

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

**Substantive Order Review Hearing
Tuesday 4 June 2024**

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: Bernard Herdan (Chair, Lay member)
Richard Curtin(Registrant member)
Saiqa Shaffi (Lay member)

Legal Assessor: Sean Hammond

Hearings Coordinator: Sophie Cubillo-Barsi

Nursing and Midwifery Council: Represented by Lucie Danti, Case Presenter

Miss Bird: Not present and unrepresented

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect at the expiry of the current order 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 Miss Bird was not in attendance and that the Notice of Hearing had been sent to Miss Bird's registered email address by secure email on 3 May 2024.

Ms Danti, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Bird's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Bird 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 Miss Bird

The panel next considered whether it should proceed in the absence of Miss Bird. The panel had regard to Rule 21 and heard the submissions of Ms Danti who referred the panel to correspondence between the NMC and Miss Bird. Ms Danti highlighted an email dated 21 May 2024, in which Miss Bird indicates that she would be attending today's hearing. Ms Danti further highlighted a call log between the NMC and Miss Bird, dated 22 May 2024, in which it is recorded that Miss Bird confirms her attendance at the upcoming review hearing.

Despite the indication from Miss Bird that she would be attending today's hearing, Ms

Danti informed the panel that no further correspondence had been received from her since 22 May 2024. Ms Danti told the panel that attempts to contact Miss Bird this morning, via telephone, have been unsuccessful.

In the absence of any further engagement from Miss Bird, Ms Danti invited the panel to proceed in her absence. Ms Danti submitted that Miss Bird is fully aware of these proceedings and the panel can be satisfied that she has decided to voluntarily absent herself. Ms Danti submitted that there is no reason to suppose that adjourning today's hearing would secure Miss Bird's attendance at a future date. She reminded the panel that there is a strong public interest in the timely review of this case.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Bird. In reaching this decision, the panel has considered the submissions of Ms Danti and the evidence of correspondence between the Miss Bird and the NMC. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- Miss Bird previously informed the NMC that she has received the Notice of Hearing and that she would be attending;
- Miss Bird has not engaged with the NMC since 22 May 2024;
- Miss Bird has not responded to the attempts made by the NMC to communicate with her;
- No application for an adjournment has been made by Miss Bird;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- The current order expires at the end of 6 July 2024; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Miss Bird.

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

At the outset of the hearing, Ms Danti made a request that parts of this hearing be held in private on the basis that proper exploration of Miss Bird's case involves reference to [PRIVATE]. 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.

Having heard that reference may be made to [PRIVATE], the panel determined to go into private session as and when such issues arise. It considered that Miss Bird's right to privacy in relation to these matters outweighed the public interest in holding those parts of the hearing in public.

Decision and reasons on review of the substantive order

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

This order will come into effect at the end of 6 July 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second 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 order was reviewed on 27 May 2022 and a further 24 month conditions of practice order was imposed.

The current order is due to expire at the end of 6 July 2024.

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 first reviewing panel determined the following with regard to 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... 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.'

The first reviewing 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, 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.'*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Bird'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 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 correspondence from Miss Bird.

Ms Danti provided the panel with a background to Miss Bird's case. She reminded the panel that the onus is upon Miss Bird to demonstrate that she is no longer impaired.

Ms Danti highlighted the recommendations made by the previous reviewing panel, including Miss Bird's engagement with the NMC, employer references and/or testimonials and evidence of keeping skills and knowledge up to date. Ms Danti submitted that there is little new material before the panel to assist it in its decision today. She referred the panel to a call log of a telephone conversation between Miss Bird and the NMC, dated 22 May 2024, which states:

'She [Miss Bird] felt that she couldn't provide evidence of keeping her skills up to date because she wasn't currently working as a nurse and, though she was employed by a care agency, she wasn't actually working as a carer or care assistant. I asked her if her employers were supportive, and she replied that they knew all about her conditions of practice and that they were very supportive of her. I explained that in that case it might be possible to meet a number of her conditions, while employed as a carer. For example, creating a PDP.'

Ms Danti submitted that the panel have no further information before it as to where her current employment is based, whether the work Miss Bird is undertaking is paid or unpaid and whether there is scope for Miss Bird to move into a nursing role.

Ms Danti stated that it is clear that Miss Bird has not been working as a registered nurse and has therefore been unable to comply with the current conditions of practice order, in particular condition three. Ms Danti submitted that the panel have no evidence before it of Miss Bird's developing insight and/or remediation. She asked the panel to consider Miss Bird's limited engagement with the NMC and her failure to comply with the recommendations made by the previous reviewing panel.

Should the panel find that Miss Bird is currently impaired, Ms Danti highlighted the options available to the panel today. This included allowing the order to lapse. However, Ms Danti reminded the panel that there has been no indication from Miss Bird that she does not intend to return to nursing practice. To the contrary, Miss Bird has discussed with the NMC her intentions to return to the profession. Ms Danti asked the panel to carefully consider the public protection and public interest concerns in this regard and stated that should the order be allowed to lapse, it would be open to Miss Bird to reapply to the NMC's register.

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 Miss Bird's fitness to practise remains impaired.

Despite the recommendations by the last reviewing panel, today's panel did not have any new information before it to suggest that Miss Bird has made attempts to strengthen her practice, despite the wide range of lack of competency issues found proved. Further, the panel did not have any testimonials and/or character references despite Miss Bird stating that she is currently employed by a care agency. The panel noted that Miss Bird is not currently practising as a nurse and therefore she has not yet been able to comply with the current conditions of practice order.

Whilst it was previously found that Miss Bird had demonstrated some insight into her failings, as of today, no further information has been received as to Miss Bird's reflection, understanding or insight into her failings

In the absence of any meaningful information and/or engagement from Miss Bird, the panel determined that Miss Bird remains 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. To do otherwise would seriously undermine the public's confidence in the nursing profession and the NMC as a regulator.

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

Decision and reasons on sanction

Having found Miss Bird'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 considered whether to take no further action and whether allowing the current order to lapse would be an appropriate response in Miss Bird's case given its finding on impairment. In this regard, the panel had sight of the NMC's guidance on '*Nurses, midwives or nursing associates whose registration will lapse automatically if the substantive order is lifted*' (REV-3h) and noted that the guidance provides for circumstances where registrants who are subject to a substantive order may be allowed to be removed from the register through their registration lapsing and having not revalidated.

The panel noted that Miss Bird's registration lapsed on 30 November 2018 and that her registration remains active only by reason of the presence of the substantive order. However, the panel could not be satisfied as to Miss Bird's current future intentions as regards to the nursing profession and therefore concluded that allowing the order to

lapse would not address the public interest concerns in this case and would be inappropriate at this time.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, the wide-ranging allegations found proved, and the public protection issues identified, an order that does not restrict Miss Bird'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 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 replace the current order with a caution order.

The panel next considered whether imposing a further conditions of practice order on Miss Bird's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel noted that Miss Bird has been subject to a conditions of practice order since December 2020. It was of the view that the conditions imposed are workable and that Miss Bird has had ample opportunity to find employment which would have enabled her to comply with those conditions and evidence that compliance to the NMC. Despite over three years elapsing, no evidence has been put before a panel to demonstrate that Miss Bird has attempted to begin complying with the order and/or taken steps to strengthen her practice. Further, Miss Bird has not practised as a registered nurse since 2018. On this basis, the panel concluded that a conditions of practice order is no longer practicable and/or an appropriate order in this case and would serve no useful purpose.

The panel seriously considered imposing a striking off order. However, given Miss Bird's email communication to the NMC on 22 May 2024 and her previous indication that she does intend to return to the nursing profession, the panel determined that such an order would be disproportionate at this time.

The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly,

the panel determined to impose a suspension order for the period of six months would provide Miss Bird with an opportunity to meaningfully reengage with the NMC, her regulator. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 6 July 2024 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. Amongst the available sanctions, it would be open to a reviewing panel to impose a striking off order.

Any future panel reviewing this case would be assisted by:

- Evidence of Miss Bird's meaningful engagement with the NMC, including her intention as to her nursing career;
- Miss Bird's attendance at the review hearing;
- 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; and
- An updated detailed reflective piece.

This will be confirmed to Miss Bird in writing.

That concludes this determination.