

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

**Substantive Order Review Hearing
Friday 27 May 2022**

Virtual Hearing

Name of registrant:	Joanna Elizabeth Bird
NMC PIN:	10I3320E
Part(s) of the register:	Registered Nurse – Mental Health Nursing Effective – 7 September 2011
Relevant Location:	London
Type of case:	Lack of competence
Panel members:	Bryan Hume (Chair, Lay member) Helen Chrystal (Registrant member) Frances McGurgan (Lay member)
Legal Assessor:	Clare Bates
Hearings Coordinator:	Amanda Ansah
Nursing and Midwifery Council:	Represented by Stefan Bisson, Mr Bisson
Miss Bird:	Present and unrepresented
Order being reviewed:	Conditions of practice order (18 months)
Fitness to practise:	Impaired
Outcome:	Conditions of practice order (2 years) to come into effect at the end of 6 July 2022 in accordance with Article 30 (1)

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

At the outset of the hearing, Mr Bisson made a request that this case be held partly in private on the basis that proper exploration of your case involves some reference to your health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (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.

The panel determined to go into private session in connection with your health as and when such issues are raised in order to maintain your privacy.

Decision and reasons on review of the substantive order

The panel decided to confirm the current conditions of practice order.

This order will come into effect at the end of 6 July 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 18 months by a Fitness to Practise Committee panel on 8 December 2020.

The current order is due to expire at the end of 6 July 2022.

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, whilst employed by North East London NHS Trust, failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a band 6 Community Psychiatric Nurse in that you

1) On 5 May 2018, provided inaccurate and / or insufficient feedback to the MDT at a zoning meeting in that you feedback that 'clozapine was now transferred to Denise – need to follow up with pharmacy if medication has been delivered' when you needed to report that Patient SH care and clozapine prescribing and dispensing had transferred to Newham;

2) On 22 March 2018 did not include a plan for Patient LR in a handover note prior to going on annual leave when such a plan was necessary due to Patient LR being a high risk;

3) On 13 July 2018, did not take reasonable steps to ensure a meeting with Patient OO was effective in that you did not call her when she failed to answer the door;

4) Were unable to account for your movements regarding a depot injection for Patient AW;

5) Did not complete clinical documentation in that you:

i) Did not record entries on RIO system for Patient OO's visit on 13 July 2018;

ii) Did not document delay in administering Patient EG's depot injection;

6) Did not manage your time in that you:

i) Between February and March 2017 did not produce care plans;

ii) Between June and July 2018 did not update care plan;

iii) Did not submit a social circumstances report for Patient MT by 4 June 2018;

- iv) Delayed sending a social circumstances report Patient JJ;*
- v) Did not administer Patient EG's depot injection on time in that EG was two weeks overdue in receiving a depot injection in*
 - (a) April 2018;*
 - (b) June 2018;*
 - (c) July 2018;*

7) Signed off a social circumstances report that lacked the required detail in that it did not:

- i) Specify the patient's living arrangements;*
- ii) Failed to address issue of support from relatives;*
- iii) Failed to address effectiveness of care;*

8) Did not follow record keeping policy in that you:

- i) On 5 July 2018 in relation to Patient MT did not:*
 - (a) Update the crisis plan;*
 - (b) Update the risk assessment;*
 - (c) Document a full progress note regarding the home visit you had made;*
- ii) On 5 July 2018 did not record a telephone call to Patient RT's husband;*
- iii) Did not update Patient MP's records in a timely manner following a crisis visit on 28 February 2018;*
- iv) Did not update Patient SU's records;*
- v) Did not contemporaneously note concerns that Patient JJ's flat was being used for drug consumption;*
- vi) Did not document depot injections on RIO for some or all of the following Patients: JJ; DD; EG;*

9) Did not visit Patient MB as often as required between January 2017 and July 2017

10) Did not submit the following DWP paperwork for Patient JJ:

- i) ESA;*
- ii) PIP;*
- iii) Fit notes;*

11) On or around 26 April 2017 in relation to Patient CL did not:

- i.) Complete the administration tasks to allow their PIP application to be considered;*
- ii) Complete the administration tasks to allow their Freedom Pass application to be considered;*

12) Between March and July 2018, did not make contact with the patients on your caseload at least monthly;'

The original reviewing panel determined the following with regard to impairment:

'The panel determined that Miss Bird lacks competence in relation to her role as a registered mental health nurse as part of the community psychiatric team at the Trust. The panel was of the view that the most of the concerns relate to basic nursing skills and involved a potential for actual patient harm.

In this respect, the panel endorsed paragraphs 16 to 18 of the provisional CPD agreement in respect of lack of competence.

The panel then considered whether Miss Bird's fitness to practise is currently impaired by reason of a lack of competence. It determined that limbs a, b and c of the test set out in the case of Grant above are engaged in this case. Miss Bird's actions put patients in her care at a risk of unwarranted harm and brought the profession into disrepute. The charges found proved individually and collectively were serious, breaching fundamental tenets of the profession.

The panel was of the view that the actions that underline Miss Bird's lack of competence is capable of remediation. However, the panel had no evidence

before in respect of a reflective statement which could demonstrate developed insight into the failings and consequences for patients, colleagues and the profession. Further, it has no evidence of remediation. In the panel's judgment the risk of repetition is high. Therefore the panel concluded that a finding of impairment on public protection grounds is necessary.

The panel also considered that a finding of impairment in the public interest is necessary to uphold proper professional standards and public confidence in the profession.

The panel concluded that Miss Bird's fitness to practise is currently impaired. In this respect the panel endorsed paragraphs 18 to 31 of the provisional CPD agreement.'

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

'The panel took into account the following aggravating features:

- *The particularly vulnerable nature of the patients in the Miss Bird's care and the potential impact her failings had upon them*

The panel also took into account the following mitigating features:

- *Miss Bird has engaged with the NMC and made admissions to all the charges;*
- *[PRIVATE]*

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case, Miss Bird's lack of insight and the fact she is yet to remedy her failings. 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 Miss Bird's practice would not protect the public and patients, therefore would not be appropriate in the circumstances.

The panel next considered whether placing conditions of practice on Miss Bird'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:

- 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;*
- Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- 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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel did note that Miss Bird had already been on an interim conditions of practice order for a period of time. However, it bore in mind that there appears to have been some underlying health concerns (although the panel had no medical information to support this).

The panel were persuaded that Miss Bird has engaged with the NMC and agreed with CPD. It was of the view that Miss Bird is willing to comply with conditions of practice. The panel was of the view that it was in the public interest that, with appropriate safeguards, Miss Bird should be able to return to practise as a nurse.

Balancing all of these factors, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order would not be a reasonable response in the circumstances of Miss Bird's case because it would be disproportionate and not give Miss Bird the opportunity to remediate her practice.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will protect the public and mark the importance of maintaining public confidence in the profession. It will also send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel agreed with the CPD that the following conditions are appropriate and proportionate in this case:

'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 not practise in a community nurse capacity.*
- 2. You must ensure that you are supervised by your mentor, line manager or nominated deputy any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, another registered nurse.*
- 3. You must identify a clinical supervisor who is a registered nurse to work with you to create a personal development plan (PDP) which addresses the following areas of your practise:*
 - Communication and handover*
 - Following policies and procedures*

- *Documentation and record keeping*
- *Time management*

You must:

- a) *Send your case officer a copy of your PDP within 28 days of starting employment as a nurse.*
 - b) *Meet with your clinical supervisor at least every week to discuss your progress towards achieving the aims set out in your PDP.*
 - c) *Send your case officer a report from your clinical supervisor at least 14 days before any review of this order. This report must show your progress towards achieving the aims set out in your PDP*
4. *You must keep us 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.*
5. *You must keep us 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.*
6. *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*

7. *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.*

8. *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'*

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 suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle and your submissions. It has taken account of the submissions made by Mr Bisson on behalf of the NMC. He submitted that it is clear you intend to return to nursing

at some point following the information in your reflective statement. He further submitted that it should be left up to the panel to determine the outcome of today's proceedings.

The panel also had regard to your written representations in the form of your reflective statement, and your responses to Mr Bisson's submissions. You submitted that you re-iterate what you stated in your reflection, in that you have not been able to demonstrate your competence following the incident but you are passionate about going back to nursing in good time with the correct training. You further submitted that you have been offered a job in education providing mental health support which you are looking forward to, but it is not a registered nursing role. You expressed that you would like to return to nursing in time and this new job is a step in that direction, [PRIVATE]. You submitted that you intend to return to a mental health nursing role that will allow you to comply with the current conditions of practice. You stated that your position now has significantly changed since the incidents occurred and you are in a much better state mentally and physically to manage your new role.

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 your fitness to practise remains impaired.

The panel noted that the original reviewing panel found that you had developing insight. At this hearing the panel found that your insight had continued to develop. It was also encouraged in that view by your attendance at this hearing and your provision of a reflective statement. However, it was not satisfied that you have appropriately remediated the concerns given that you have not been working in a mental health nursing role since the incidents occurred.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account your reflective statement and your responses in today's hearing,

however it determined that in the absence of your work as a mental health nurse since the initial hearing, you have not been able to remediate the concerns or comply with the current conditions of practice.

The original reviewing panel determined that you were liable to repeat matters of the kind found proved. Today's panel has heard that you have not been able to comply with the current conditions of practice given that you have not been working as a mental health nurse. In light of this, this panel determined that there remains a risk that you could 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.

For these reasons, the panel finds that your fitness to practise remains impaired.

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 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 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 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 imposing a further conditions of practice order on your registration would remain a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you have been unable to comply with the conditions of practice due to your current employment status, but you are engaging with the NMC and are willing to comply with any conditions imposed once you find the necessary employment to do so.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that this case involves specific identifiable areas of clinical practice rather than widespread or general incompetence. In light of this, there are conditions that could be formulated which would protect patients during the period they are in force.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case because you have demonstrated that you wish to return to nursing and are taking steps to strengthen your practice.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 24 months, which will come into effect on the expiry of the current order, namely at the end of 6 July 2022. It decided to confirm the following existing conditions which it considered are appropriate and proportionate in this case:

'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 not practise in a community nurse capacity.*
- 2. You must ensure that you are supervised by your mentor, line manager or nominated deputy any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, another registered nurse.*
- 3. You must identify a clinical supervisor who is a registered nurse to work with you to create a personal development plan (PDP) which addresses the following areas of your practise:*
 - Communication and handover*
 - Following policies and procedures*
 - Documentation and record keeping*
 - Time management*

You must:

- a. Send your case officer a copy of your PDP within 28 days of starting employment as a nurse.*
 - b. Meet with your clinical supervisor at least every week to discuss your progress towards achieving the aims set out in your PDP.*
 - c. Send your case officer a report from your clinical supervisor at least 14 days before any review of this order. This report must show your progress towards achieving the aims set out in your PDP*
- 4. You must keep us 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.*
- 5. You must keep us 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.*
- 6. 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*
- 7. 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.*
- 8. 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*

The period of this order is for 24 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 6 July 2022 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.

Any future panel reviewing this case would be assisted by:

- Your attendance and continued engagement with any future NMC proceedings
- Any positive references or testimonials about any recent nursing practice or non-nursing role;
- Evidence of keeping skills and knowledge up to date including training undertaken.

This will be confirmed to you in writing.

That concludes this determination.