

**Nursing and Midwifery Council
Investigating Committee**

**Fraudulent/Incorrect Entry Hearing
Friday 31 March 2023**

Virtual Hearing

Name of Registrant:	Mary Maxwell Archibald
NMC PIN	7310467S
Part(s) of the register:	RN1, Registered Nurse- Adult (September 1976) SPDN, Specialist Practitioner- District Nursing (July 2004) V300, Nurse Independent/ Supplementary Prescriber (September 2006)
Relevant Location:	East Lothian
Type of case:	Incorrect/Fraudulent entry
Panel members:	Angela Williams (Chair, lay member) Hayley Ball (Registrant member) Alison Fisher (Lay member)
Legal Assessor:	Monica Daley
Hearings Coordinator:	Yewande Oluwalana
Nursing and Midwifery Council:	Represented by Mohammed Moksud, Case Presenter
Mrs Archibald:	Not present and unrepresented at today's hearing
Outcome:	Registration entry incorrectly and fraudulently made
Direction:	Panel directs the Registrar to remove the entry from the register
Interim Order:	Interim Suspension Order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Archibald was not in attendance and that the Notice of Hearing letter had been sent to Mrs Archibald's registered email address by secure email on 16 February 2023 and to her registered postal address by recorded delivery on 17 February 2023.

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

Mr Moksud 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 Mrs Archibald has been served with the Notice of Hearing in accordance with the requirements of Rules 5 and 34.

Decision and reasons on proceeding in the absence of Mrs Archibald

The panel next considered whether it should proceed in the absence of Mrs Archibald. It had regard to Rule 21 and heard the submissions of Mr Moksud who invited the panel to continue in the absence of Mrs Archibald. He submitted that Mrs Archibald had voluntarily absented herself.

Mr Moksud referred the panel to the emails from Mrs Archibald dated 21 March 2023 and 30 March 2023 and from her email on 30 March 2023 Mrs Archibald stated:

'I have gone over and over my appearing at the hearing and am aware of your recommendation that it would be in my best interest to attend But I'd rather the process goes ahead without me.'

Mr Moksud submitted that Mrs Archibald had made no application to adjourn the hearing and that she would like the proceedings to continue in her absence.

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 and the case of *GMC v Adeogba* [2016] EWCA Civ 162.

The panel has decided to proceed in the absence of Mrs Archibald. In reaching this decision, the panel has considered the submissions of Mr Moksud, the emails sent by Mrs Archibald dated 21 March 2023 and 30 March 2023, 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* 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 Mrs Archibald;
- Mrs Archibald has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Archibald in proceeding in her absence, although the evidence upon which the NMC relies will have been sent to her via email and to

her registered postal address. She has responded to the allegations and accepts that the entry was incorrect, however she denies it was fraudulently made. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf.

However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of her decision to absent herself from the hearing, waive her rights to attend or be represented.

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

Details of charge

That you:

1. On your online revalidation application dated 14 August 2021, stated that you had a reflective discussion with colleague A on 14 August 2021 when no such reflective discussion had taken place.
2. On your online revalidation application dated 14 August 2021, stated that you had received confirmation on 14 August 2021 from colleague A when you had not received such confirmation.
3. On your online revalidation application dated 14 August 2021, declared that you had completed your reflective accounts in line with 'How to revalidate with the NMC' when you had not.
4. On your online revalidation application dated 14 August 2021, declared that you had obtained feedback in line with 'How to revalidate with the NMC' when you had not.

And thereby an entry on sub part 1 of the NMC register in the name of Mrs Mary Maxwell Archibald, NMC PIN 7310467S was fraudulently procured and/or incorrectly made.

Background

On 1 September 2021, the NMC received a referral from the Deputy Director of Nursing at Lothian NHS raising concerns about Mrs Archibald.

On the 14 August 2021 Colleague A (who was also Mrs Archibald's line manager at the time) received a revalidation confirmation email (21:05hrs) thanking her for confirming that Mrs Archibald had met the revalidation requirements. Colleague A had not met with Mrs Archibald nor had she been asked to confirm her revalidation.

Colleague A received an email from Mrs Archibald on 14 August 2021 (22:23hrs) advising that she had taken Colleague A's name "*in vain*" regarding her revalidation and requested a meeting on 17 August 2021 when she was back on shift to get "*signed off*" as Mrs Archibald was not back on shift again until September.

On 17 August 2021 Colleague A met with Mrs Archibald and advised her that she should not have used Colleague A's NMC PIN number without her consent. Mrs Archibald advised that she was about to go on annual leave and needed it done. Colleague A asked for sight of Mrs Archibald's revalidation evidence which comprised of a record confirming working hours and one piece of reflection. When Colleague A advised Mrs Archibald that they needed to be five pieces of evidence feedback and five pieces of reflective evidence required, Mrs Archibald did not seem to be aware of this, which raised concerns for Colleague A.

On 29 August 2021 Colleague A received an email from Mrs Archibald advising that she was still awaiting a couple of feedbacks but attached the rest of the revalidation paperwork required. Of the completed feedback, one was dated 21 August 2021 which was seven days after the date that she revalidated online and raised concerns

regarding Mrs Archibald having the required five pieces of feedback on the date of revalidation.

The referral alleges that Mrs Archibald's most recent revalidation application contained an incorrect or false declaration which the Registrar relied upon at the time that her revalidation application was considered. As such, there are concerns that Mrs Archibald's entry on to the NMC register was either incorrectly made and/or fraudulently procured.

Decision and reasons on the facts

At the outset of the hearing, the Chair referred to Mrs Archibald's email to the NMC dated 14 December 2022, where Mrs Archibald made admissions to charges 1, 2, 3 and 4 as being incorrectly made but disputes that the entry was fraudulent.

The panel therefore finds charges 1,2,3 and 4 proved, by way of Mrs Archibald's admissions with regard to the entry on the NMC register being incorrectly made.

The panel next went on to consider whether Mrs Archibald's entry on to the register was also fraudulently procured. It had regard to the submissions from Mr Moksud and the documentary evidence provided by the NMC.

Mr Moksud provided the panel with the background to this case. He submitted that Mrs Archibald does not dispute the witness statements in this case and that there are key public interest considerations in this case, including having regard to the need to uphold confidence in the NMC register.

Mr Moksud submitted that Mrs Archibald's entry onto the register was not only incorrect but fraudulently procured. He further submitted that Mrs Archibald was aware of the fact that she did not have Colleague A's consent to use her PIN as her confirmer for revalidation. He referred the panel to Colleague A's witness statement and where she mentions that she spoke with Mrs Archibald on 17 August 2021 to discuss why her PIN was used without her permission and the seriousness of using Colleague A's PIN.

Mr Moksud submitted that Mrs Archibald knew what she was doing, was not only incorrect and was plainly wrong, and that she had gained admission onto the NMC register fraudulently.

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. It considered the witness statements and documentary evidence provided by the NMC.

Charge 1

That you, on your online revalidation application dated 14 August 2021, stated that you had a reflective discussion with colleague A on 14 August 2021 when no such reflective discussion had taken place.

This charge is found proved.

In reaching this decision, the panel took into account that Mrs Archibald had admitted to Charge 1 in her email to the NMC dated 14 December 2022. It considered Colleague A's witness statement, the NMC's Investigator and Acting Registration Investigations Manager's witness statement and Mrs Archibald's revalidation application form.

The panel were of the view that Mrs Archibald knew that the information she provided for revalidation on 14 August 2021 was untrue and that she had not had a discussion with Colleague A on 14 August 2021. It considered the email sent by Mrs Archibald to Colleague A dated 14 August 2021 asking for a meeting on 17 August 2021 to discuss her revalidation. The panel noted that Mrs Archibald proactively contacted Colleague A immediately after submitting her revalidation application, but

notwithstanding this, she was aware at the time that she submitted her revalidation application, a reflective discussion had not taken place.

The panel therefore, concluded, that the information provided on Mrs Archibald's revalidation application form was plainly wrong as the information upon which her entry on the register is based on is inaccurate.

The panel concluded that the information on Mrs Archibald's revalidation application form was submitted with the intention to mislead the NMC into believing that she had met the requirements for revalidation when she had not. Therefore, the panel was satisfied that Mrs Archibald's actions were dishonest by the standards of an ordinary person and that her entry on the register had been fraudulently procured.

Charge 2

That you, on your online revalidation application dated 14 August 2021, stated that you had received confirmation on 14 August 2021 from colleague A when you had not received such confirmation.

This charge is found proved.

In reaching this decision, the panel took into account that Mrs Archibald had admitted to Charge 2 in her email to the NMC dated 14 December 2022. It noted that Colleague A in her witness statement stated that she had not given permission to Mrs Archibald to use her PIN.

The panel was of the view, that the information before it demonstrated that Mrs Archibald did not have permission when completing her online revalidation application form. It had regard to Mrs Archibald's email dated 14 August 2021 to Colleague A, where she stated '*...Hope you don't mind but I've taken your name in vain tonight regarding the above [revalidation]. Am back in on Tuesday and wondered if you had the time could you sign me off.*' The panel noted that this email was sent a short time (1hr 19 minutes) after Mrs Archibald completed her

revalidation application form and demonstrated that Mrs Archibald knew she was wrong in using Colleague A's information.

The panel concluded that the information on Mrs Archibald's revalidation application form was submitted with the intention to mislead the NMC into believing that she had met the requirements for revalidation when she had not. Therefore, the panel was satisfied that Mrs Archibald's actions were dishonest by the standards of an ordinary person and that her entry on the register had been fraudulently procured.

Charge 3

That you, on your online revalidation application dated 14 August 2021, declared that you had completed your reflective accounts in line with 'How to revalidate with the NMC' when you had not.

This charge is found proved.

In reaching this decision, the panel took into account that Mrs Archibald had admitted to Charge 3 in her email to the NMC dated 14 December 2022. The panel considered the witness statements and Mrs Archibald's admissions that she accepted the charges in respect of an incorrectly made entry.

The panel had regard to Colleague A's witness statement and her clear account of her discussion with Mrs Archibald on the 17 August 2021. It noted that Mrs Archibald at her meeting with Colleague A was only able to produce one written reflective piece. Colleague A gave Mrs Archibald an extension to provide the remaining pieces needed for revalidation until the end of August. An email was sent to Colleague A from Mrs Archibald dated 29 August 2021 stating: *'Am still awaiting a couple of feedbacks but here is the rest of my revalidation. Apologies for being a bit back to front but all done now.'*

The panel considered the information before it, and found that Mrs Archibald at the time she completed her revalidation application form, knew that she did not have the required documentation but submitted her application nonetheless. It noted that

following her discussion with Colleague A on the 17 August 2021, she was given an extension to provide the documentation, however the further documents that were submitted amounted to three reflective accounts and not the five required for NMC revalidation.

The panel determined that Mrs Archibald was wrong in submitting the revalidation application form when she did not have the required five reflective accounts and considered that she took responsibility by emailing Colleague A and then tendering her resignation on 10 September 2021 via email.

On the balance of probabilities, the panel concluded that the information provided on Mrs Archibald's revalidation application form regarding her completed reflective accounts was plainly wrong as the information upon which her entry on the register is based on is inaccurate.

Based on the information before it, the panel concluded that the information on Mrs Archibald's revalidation application form was submitted with the deliberate intention to mislead the NMC into believing that she had met the requirements for revalidation, when she had not. Therefore, the panel was satisfied that Mrs Archibald's actions were dishonest by the standards of an ordinary person and that her entry on the register had been fraudulently procured.

Charge 4

That you, on your online revalidation application dated 14 August 2021, declared that you had obtained feedback in line with 'How to revalidate with the NMC' when you had not.

This charge is found proved.

In reaching this decision, the panel took into account that Mrs Archibald had admitted to Charge 4 in her email to the NMC dated 14 December 2022. The panel considered the witness statements and Mrs Archibald's admissions that she accepts the charges in respect of an incorrectly made entry.

The panel had regard to Colleague A's witness statement and her clear account of her discussion with Mrs Archibald on the 17 August 2021. It noted that Mrs Archibald at her meeting with Colleague A did not produce any feedback documentation. Colleague A gave Mrs Archibald an extension to provide the remaining pieces needed for revalidation until the end of August. An email was sent to Colleague A from Mrs Archibald dated 29 August 2021 stating: *'Am still awaiting a couple of feedbacks but here is the rest of my revalidation. Apologies for being a bit back to front but all done now.'*

The panel considered the information before it, and found that Mrs Archibald at the time she completed her revalidation application form knew that she did not have the required five pieces of feedback but submitted her application nonetheless. It noted that following her discussion with Colleague A on the 17 August 2021, she was given an extension to provide the five pieces of feedback, however the further documents that were provided amounted to two feedbacks and not the five required for NMC revalidation. The panel noted that one of the feedbacks was dated on 21 August 2021 which was seven days after she submitted her revalidation to the NMC.

The panel determined that Mrs Archibald was wrong in submitting the revalidation application form when she did not have the required documents and considered that she took responsibility by emailing Colleague A and then tendering her resignation on 10 September 2021 via email.

On the balance of probabilities, the panel concluded that the information provided on Mrs Archibald's revalidation application form regarding her completed reflective accounts was plainly wrong. As the information upon which her entry on the register is based on is inaccurate.

Based on the information before it, the panel concluded that the information on Mrs Archibald's revalidation application form was submitted with the deliberate intention to mislead the NMC into believing that she had met the requirements for revalidation, when she had not. Therefore, the panel was satisfied that Mrs Archibald's actions were dishonest by the standards of an ordinary person and that her entry on the register had been fraudulently procured.

Decision on Incorrect/Fraudulent Entry

The panel decided, for the above reasons, that in respect of each charge the entry on the register in Mrs Archibald's name was incorrectly and fraudulently procured.

The panel accepted the advice of the legal assessor who referred it to the case of *Ivey v Genting Casinos* [2017] UKSC 67, in which Lord Hughes stated:

'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

The panel bore in mind that for an entry to be fraudulent there must have been a deliberate attempt to mislead whereas an incorrect entry involves a mistake or genuine error.

The panel therefore found that an entry on sub part 1 of the NMC register in the name of Mrs Mary Maxwell Archibald, NMC PIN 73I0467S was incorrectly made and fraudulently procured.

Decision and reasons on direction

Having determined that Mrs Archibald had incorrectly and fraudulently 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.’

Mr Moksud referred the panel to the NMC’s published guidance on incorrectly made and fraudulently procured entries. He submitted that given the panel’s findings that Mrs Archibald’s entry on to the register was incorrectly made and fraudulently procured, some action is required. He submitted that there is nothing to amend in these circumstances and that the appropriate course of action would be to remove Mrs Archibald’s entry from the register.

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

Having found that Mrs Archibald’s entry on the NMC register was incorrectly made and fraudulently procured, the panel decided that it would be inappropriate to take no action. Taking no action could affect public confidence in the integrity of the register and the nursing profession.

The panel decided that directing the Registrar to amend the entry would also be inappropriate. The error is not minor or trivial and did not arise out of a simple mistake. The panel noted that Mrs Archibald did not have the consent of Colleague A to use her PIN nor did she agree to confirm her revalidation. Mrs Archibald did not provide Colleague A with five reflective pieces or the five feedbacks required for NMC revalidation and Colleague A had not discussed the reflections with Mrs Archibald. Therefore, there is nothing in the entry that can be amended.

In all the circumstances the panel decided that the only appropriate action is to direct the Registrar to remove Mrs Archibald’s entry from the register.

Mrs Archibald will be notified of the panel's decision in writing. Mrs Archibald 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 Mrs Archibald's entry from the register, the panel was then asked to consider whether an interim order was required under Article 26(11) of the Order, in relation to the appeal period.

The panel took account of the submissions made by Mr Moksud who submitted that an interim order was necessary on the grounds of public protection and the wider public interest.

Mr Moksud submitted that an interim suspension order was necessary for the protection of the public, in that Mrs Archibald may cause risk of harm to patients as she had revalidated her PIN without the necessary safeguards. Mr Moksud submitted an interim suspension order would also be appropriate to maintain the integrity of the NMC register. He invited the panel to consider an interim suspension order for a period of 18 months to allow sufficient time for an appeal to be lodged and determined, should Mrs Archibald decide to make one.

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 Mrs Archibald's entry from the Register. It also had regard to the NMC's published Guidance on Fraudulent and incorrect 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 first decided 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 18-month interim suspension order is necessary to protect the public. As Mrs Archibald has not provided the necessary evidence of having met the full requirements for revalidation, the panel considered that patients could be placed at risk of harm if Mrs Archibald were allowed to practise unrestricted. The panel considered that Mrs Archibald had resigned and left her employment on 10 October 2021 she has not worked since. Notwithstanding this the panel considered that Mrs Archibald could decide to return to work and therefore an interim order is necessary to protect the public. It determined that an interim suspension order is in the public interest in order to maintain public confidence in the integrity of the register and in the NMC as a regulator.

The period of this order is for 18 months to allow sufficient time for any appeal that may be lodged to conclude.

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

That concludes this determination.