

**Nursing and Midwifery Council
Investigating Committee**

**Fraudulent/Incorrect Entry Hearing
Thursday, 15 February 2024**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant: Bernadette Josephine Kevina Lunt

NMC PIN: 89Y1363E

Part(s) of the register: Registered Nurse – Adult

Relevant Location: Sheffield

Type of case: Incorrect/Fraudulent entry

Panel members: Mahjabeen Agha (Chair, lay member)
Carolyn Jenkinson (Registrant member)
David Brown (Lay member)

Legal Assessor: John Bassett

Hearings Coordinator: Opeyemi Lawal

Nursing and Midwifery Council: Represented by Rebecca Steels, Case
Presenter

Ms Lunt: Not present and unrepresented

Outcome: **Registration entry fraudulently procured**

Direction: **Registrar to remove Ms Lunt’s entry from the
register**

Direction: **Interim Suspension order (18 months)**

Service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Lunt was not in attendance and that the Notice of Hearing letter had been sent to Ms Lunt's registered email address by secure email, and to her registered address, by recorded delivery on 16 January 2024.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, date and venue of the hearing and amongst other things, information about Ms Lunt's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Steels, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 5 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.

In the light of all of the information available, the panel was satisfied that Ms Lunt has been served with the Notice of Hearing in accordance with the requirements of Rules 5 and 34.

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

At the outset of the hearing, Ms Steels made a request that this case be held partly in private on the basis that proper exploration of Ms Lunt'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.

The panel accepted the advice of the legal assessor.

The panel determined to go into private session as and when such matters relating to Ms Lunt's [PRIVATE] arises.

Decision and reasons on proceeding in the absence of Ms Lunt

The panel next considered whether it should proceed in the absence of Ms Lunt. It had regard to Rule 21 and heard the submissions of Ms Steels who invited the panel to continue in the absence of Ms Lunt. Ms Steels took the panel through the timeline of previous hearing listings that has been scheduled or postponed and Ms Lunt's reasonings.

The Chronology of previous postponed hearings is listed below:

- On 28 April 2023, a panel of the IC decided to postpone the substantive hearing on the basis that Ms Lunt said she was working and wanted the hearing to be rearranged so that she could attend.
- On 26 June 2023, a panel of the IC decided to adjourn the substantive hearing on the basis that Ms Lunt experienced significant technical difficulties and requested an in-person hearing on the day.
- On 7 September 2023, a panel of the IC decided to postpone the substantive hearing on the basis that Ms Lunt emailed the night before the hearing (6 September 2023) stating that she could not attend the hearing as [PRIVATE].
- A hearing had been fixed for 4 January 2024 but on 28 December 2023 Ms Lunt emailed the NMC stating that she will not be attending the hearing and unable to give a date for a future hearing. In any event, the NMC could not go ahead with this hearing date because they could not secure the services of a legal assessor.

Ms Steels referred the panel to the email from Ms Lunt dated 16 January 2024 which she stated that she will not be attending today's hearing due [PRIVATE] and was due to

be at work today. Ms Lunt further stated that she could not commit to any date at the moment.

Ms Steels submitted that Ms Lunt has voluntarily absented herself and has deliberately avoided attending hearings on multiple occasions.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Ms Lunt. In reaching this decision, the panel has considered the submissions of Ms Steels and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Lunt;
- Ms Lunt has informed the NMC that she has received the Notice of Hearing;
- Postponing or adjourning the hearing for the fourth time would cause inconvenience to the people who have made themselves available to attend;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided to exercise its discretion and that it is fair to proceed in the absence of Ms Lunt. The panel will draw no adverse inference from Ms Lunt's absence in its findings of fact.

Details of charge

That you

1. [PRIVATE].

And thereby an entry on Sub Part 1 of the NMC register in the name of Ms Bernadette Josephine Kevina Lunt, PIN 89Y1363E was fraudulently procured and/or incorrectly made.

Background

On 23 December 2021, the NMC received a referral from a General Practitioner at Rustlings Road Surgery (“the Surgery”) about Ms Lunt. The referral concerned a separate matter, however during the course of the enquiries on the linked case, the NMC discovered that Ms Lunt was [PRIVATE] and failed to declare this conviction on her online readmission application on 15 October 2019.

Decision and reasons on the facts

In reaching its decision on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Steels on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Ms Lunt.

The panel also read the statement of an NMC Investigator and Acting Registration Investigations Manager, dated 13 October 2022 and the eight exhibits.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. This included reference to the case of *Ivey v Genting Casinos (UK) Limited [2017] UKSC67* on the issue of dishonesty.

Charge 1

“[PRIVATE].”

This charge is found proved.

In reaching this decision, the panel took into account the NMC Investigator and Acting Registration Investigations Manager’s witness statement, exhibits and the correspondence between Ms Lunt and her NMC case officer. The panel also took into account the NMC Guidance on health and character published on 23 January 2019.

The panel had regard to the email correspondence including the following:

On 24 November 2022, Ms Lunt sent an email in which she stated:

“...I made one mistake a few years ago with an offence that has long expired. The remorse I felt was and is second to none. I cannot even bring myself to write it down...”

I don’t know if you have had access to my emails to others in the NMC. I’ve been contacted by multiple members. However, I did speak to the NMC at the time and was advised that as it was a first ever offence it did not need to be reported.”

In her email of 13 December 2022, Ms Lunt said:

“...It is my belief that revalidation criteria has changed since my last revalidation to now include any offences.

I recently revalidated and included this now historic offence.”

Ms Steels submitted that there is nothing in the NMC memo pad, which records any contact with registrants, that supports Ms Lunt's assertion that she spoke to someone at the NMC in 2019 and was told that she did not need to disclose the offence. Ms Steels further submitted that it is the NMC's case that [PRIVATE] when she revalidated in 2022 because, by that time, she knew she was under investigation for this matter and the NMC was already aware of her [PRIVATE]. Ms Steels also submitted that it is incorrect that the validation criteria had changed since 2019.

Ms Steels' primary submission was that the entry was fraudulently procured by Ms Lunt. Her secondary submission was that on any account the entry was incorrect.

The panel first considered whether Ms Lunt's entry on the register was incorrect due to her failure to disclose her [PRIVATE]. While it recognised that Ms Lunt had made no formal admission in this respect, there is no dispute that she did in fact fail to disclose the conviction on her online readmission application. Consequently, it follows that as a result of this failing, an incorrect entry was made on the register. The entry represented to the public that the Registrar was satisfied that Ms Lunt had provided all the required information to enable them to be satisfied that she was of good health and character and capable of safe and effective practice. As a matter of fact this was incorrect.

The panel then went on to consider whether the NMC had proved that the entry had been fraudulently procured by Ms Lunt. The panel carefully considered the explanations put forward by Ms Lunt, notwithstanding the fact that due to her non-attendance her explanations had not been tested under cross examination. It reminded itself that the burden of proof remains on the NMC throughout. Having carefully considered Ms Lunt's account the panel concluded it was implausible and lacked credibility for the following reasons:

- The online application for readmission is clear. The relevant question requires a simple yes or no answer.
- If an applicant is in any doubt whether to disclose a [PRIVATE] there is a link to the NMC's guidance which is equally clear in the information provided.

- Ms Lunt's account is vague as to who she alleged she spoke to you i.e. either the NMC or the RCN.
- There is no record of Ms Lunt contacting the NMC at the time she made her online application for readmission.
- The panel note that Ms Lunt appears to accept that she did not disclose the [PRIVATE] but is asserting that although she did not disclose it, there was no need to because it was a "[PRIVATE]". The panel was of the view that it is implausible that anyone in the NMC would have given Ms Lunt such clearly incorrect advice.
- Ms Lunt was under a duty by reason of paragraph 23.2 of the NMC's Code of Conduct to disclose her and [PRIVATE] there is no evidence of her having done so prior to her 2022 application for revalidation. [PRIVATE].
- The panel accepts Ms Steels submission that Ms Lunt [PRIVATE] when reapplying for revalidation in 2022 when she was already under investigation for this matter.

Having found that Ms Lunt's account was implausible and not credible, the panel then considered whether she had acted dishonestly, applying the test in *Ivey v Genting Casinos*. The only logical and reasonable conclusion that the panel can arrive at in the light of its findings is that Ms Lunt knew, when applying for readmission, that she was required to [PRIVATE] but deliberately chose not to do so. The panel is satisfied that such conduct would be considered to be dishonest by the standards of ordinary decent people.

Accordingly, the panel finds that the entry was fraudulently procured by Ms Lunt. On this basis, the panel found the charge proved.

Decision and reasons on direction

Having determined that Ms Lunt had procured an entry on the NMC's register, the panel went on to decide what direction, if any, to make under Article 26(7) of the 'Nursing and Midwifery Order 2001' (the Order).

Article 26(7) states:

'...If the Investigating Committee is satisfied that an entry in the register has been fraudulently procured or incorrectly made, it may make an

order that the Registrar remove or amend the entry and shall notify the person concerned of his right of appeal under article 38.”

Ms Steels referred the panel to the guidance issued by the NMC.

There are two ways in which an entry on the Register can be incorrect:

- i. An entry on the face of the Register is incorrect;
- ii. The information upon which an entry on the face of the Register was based is incorrect.

Ms Steels submitted that the declarations made in respect of a Ms Lunt's application was not entered 'on the face of the Register'. Consequently, the only options available are either to take no action or to direct removal from the Register. Ms Steels submitted that an amendment of the register would not be possible because there would be nothing to amend.

Therefore, Ms Steels invited the panel to remove Ms Lunt's entry from the register in accordance with Article 26(7) of the Order.

The panel heard and accepted the advice of the legal assessor.

The panel considered that, having found that Ms Lunt's entry on the NMC register was fraudulently procured, it would be inappropriate to take no action. The panel determined that Ms Lunt knew that she [PRIVATE] on her readmission and that the entry cannot be amended.

In all the circumstances the panel decided that the only appropriate order is to direct the Registrar to remove Ms Lunt's entry from the register.

Ms Lunt will be notified of the panel's decision in writing. Ms Lunt has the right to appeal the decision under Article 38 of the Order. This order cannot take effect until the end of

the 28-day appeal period or, if an appeal is made, before the appeal has been concluded.

Decision and reasons on interim order

Having directed that the Registrar remove Ms Lunt's entry from the register, the panel then considered whether an interim order was required under Article 26(11) of the Order, in relation to the appeal period.

The panel heard and accepted the legal assessor's advice.

The panel took account of the submissions made by Ms Steel.

Ms Steels invited the panel to impose an interim suspension order for a period of 18 months.

Ms Steels submitted that an interim conditions of practice order would not be the appropriate order as there are no conditions that could be formulated, or workable, that would adequately address the dishonesty.

Ms Steels submitted that an interim order is necessary to maintain the integrity of the register. Ms Steels also submitted that the length of the order will allow for the possibility of an appeal and allow sufficient time for it to conclude.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision on whether to impose an interim order, the panel had regard to the reasons set out in its decision on the facts and its decision to direct the Registrar to remove Ms Lunt's entry from the Register. It also had regard to the NMC's published Guidance on Fraudulent entry cases. It noted that the imposition of an interim order is not an automatic outcome but is a matter for the panel's discretion in the circumstances of the case, having regard to the public interest in maintaining the integrity of the

register. It also had regard to Article 31 of the Order and the NMC's Guidance on interim orders.

The panel considered whether to impose an interim conditions of practice order. It determined that an interim conditions of practice order was not workable or appropriate in this case.

The panel determined that an interim suspension order was in the public interest to protect the reputation of the profession and the NMC as its regulator and maintain public confidence in the profession. The panel was satisfied that an informed member of the public would be disturbed to learn that a nurse whose registration had been obtained fraudulently was allowed to practice at all.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim order will lapse upon the removal of Ms Bunting's entry in the Register 28 days after she is sent the decision of this hearing in writing.

That concludes this determination.