

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

**Substantive Meeting  
Friday, 6 September 2024**

Virtual Meeting

**Name of Registrant:** **Ebob Marie Apana Agey**

**NMC PIN** 11H0628E

**Part(s) of the register:** Nurses part of the register Sub part 1 RNMH:  
Mental health nurse, level 1 (17 April 2012)

**Relevant Location:** Cheshire

**Type of case:** Conviction

**Panel members:** Rachel Forster (Chair, Lay member)  
Vanessa Bailey (Registrant member)  
Seamus Magee (Lay member)

**Legal Assessor:** Cyrus Katrak

**Hearings Coordinator:** Eleanor Wills

**Facts proved:** Charges 1a, 1b

**Fitness to practise:** Impaired

**Sanction:** **Striking-off order**

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

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

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mrs Apana Agey's registered email address by secure email on 1 August 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and the fact that this meeting was to be heard virtually.

In the light of all of the information available, the panel was satisfied that Mrs Apana Agey has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

## **Details of charge**

That you a Registered Nurse:

1. On 12 January 2024 at Chester Crown Court, were convicted of:

- a) Distribute an indecent photograph/pseudo-photograph of a child
- b) Show an indecent photograph/pseudo-photograph of a child

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

## **Background**

On 25 February 2022 the NMC received a referral from Cheshire Constabulary stating that Mrs Apana Agey had been arrested on the 23 of February 2022 for indecent image offences.

A member of staff at Willow psychiatric intensive care unit reported to the police that on 18 February 2022 he was working with Mrs Apana Agey for the first time. He reported that

Mrs Apana Agey entered the office where he was working, offered to assist him and showed him a video on her phone of a child, performing oral sex with an adult male.

The staff member stated that the Mrs Apana Agey said, “[PRIVATE] she’s only doing it for a happy meal, there is another boy involved as well, they’re in a different country”. He reported this to his superiors but when she turned up to work a shift on 23rd February 2022, he was concerned that the matter was not being addressed properly so he contacted the police.

In police interview, Mrs Apana Agey stated that this was an unsolicited message received via Facebook Messenger just prior to showing it to the witness. She stated that she only showed it as she was shocked and appalled upon opening the message. She denied knowing the young girl or indeed the adult depicted in the video and denied [PRIVATE].

Mrs Apana Agey said she believed that the same video had been sent to her by a childhood friend who resides in Africa via WhatsApp earlier, though she didn’t open this and it wasn’t apparent from the video preview that this was an indecent image.

Mrs Apana Agey was charged and found guilty following trial on 12 January 2024 of the following offences:

1. Distributing an indecent photograph/pseudo-photograph of a child,
2. Show an indecent photograph/pseudo-photograph of a child.

Mr Recorder Lamb in the sentencing remarks stated the following:

*‘Having received the video unbidden from some contact in Cameroon on 15<sup>th</sup> February 2022 [Mrs Apana Agey] decided to forward it to [Person 1] ..., with the logo “See wickedness”. And three days later, when on duty with ... [she] showed that colleague the offensive material, saying to him afterwards “[PRIVATE], she’s only doing it for a happy meal” as ... reported.’*

On 16 February 2024 at Chester Crown Court, Mrs Apana Agey was sentenced to 2 years imprisonment suspended for 2 years with a 25-day Rehabilitation Activity Requirement and was placed on the Sex Offenders Register for 10 years.

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

Having been provided with a copy of the certificate of conviction for Mrs Apana Agey signed by an officer of the court, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

- ‘31.— (2) Where a registrant has been convicted of a criminal offence—*
- (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*
  - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.’*

### **Fitness to practise**

Having found the facts proved, the panel then considered whether Mrs Apana Agey’s fitness to practise is currently impaired by reason of Mrs Apana Agey’s conviction. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant’s suitability to remain on the register unrestricted.

### **Representations on impairment**

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This includes the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory

body. The panel was referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and *R (on application of Cohen) v General Medical Council* [2008] EWHC 581

The NMC submitted that limbs a, b and c of the *Grant* “test” can be answered in the affirmative in this case.

The NMC provided the following submissions in respect of impairment:

*‘In respect of question 1 [Limb a], the offences are sexual in nature and involve a vulnerable child. Not only did she view the indecent video, but Mrs Agey also shared it with a colleague whilst in the workplace. Although no harm was caused to patients, the behaviour places patients, particularly children, at risk of harm and raises concerns about her treatment of vulnerable individuals.*

*In respect of question 2 [Limb b], the public has the right to expect high standards of registered professionals. Mrs Agey has committed a serious criminal offence resulting in a custodial sentence being imposed by the Crown Court and being placed on the sex offenders register for a period of 10 years. Mrs Agey’s actions clearly bring the profession into disrepute.*

*In respect of question 3 [Limb c], fundamental tenets of the nursing profession cover the aspects of behaviour, attitude and approach which underpin the professional standards registered nurses must uphold as outlined in The Code. These include promoting professionalism and trust by upholding the reputation of the profession at all times. To achieve this, registered professionals must keep to the laws of the country in which they are practising. The actions of Mrs Agey leading to the serious criminal conviction and placement on the sex offenders register are a significant breach of the fundamental tenets of the profession.*

*Impairment is a forward-thinking exercise which looks at the risk the registrant’s practice poses in the future. NMC guidance adopts the approach of Silber J in the case of *R (on application of Cohen) v General Medical Council* [2008] EWHC 581*

*(Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.*

*When considering question one, the concern is not easily remediable. Under guidance FTP-3a the conviction falls within the category of a specified offence, it being sexual in nature and therefore a serious concern which is more difficult to put right.*

*NMC guidance FTP-14a entitled "Can the concern be address?" states that it may not be possible to address the concern where they include criminal convictions for specified offences or convictions that led to custodial sentences.*

*Mrs Agey's conviction led to a custodial sentence which has not yet been served. Furthermore, Mrs Agey has been placed on the Sex Offenders Register for a period of 10 years.*

*We consider the registrant has displayed limited insight. Mrs Agey did accept her conduct and the regulatory concern in her 'reflection on conviction document'. The document explains some personal mitigation but offers limited insight into her actions. Mrs Agey states "the judgment can be interpreted as to have qualified my actions as an honest mistake rather than an intent to commit a crime." This is not the view of the NMC when reading the judgement document. The document also fails to address the failure of Mrs Agey to take appropriate steps to report the image to police and safeguarding authority.*

*Within reflection, Mrs Agey states "I do understand, acknowledged and appreciate the high professional standards and demands of NMC to all qualified and professional registered Nurses and also understand the implications of a criminal conviction to the profession, my employer, the Service Users, general public, my family and self." Mrs Agey fails to provide any insight on the impact of the offence itself on the victims and in particular, her colleague who was shown the video and suffered psychological harm as a result.*

*Mrs Agey's responses suggest she fails to recognise her role in what went wrong and seeks to minimise and excuse her conduct.*

*We consider the registrant has undertaken some relevant training in respect of the issues of concern. The following training is relevant:*

- Level 3 Safeguarding Adults*
- Level 3 Safeguarding children*

*We note Mrs Agey has worked since the issues of concern. The testimonial of [Ms 1], Registered Manager, Bury Dunes Hospital, is relevant to the risk of repetition in that they suggest the registrant has practiced well in the intervening period*

*The NMC consider there is a continuing risk to the public due to Mrs Agey's lack of full insight. Although the offences did not occur as part of Mrs Agey's clinical practice, the failure to escalate an obvious safeguarding concern presents an ongoing risk in the clinical setting*

*...*

*In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.*

*However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.*

*Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses*

*with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct always justifies both their patient's and the public's trust in the profession. Without it, patients and their families risk not putting their care into the hands of professionals and so risk their health and wellbeing.*

*By committing the offences involving indecent images of children, Mrs Agey has acted in a way which damages the trust the public places in nurses. Furthermore, the public would be concerned to be treated by a nurse who has been placed on the Sex Offenders Register. For this reason, the NMC considers there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior (sic).'*

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

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

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

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

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.



In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:*

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...'*

The panel concluded that as a result of Mrs Apana Agey's conviction she had in the past put patients at risk of unwarranted harm and had breached the fundamental tenets of the nursing profession and brought its reputation into disrepute. However, the panel did not find that limbs a, b and c of the *Grant* "test" in relation to future risk are engaged.

The panel had regard to the sentencing remarks made by Mr Recorder Lamb in the Crown Court at Chester on Friday 16 February 2024.

*‘...This is an unusual case, unusual in the sense that it is not a case of you seeking sexual gratification by the distribution or showing of this offensive material. It is, I note, the same video which is involved in both counts.*

...

*...in the pre-sentence report it's made clear that your risk of future offending is low. The risk of further offending is low and the risk of harm to others is assessed at medium. I am, therefore, entitled to alight upon a sentence which is simply a reflection of the seriousness of the offending and to pass a commensurate sentence for that which you have done rather than a sentence for public protection.’*

The panel noted that the conduct was an isolated instance of serious misjudgement on two occasions concerning the same material. In the sentencing remarks, the judge referred to the conduct which led to Mrs Apana Agey's conviction as an impulsive action. He also noted that during the police investigation, no material of a similar nature was found on any of her digital devices nor anything in her search history. The panel noted that Mrs Apana Agey did not seek sexual gratification by the distribution or showing of the offensive material and that the judge had referred to her risk of future offending and risk of harm to others as being low.

Regarding insight shown by Mrs Apana Agey the panel considered her reflective piece which set out her acknowledgment of how her conduct negatively impacted on the reputation of the nursing profession. However, the panel did not find the reflection provided to be of sufficient depth to show that she had fully reflected on the incidents in question. Mrs Apana Agey has not demonstrated an understanding of how her actions seriously impacted the colleague to whom she showed the material. Nor has she expressed any insight into how her actions impact the confidence that the wider public has in nurses and the profession as a whole and how her actions undermine the professionalism that the public expects of a nurse and undermine the reputation of the

profession as a whole. Furthermore, Mrs Apana Agey has not demonstrated what she has learnt from the situation in terms of reporting receipt of such images and how she would handle a similar situation differently in the future.

In terms of steps taken by Mrs Apana Agey to strengthen her practice, the panel noted the following relevant training she has undertaken:

- Level 3 Safeguarding Adults
- Level 3 Safeguarding Children

The panel took into account that Mrs Apana Agey is of previous good character and there have been no concerns regarding her clinical practice. The panel took into consideration the positive testimonials provided by her manager and ward manager, both of whom were aware of her conviction and gave full support of her practice and character.

In light of the evidence before it the panel determined there is a very low risk of repetition, there is minimal risk of future unwarranted harm to patients given that the charges are not related to her clinical practice and are isolated instances of misjudgement albeit with significant criminal consequences. Furthermore, the panel determined that it is highly unlikely that Mrs Apana Agey would breach fundamental tenets of the nursing profession and bring it into disrepute in the future.

The panel therefore decided that a finding of impairment is not necessary on the grounds of public protection.

The panel next went on to consider whether Mrs Apana Agey's fitness to practise is currently impaired on public interest grounds.

The panel had regard to whether the Mrs Apana Agey's conduct is remediable and determined that it is, given the context in which the conduct occurred. However, the panel was of the view that given Mrs Apana Agey's limited insight, at this time, that her failings have not yet been fully remedied.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/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, in this case, a finding of impairment on public interest grounds is required. Mrs Apana Agey is currently serving a two-year custodial sentence (suspended for two years) and has also been placed on the Sex Offenders Register for 10 years. The panel concluded that a member of the public, fully apprised of the facts of the case, would be concerned if a finding of current impairment were not made in this case.

Further the panel when considering whether Mrs Apana Agey can practise '*kindly, safely and professionally*' determined in light of her criminal conviction and sentence that she is not able to practice professionally.

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

## **Sanction**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Apana Agey off the register. The effect of this order is that the NMC register will show that Mrs Apana Agey has been struck-off the register.

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.

## **Representations on sanction**

The NMC provided the following submissions in relation to sanction:

*'The aggravating factors in this case include:*

- Criminal conviction resulting in a custodial sentence*
- Offence relating to vulnerable children*
- Limited insight into the behaviour which led to her conviction*

*The mitigating factors in this case include:*

- Engagement with the NMC*

...

*Considering a suspension order and guidance at SAN-3d, a suspension order would be an insufficient sanction in this case. The convictions are extremely serious, leading to a custodial sentence being imposed and Mrs Agey has been placed on the sex offenders register for a period of 10 years. Mrs Agey's actions fell far below the standards expected of a registered nurse. Considering this, a period of suspension would not be sufficient to protect patients or the public confidence in nurses or professional standards.*

*Considering the checklist at SAN-3d, this case deals with a single instance of misconduct however because of the limited insight shown, there is evidence of a deep-seated personality or attitudinal problem. There is no evidence of repetition since the incident albeit Mrs Agey has been subject to a Court Order and conditions since. This is not a case where it can be said that Mrs Agey has full insight. Mrs Agey pleaded Not Guilty to the offences and was convicted following trial. She decided to share the indecent image with a colleague and not to report the video to police or the relevant safeguarding authority. She has given no explanation as to why she acted the way she did and how she would act differently in the future.*

*Accordingly, a striking off order is the only adequate sanction in this case.*

...

*The concerns, raise fundamental questions about Mrs Agey's professionalism, such that public confidence would be drastically undermined by her continued registration. These are serious offences involving deep-seated attitudinal concerns that Mrs Agey has failed to remedy. The commission of a specified offence, leading to a custodial sentence and placement on the sex offenders register is conduct which seriously affects the public's trust and confidence in registered nurses, midwives or nursing associates.*

*Given these concerns, a striking off order is the only sanction that will protect the public, both colleagues and patients, and maintain professional standards.'*

The panel heard and accepted the advice of the legal assessor, and it was referred to the case of *Council for the Regulation of Health Care Professionals v (1) General Dental Council and (2) Fleischmann* [2005] EWHC 87 (QB), and in particular the following paragraph:

*"54... as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. ...The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained."*

## **Decision and reasons on sanction**

Having found Mrs Apana Agey's fitness to practise to be 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 had regard to the NMC guidance titled '*Considering sanctions for serious cases*', reference 'SAN-2', last updated 27 February 2024. Upon the advice of the legal

assessor the panel took into account the following paragraph under the section titled 'Cases involving sexual misconduct'.

*'Convictions for sexual offences including rape, sexual assault, sexual harassment and accessing, viewing, or any other offence relating to images or videos involving child sexual abuse or exploitation. These types of offences gravely undermine the public's trust in nurses, midwives and nursing associates. Some offences relating to images or videos of child sexual abuse are considered more serious than others in the criminal courts. However, in fitness to practise, any conviction relating to images or videos involving child sexual abuse is likely to raise fundamental questions about the ability of the nurse, midwife or nursing associate to uphold the standards and values set out in the Code.'*

The panel took into account the following aggravating features:

- Limited insight into her failings

In addition, the panel noted that Mrs Apana Agey as a result of her conviction is now on the Sex Offenders Register.

The panel also took into account the following mitigating features:

- Relevant training to address regulatory concerns
- Positive testimonials from colleagues and employer

The panel, having borne in mind the general rule laid out in *Fleischman*, determined that a sanction of no further action, a caution order or a conditions of practice order would not be appropriate in this case. Further the panel took in account that Mrs Apana Agey, having been convicted of distributing and showing an indecent photograph/pseudo-photograph of a child, has been sentenced to a suspended two-year custodial sentence and has been placed on the Sex Offenders Register for 10 years.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel had regard to the fact that the conduct which led to Mrs Apana Agey's conviction was an impulsive and isolated instance of serious misjudgement on two occasions. The panel was of the view that although Mrs Apana Agey's insight and reflection is limited, at this time, there is no evidence of any deep-seated attitudinal or personality problems. The panel took into account its previous finding that there is a very low risk of repetition and that it has made no finding of current impairment on the ground of public protection.

However, the panel took into account that the conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a Registered Nurse. Her conduct has resulted in her having a criminal conviction, a two-year custodial sentence (suspended for two years) and notably being placed on the Sex Offenders Register for 10 years as a result of the sentence imposed. The panel determined that being on the Sex Offenders Register is fundamentally incompatible with Mrs Apana Agey remaining on the register.

The panel therefore determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, the panel considered whether a striking-off order would be appropriate in this case, noting the following paragraphs of the SG:



- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The panel determined that Mrs Apana Agey's actions were very serious and resulted in her having a criminal conviction, a two-year custodial sentence (suspended for two years) and notably being placed on the Sex Offenders Register for 10 years as a result of the sentence imposed. To allow her to continue practising during this time would undermine public confidence in the profession and in the NMC as a regulatory body.

Therefore, the panel determined that nothing short of a strike-off order would suffice in this case.

The panel considered that this order was 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.

This will be confirmed to Mrs Apana Agey in writing.

### **Interim order**

As the striking-off 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 Mrs Apana Agey's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Representations on interim order**

The NMC invited the panel to impose an interim order on the grounds of public protection and public interest, for the same reasons as previously identified, in order to cover the appeal period.

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

The panel was satisfied that an interim order is necessary 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 concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months in order to maintain the public's trust and confidence in the profession during the 28-day appeal period.

If no appeal is made, then the interim suspension order will be replaced by the substantive striking off order 28 days after Mrs Apana Agey is sent the decision of this hearing in writing.

That concludes this determination.