

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

**Substantive Hearing  
Monday, 17 June 2024 – Thursday, 20 June 2024**

Virtual Hearing

**Name of Registrant:** **Seana Mary Kerr**

**NMC PIN** 0710143N

**Part(s) of the register:** Midwives part of the register  
RM: Midwife (17 September 2007)

**Relevant Location:** Newry, Mourne and Down

**Type of case:** Misconduct

**Panel members:** Debbie Hill (Chair, Lay member)  
Anna Ferguson (Registrant member)  
Christine Moody (Lay member)

**Legal Assessor:** Patricia Crossin

**Hearings Coordinator:** John Kennedy

**Nursing and Midwifery Council:** Represented by Teri Howell, Case Presenter

**Ms Kerr:** Not present and unrepresented

**Facts proved:** Charges 1a,1b,1c, 1d, 2a, 2b, 2c, 3a, 3b, 3c

**Fitness to practise:** Impaired

**Sanction:** **Suspension order (12 months)**

**Interim order:** **Interim suspension order (18 months)**

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Ms Kerr was not in attendance and that the Notice of Hearing letter had been sent to Ms Kerr's registered email address by secure email on 9 May 2024.

Ms Howell, 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 allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Ms 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 Ms Kerr has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

## **Decision and reasons on proceeding in the absence of Ms Kerr**

The panel next considered whether it should proceed in the absence of Ms Kerr. It had regard to Rule 21 and heard the submissions of Ms Howell who invited the panel to continue in the absence of Ms Kerr. She submitted that Ms Kerr had voluntarily absented herself.

Ms Howell submitted that there had been no engagement by Ms Kerr with the NMC in relation to this hearing 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 noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Ms Kerr. In reaching this decision, the panel has considered the submissions of Ms Howell, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Kerr;
- Ms Kerr has not engaged with the NMC since June 2022 and has not responded to any of the letters sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses have attended today to give oral evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2020;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Ms Kerr in proceeding in her absence. Although the evidence upon which the NMC relies has been sent to her at her registered address, she has made no formal responses to the allegations before the panel today. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to

give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Ms Kerr's decision to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Ms Kerr. The panel will draw no adverse inference from Ms Kerr's absence in its findings of fact.

### **Details of charge**

That you, a registered midwife:

1. On or around 14 August 2020, identified yourself as a midwife and advised a member of the public:
  - a. That she should not be wearing a face mask whilst pregnant.
  - b. That wearing a face mask whilst pregnant was reducing the amount of oxygen her baby was receiving.
  - c. That she should not receive a flu vaccination.
  - d. That if she received a flu vaccination this would increase the risk of her baby being stillborn.
  
2. Your actions at charge 1 were unprofessional in that the advice you purported to give was:
  - a. unsolicited.
  - b. given outside of a clinical relationship,

- c. contrary to the position of your employer and/or the World Health Organisation and/or mainstream medical opinion and provided with this qualification or caveat.
3. Between 27 September 2020 and 19 December 2021, identified yourself as a midwife on social and/or other media and advised the public at large:
  - a. On 27 September 2020, that babies were being attacked in the womb through vaccination of mothers during pregnancy.
  - b. On 04 March 2021, that:
    - i. Professionals who were 'complicit' in the national response to Covid-19 no longer had the 'I didn't know what I didn't know get out clause'.
    - ii. the current health crisis was a Trojan horse intend to introduce a new era for humanity.
  - c. On 19 December 2021, that 'they' had been 'planting the seeds' about Covid-19 over Christmas 2020 by referring to 'some bat in China'.

AND, in the light of the above, your fitness to practise is impaired by reason of your misconduct.

## **Background**

The charges arose whilst Ms Kerr was employed as a registered midwife by Southern Health and Social Care Trust (the Trust) in Northern Ireland.

In October 2020 concerns were raised to the Trust about alleged posts Ms Kerr made on social media in which she identified herself as a midwife and expressed views which suggested that vaccinations given to pregnant women could cause harm to unborn babies. It was further alleged she expressed negative comments about the national response to Covid-19, and suggested that healthcare professionals were complicit in this response. A Trust investigation was commenced. Subsequently in November 2020 a complaint was

received that Ms Kerr gave unsolicited advice to a pregnant woman who was working in a shop where Ms Kerr was a customer. It is alleged that Ms Kerr advised her that she should not accept the flu vaccination due to being pregnant as it had the potential to increase the risk of stillbirth. It was alleged that Ms Kerr also told the woman, who was visibly pregnant, that she should not be wearing a facemask whilst pregnant due to the risk of reduced oxygen to the unborn baby. When the woman attended the Trust for intrapartum care she disclosed to the midwife who was providing her care at that time details of the conversation with Ms Kerr. The midwife told the couple she would escalate these concerns and did do so. Subsequent to this the pregnant woman's partner made a complaint to the Trust about what he considered to be Ms Kerr's unprofessional approach.

During the investigation further allegations arose in connect with videos and posts Ms Kerr made online about Covid-19 theories and the effectiveness of vaccinations.

### **Decision and reasons on facts**

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Howell.

The panel has drawn no adverse inference from the non-attendance of Ms Kerr.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard oral evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Lead Midwife at the Trust

- Witness 2: Former Head of Midwifery and Gynaecology at the Trust and a Risk Midwife, who carried out the disciplinary investigation

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and as previously provided by Ms Kerr.

The panel then considered each of the disputed charges and made the following findings.

### **Charge 1a**

That you, a registered midwife:

1. On or around 14 August 2020, identified yourself as a midwife and advised a member of the public:
  - a. That she should not be wearing a face mask whilst pregnant.

### **This charge is found proved.**

In reaching this decision, the panel took into account the oral evidence of Witness 1 which stated that she was told by the member of the public, herein after referred to as Patient A, of a conversation that took place with Ms Kerr at some time in August 2020. On 23 November 2020 Witness 1 sent an email recounting details of this conversation to the head of midwifery and the assistant director at the Trust with stated as follows:

*'I wish to bring to your attention concerns that were raised by a patient in relation to staff Midwife Seana Kerr. [Patient A] was approximately 27 weeks pregnant working within her place of employment when Seana approached her requesting*

*her assistance, during which Seana became aware that [Patient A] was pregnant. Seana advised [Patient A] that she should not be wearing a face mask and in doing so was reducing the amount of oxygen her baby was receiving.'*

The panel considered that this comprised hearsay evidence, and took into account the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin). The panel concluded that Witness 1 was a reliable witness and that this account was consistent and substantiated by further accounts from Witness 2, and email records from the Trust investigation. Further the panel noted that in Ms Kerr's response statement provided to the Trust as part of the investigation she admitted that the conversation had happened and that she did dispute that she identified herself as a registered midwife nor that she told Patient A to not wear a facemask.

The panel considered that on the balance of probabilities it is therefore more likely than not that Ms Kerr did identify herself as a midwife and made this statement to Patient A. Therefore, this charge is found proved.

### **Charge 1b**

1. On or around 14 August 2020, identified yourself as a midwife and advised a member of the public:
  - b. That wearing a face mask whilst pregnant was reducing the amount of oxygen her baby was receiving.

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 1 and the Trust investigation documentation which both confirmed the allegation that Ms Kerr did say that wearing a facemask would reduce the amount of oxygen Patient A's unborn baby was receiving. The panel bore in mind the same points around hearsay as it had for



charge 1a. The panel considered that Ms Kerr in her response statement to the Trust where she stated that she would have said to Patient A her views on wearing a face mask and the '*risk of rebreathing Co2*' [sic]. The panel considered that this was in agreement with the evidence provided by Witness 1.

The panel therefore concluded that on the balance of probabilities it was likely that Ms Kerr, having identified herself as a midwife did make this statement. Therefore, this charge is found proved.

### **Charge 1c**

1. On or around 14 August 2020, identified yourself as a midwife and advised a member of the public:
  - c. That she should not receive a flu vaccination.

### **This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 1 along with the response statement that Ms Kerr provided as part of the Trust investigation. The panel noted that in her witness statement Witness 1 stated:

*'I was aware that Seana held, and expressed her views regarding influenza vaccines for pregnant woman and in recent year's views in relation to the covid vaccine for pregnant woman. Seana did express her anti vax opinion, which was not a secret, I was aware of posts that Seana shared on social media regarding her views.'*

The panel noted in the email dated 23 November 2020 from Witness 1 to the Head of midwifery the record of the conversation between Patient A and Witness 1:

*‘Seana then proceeded to ask [Patient A] about her intentions surrounding the flu vaccine and advised [Patient A] not to get it as it could increase her risk of still birth. At this point Seana disclosed that she is employed as a Midwife in DHH, and stated it was a sign that she should speak with her.’*

The panel noted the consistency of the information in both of the above and noted that Ms Kerr did not dispute this and noted in her response statement said she may have had this discussion.

Therefore, the panel considered that on the balance of probabilities it is more likely than not that Ms Kerr would have said this to Patient A. The panel therefore found this charge proved.

#### **Charge 1d**

1. On or around 14 August 2020, identified yourself as a midwife and advised a member of the public:
  - d. That if she received a flu vaccination this would increase the risk of her baby being stillborn.

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witness 1 who stated that Patient A was highly distressed by this statement being made to her during her first pregnancy and wanted to ensure she was doing the best for her child.

The panel noted in the email dated 23 November 2020 from Witness 1 to the Head of midwifery the record of the conversation between Patient A and Witness 1:

*‘Seana then proceeded to ask [Patient A] about her intentions surrounding the flu vaccine and advised [Patient A] not to get it as it could increase her risk of still birth.’*

The panel noted that in her response statement to the Trust Ms Kerr said:

*‘I responded to say that I could produce papers to confirm that there is an increased risk of still birth and confirmed that this may have come up in this discussion with the lady.’*

The panel therefore found on the balance of probabilities that this charge is proved.

### **Charge 2a**

2. Your actions at charge 1 were unprofessional in that the advice you purported to give was:
  - a. unsolicited.

### **This charge is found proved.**

In reaching this decision, the panel took into account the statement made by Witness 1 who recounted that Patient A was working in a shop at the time Ms Kerr approached and gave the advice. The panel accepted the evidence that Patient A was at her place of work on 14 August 2020 when Ms Kerr approached her. Ms Kerr identified herself as a midwife at this time and proceeded to provide Patient A with advice which was not requested. The panel noted that in the response provided by Ms Kerr to the Trust investigation this was not disputed by Ms Kerr.

In these circumstances the panel therefore concluded that the advice given by Ms Kerr was unsolicited. Therefore, the panel found this charge proved.

## **Charge 2b**

2. Your actions at charge 1 were unprofessional in that the advice you purported to give was:

- b. given outside of a clinical relationship,

### **This charge is found proved.**

In reaching this decision, the panel took into account its findings at charge 2a that the interaction happened between Ms Kerr and Patient A while at her place of work, not in a clinical setting. The panel noted that Patient A was under the primary care of another midwife at the Trust and had not seen Ms Kerr as part of any antenatal appointments at the time of the incident.

Therefore, the panel concluded that the advice given by Ms Kerr was outside a clinical relationship with Patient A and found this charge proved.

## **Charge 2c**

2. Your actions at charge 1 were unprofessional in that the advice you purported to give was:

- c. contrary to the position of your employer and/or the World Health Organisation and/or mainstream medical opinion and provided with this qualification or caveat.

### **This charge is found proved.**

In reaching this decision, the panel took into account that both Witness 1 and Witness 2 said in their evidence that the advice Ms Kerr gave was outwith and contrary to the Trust

policy at the time. The panel had sight of policy documents used by the Trust including the following: Royal College of Obstetricians and Gynaecologists 'Coronavirus (Covid-19) Infection in Pregnancy'; and The Royal College of Midwives 'Position Statement, Flu Vaccination'.

The panel noted that within the 'Coronavirus (Covid-19) Infection in Pregnancy policy document it stated the following:

*'Advise women that influenza vaccination is still safe at all gestations of pregnancy and is recommended to protect both the woman and baby from the adverse effects of becoming seriously ill with flu during pregnancy'*

And:

*'Staff members should ensure adequate personal protective equipment (PPE) is used for in-person visits.*

...

*All women and any accompanying visitors (where permitted) should be advised to wear face masks or face coverings in line with guidance from national authorities'.*

In relation to the point on facemasks the panel noted that while the full policy provided was version 14, published in October 2020 at page 60 it refers to the national guidance of Public Health England (PHE) and World Health Organisation (WHO).

*'COVID-19 infection and control guidance issued by PHE, on behalf of the four nations of the UK, gives advice about avoiding disease transmission.<sup>46</sup>*

*WHO has produced guidance on clinical management of COVID-19.<sup>75</sup>*

The panel examined the endnote references which provided links to the PHE guidance published on 10 January 2020 (and updated regularly throughout the pandemic) where the stated policy on facemasks was:

***'23 July 2020***

*Added recommendations for the use of face masks in primary care.'*

The second endnote reference was to the WHO document 'Clinical Management of COVID-19' first published on 27 May 2020 and accessed on 11 July 2020.

The panel considered both of these documents referenced together with the policy documents in full and concluded that given the state of mainstream medical opinion, the Trust's policies, and WHO guidance at the time of the incident in August 2020 this charge can be found proved.

The panel found that Ms Kerr's actions were unprofessional in her having a conversation with Patient A in these circumstances.

### **Charge 3a**

3. Between 27 September 2020 and 19 December 2021, identified yourself as a midwife on social and/or other media and advised the public at large:
  - a. On 27 September 2020, that babies were being attacked in the womb through vaccination of mothers during pregnancy.

**This charge is found proved.**

In reaching this decision, the panel took into account the transcription provided as part of the Trust investigation of Ms Kerr's social media posts. The panel noted that it has not seen a screenshot of these posts, nor the video records made by Ms Kerr. The panel

noted that Witness 2 stated in oral evidence that the transcripts were produced by the Trust's Human Resources Department. Ms Kerr had sight of the transcripts during the Trust investigation and also in the papers for this hearing and did not object to their content. The panel therefore considered it reasonable to accept the transcripts as a true and accurate reflection of the contents.

The panel noted that the transcript of a Facebook post by 'Seana Kerr' dated 27 September 2020 stated:

*'I am not proud that babies are still being attacked in the womb through vaccination of mothers during pregnancy and I am not proud that when babies die in the womb that the coroner in this country is not asking the question was this mother vaccinated.'*

The panel noted that in her respondent statement to the Trust Ms Kerr stated:

*'I advised that the video was not posted by me but I may have shared it to my page. I also advised the panel that, while my permission was not sought for the filming, I had no issue with it being posted. I confirmed that I did post some personal beliefs, which I am entitled to do. I advised that I did state that I was proud to be a human being, a woman, a mother and a Midwife...'*

Therefore, taking all of this evidence into account the panel found this charge proved.

### **Charge 3b**

3. Between 27 September 2020 and 19 December 2021, identified yourself as a midwife on social and/or other media and advised the public at large:

b. On 04 March 2021, that:

- i. Professionals who were 'complicit' in the national response to Covid-19 no longer had the 'I didn't know what I didn't know get out clause'.
- ii. the current health crisis was a Trojan horse intend to introduce a new era for humanity.

**This charge is found proved.**

In reaching this decision, the panel took into account it's previous considerations at charge 3a in regard to the transcripts provided. The panel noted the transcript of a video made on 8 March 2021 of a video posted on Facebook on 4 March 2020 which stated:

*'My name is Seana Mary Kerr.' ...*

*'I qualified as a midwife in 2007 ... I have worked in southern trust throughout my career.' ...*

*'I say also to those who have been implicit [sic] at this time, while they may previously have had the I didn't know what I didn't know get our clause, well now you don't because now you know. I have now created an awareness at any and every level possible, and awareness is the cure. I wish it to be known that there are many more like me. Those that are willing to do what is right for freedom. They understand that this and I quote "current health crisis" is a trogan [sic] horse, to introduce a new era for humanity.'*

Therefore, taking all of this evidence into account the panel found this charge proved in its entirety.

**Charge 3c**

3. Between 27 September 2020 and 19 December 2021, identified yourself as a midwife on social and/or other media and advised the public at large:



C. On 19 December 2021, that 'they' had been 'planting the seeds' about Covid-19 over Christmas 2020 by referring to 'some bat in China'.

**This charge is found proved.**

In reaching this decision, the panel took into account its previous considerations at charge 3a in regard to the transcripts provided. The panel noted the transcript provided by Witness 2 as part of the investigation titled '*Health & Truth Video You Tube Has Medicalisation gone too far?*' which stated:

*'My name is SK' [Seana Kerr] ...*

**'Recounting issues with the way Maternity services are being run at the start of the pandemic.'**

*Then the word came through all the caesarean sections are coming. Don't turn a maternity service on its head I said. Why are they doing this? Have I missed something? So the last thing I heard was that some bat in China, I hadn't drawn the dots- right we all heard about it that x mas they were just planting the seeds that's where it came from the Bat.'*

The panel noted that Ms Kerr referred to herself as a midwife throughout her comments and in the captions on the video.

Therefore, taking all of this evidence into account the panel found this charge proved.

**Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Ms Kerr's fitness to practise is currently impaired. There is no statutory definition of fitness to

practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Ms Kerr's fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct**

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Howell invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) in making its decision.

Ms Howell identified the specific, relevant standards where Ms Kerr's actions amounted to misconduct. Ms Howell made particular reference to sections 6.1, 18.1, 19.3, 19.4, 20.3, 20.5, 20.7, 20.8, and 20.10 of the Code as being areas where Ms Kerr's actions in all charges amount to misconduct.

Ms Howell submitted that while all the charges found proved happened while Ms Kerr was outside of work they are actions closely linked to professional practice that should be considered as amounting to misconduct. She submitted that Ms Kerr has identified herself as a midwife on all the occasions and was giving advice that was of a clinical nature therefore the facts found proved are inherently connected to Ms Kerr's professional practice.

Ms Howell therefore invited the panel to find that Ms Kerr's actions did amount to misconduct.

### **Submissions on impairment**

Ms Howell moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Adil v GMC* [2023] EWHC 797 (Admin).

Ms Howell submitted that Ms Kerr's actions had the potential to cause serious harm and distress to Patient A, Patient A's family, and to Ms Kerr's colleagues. She submitted that by providing unsolicited medical advice that was contrary to the recognised guidelines and mainstream medical consensus Ms Kerr caused significant harm to Patient A and her family. Ms Howell directed the panel to the documentation before it and submitted that as a result of Ms Kerr's comments Patient A was exceptionally concerned about how to do the best for her unborn baby. Patient A experienced increased anxiety which continued after the encounter with Ms Kerr and was still apparent when Patient A attended for intrapartum care.

Ms Howell submitted that there is a likelihood that Ms Kerr's comments implicating other medical professionals in causing harm would have caused harm and distress to her colleagues and have undermined the national response to the Covid-19 pandemic.

Ms Howell submitted that there has been no evidence of any reflection or insight into the incidents by Ms Kerr nor is there any remediation or further training. She submitted that this increases the risk of repetition in the future, and that since Ms Kerr has repeated the actions on multiple occasions previously there is further risk of repetition.

Ms Howell submitted that all the actions of Ms Kerr, that the panel have found proved, are a breach of the fundamental tenets of safe midwifery practice. She noted with reference to the case of *Adil v GMC* that while Ms Kerr does have a right to freedom of expression under Article 10 of the Human Rights Act (1998), but this is not an exhaustive right and the context and way that Ms Kerr expressed her views go beyond the protections granted. She submitted that there is a need for registered midwives to use a high degree of caution in expressing views related to clinical professionalism.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *General Medical Council v Meadow* [2007] QB 462 (Admin), *Mallon v General Medical Council* [2007] CSIH 17, *Cohen v General Medical Council* [2008] EWHC 581 (Admin), and of *CHRE v NMC and Grant*.

### **Decision and reasons on misconduct**

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Ms Kerr's actions did fall significantly short of the standards expected of a registered midwife, and that Ms Kerr's actions amounted to a breach of the Code. Specifically:

***'6 Always practise in line with the best available evidence***

***To achieve this, you must:***

*6.1 make sure that any information or advice given is evidence-based including information relating to using any health and care products or services.*

***18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations***

***To achieve this, you must:***

*18.1 prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs.*

***19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice***

***To achieve this, you must:***

*19.3 keep to and promote recommended practice in relation to controlling and preventing infection.*

*19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public.*

***20 Uphold the reputation of your profession at all times***

***To achieve this, you must:***

*20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people.*

*20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress.*

*20.7 make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way.*

*20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to.*

*20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times.'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that due to the serious nature of the breaches and the repetition by Ms Kerr of her actions in relation to social media, particularly after the Trust's investigation, that her actions do amount to misconduct.

The panel noted that midwives do have a role in supporting informed choice and providing additional information when pregnant women and people choose to make decisions outside of guidance. Any such dialogue should take place within a clinical relationship, and with the input of other health professionals where indicated. It should be fully documented, and evidence based. Ms Kerr engaged on social media platforms at the time of a global pandemic and it does not consider that her participation in these postings and the provision of unsolicited advice in public meets those standards.

The panel found that Ms Kerr's actions did fall seriously short of the conduct and standards expected of a midwife and amounted to misconduct.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, 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.'*

Midwives 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 midwives with their lives and the lives of their loved ones. To justify that trust 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 Patient A and their family were put at risk and were caused significant emotional harm as a result of Ms Kerr’s misconduct.

The panel noted that it is a reasonable expectation of everyone working in a public environment, such as a shop, that they will not be approached and given personal, clinical advice and that such advice would normally only be given during a private clinical appointment or at an antenatal class. Therefore, by approaching Patient A in her place of work, outside a clinical relationship, unsolicited, Ms Kerr placed her at significant risk of harm. It noted that at that time Patient A had no easy means to avoid the conversation, being at her place of work. Additionally she was pregnant and the panel considered that this made Patient A more vulnerable, especially given the Covid-19 pandemic.

Ms Kerr’s misconduct had breached the fundamental tenets of the midwifery profession and therefore brought its reputation into disrepute.



Regarding insight, the panel considered that Ms Kerr has demonstrated no insight at all. The panel considered that by making repeated comments online after the concerns were raised to Ms Kerr by the Trust, she has shown a disregard for the Trust's disciplinary process and a total absence of insight or remediation.

The panel was satisfied that the misconduct in this case is capable of being addressed. However, the panel had no information before it that Ms Kerr has taken any steps to reflect on her conduct or shown any insight or to strengthen her practice.

Therefore, in light of the above, the panel is of the view that there is a risk of repetition. 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 acknowledges Ms Kerr's right to freedom of expression as enshrined in Article 10 of the European Convention of Human Rights. However, Ms Kerr's advice and social media comments were given when she identified herself as a midwife, promoting her opinion on matters of clinical importance. Ms Kerr's actions therefore engaged her professional responsibilities as a registered midwife.

The panel considered that the actions of Ms Kerr took place during an exceptionally unusual time, where the entirety of the NHS was mobilised to protect the public from the international Covid-19 pandemic. Therefore, by expressing the view that other healthcare professionals, who Ms Kerr was working with in the Trust, were acting in ways which may cause harm, a view Ms Kerr held which was against the recognised guidance at the time, Ms Kerr risked seriously undermining the public confidence in the profession. It further

noted that by making these accusations that Ms Kerr's colleagues may have suffered harm while working in an unprecedented and challenging situation.

The panel concluded that in light of the above a finding of impairment on public interest grounds is required.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Ms Kerr's fitness to practise impaired on the grounds of public interest.

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

### **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that Ms Kerr's registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

### **Submissions on sanction**

Ms Howell informed the panel that in the Notice of Hearing, dated 9 May 2024, the NMC had advised Ms Kerr that it would seek the imposition of a suspension order for 12 months if it was found that Ms Kerr's fitness to practise currently impaired. She submitted that this remains the appropriate sanction given the seriousness of the facts found proved, and the lack of engagement or insight by Ms Kerr.

Ms Howell submitted that the panel may wish to consider the following aggravating factors:

- Impact on other healthcare professionals during the Covid-19 pandemic
- The vulnerable position Patient A was in
- Failure of Ms Kerr to either engage with or attend this hearing

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

Having found Ms Kerr'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 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:

- That Patient A was pregnant with their first child during the Covid-19 pandemic and therefore in an extremely vulnerable position
- Failure of Ms Kerr to engage fully with this hearing
- Ms Kerr has not shown any insight, remorse, nor reflected upon, or made any attempts to remediate her misconduct
- Conduct that placed patients at risk of harm, and particularly conduct towards Patient A which caused significant distress during her pregnancy and continued until she attended for intrapartum care
- Expressing views on social media that were against clinical advice during a national health crisis
- Impact of Ms Kerr's conduct on other healthcare professionals during the Covid-19 pandemic

The panel took into account the following mitigating features:

- There were a number of undated good character references and the panel noted that Ms Kerr had previously received an award for her practice

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 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 be neither proportionate nor in the public interest to impose a caution order.

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 proportionate, measurable and workable. The panel took into account the SG, in particular:

- *Conditions can be created that can be monitored and assessed.*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case and that this misconduct took place outside of working hours. The misconduct identified in this case was not something that can be easily addressed through retraining. The panel further noted that Ms Kerr's

lack of engagement since mid-2022 and non-attendance made the formulation of workable conditions impossible as it had no information on her current employment.

Furthermore, the panel concluded that the placing of conditions on Ms Kerr's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel was satisfied that in this case the seriousness of the misconduct found proved requires temporary removal from the register and a period of suspension would be sufficient to protect patients, uphold public confidence in midwives, and professional standards, and mark the public interest. The panel noted its findings in relation to Patient A involved one single patient and Ms Kerr's social media postings were repeated over a period of time. The panel concluded that a period of suspension would allow Ms Kerr to address its findings in relation to her misconduct.

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

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Ms Kerr's case to impose a striking-off order.

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 midwife.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct.

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:

- Evidence of reflection using a recognised reflective model, with particular emphasis on the impact of Ms Kerr's misconduct on patients, her colleagues, and the public
- Updated, signed and dated character references
- An update on employment status voluntary or otherwise
- Evidence of keeping clinical skills up to date or training courses attended
- Engagement with the NMC and attending future review

This will be confirmed to Ms Kerr in writing.

### **Interim order**

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Ms Kerr's own interests until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Ms Howell. She submitted that an interim order is necessary for 18 months to cover any potential appeal against the substantive suspension order.

Ms Howell submitted that Ms Kerr is currently subject to an interim conditions of practice order and has been since 22 March 2022. She submitted that to cover any potential period of appeal and provide for the public protection this interim conditions of practice order should be adopted and imposed by this panel for a period of 18 months.

The panel questioned whether Ms Kerr had previously engaged with the last interim order review panel in January 2024 and Ms Howell responded that Ms Kerr has not engaged since September 2022.

### **Decision and reasons on interim order**

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel considered the submissions by Ms Howell but concluded that it is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case and that this misconduct took place outside of working hours. The misconduct identified in this case is not something that can be easily addressed through retraining. Further interim conditions of practice would not adequately address the risks identified. The panel further noted that Ms Kerr's lack of engagement since mid-2022 and non-attendance made the formulation of workable conditions impossible as it had no information on her current employment. Therefore, the panel

concluded that an interim conditions of practice order would not be appropriate or proportionate in this case.

The panel therefore imposed an interim suspension order for a period of 18 months to provide for the public protection during any possible appeal period.

If no appeal is made, then the interim suspension order will be replaced by the substantive suspension order 28 days after Ms Kerr is sent the decision of this hearing in writing.

That concludes this determination.