

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

**Substantive Order Review Hearing
Tuesday, 15 July 2025**

Virtual Hearing

Name of Registrant:	Benjamin John Appleton
NMC PIN	20D1647E
Part(s) of the register:	Registered Nursing Associate All NAR – September 2020
Relevant Location:	Worcestershire County
Type of case:	Misconduct
Panel members:	Catherine Devonport (Chair, registrant member) Sophie Agolini (Registrant member) Kevin Connolly (Lay member)
Legal Assessor:	Richard Ferry-Swainson
Hearings Coordinator:	Ibe Amogbe
Nursing and Midwifery Council:	Represented by Alex James Granville, Case Presenter
Mr Appleton:	Not present and unrepresented at this hearing
Order being reviewed:	Suspension order (12 months)
Fitness to practise:	Impaired
Outcome:	Suspension order (6 months) to come into effect on 28 August 2025 in accordance with Article 30 (1)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Appleton was not in attendance and that the Notice of Hearing had been sent to Mr Appleton's registered email address by secure email on 13 June 2025.

Mr Granville, on behalf of the Nursing and Midwifery Council (NMC), also referred the panel to recent correspondence between Mr Appleton and the NMC on 10 June 2025, in which Mr Appleton confirmed that he is aware of today's hearing and is unable to attend.

Mr Granville 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 Mr Appleton's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Appleton 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 Mr Appleton

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

Mr Granville referred the panel to the recent documentation from Mr Appleton, in relation to this hearing, which states the following:

"I'm out of the country for next three weeks, but have agreed that the hearing should take place in my absence as I feel there is nothing further I could add."

The panel accepted the advice of the legal assessor.

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

- No application for an adjournment has been made by Mr Appleton;
- Mr Appleton has informed the NMC that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence;
- Mr Appleton provided written reflections for the panel to consider today, which states that he has nothing further to add;
- There is a strong public interest in the expeditious review of the case; and
- It is in Mr Appleton's interest that the order restricting his practise be reviewed.

In these circumstances, the panel has decided that Mr Appleton has voluntarily absented himself from the hearing and thereby waived his rights to be present. The panel thus determined that it is fair to proceed in the absence of Mr Appleton.

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr Granville, on behalf of the NMC, made a request that this case be held partly in private on the basis that proper exploration of Mr Appleton's case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the Rules.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to [PRIVATE], the panel determined to go into private session as and when issues concerning [PRIVATE] are raised in order to protect his privacy.

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order.

This order will come into effect at the end of 28 August 2025 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of the substantive suspension order of 12 months. The original Fitness to Practise Committee panel initially imposed a conditions of practice order on 9 November 2023. However, this was appealed by the Professional Standards Authority (PSA). Following the appeal, the High Court ruled to change the order to a suspension order, which has been in place since 29 August 2024.

The current order is due to expire at the end of 28 August 2025.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

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

'That you, a registered nursing associate:

- 1) Between 14 August 2020 and 31 December 2021 breached professional boundaries in that you:*

- a) *Sent messages to and exchanged messages with Patient A without clinical reason.*
 - b) *Sent photographs to and exchanged photographs with Patient A which were inappropriate.*
- 2) *Your intentions were sexual in that you expressed your desire to have sexual relations with Patient A.*

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

The original panel determined the following with regard to impairment:

'The panel finds that you put Patient A put at a potential risk of harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that you made admissions at the outset of the hearing and have cooperated with the internal as well as the NMC investigation. Your cooperation included providing the messages to your employer. It acknowledged that you were open about your personal circumstances at the time and how they affected your behaviour. However, the panel noted that it did not have any records of your subsequent reflective discussions with your manager before it. Your statement, dated 1 November 2023, was more of an account of the incident rather than a reflection. In the it you state 'I deny that the patient was a vulnerable patient at the time'. You have shown general insight into why breaching professional boundaries is misconduct, what you did was wrong and how this impacted negatively on the reputation of the nursing profession. However, you were not able to give adequate insight into the risks to and possible impact on Patient A, their family or yourself. The panel noted that you did not have any training on professional boundaries before the incident with Patient A, however, in your evidence you described a similar situation,

predating your misconduct, with another patient where you set clear professional boundaries. The panel was of the view that you were not able to fully explain why you acted differently then and what the factors were that led to you breaching professional boundaries with Patient A. It therefore determined that you have shown developing insight.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel have taken your willingness to strengthen your practise into account. It noted that you have undertaken further professional development and have been meeting regularly with your supervisor. However, the panel had not had any documentation in relation to these meetings. The panel took note of the excellent references from relatives of patients you looked after and noted that they attested to your very friendly nature. However, the panel concluded that it had no evidence before it to demonstrate that you understand how to keep the line between work and your private life clear and how you would act if you were attracted to another patient. The panel was therefore of the view that you have not yet demonstrated that you have strengthened your practice.

Therefore, 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 determined that a finding of impairment on public interest grounds is also required to promote and maintain public confidence in the

nursing and midwifery professions and uphold proper professional standards. A reasonable and informed member of the public, in the panel's judgement, would be shocked if a finding were not made in circumstances where a nursing associate had sent a recent patient messages and photographs which were inappropriate and where your intentions were sexual and that you expressed your desire to have sexual relations with that patient.

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 your fitness to practise impaired on the grounds of public interest.

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

On appeal, the High Court determined the following with regard to sanction:

'Appeal

The PSA filed a Notice of appeal on 12 January 2024. .

In brief the grounds advanced were:-

- The Decision was wrong and/or unjust because of a serious procedural irregularity in that the Committee failed to consider the full gravamen of the misconduct and/or whether the misconduct revealed a deep-seated attitudinal problem.*
- The Decision was wrong and/or unjust because of a serious procedural irregularity in that the Committee failed to properly identify the aggravating and mitigating factors arising in the case.*
- The conditions of practice order was insufficient for the protection of the public. Nothing short of a period of suspension with review would*

have been sufficient to mark the seriousness of the misconduct and maintain public confidence in the profession as well as proper professional standards and conduct for members of the profession.

The PSA sought an order to quash the decision of the Committee as to sanction, and a. Substitute a period of suspension with review; or alternatively remit the matter to the Committee for a redetermination on sanction with such directions as the Court sees fit and for costs.

Disposal

The parties agreed that the sanction determination (COPD) should be quashed and substituted with an order that the Registrant is suspended from the Register for a period of 12 months to be reviewed before expiry.

Consent order

A signed consent order was submitted to the Court in July 2024 and the sealed order was received 29 August 2024.'

Decision and reasons on current impairment

The panel has considered carefully whether Mr Appleton'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 ability to practice kindly, safely and professionally. 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 judgment as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle and Mr Appleton's written representations. It has taken account of the submissions made by Mr Granville on behalf of the NMC.

Mr Granville began by providing a background to the case. He informed the panel that the NMC was neutral and leaves the outcome to the panel.

Mr Granville referred the panel to the recent reflection provided by Mr Appleton. He noted that Mr Appleton has demonstrated remorse and reflection, having accepted responsibility for his conduct and recognising the potential harm to patients.

Mr Granville also noted that Mr Appleton expressed frustration with the progression of the case, particularly regarding the transition from conditions of practice to suspension, following the High Court appeal.

Mr Granville highlighted the personal impact this process has had on Mr Appleton, including [PRIVATE]. Mr Appleton has stated that he resigned from his previous role before any internal proceedings could occur, and has since begun a new life and career outside the nursing profession.

In relation to sanction, Mr Granville submitted that the current order should remain in place to ensure ongoing oversight, particularly if the registrant chooses to re-engage with the NMC and return to practice.

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 Mr Appleton's fitness to practise remains impaired.

The panel had sight of Mr Appleton's recent reflective statement. While it acknowledges that although there may be some developing insight, it is at an early stage and remains limited. The panel concluded that there was insufficient reflection on the potential or actual impact of Mr Appleton's actions on the patient involved, the nursing profession as a whole, or the wider public. The panel was concerned that the reflection presented focused more on the consequences for himself, rather than on understanding the gravity of the misconduct or the impact on those who may have been affected.

In its consideration of whether Mr Appleton has taken steps to strengthen his practice, the panel found no effective evidence since the original hearing that Mr Appleton has taken steps to strengthen his practice since the imposition of the original order. The panel had not been provided with any evidence of remediation such as continued professional development (CPD), relevant training, or testimonials from work. While the panel noted that there was no evidence of non-compliance with the previously imposed conditions of practice, this alone does not demonstrate remediation.

Given the lack of meaningful insight and the absence of remediation, the panel concluded that there remains a risk of repetition. The panel was also concerned that the most recent reflection provided, suggests the presence of an emerging attitudinal issue, in that Mr Appleton appears to be developing insight, but in a direction that focuses on the personal effects of the fitness to practise process rather than understanding the impact of his actions on others arising from the charges found proved.

The panel considered that Mr Appleton's actions previously breached fundamental tenets of the profession, that of maintaining professional standards and putting the welfare of the patient first and that he is still liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required. This is because a member of the public in full possession of the facts and the progression of this case, would be troubled if a registered nursing associate were allowed to practise without restriction at a time when they continued to present a risk of harm to patients.

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

Decision and reasons on sanction

Having found Mr Appleton'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 not be appropriate since it would not protect the public from the risks it had identified.

It then considered the imposition of a caution order but again determined that, due to the ongoing risk of harm and the public protection issues identified, an order that does not restrict Mr Appleton'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 Mr Appleton'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 a conditions of practice on Mr Appleton's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. Given Mr Appleton's lack of insight and remediation, the panel concluded that such an order would not adequately protect the public or uphold the public interest. While Mr Appleton has expressed a desire to retain his PIN and return to practice in future, he is currently working in another industry and has shown no indication of willingness to engage with conditions. The panel therefore determined that a conditions of practice order would not be workable or sufficient, at this time.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. The panel decided to impose a suspension order for the period of 6 months to provide Mr Appleton a

further opportunity and sufficient time within which to reflect and to demonstrate insight by fully reflecting on the impact of his behaviour on the patient concerned, the wider public, the profession and the NMC as regulator. It would also allow Mr Appleton time to demonstrate remedial steps that he has taken to prevent a recurrence of his misconduct. The panel considered this to be the most appropriate and proportionate sanction available.

The panel considered whether a striking off order might be appropriate but decided that such a sanction would be disproportionate at this time.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 28 August 2025 in accordance with Article 30(1).

Before 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 of Mr Appleton at the next review hearing
- Evidence of meaningful insight (as referred to above) in reflective accounts using a framework such as a Gibbs cycle reflective framework
- Evidence of any strengthening of practice in light of the misconduct found in this case
- Testimonials from current employer (within or outside healthcare)

This will be confirmed to Mr Appleton in writing.

That concludes this determination.