

## Drafting charges in incorrect or fraudulent entry cases

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In some cases, we'll *only* allege that the register entry is incorrect or that the register entry is fraudulently procured. An example of this would be situations where we allege fraud, but the error or inaccuracy in the register entry has since been rectified.

In other cases, we'll allege that the register entry is *both* incorrect *and* fraudulently procured.

Whatever category of case we are dealing with, it's important when drafting charges to recognise that the two types of allegation are quite different in nature:

- an entry will be incorrectly made if it was made based on wrong information
- an entry will only be fraudulently procured if the information it was based on was submitted with the deliberate intention to mislead the NMC or another organisation like a university.

The key distinction between the two types of allegation is that a fraudulently procured entry onto our Register involves an element of dishonesty.

By contrast, an incorrectly made entry onto the register doesn't require a finding of dishonesty.

It's essential that any charges in incorrect or fraudulent entry cases make clear:

- first, on what basis we allege that the entry was incorrectly made
- and (where fraud is alleged) on what basis we allege the entry was fraudulently procured

For example, the allegation might be drafted as follows:

*You, a registered nurse:*

*On 10 May 2020, as part of your application for admission to the NMC register, submitted or caused to be submitted a qualification certificate.*

*The qualification certificate was not genuine as you hadn't been awarded the qualification referred to in the qualification certificate.*

*At the time you submitted or caused to be submitted the qualification certificate you knew and/or believed:*

- (a) that the qualification certificate was not genuine;*
- (b) that you had not been awarded the qualification referred to in the qualification certificate.*

*Because of the matters stated above, your entry in the NMC Register was incorrectly made, and your entry in the NMC Register was fraudulently procured.*

To establish that an entry was fraudulently procured, the charges must be clear on what basis we're alleging there was a deliberate intention to mislead the NMC or another organisation.

In some cases, the allegation may be that the nurse, midwife or nursing associate deliberately sought to mislead the NMC or another organisation. In other cases, the allegation may be that someone other than the professional on our register deliberately sought to mislead us or another organisation.

The NMC will never allege fraud unless we have reasonably credible material that establishes an arguable case of fraud.

Fraud is a form of dishonesty. Therefore, when drafting an allegation of fraud, we must bear in mind the test for dishonesty. To make a finding of fraud, the Investigating Committee must first make findings about the actual state of mind of the person who allegedly acted fraudulently at the relevant time.

In deciding whether or not the alleged conduct was fraudulent, the Committee must apply the standards of ordinary people<sup>1</sup>. The law assumes that people from all walks of life can easily recognise dishonesty when they see it<sup>2</sup>. The law also assumes that it isn't difficult to identify how an honest person would behave in most situations.<sup>3</sup>

The two types of allegations aren't necessarily alternatives to each other. There's nothing to prevent the Investigating Committee from finding that an entry was incorrectly made *and* fraudulently procured.

Equally, the Investigating Committee may properly conclude that an entry was incorrectly made, but wasn't fraudulently procured. Furthermore, there may be cases where, although the Committee is satisfied that the register entry was fraudulently procured, there's no need for a finding that it was incorrectly made (because the error or inaccuracy in the register entry has since been rectified).

1 See *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67 at para 74.

2 *Ivey* (para 53); further *Ivey* (para 48) restates that judges do not and must not attempt to define dishonesty.

3 See *Royal Brunei Airlines v Tan* [1995] 2 AC 378.