

Fraudulent and incorrect entry guidance

Introduction

- 1 Article 22(1) (b) of the Nursing and Midwifery Order 2001 (the order) provides for allegations that a nurse's or midwife's entry on the register has been fraudulently procured¹ or incorrectly made.
- 2 This guidance applies to all decision-makers considering this particular type of allegation. This includes the Registrar who makes an initial decision as to whether an allegation falls into this category (who, for the purposes of this guidance, will be known as 'the investigating Registrar') and the Investigating Committee (IC) that consider an allegation at a final hearing or meeting. It may also be relevant to the Registrar who makes decisions on registration and renewal ('the Registrar').

Background

- 3 An allegation that an entry on the register has been fraudulently or incorrectly made goes to the very core of whether someone is actually entitled to practise as a nurse or midwife. It also raises genuine public protection concerns. For example, where an individual has been entered onto the register without the required approved qualification, they may lack the skills required to carry out their nursing or midwifery role and therefore pose a risk to patient safety.
- 4 There is a very strong public interest in investigating and determining these allegations to maintain public confidence in the integrity of the register and the wider profession as a whole.² When considering these matters, decision-makers are examining how the entry to the register was made and not the individual's fitness to practise.³

Process

- 5 We investigate fraudulent and incorrect entry cases in two parts:

¹ For the purposes of this guidance, 'fraudulently procured' will be referred to as 'fraudulent', 'fraudulently obtained' or 'fraudulently made'.

² Article 3(4) Nursing and Midwifery Order 2001 states the over-arching objective of the NMC's Fitness to Practise (FtP) function is to protect the public. Article 3(4A) states that this is achieved by undertaking to: a) protect, promote and maintain the health, safety and well-being of the public; b) promote and maintain public confidence in the professions regulated under this Order; and c) promote and maintain proper professional standards and conduct for members of those professions.

³ This reflects the wording of article 22(1)(b) of the order in that there is no reference to 'fitness to practise'.

- 5.1 the initial stage⁴; and
- 5.2 the determination stage.⁵
- 6 The initial stage gives the investigating Registrar the opportunity to decide whether to investigate a nurse's or midwife's entry in the register. .
- 7 If, after investigation, the investigating Registrar decides that it could amount to an allegation of fraudulent or incorrect entry, she must refer it to the IC. The nurse or midwife will then be formally told about the allegation. This leads to the determination stage.
- 8 An allegation of incorrect or fraudulent entry must be detailed by a charge, which sets out the alleged facts upon which the allegation is based.⁶ The charge should always set out the alleged facts which led the Registrar to make an entry that was fraudulent or incorrect.
- 9 Before the determination stage the nurse or midwife is given 28 days to make written representations and tell us if they wish the matter to be dealt with at a hearing or a meeting.⁷ If the nurse or midwife asks for a hearing or the investigating Registrar considers that a hearing is desirable then the IC must consider the allegation at a hearing. The nurse or midwife must be given at least 28 days' notice of such a hearing.
- 10 Where no hearing is requested and the investigating Registrar does not consider that a hearing is desirable, the IC will meet in private to consider the case. Any nurse or midwife whose entry has been found to have been fraudulently or incorrectly made has 28 days from the date of the notice of the decision letter to appeal.⁸

The initial stage

- 11 When we receive a referral, the investigating Registrar will assess the available information and decide whether or not to carry out an investigation into the nurse's or midwife's entry in the register.⁹
- 12 The investigating Registrar will usually carry out a full investigation if the matter may potentially amount to an allegation that an entry was fraudulently or incorrectly made. When the investigation is complete, the investigating Registrar should consider whether the matter amounts to an allegation and if so, refer it to the IC.¹⁰
- 13 In making this decision, the investigating Registrar should consider whether:

⁴ Rule 2A(1), (4)(b), and 4(d) of the Nursing and Midwifery Council Fitness to Practise Rules 2004 (the rules)

⁵ Rule 5 of the rules

⁶ Rule 5(3)(b) of the rules

⁷ Rule 3(2)(e) of the rules

⁸ to a county court or a sheriff (article 26 (7) and (14) of the order)

⁹ Rule 2A(4)(b) and (d) of the rules

¹⁰ Rule 2A(1) of the rules

- 13.1 any of the information before the Registrar at the time of application was deliberately misleading;
 - 13.2 any of the information before the Registrar at the time of application was otherwise wrong, false or inaccurate; or
 - 13.3 the entry on the register was made by mistake.
- 14 In some circumstances, the investigating Registrar may decide not to refer an allegation to the IC. This could arise when:
- 14.1 there is no suggestion that an entry was fraudulently obtained;
 - 14.2 the error or inaccuracy in the application made before the Registrar was trivial or clearly immaterial;
 - 14.3 the error or inaccuracy has since been remedied;
 - 14.4 the Registrar has subsequently entered the nurse or midwife on the register based on correct information;
 - 14.5 it is unlikely that the IC would take any action if it were considering the allegation.
- 15 An example of when the investigating Registrar may decide not to investigate a potential allegation might be if there was a minor date error in a caution that a nurse or midwife declared (thereby making the information before the Registrar incorrect) and there is no suggestion that they were attempting to deliberately mislead the Registrar.

Fraudulently obtained entry

- 16 If the information before the Registrar was deliberately misleading on all or any part of the relevant entry requirements, then it is likely to amount to an allegation that the entry was fraudulent.
- 17 For example, if an individual has provided a falsified certificate in order to be entered to the register, the Registrar would have been deliberately misled about whether the certificate was genuine, and therefore the entry will have been fraudulently obtained. Furthermore, entry to the register may have been fraudulently obtained if the individual has made a false declaration as part of their revalidation application.
- 18 It is not necessary for the nurse or midwife whose name appears on the register to have been a party to the fraud in order for an allegation to be made out. For example, if a third party has deliberately made a misleading application on behalf of a nurse or midwife, the entry will have been fraudulently obtained notwithstanding the ignorance of the nurse or midwife of this fact.
- 19 Equally, it is not important that the individual whose name was actually entered on the register may have in fact met the relevant criteria at the point of entry. The key issue will be whether the Registrar made the entry based on misleading

information. Therefore, not all fraudulently obtained entries will have been incorrectly made.

- 20 In some cases, an allegation that an entry was fraudulent could also amount to an allegation of misconduct because the nurse or midwife has acted dishonestly during the course of the registration process. In these circumstances the allegation of fraudulent entry will usually take precedence over the fitness to practise allegation and will be investigated and decided first. Any potential misconduct allegation will generally not be investigated until the allegation of fraudulent entry has been dealt with.
- 21 This is because the allegation of whether individual should be on the register in the first place should be resolved before considering any allegations that have come to light after the fraudulent entry was made.

Incorrect entry

- 22 If it is alleged that the Registrar made an entry to the register based on wrong, false or inaccurate information about the relevant entry requirements, then this will amount to an allegation of incorrect entry. Where appropriate, this allegation may be charged in the alternative to an allegation of fraud.
- 23 An example of an incorrect entry would be where the Registrar had information that the applicant had completed the required CPD hours, when this was not actually the case and there was no deliberate attempt to mislead the Registrar.
- 24 An entry will have also been incorrectly made where the Registrar made a mistake in relation to the application process. For example, if, due to an administrative error, the wrong individual's name was entered onto the register.

The determination stage

- 25 At the determination stage, the IC panel decides:
 - 25.1 if the entry in the register has been fraudulently or incorrectly made;
 - 25.2 whether to take no action or make an order that the Registrar remove or amend the entry¹¹; and
 - 25.3 whether to impose an interim order at the same time as making an order¹².
- 26 Before taking any action, the IC must be satisfied on the balance of probabilities that an entry in the register has been fraudulently obtained or incorrectly made. In determining this question, the IC should have regard to the same factors set out at paragraphs 14 and 16–24.
- 27 When deciding whether an allegation is proved or not at this stage, the panel is considering the validity of the entry and not the nurse's or midwife's fitness to

¹¹ Article 26(7) of the rules

¹² Article 26(11) of the rules

practise. This means that evidence at this stage should be relevant to this question. Matters which relate to the nurse's or midwife's character or professional practise are unlikely to assist the panel.

- 28 If the IC finds the allegation proved, it may:
- 28.1 make an order that the Registrar remove the entry;
 - 28.2 make an order that the Registrar amend the entry; or
 - 28.3 take no action.

Removal of the entry

- 29 The appropriate outcome will depend on the circumstances of the case. However, in general, where the IC has found an allegation of fraudulent or incorrect entry proved, the suitable response in both cases will normally be for the entry to be removed and, if the nurse or midwife wishes to return to the register, a new application to be made to the Registrar.
- 30 This is because the IC is not deciding whether or not the individual now meets the relevant entry requirements and therefore can be allowed to remain on the register. Instead, the IC's role is to assess whether there is reason to question the validity of the original registration or renewal decision. It is for the Registrar to decide whether an individual should be allowed to practise as a nurse or midwife.¹³
- 31 Where the IC orders removal of the entry from the register and the individual makes a new application, the Registrar can have regard to the nature and circumstances of the fraudulent or incorrect entry allegation found proved.
- 32 This means that if an individual was fraudulently or incorrectly entered onto the register through no fault of their own, the Registrar can take this into account in considering whether to allow them back onto the register.
- 33 Equally, if an individual acted fraudulently in a previous application to the register, the Registrar may take this into consideration in deciding whether they are of sufficiently good character to be capable of safe and effective practice.¹⁴

Amending an entry

- 34 In certain circumstances, it may be appropriate to order that the Registrar amend the entry in the register. For example, this may apply in situations where an annotation has been made in error and there is no wider concern regarding the integrity of the entry in question.

¹³ Articles 9 and 10 of the order specify that the Registrar is the only person able to make decisions in relation to registration, renewal and readmission.

¹⁴ Article 9(2)(b) of the order

No action

- 35 Even if the panel has found that an entry on the register has been fraudulently or incorrectly made, it may nonetheless decide to take no action. Taking no action may be appropriate if the error or inaccuracy in the application process was trivial or clearly immaterial; has since been remedied; or the Registrar has subsequently correctly entered the individual on the register based on all relevant information. Such situations are likely to be relatively rare because the investigating Registrar will not usually investigate the allegation in these circumstances.¹⁵
- 36 If the panel decides to take no further action, it should set out very clearly the reasons why it considers it appropriate, notwithstanding it has found the nurse's or midwife's entry in the register to have been incorrectly or fraudulently made.

Procedure at hearings

- 37 If an allegation is being considered at a hearing, the panel should hear evidence in relation to and consider each of the stages set out at paragraph 25 above separately. This means that it should hear representations, deliberate and announce its decision in respect of each stage before moving on to the next.

Particular considerations

Interim orders

- 38 The IC has the power to make an interim conditions of practise or suspension order in relation to an individual facing an allegation of fraudulent or incorrect entry. This order can be made on any one of the three statutory grounds set out at article 31 of the order.
- 39 If an allegation is still being investigated, the IC should consider whether it is in the public interest to suspend a nurse or midwife, who may not be on the register legitimately. The IC should also consider whether the allegation raises any public protection concerns, which may mean it is necessary to make an interim suspension to protect the public from the risk of harm.
- 40 The IC can also consider whether to make an interim conditions of practise order. An example of when such an order may be appropriate is if an individual is dual registered and the allegation of fraudulent or incorrect entry relates to only one of their entries in the register. In such circumstances, it may be appropriate to impose a conditions of practise order restricting the individual from working in the area, which the allegation relates to.
- 41 At the determination stage, if the IC finds the allegation proved and makes an order for removal, any interim order in place will lapse. Additionally, any order for removal will not take effect until the end of the appeal period (28 days after the

¹⁵ For the reasons given at paragraph 14 above

date on which the decision letter is served) or, if an appeal has been lodged, before the appeal has concluded.¹⁶

- 42 At this stage the IC has the power to impose an interim order to prevent the nurse or midwife from practising until the order to remove their entry on the register takes effect.¹⁷
- 43 This power is discretionary and should not be viewed as an automatic decision in every case. The IC should consider the public interest in maintaining the integrity of the register in light of any order it has made.

Approved qualification

- 44 Every applicant seeking admission to the register must satisfy the Registrar that they hold an approved qualification. The applicant is required to provide the Registrar with evidence of this qualification, which must have been awarded within five years of the application for admission to the register.
- 45 If the qualification has not been awarded within the prescribed five year period, the applicant must have undertaken additional education, training and experience in order to be admitted to the register.
- 46 Therefore, an entry to the register may have been fraudulently or incorrectly made if there is evidence that the individual:
 - 46.1 did not hold an approved qualification at the time of admission to the register; or
 - 46.2 was not awarded the approved qualification within five years of their application for admission to the register and they did not undertake the required additional education, training and experience.

Indemnity arrangement

- 47 Every individual that is entered to the register must have satisfied the Registrar that they have appropriate cover under an indemnity arrangement or that an arrangement will be in place when they practise in a registered capacity. To fulfil this requirement an applicant for admission, renewal or readmission must sign a self-declaration confirming that they (or their employer on their behalf) hold appropriate indemnity insurance.
- 48 If there is evidence that this declaration was false and the applicant was then entered on the register, then the entry will have been incorrectly made. If the declaration was deliberately misleading, then the entry will have been fraudulently obtained. This is because the Registrar made the entry based on false or misleading information. In deciding whether or not to investigate such an allegation the investigating Registrar will consider the particular circumstances in which the declaration was made. If at the time of making the declaration, the nurse or

¹⁶ Article 26(10) and (14) of the order

¹⁷ Article 26(11) of the order

midwife had no reason to doubt that their employer had appropriate cover in place for them, the investigating Registrar may decide not to investigate the allegation.

Safe and effective practise

- 49 In order to enter an individual's name onto the register, the Registrar must be satisfied that they are capable of safe and effective practice. This involves determining whether the applicant meets the prescribed requirements of good health and good character.¹⁸
- 50 In deciding whether an applicant is of good health, the Registrar is required to have regard to:
- 50.1 a self-declaration provided by the applicant that they are of good health;
 - 50.2 a supporting declaration from an appropriate third party (in the case of admission and readmission); and
 - 50.3 any other matters which, in the opinion of the Registrar, appear to be relevant.¹⁹
- 51 In deciding whether an applicant is of good character, the Registrar is required to have regard to:
- 51.1 a self-declaration provided by the applicant that they are of good character;
 - 51.2 a supporting declaration from an appropriate third party (in the case of admission and readmission);
 - 51.3 any conviction or caution which the applicant has received for a criminal offence;
 - 51.4 any determination by another regulatory body that the applicant's fitness to practise is impaired; and
 - 51.5 any other matters which, in the Registrar's opinion, appear to be relevant.²⁰

Fitness to practise proceedings

- 52 Under article 22(1)(a) of the Nursing and Midwifery Order 2001 (the Order) a nurse's or midwife's fitness to practise may be impaired by reason of any or all of the following.
- 52.1 Misconduct.
 - 52.2 Lack of competence.

¹⁸ Article 9(2)(b) of the order

¹⁹ Rule 6(5) The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004 (registration rules).

²⁰ Rule 6(6) of registration rules

- 52.3 A conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence.
- 52.4 Physical or mental health.
- 52.5 Not having the necessary knowledge of English.
- 52.6 A determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that the nurse's or midwife's fitness to practise is impaired, or a determination by a licensing body elsewhere to the same effect.
- 53 The Registrar also has the power to seek additional information to determine whether the applicant is of sufficient good health and character to be entered onto the register.²¹
- 54 If any of the information about the applicant's health or character was misleading, wrong, false or inaccurate, the Registrar will not have been in a suitable position to decide whether an applicant was capable of safe and effective practice. In such circumstances the entry will have been fraudulently or incorrectly made.
- 55 For example, if the information before the Registrar inaccurately indicated that the applicant had no convictions or cautions, then the entry would have been incorrectly made. If the Registrar was deliberately misled, then the entry will have been fraudulently made.
- 56 In these cases, the IC is not determining whether, in light of the new information that has become available about the individual's health or character, the individual was capable of safe and effective practise at the point of entry. To do so would be to make a decision on behalf of the Registrar.
- 57 Instead the IC is determining whether at the time of making the decision the Registrar had false or misleading information about whether the individual was capable of safe and effective practice.

Non-payment of fee

- 58 It is the professional responsibility of every nurse and midwife to ensure that they have paid the registration or renewal fee. If an individual is entered onto the register without having paid the relevant fee (and has not subsequently done so), then they will have been incorrectly entered onto the register. If there is evidence that there was a deliberate intention to avoid payment of the relevant fee, then the entry to the register will have been fraudulently obtained.

Continuous professional development

- 59 On renewal of registration the applicant must self-declare that they have undertaken the required number of hours of continuous professional development

²¹ Rule 6(5) and (6) of registrations rules

(CPD). This consists of 35 hours learning activity and 450 hours of practise in the previous three years.

- 60 If there is evidence that the declaration of the applicant's CPD was false and the applicant was then entered onto the register, then the entry will have been incorrectly made. If there is evidence that the false declaration was made with the deliberate intention to mislead the Registrar then the entry will have been fraudulently obtained.

Identity fraud

- 61 In some cases, the allegation will be that an entire application was fraudulently submitted to the Registrar by a person who is using another nurse's or midwife's name. Such cases are identity fraud, often with the person whose name appears on the register being unaware that an application has been made in their name. Although the individual whose name has been entered onto the register may have actually fulfilled the relevant entry requirements, the information before the Registrar was deliberately misleading about the identity of the applicant. In such circumstances, the entry will have been fraudulently obtained.
- 62 Although this is a criminal offence, there is no need for the IC to see evidence that the person who made the application has been convicted in order to find the allegation proved. The IC needs to be satisfied, on the balance of probabilities, that the individual whose name was entered onto the register was not the individual who submitted the application form to the Registrar and that their name was entered onto the register by fraud.

Dual registration

- 63 An individual can apply to be on more than one part of the register as long as the relevant entry requirements for each part are met.
- 64 If an individual has gained entry onto one part of the register through fraudulent means and the IC makes an order for that entry to be removed, they will still be able to practise due to their entry in the other part or parts of the register. This is despite the fact that they may have been found to have acted fraudulently.
- 65 In such circumstances, there is likely to be public interest in a fitness to practise referral being made to deal with the IC's decision that the individual has fraudulently gained entry to the register.²² If the IC panel considers it would be appropriate for such a referral to be made, it can make this recommendation in its determination.
- 66 This referral will be treated as an allegation of misconduct because nurses and midwives are required to behave with honesty and integrity and such conduct breaches a fundamental tenet of the profession.²³

²² We can make such a referral under article 22(6) of the order

²³ Paragraph 20.2 of *The Code: Professional standards of practise and behaviour for nurses and midwives* (NMC, 2015)

Multiple allegations

- 67 If a nurse or midwife is facing an allegation about their entry in the register as well as their fitness to practise, the allegation that their entry was fraudulently obtained or incorrectly made should usually be considered first.²⁴
- 68 This is because the issue of whether the entry on the register is incorrect or fraudulent should be resolved before an examination of any fitness to practise issues that have come to light following the entry having been made. However, there may be certain cases where the public interest requires that the fitness to practise allegation is considered at a final hearing.
- 69 If the IC makes an order that an entry be removed from the register and the nurse or midwife concerned is subject to a fitness to practise allegation, the fitness to practise proceedings will automatically end.²⁵ In appropriate cases, if the individual is subsequently readmitted to the register, the fitness to practise investigation may be pursued until a final decision.
- 70 If the individual whose entry has been removed from the register is subject to a fitness to practise sanction and they apply for readmission to the register, the Registrar may take the sanction into account to consider whether the individual is capable of safe and effective practice.

Approved by Director of Fitness to Practise 25.6.15

Revised by Director of Fitness to Practise 5.4.16

**Updated version approved by the FtP Director on 24.06.16
Effective from 26.09.16**

²⁴ As long as it is practicable

²⁵ Except if the individual has dual registration and their entry on only one part of the register has been removed.