

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

**Substantive Order Review Hearing
Tuesday, 9 September 2025 & Friday, 10 October 2025**

Virtual Hearing

Name of Registrant:	Brandon Ernest
NMC PIN:	06I0883E
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nursing – 12 September 2007
Relevant Location:	England
Type of case:	Misconduct
Panel members:	John Kelly (Chair, lay member) Tiago Horta Reis Da Silva (Registrant member) Jayanti Durai (Lay member)
Legal Assessor:	Emma Boothroyd (9 September 2025) Gillian Hawken (10 October 2025)
Hearings Coordinator:	Priyam Jain
Nursing and Midwifery Council:	Represented by Giedrius Kabasinskas, Case Presenter
Mr Ernest:	Present and represented by Roy Donnelly
Order being reviewed:	Suspension order (4 months)
Fitness to practise:	Impaired
Outcome:	Conditions of Practice Order (12 months) to come into effect on 16 October 2025 in accordance with Article 30 (1)

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a conditions of practice order.

This order will come into effect at the end of 16 October 2025 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of four months by a Fitness to Practise Committee panel on 16 May 2025.

The current order is due to expire at the end of 16 October 2025.

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

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

'That you, a registered nurse:

- 1) *Between 27 August 2022 and 13 September 2022 breached professional boundaries with Service User A in that you:*
 - a. *During a discharge visit, made inappropriate comments to Service User A;*
 - i. *Asked about their sexual relationships, or words to that effect.*
 - ii. *Said that they should go and look for a relationship, or words to that effect.*
 - iii. *Said that sleeping naked was good and relaxing, or words to that effect.*

- b. *Made a telephone call to Service User A after they had been discharged from the care of the North Wiltshire Intensive Service, without clinical justification for doing so.*
 - c. *Told Service User A you wanted to come and visit them [PRIVATE], without clinical justification for doing so.*
 - 2) *On 12 September 2022 accessed Service User A's medical records via the RIO case management system on one or more of the following occasions without clinical justification:*
 - a. *17.09hrs*
 - b. *17.10hrs*

3) ...

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 Witness 1/Service User A was put at risk and was caused emotional 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. The panel also considered its findings in relation to the Equality Act 2010 as outlined in the misconduct findings.

The panel considered whether there is a risk of repetition and whether you are liable to repeat the conduct found proved in the future.

In consideration of the risk of repetition, the panel took into account your written reflection and your evidence of any remediation. You provided two reflective

statements, evidence of training and CPD certificates. The training and certificates are relevant to the charges found proved.

The panel took into account that you have 15 years of otherwise unblemished practise and numerous positive testimonials including from four registered mental health nurses. The panel also acknowledged that you have been subject to a lengthy and serious fitness to practise process and have closely engaged with the NMC proceedings.

However, in considering the serious nature of the concern, the breaches of the Equalities Act, the power imbalance between you and Witness 1/Service User A, the panel was of the view that stronger insight and in-depth reflection is necessary in order to remediate the harm caused and reduce the risk of repetition in the future.

The panel noted that you have not provided a sufficient explanation as to why you contacted Witness 1/Service User A via telephone. You have not demonstrated that you sufficiently understand the severity of this contact, or the accessing of confidential medical records without justification. The panel determined that your reflective statements lacked detail and were therefore more generic in nature.

The panel acknowledged that you provided two reflective statements and that you have demonstrated that you have started the process of developing insight, but at this time it is insufficient.

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.

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 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.'

The original panel determined the following with regard to sanction:

'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, an order that does not restrict your 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 your 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to retraining;*

- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel acknowledged that you are currently on an interim conditions of practice order and that there are conditions that can be formulated. However, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case. It also took into account that you have started developing some insight but was not satisfied that this insight was sufficient to reduce the risk of repetition and therefore meet the public interest and public protection in this case.

The panel did acknowledge that, other than these incidents, you have had an unblemished career of 15 years as a nurse and took into account that you have attended these proceedings and engaged with the NMC.

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

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

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, and of the mitigation provided, 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 your 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 you. 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.

In making this decision, the panel carefully considered the submissions of Mr Earnshaw in relation to the sanction that the NMC was seeking in this case. However, the panel considered that a striking off order would be unduly punitive in this case as, although serious, it was not fundamentally incompatible with remaining on the register.

The panel determined that a suspension order for a period of four 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 developed and strengthened insight*
- More detailed and specific reflective statement addressing the concerns*
- Up-to-date testimonials'*

Decision and reasons on current impairment

The panel has considered carefully whether your 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 practise kindly, safely and professionally. In considering this case, the panel carried out a comprehensive review of the order in light of the current circumstances. Whilst it noted the decision of the last panel, this panel exercised its own judgement as to current impairment.

The panel had regard to all the documentation before it, including the NMC bundle and your bundle. It has taken account of the submissions made by Mr Kabasinskas on behalf of the NMC and Mr Donnelly on your behalf. The panel also had the opportunity to hear live evidence from Witness 1 on affirmation. You also gave evidence on affirmation.

Mr Kabasinskas took the panel through the brief background of the case. He referred the panel to the previous panel's recommendations on insight and submitted that insight is only one factor and even though you might have developed complete insight, it does not imply you can practise safely, kindly and professionally. Mr Kabasinskas next acknowledged that you have been active in addressing your misconduct by taking relevant training and a mentorship scheme.

Mr Kabasinskas invited the panel to consider that a risk of repetition remains if it finds your insight to be insufficient. He submitted that given the seriousness of the case and harm caused by your actions to the wider public, there remains a risk of repetition. He invited the panel to consider your fitness to practise is currently impaired on both public protection and public interest grounds. Mr Kabasinskas submitted that if the panel finds impairment, the NMC would invite the panel to maintain the current suspension order. He further submitted that if the panel finds that the risk identified in this case has been addressed or has reduced, then a conditions of practice order could be formulated with specific conditions tailored to the misconduct found.

Mr Donnelly, on your behalf invited the panel to consider your current impairment and risk as of today and not based on any previous instances. Mr Donnelly took the panel through all the relevant documentation, including the NMC bundle, your bundle, your mentor's live evidence and your live evidence. He said that the public interest was met by the current suspension order. He added that the public protection in this case was also met by your

developed insight, trainings and relevant courses undertaken to strengthen your practice and positive testimonials.

Mr Donnelly submitted that you have engaged with your learning and that your mentoring sessions with Witness 1 have helped you reflect on your failings and gain a deeper insight into your actions. He also submitted that you have an unblemished professional record of 15 years and acknowledge your shortcomings and demonstrated substantial insight and remorse. He said that there are no deep-seated attitudinal aspects to your conduct and that there remains a very low risk of repetition and risk to patients. Mr Donnelly invited the panel to consider that your fitness to practise is not currently impaired and that the current suspension order be allowed to expire. He also submitted that if the panel finds your practice to be impaired, then a conditions of practice order could be imposed which is not restrictive and is workable, practical and measurable.

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 noted that your insight has significantly improved and that you have taken steps to remediate the concerns. The panel determined that you have engaged with the NMC as a regulator, complied with some of the key recommendations of the previous panel and have shown positive growth and therefore demonstrated significantly improved insight.

The panel found that you have been able to articulate the impact of your actions on patients, the wider public and the nursing profession and that your level of insight into your actions has improved. The panel further determined that whilst it was voluntary with no written record of your mentoring with Witness 1, the process and your reflections seem to have helped you understand the impact of your conduct.

In considering your steps to strengthen your practice, the panel took into account your reflective piece, your evidence and the training you have undertaken. The panel noted the significant improvement in your insight. Because of the suspension order imposed, you

have not been able to work as a nurse and the panel accepted your evidence and submissions on your behalf that this also prevented you obtaining relevant employment. Consequently, the panel considered your reflection currently incomplete on the basis that you have not been able to demonstrate how you will apply your learning in a clinical workplace and thereby demonstrate strengthened practice. There remains a residual risk to the public and that there is a need to protect the public and patients from a risk of repetition.

In all circumstances, the panel considered that, notwithstanding your period of positive growth, remorse, training/mentoring undertaken and significantly improved insight, you are still on the journey of returning to safe practice.

The panel therefore concluded that your fitness to practise remains impaired on public protection grounds.

The panel bore 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 noted that the original panel determined that there is a public interest issue in this case given the seriousness of the misconduct. This panel acknowledged the findings of the original panel but determined that, in this case, a finding of continuing impairment on public interest grounds is not required.

For these reasons, the panel finds that your fitness to practise remains impaired on public protection grounds alone.

Decision and reasons on sanction

Having found your 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 also took into account the 'NMC's Sanctions Guidance' (SG) and bore in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the ongoing public protection issues.

It then considered the imposition of a caution order but again determined that due to the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances.

The panel considered imposing a conditions of practice order. Despite the seriousness of your misconduct, there is evidence to show that you have significantly improved your insight, demonstrated remorse and evidenced some steps taken to strengthen your practice. The panel also considered the evidence of Witness 1 and your evidence, that you are willing to comply with conditions.

The panel was satisfied that it will be possible to formulate practicable, measurable and workable conditions that, if complied with, may lead to your unrestricted return to practice and would serve to protect the public.

The panel determined that extending the suspension order would be disproportionate at this time, given your positive growth and improved insight.

The panel decided that the public would be suitably protected by the implementation of the following conditions of practice:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.

2. You must keep the NMC informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
3. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity
4. You must tell your case officer, within seven days of your becoming aware of:
 - a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.
5. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
 - a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions
6. You must send the NMC a report seven days in advance of the next NMC hearing or meeting from either:
 - a) Your line manager;
 - b) Your mentor or supervisor.
7. You must ensure that you are supervised any time you are working. Your supervision must consist of:

- a) Working at all times while being indirectly supervised by a registered nurse of band 6 or above who is available through telephone or other means. You must follow their advice and recommendations.
8. You must work with your line manager/supervisor to create a personal development plan (PDP). Your PDP must address the concerns about maintaining professional boundaries and effective communication when dealing with people. You must:
- a) Send your case officer a copy of your PDP one month before your next review hearing.
9. You must engage with your line manager on a monthly basis to ensure that you are making progress towards aims set in your personal development plan (PDP), which include:
- a) Discussing maintaining professional boundaries and effective communication in line with best practice.

The panel considered that the conditions will assist your return to unrestricted practice whilst protecting the public.

The period of this order is for 12 months.

This conditions of practice order will take effect upon the expiry of the current suspension order, namely the end of 16 October 2025 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

This will be confirmed to you in writing.

That concludes this determination.