

**Nursing and Midwifery Council
Investigating Committee**

**Fraudulent/Incorrect Entry Hearing
Wednesday, 20 March 2024**

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

Name of Registrant: Folashade Tolulope Onibudo

NMC PIN 23B08170

Part(s) of the register: Registered Nurse
Mental Health

Relevant Location: Nigeria

Type of case: Incorrect/Fraudulent entry

Panel members: Godfried Attafua (Chair, registrant member)
Eleanor Harding (Lay member)
Kathryn Evans (Registrant member)

Legal Assessor: Nigel Ingram

Hearings Coordinator: Max Buadi

Nursing and Midwifery Council: Represented by Harry Perkin, Case Presenter

Ms Onibudo: Present and not represented

Charge found proved: Charge 1

Charges found not proved: None

Outcome: Registration entry fraudulently made

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

Interim Order: Interim Suspension order (18 months)

Details of charge

1. Submitted or caused to be submitted, the following Computer Based Test results, obtained at Yunnik Technologies Limited test centre, that had been obtained through fraud:
 - a. RNMH Numeracy test, taken on 16 March 2022
 - b. RNMH Clinical test, taken on 16 March 2022

And, in light of the above, your entry on the NMC register, in the name of Folashade Tolulope Onibudo, PIN 23B0817O, was fraudulently procured and/or incorrectly made.

After the charge was read, you informed the panel that denied the charge.

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

Mr Perkin, on behalf of the Nursing and Midwifery Council (the NMC), informed the panel that there are witness statements from Witness 4 and Witness 5. He submitted that both witnesses are nurses who on different dates, from each other and from you, admit to fraudulently procuring a proxy at the Yunnik Centre.

Mr Perkin informed the panel that during preliminary discussions with yourself and the legal assessor, you had indicated that you would contest that these witness statements should be admitted into evidence.

Mr Perkin applied under Rule 31 to allow the written statements of Witness 4 and Witness 5. He 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.

Mr Perkin submitted that the witness statements are not the sole and decisive evidence as the NMC also have the data analysis provided by Witness 1 and the witness statement of Witness 2. He submitted that there cannot be much challenge to these witness statements as Witness 4 and Witness 5 have stated fraud was occurring at the Yunnik Centre and there is no reason to suggest that they have fabricated these allegations.

Mr Perkin invited the panel to admit the witness statements of both Witness 4 and Witness 5.

You opposed the application. 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.

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. Witness 1 and Witness 2 also provide witness statements and evidence to support the charge.

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

You stated that you had undertaken the CBT at completely different times that Witness 4 and Witness 5 took their respective CBT's. The panel considered that the witness statements contextualised the events at the Yunnik Centre.

(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 and it would be impractical for Witness 4 and Witness 5 to attend every hearing.

(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 witness statements of Witness 4 and Witness 5 were going to be read.

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.

Background

Pearson VUE have a contract with the NMC as their Computer Based Test (“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 16 March 2022, you completed the CBT Test at the Yunnik Centre. According to the data, you completed the numeracy test in 3.73 minutes and the clinical test in 17 minutes. It is the NMC's case that the reason you were able to complete the test so quickly was that it was undertaken using fraud.

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 Mr Perkin on behalf of the NMC and by you.

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, and if established then the burden shifts to you to satisfy the panel on the balance of probabilities that you had not committed fraud in relation to your CBT.

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

- Witness 1: An independent data analyst who provided the NMC with an analysis of the data provided by Pearson Vue;

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

- Witness 2: Director of Information Security and Security Services at Pearson Vue, undertook the initial investigation into the anomalies;
- Witness 3: Executive Director of Professional Practice at 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.

Charge 1

1. Submitted or caused to be submitted, the following Computer Based Test results, obtained at Yunnik Technologies Limited test centre, that had been obtained through fraud:
 - a. RNMH Numeracy test, taken on 16 March 2022
 - b. RNMH Clinical test, taken on 16 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 2 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....

... 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.”

The panel took account of the data provided by Witness 2 which is a table showing data relating to some of the individuals who sat their CBT at the testing centre on the same day as you on 16 March 2022. The table also shows other candidate activity at the testing centre on the same date. The panel noted that in addition to yourself, the four other

candidates, appeared to complete both the numerical and clinical parts of the CBT exceptionally fast. The numerical test were completed between five to seven minutes and the clinical tests were completed between 13 to 34 minutes.

The panel also took account of the evidence of Witness 1. His 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.

Although the time stamps for the tests were different between Witness 1's report and Pearson Vue's data, Witness 1 explained how this was produced by excluding variables such as time spent on introduction and exit screens and the tutorial page to ensure fairness and consistency.

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 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 contemporaneous fraud was occurring at the Yunnik Centre. It noted that the evidential burden had shifted to you. The panel took account of the evidence you provided.

In your oral evidence, you denied that you completed both the numerical and clinical tests at the times alleged, namely the numerical test completed in 3.73 minutes and the clinical test completed in 17.00 minutes. You told the panel that you thought you had completed the numeracy test in five to six minutes and the clinical test in around half an hour, but you could not be sure as you did not have a watch with you.

The panel took account of Mr 1's analysis pertaining to the time you had taken to complete the CBT. With regards to the clinical test, using Mr 1's analysis, the odds of that taking place against the benchmark is 1 in 8068.29. In other words when considering the benchmark population of those not in Yunnik Centre only 7 people out of 56,478 would be faster.

With regards to the numeracy test, using Mr 1's analysis, the odds of that taking place against the benchmark is 1 in 58123.0. Meaning that when considering the benchmark population of those not in Yunnik Centre only 1 out of 58,123 would be faster.

You described yourself as very intelligent. You explained that you were able to complete the test very quickly because you had studied hard and were very well prepared and your colleagues were waiting outside in a van while you completed the CBT so you wanted to be quick.

In cross examination, you were taken to the data analysis of Witness 1 which demonstrated that the times you completed your CBT compared to the global benchmark population. When Mr Perkin put it to you that the time you took to complete the CBT would make you one of the fastest in the world, according to the data provided by Witness 1, you accepted this.

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.

However, when you resat the CBT exam, you completed the numeracy section in six minutes and the clinical section in 66 minutes . The panel noted that the clinical section had taken you significantly longer.

You stated that you believed you had actually completed the clinical section in 34 minutes, however you decided to check over your answers to ensure that they were correct. You told the panel that you “could not afford to fail” the CBT so you reviewed your answers carefully. Further, you explained that you only had two weeks to prepare for the exam as you had busy shifts at work. The panel could not accept your reasons for this given your exceptional previous performance.

The panel was of the view that the resit would have provided you with an opportunity to demonstrate that you were an exceptional student. However, the panel considered that your results showed that you took an extra 40 minutes to complete the clinical test. According to the data of Witness 1, your results put you with the majority of the students globally who completed the clinical exam in the same amount of time.

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.

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 Folashade Tolulope Onibudo, PIN 23B0817O, 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.'

Mr Perkin 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.

You had no comment to make regarding a direction the panel should make.

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.

Mr Perkin submitted that an interim suspension order for 18 months would be appropriate in this case on public interest ground alone. He submitted that cases of these types have attained significant attention of the press. He submitted that a registrant who has procured their entry onto the Register fraudulently would undermine public confidence in the NMC.

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 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.