *There was no provision for formal breaks during the night shift*
- *Lack of training with regard to ACCT*

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 not be proportionate to do so, such a course being a highly unusual nor would it sufficiently protect the public or maintain confidence in the profession. 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 Kerr'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 Kerr'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 not be proportionate, protect the public or maintain confidence in the profession.

The panel next considered whether placing conditions of practice on Ms Kerr's registration would be a sufficient and appropriate response. The panel

is mindful that any conditions imposed must be relevant, proportionate, measurable and workable.

The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of general incompetence;*
- *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;*
- *Conditions can be created that can be monitored and assessed.*

The panel noted the lack of insight demonstrated by Ms Kerr and her lack of engagement. On that basis, it was of the view that a conditions of practise order was not appropriate as there are no practical or workable conditions that could be formulated. Therefore, the panel could not be satisfied that this would protect the public and maintain confidence in the profession.

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 present:

- *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;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel found the seriousness of the case requires at least temporary removal from the register. The panel is conscious that Ms Kerr faced local investigations and engaged with those but was subsequently dismissed and then was subject to giving evidence at the inquest. A period of suspension would give Ms Kerr an opportunity to inform the NMC of her future plans and how she could address the failings the panel has found. The panel considered the appropriateness of a suspension order, it found this was a single incident of misconduct. The panel did not find deep seated attitudinal issues and no evidence of repetition of the behaviour.

The panel went on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. The panel had noted that Ms Kerr's conduct is remediable and therefore wanted to afford her the opportunity to engage with the process.

Kerr's conduct is remediable and therefore wanted to afford her the opportunity to engage with the process. Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Ms Kerr. However this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of six months was

appropriate in this case to mark the seriousness of the misconduct and provide Ms Kerr the opportunity to engage with the NMC process.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- *Attendance at a future hearing and engagement with the NMC;*
- *Evidence of professional development, including documentary evidence of completion of courses or other relevant training that would support Ms Kerr's return back into practice;*
- *Testimonials from current or previous line managers or supervisors, particularly if in a caring capacity;*
- *A reflective piece into the misconduct found proved by the panel'*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Kerr's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as can the registrant practice kindly, safely and professionally without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle. It has taken account of the submissions made by Mr Radley on behalf of the NMC. He submitted that Miss Kerr's fitness to practise remains impaired, as she has not engaged with the original proceedings and has provided no communication or response since 2024. This matter is a review of a substantive suspension order. Mr Radley stated that the original suspension was imposed with the expectation that future panels would be assisted by Miss Kerr's attendance and engagement with the NMC. However, there has been no engagement with the NMC since the order was made.

Mr Radley submitted that the previous panel had expected Miss Kerr to provide evidence of her professional development and training, such as records demonstrating completion of continuing professional development, as well as testimonials and professional references. However, no such documentary evidence has been submitted to the NMC for consideration by this panel. Likewise, no testimonials from supervisors or current employers have been provided, despite Miss Kerr having had opportunities to do so.

Mr Radley noted that it is Miss Kerr's responsibility to demonstrate why the suspension order should be ended. He further submitted that Miss Kerr remains subject to regulatory scrutiny as the suspension order continues in effect and has not been challenged by her.

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 Miss Kerr's fitness to practise remains impaired.

The panel noted that the original panel had found that Miss Kerr had insufficient insight and had not yet strengthened her practice. It bore in mind that there is a persuasive burden on Miss Kerr to provide evidence that she has developed her insight and strengthened her practice to address the concerns identified by the previous panel. Unfortunately, there was no new information before this panel to demonstrate any progress. In the absence of evidence of current nursing practice, there was no opportunity to assess any improvement in Miss Kerr's practice.

The panel noted that Miss Kerr has not provided the information which the last panel identified as likely to help a future reviewing panel, in terms of her engagement and the provision of a reflective piece and testimonials. In the circumstances, the panel considered that there was no evidence to show that the risk of repetition, and the associated risk of harm to patients, has been mitigated.

The panel saw nothing to undermine the conclusions reached by the previous panel that Miss Kerr's fitness to practise remains impaired. Whilst the panel considers that the concerns identified in this case remain remediable, there is no evidence that they have been remedied or addressed. The panel therefore determined that the risk of repetition remains and that Miss Kerr's fitness to practise remains impaired on public protection and public interest grounds.

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

Decision and reasons on sanction

Having found Miss Kerr'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 had regard to its previous findings on impairment in coming to this decision. It bore in mind that its primary purpose is to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator.

The panel first considered whether a caution order would be sufficient. It concluded that such an order would not adequately address the seriousness of the matter and would therefore be inappropriate in this case.

The panel then considered the option of a conditions of practice order. However, it determined that this would be neither practical nor workable given Miss Kerr's lack of engagement with the regulatory process. Although the previous panel had observed that Miss Kerr's misconduct might, in theory, have been redeemable, Miss Kerr's continued non-engagement makes this option unworkable.

Turning to suspension, the panel noted that there has been no change in Miss Kerr's circumstances. Miss Kerr has absented herself from proceedings on two occasions. The panel considered whether to allow the current suspension order to continue but determined that maintaining a suspension for someone who has failed to engage would

not be in the best interests of either the registrant or the public. The panel concluded that it is unlikely that Miss Kerr will engage in future and that permitting her registration to lapse would best satisfy both public protection and the wider public interest.

The panel considered whether a striking-off order was appropriate. It concluded that such a sanction would be disproportionate in this case as it was not the only sanction that would address public protection and public interest.

The panel concluded in consideration of all the circumstances that it was both proportionate and necessary to allow the substantive suspension order to lapse at the end of the current period of imposition, namely the end of 12 November 2025 in accordance with Article 30(1). As Miss Kerr only remains on the register for the purposes of this order she will therefore be removed from the register as of 11 November 2025. The panel is satisfied both public protection and public interest grounds are met by its findings of impairment that remain on record.

The panel expressed sympathy for the overall circumstances surrounding this case and found it regrettable that Miss Kerr had not engaged, as her misconduct was potentially remediable and she did have the opportunity to work towards a return to safe, kind and professional practice.

This will be confirmed to Miss Kerr in writing.

That concludes this determination.