

**Nursing and Midwifery Council
Investigating Committee**

**Fraudulent/Incorrect Entry Hearing
Thursday, 4 April 2024 – Friday, 5 April 2024**

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

Name of Registrant: Esther Temitayo Ayelabowo

NMC PIN 23B02360

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

Relevant Location: Nigeria

Type of case: Incorrect/Fraudulent entry

Panel members: Godfried Attafua (Chair, Registrant member)
Judith Ebbrell (Registrant member)
John Anderson (Lay member)

Legal Assessor: Nigel Mitchell

Hearings Coordinator: Max Buadi

Nursing and Midwifery Council: Represented by Emma-Louise Fenelon, Case Presenter

Ms Ayelabowo: Present and represented by Dr Abbey Akinoshun, (Erras)

Outcome: **Charged proved, Registration entry fraudulently procured**

Direction: **The panel directs the Registrar to remove Ms Ayelabowo's entry on the register in accordance with Article 26(7) of the Order**

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Fenelon, on behalf of the Nursing and Midwifery Council (the NMC), to amend the wording of charge 1a.

Ms Fenelon submitted that the date in the charge, which is currently 31 January 2022, needed to be amended to reflect the actual date you had undertaken the Computer Based Test (CBT) at the Yunnik Centre, namely on 29 March 2022. It was submitted by Ms Fenelon that the proposed amendment would provide clarity and more accurately reflect the evidence.

Proposed Amendment

That you, as part of your application to join the NMC register:

1. Submitted or caused to be submitted, the following Computer Based Test result, obtained at Yunnik Technologies Limited test centre, that had been obtained through fraud:
 - a. RNA Clinical test, taken on ~~31 January 2022~~ **29 March 2022**

Dr Akinoshun submitted that he did not object to the application.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was of the view that such an amendment, as applied for, was in the interest of justice. It also noted that Dr Akinoshun did not object to the amendment. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Decision and reasons on application to admit written statements of Witness 4 and Witness 5 into evidence

The panel heard an application from Ms Fenelon to admit the witness statements of Witness 4 and Witness 5 as hearsay evidence. She submitted that while neither Witness 4 nor Witness 5 are giving live evidence at this hearing, their evidence is relevant to this case.

With regards to fairness, Ms Fenelon submitted that both Witness 4 and Witness 5 are working registered nurses and their evidence will be relied upon in these types of cases. She submitted that it would be disproportionate for them to attend each one of these hearings concerning CBT's.

Ms Fenelon informed the panel that Witness 4 and Witness 5 took the CBT at the Yunnik centre on a different day from you and that neither can speak to what actually occurred on the day you took your CBT. She submitted that all Witness 4 and Witness 5 can do is speak to their own experience which can provide the panel with context.

Ms Fenelon referred the panel to the guidance in the case of *Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin)* which pertains to the admissibility of hearsay evidence.

Ms Fenelon submitted that the witness statements are not the sole or decisive evidence in this case. She submitted that both witness statements describe proxy's being used at the Yunnik test centre. She submitted that this is valuable background to the panel's consideration of the charge. Ms Fenelon submitted Witness 4 and Witness 5 are practising registered nurses of good character which may carry some weight with the panel pertaining to the likelihood that they may have fabricated these allegations.

Ms Fenelon invited the panel to admit the witness statements of both Witness 4 and Witness 5.

Dr Akinoshun opposed the application. He submitted that it would not be fair to rely on these witness statements without the opportunity to cross examine or the opportunity for the panel to seek clarification on the witness statements. He also reminded the panel that you stated that witness statements of Witness 4 and Witness 5 are irrelevant to your case.

You said that Witness 4 and Witness 5 were not at the Yunnik Centre at the same time you were so their experience was different to yours.

Dr Akinoshun disputed the submission that Witness 4 and Witness 5 are nurses of good character due to the fact that they have admitted to using proxies at the Yunnik Centre.

Panel's Decision on Witness 4 and Witness 5's witness statement

The panel heard and accepted the legal assessor's advice, during which he referred the panel to the guidance in *Thorneycroft*.

The panel considered *Thorneycroft* and determined the following:

(1) whether the statement was the sole or decisive evidence in support of the charge;

The witness statements of Witness 4 and Witness 5 were not the sole and decisive evidence in support of the charge. They both provide background context.

(2) the nature and extent of the challenges to the contents of the statement;

Dr Akinoshun's objection is that he cannot cross examine either witness. However, it is not in dispute that Witness 4 and Witness 5 were not at the Yunnik centre on the same day as you.

(3) whether there was any suggestion that the witness had reason to fabricate their allegations;

There is no evidence to suggest that Witness 4 and Witness 5 had a reason to fabricate this evidence. They have admitted to fraudulently procuring a proxy which comes at a great risk to themselves.

(4) the seriousness of the allegations, taking into account the impact that adverse findings might have on the Registrant's career;

The charge is serious and relates to fraudulent entry which could have an adverse impact on your nursing career.

(5) whether there was a good reason for the non-attendance of the witness;

These types of cases are the first of many yet to come before an NMC panel and it would be impractical and disproportionate for Witness 4 and Witness 5 to attend every hearing pertaining to CBT's.

(6) whether the NMC had taken reasonable steps to secure the attendance;

There is no evidence before the panel that the NMC took reasonable steps to secure the attendance of Witness 4 and Witness 5. However, the panel accept that it would be impractical for both witnesses to attend all these types of hearings and cause them great inconvenience.

(7) the fact that the registrant did not have prior notice that the witness statement was to be read.

You had prior notice that the NMC would apply to read the witness statements of Witness 4 and Witness 5.

The panel bore in mind that Witness 4 and Witness 5 are giving an account of their personal experiences at the Yunnik Centre. While the panel accept that both Witness 4 and Witness 5 were not present at the Yunnik Centre at the same time you were, they panel considered that their experience provides context to what was occurring at the Yunnik Centre.

In light of the above, the panel decided that it would be fair and relevant to admit the witness statements of Witness 4 and Witness 5. In due course the panel will determine what weight, if any, to attach to it.

Details of charge (as amended)

That you, as part of your application to join the NMC register:

1. Submitted or caused to be submitted, the following Computer Based Test result, obtained at Yunnik Technologies Limited test centre, that had been obtained through fraud:
 - a. RNA Clinical test, taken on 29 March 2022

And, in light of the above, your entry on the NMC register, in the name of Esther Temitayo Ayelabowo, PIN 23B0236O, was fraudulently procured and/or incorrectly made.

After the charge was read the panel heard from Dr Akinoshun, who informed the panel that you denied the charge.

Background

Pearson VUE have a contract with the NMC as their CBT provider which has been in place since 2014. CBT is one part of the NMC's Test of Competence ("ToC") and is used by the NMC to assess the skills and knowledge of people wanting to join the NMC's register from overseas as a nurse, midwife or nursing associate or re-join the register after a long period away from practice. The second part of the ToC is an objective structured clinical examination ("OSCE") – a practical examination.

The current CBT ("CBT 2021"), created on 2 August 2021, is split into two parts (Part A and Part B). Part A contains a numeracy test consisting of 15 short answer questions and lasts for 30 minutes. Part B is a clinical test consisting of 100 multiple-choice questions and lasts for 2 hours and 30 minutes. All questions are scored as either correct or incorrect.

Pearson VUE contracted with a third party, Yunnik Technologies Ltd, in relation to a PVTC in Ibadan ("the testing centre"), Nigeria. This testing centre is where the concerns in this matter relate.

On 15 March 2023, Pearson VUE identified that the Yunnik centre was delivering exams for multiple candidates who were completing the clinical part of the CBT in

10 minutes (2.5 hours is allowed for this part of the exam). The number of candidates was initially unknown.

The NMC was notified, and the Pearson VUE results team ran a report from January 2022, for all NMC exams that were delivered at the Yunnik centre in 20 minutes or under. This report identified a suspicious level of activity.

Pearson Vue conducted an investigation and found that the data set for the period between 15 March 2019 and 31 March 2023 indicated a specific pattern of probable fraudulent behaviour, likely to be proficient proxy testing, which was not present in other test centres globally.

The investigation also concluded that there was no technical error at the Yunnik centre that had led to the data set and that human interference was involved.

The NMC commissioned a report from Mr 1, instructed as an independent expert to analyse and report on data provided by the NMC. He reached essentially the same conclusion, namely, that there were a significant number of exceptionally quick test times at Yunnik, compared to global averages.

On 3 August 2023 the NMC's Registrar decided to use, as a benchmark, the 1 in 2,500 percentile in order to identify tests which were taken at such a speed that it is likely they were conducted using fraud (most likely a proxy test taker).

Because of the evidence of widespread fraudulent activity at the Yunnik centre, the NMC were unable to be confident in any of the CBT results obtained at the Yunnik centre. The Registrar therefore considered all CBT results obtained there to be invalid and that the safest, fairest, and most proportionate way to deal with this was to ask everyone who sat their CBT at the Yunnik centre, to take a new CBT. In the absence of a valid CBT an individual should not have been allowed entry to the NMC register.

On 29 March 2022, you completed the CBT Test at the Yunnik Centre. According to the data, you completed the numeracy test in 5 minutes 48 seconds and the clinical test in 9

minutes 25 seconds. It is the NMC's case that the reason you were able to complete the test so quickly was that you used a proxy to sit the test on your behalf.

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

Dr Akinoshun informed the panel that his re-examination of you would [PRIVATE]. Dr Akinoshun made a request that those parts of this case be held in private. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Fenelon supported this application.

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 there will be reference [PRIVATE], the panel determined to hold those parts of the hearing in private.

Decision and reasons on application to amend the charge

Before the panel handed down its decision on the facts, it highlighted to both Ms Fenelon and Dr Akinoshun that your name in the charge is different to the name on the NMC register. It invited submissions from Ms Fenelon, in relation to this.

Ms Fenelon invited the panel to amend your name in the charge so that it reflects the name found on the NMC register.

Proposed Amendment

That you, as part of your application to join the NMC register:

That you, as part of your application to join the NMC register:

1. Submitted or caused to be submitted, the following Computer Based Test result, obtained at Yunnik Technologies Limited test centre, that had been obtained through fraud:
 - a. RNA Clinical test, taken on 29 March 2022

And, in light of the above, your entry on the NMC register, in the name of ~~Ayelabowo Esther Temitayo~~ **Esther Temitayo Ayelabowo**, PIN 23B0236O, was fraudulently procured and/or incorrectly made.

Dr Akinoshun submitted that he did not object to the application.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was of the view that such an amendment, as applied for, was in the interest of justice. It also noted that Dr Akinoshun did not object to the amendment. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to accurately reflect the name on the NMC register.

Decision and reasons on the facts

In reaching its decisions 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 Fenelon on behalf of the NMC and by Dr Akinoshun on your behalf.

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. Once a prima facie case is established, then the burden shifts to you to satisfy the panel that you had not committed fraud in relation to your CBT.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Executive Director of Professional Practice at the NMC;
- Witness 2: An independent data analyst who provided the NMC with an analysis of the data provided by Pearson Vue;
- Witness 3: Director of Information Security and Security Services at Pearson Vue, undertook the initial investigation into the anomalies;

The panel took account of the witness statements from the following witnesses on behalf of the NMC:

- Witness 4: Band 5 nurse in the UK provides her experience sitting an exam at Yunnik Test centre;
- Witness 5: Band 4 Pre-registration nurse, in the UK provides her experience sitting an exam at Yunnik Test centre.

The panel also heard evidence from you under affirmation.

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

Charge 1

1. Submitted or caused to be submitted, the following Computer Based Test result, obtained at Yunnik Technologies Limited test centre, that had been obtained through fraud:
 - a. RNA Clinical test, taken on 29 March 2022

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Witness 1, Witness 2, Witness 3, Witness 4, Witness 5 and your evidence.

Witness 1 in her witness statement stated:

“Because of the evidence of widespread fraudulent activity at the Yunnik centre, we were unable to be confident in any of the CBT results obtained at the Yunnik centre. The Registrar therefore considered all CBT results obtained there to be invalid and that the safest, fairest, and most proportionate way to deal with this was to ask everyone who sat their CBT at the Yunnik centre, to take a new CBT. In the absence of a valid CBT an individual should not have been allowed entry to the NMC register.”

Witness 1 reiterated this in her oral evidence which provided the panel with the reason as to why the NMC needed to take action in regards to potential fraudulent activity at the Yunnik centre.

The panel bore in mind the general principles that emerged from the *Upper Tribunal (Immigration and Asylum Chamber) in DK and RK v Secretary of State for the Home Department [2022] UKUT 112 (IAC)* and *SSHD v Akter [2022] 1 WLR 3868* and *Ram v SSHD [2023] EWCA Civ 1323*. In its consideration of your case, it took account of the ‘Generic’ evidence of proxy test-taking at the Yunnik centre.

Witness 3 in his statement stated:

“Pearson VUE conducted a thorough and detailed investigation into the testing centre hosted by Yunnik Technologies Ltd and identified testing anomalies. The data analysis Pearson VUE conducted has two layers, firstly an analysis into the data across all test centres globally and then secondly, an analysis of the data at the exam level across candidates....

At test centre level, Pearson VUE found that the score and response time

differences between the testing centre and the global average were significantly different. At the candidate exam level, each individual candidate's score and response time delivered at the testing centre was compared to the average score and response time of candidates globally. Pearson VUE used 'Item Time' as the metric used to measure the time taken to undertake a CBT. This does not include any additional time spent by a candidate on reviewing and correcting answers after visiting a review screen. This was rounded to the nearest minute.

... Pearson VUE can confirm that the accuracy and integrity of the data provided to the NMC has been checked and the unusual data patterns are not due to a computer error, cyber/hacking attack or compromised in any other way. The data set rather strongly suggests probable human interference."

Witness 3 in his oral evidence stated that there was a finite amount of questions for the CBT. He also confirmed that the algorithm is designed so that the order of questions is generated at random from a bank of questions. He confirmed that the questions themselves are not computer generated, rather they are generated by subject matter experts.

With regards to the clinical test, Witness 3 stated that the computer pulls 100 random questions from its bank. He also stated that test administrators and staff at Yunnik would not have had access to the test in advance. He stated that someone could prepare very well and complete the test in good time. However, he hypothesised that if someone had taken the test 10 times, there is a very good chance that person would have seen all of the questions within the bank of questions available. He also said that the algorithm is designed to detect candidates who retake the exam so they would not get the same questions.

Dr Akinoshun, in his cross examination of Witness 3, referred him to his witness statement where he stated:

"Pearson VUE have also been asked to confirm, from the data/evidence obtained as part of the investigation into the CBT concerns at the testing centre, whether

there were any identifiable power outages at the testing centre on specific days and if so, whether it would affect the time recorded for completion of the CBT.”

Dr Akinoshun asked how Witness 3 could verify that there were no power outages at the Yunnik Centre without going to Nigeria to verify this for himself. Witness 3 stated that if there was a power outage at a test centre there would be technical errors in the retrieval of the results from the Yunnik test centre to the Pearson Vue data centre in the United States of America. He also stated that there is an incident system where incidents are automatically created if results are not returned for exams undertaken by candidates. He further stated that incidents are checked to determine whether technical factors indicating a power outage are triggered and he confirmed that they were not.

The panel bore in mind that pertaining to the numeracy section of the CBT you had undertaken on 29 March 2022, you completed this in 5 minutes and 48 seconds. In relation to the clinical section of the CBT on the same date, you completed this in 9 minutes and 25 seconds.

Ms Fenelon in her examination of Witness 3 stated that if there are 100 questions to be answered for you to complete this in 9 minutes and 25 seconds, you would have to answer each question with an average speed of 5.65 seconds. Witness 3 was reminded that he said that, in his experience, the fastest well prepared and honest person took 15 seconds to complete each question. Witness 3 stated that, in the experience at Pearson Vue, completing questions in 5.65 seconds is behaviour indicative of someone who was familiar with the questions. He said that it is indicative of someone who recognises a “trigger” from the question and has the answer available based on that “trigger”.

Witness 3 also accepted that there was nothing to suggest that candidates at Yunnik had access to past papers that were different to all of the other global test takers.

The panel also took account of the evidence of Witness 2. In his report titled “Review of Pearson VUE Computer Based Test Data for the Nursing and Midwifery Council” dated 14 September 2023, it stated that Pearson Vue’s analysis of the time candidates took to complete the CBT “...does not include any time spent on review of answers.” However, in Witness 2’s analysis of the test times “...includes any time spent reviewing answers and

so should be more accommodating to those candidates who spent a larger proportion of the test time on review”

Witness 2’s conclusion was that data showed that the Yunnik test centre statistically had significantly lower test times than the global benchmark population. The report also determined that other centres in Nigeria matched the global times as well. It is not country specific, namely that Nigeria has remarkably fast results, it is purely the Yunnik test centre that has results with testing speeds significantly lower both within Nigeria and globally.

In summary, when he looked at the data from Yunnik and compared it to the Global results and other Nigerian test centres, the Yunnik results were significantly faster than anywhere else.

The panel noted that during Witness 2’s oral evidence, he stated that different Data Analysts looking at the data of the Yunnik centre using a different set of assumptions could yield slightly different results. However, he stated that there would be broader themes that would apply and taking this into consideration the outcomes would not be significantly different. Your speeds were on the extreme side.

The panel also considered the witness statements of both Witness 4 and Witness 5. It noted that Witness 4 accepts that she used a proxy as she felt pressured to do so. Witness 5’s experience was different as she stated she did not use the proxy at the Yunnik test centre. However, she stated that she was being shouted at with answers, threatened and felt pressured.

The panel was mindful that this amounted to hearsay as neither Witness 4 and Witness 5 had attended to give evidence at this hearing. As a result, there was no way to test the veracity of what is in their respective witness statements. However, the panel was satisfied that both witness statements provided context to what was occurring at the Yunnik centre and their evidence was supported by the evidence of Witness 1 and Witness 2.

In light of the above the panel was satisfied that the NMC had satisfied its evidential burden that proxy testing was taking place at the Yunnik Centre. Because a prima facie case had been established it noted that the evidential burden had shifted to you to

establish that you did not use fraud. It bore in mind the speed in which you completed the CBT was what was being scrutinised.

The panel took account of the evidence you provided.

You stated that in preparation for the CBT, you were in study groups and familiarised yourself with Pearson Vue past questions on the NMC website. You stated that the past questions you encountered were very similar to the CBT.

You said that you arrived at the test centre 30 minutes before the exam. You said that the test official told you to leave your belongings and go in with your passport for verification purposes.

You said that you were allocated a computer to start the exam. You stated that you went through the exam and answered the questions that you knew and flagged the ones you did not know for review later. Therefore, you were able to finish in good time.

You said that you did not take note of the time it took you to answer the questions. You said that you were confident that you have the required skill and knowledge to practise in the UK and stated that in 10 years you have never had an issue with regards to your nursing skills. You denied using a proxy and denied that anyone assisted you at the Yunnik centre. You said that your experience was not the same as Witness 4 and Witness 5.

Under cross examination from Ms Fenelon, you accepted that it was important for you to pass the CBT as it was required for entry on the NMC register. You said that you understood that you had three hours to complete the entire CBT exam.

Ms Fenelon put it to you that it took you 5 minutes and 48 seconds to complete numeracy part of the CBT and 9 minutes and 25 seconds to complete clinical part of the CBT. Ms Fenelon reminded you of the evidence of Witness 2 who stated that in completing the clinical part of the CBT in the time referenced meant completing each of the 100 questions in 5.65 seconds. You accepted this.

Ms Fenelon reminded you that your method of flagging and reviewing the CBT questions meant that completing each question of the clinical part of the CBT would have taken you longer.

Ms Fenelon referred you to the report of Witness 2 which stated that you completing the clinical part of the CBT in 9 minutes and 25 seconds would make you quicker than all 56,478 other test takers making you the fastest. You maintained that you were the fastest.

The panel noted that you have been unable to provide evidence of previous high academic performance in previous exams to demonstrate high proficiency in taking exams. The panel was of the view that it would expect this to support the notion that you could complete the CBT as fast as you did.

The panel noted that the NMC sent you a letter on 5 May 2023, and a further letter on 19 September 2023, to inform you of the concerns they had about your CBT results. You confirmed to the panel that upon receiving this letter you were aware that the concern the NMC had was in relation to the speed with which you completed the CBT.

You resat the CBT on 11 November 2023.

Ms Fenelon put to you that you completed the resit of the clinical part of the CBT in around 40 minutes, resulting in it taking you 4 times as long to complete the clinical exam. Ms Fenelon pointed out to you that you scored 90% in the original CBT but 76% in the resit. You were also asked how you scored 14% lower whilst taking longer.

You maintained that you did not take account of how long it took you to complete the resit. You also maintained that you did the original CBT alone with no proxy.

The panel asked you again how you took longer despite you confirming that your preparation for both CBT's were the same. [PRIVATE].

[PRIVATE].

The panel also noted that your credibility was challenged by Ms Fenelon. During your evidence in chief, she told the panel that she heard a male voice say “score sheet” twice. Ms Fenelon raised this and the Chair asked if you had someone else in the room with you. You denied this on two occasions.

The recording of that part of the hearing was played a number of times and the panel, as well as your representative Dr Akinoshun, confirmed that a male voice could be heard. You denied this again and stated that “being close to the road” could be a reason as to why there was a voice. You maintained that you were alone.

The panel was of the view that you had lied while under affirmation and bore in mind that this is a hearing pertaining to fraudulent entry which is a charge of dishonesty. The panel noted that this is important in its consideration of whether you are an honest person.

Overall, the panel was of the view that you were unable to provide it with a cogent explanation to explain the speed with which you were able to complete the CBT clinical test without fraud. It was not persuaded by the explanation you put forward to the panel.

In light of the above the panel was satisfied that, on the balance of probabilities, you submitted or caused to be submitted, your CBT numeracy test and clinical test results, obtained at Yunnik Technologies Limited test centre that had been obtained through fraud.

The panel therefore find this charge proved.

Decision on Fraudulent Entry

The panel decided, for the above reasons, that in respect of the charge the entry on the register in your name was 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 the entry on sub part 1 of the NMC register in the name of Esther Temitayo Ayelabowo, PIN 23B0236O, was fraudulently procured.

Decision and reasons on direction

Having determined that you had 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.'

Ms Fenelon submitted that, as the panel have found that your entry onto the NMC Register had been fraudulently obtained, the panel should direct the Registrar to remove your entry from the register.

Dr Akinoshun submitted that this is a matter for the panel.

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

The panel considered that, having found that your entry on the NMC register was fraudulently procured, it would be inappropriate to take no action. The finding of a fraudulently procured entry to the NMC register is a serious matter, and the panel considered that to take no action in the circumstances was wholly inadequate. The panel also considered that an amendment was not appropriate in this case because it was not just a matter of you having made an error in your application.

The panel considered that, in light of its finding that your entry to the NMC register had been fraudulently procured, the only appropriate action is to direct that your entry be removed. The panel bore in mind that it had found that your entry on the Register was fraudulently procured due to you using a proxy. It recognised the importance of protecting the public and maintaining the integrity of the NMC register and public confidence in the profession. It considered that the public would be shocked to discover a person had secured entry onto the NMC register by the use of a proxy and would expect action to be taken.

The panel therefore directs that the NMC Registrar remove your entry from the register in accordance with Article 26(7) of the Order.

You will be notified of the panel's decision in writing. You have 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 your 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.

Ms Fenelon submitted that an interim suspension order for 18 months would be appropriate in this case on public protection and public interest grounds. She submitted

that imposing an interim order would be consistent with the panel's finding that your entry onto the NMC register was fraudulently procured. She submitted that the integrity of the NMC register is of great importance.

Dr Akinoshun submitted that you have been practising as a nurse without incident for a year. He submitted that, as a result, an interim order is not required.

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

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 your 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 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.

Accordingly, the panel determined that an interim suspension order was required to protect the public and is also in the public interest to protect the reputation of the profession and the NMC as its regulator.

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 your entry in the Register 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.