

**Nursing and Midwifery Council  
Investigating Committee**

**Fraudulent/Incorrect Entry Hearing  
Monday, 15 April 2024 – Tuesday, 16 April 2024**

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

Virtual Hearing  
**Friday, 10 May 2024**

<b>Name of Registrant:</b>	<b>Tomilola Gbenro</b>
<b>NMC PIN</b>	23C1950O
<b>Part(s) of the register:</b>	Registered Nurse - Adult
<b>Relevant Location:</b>	Nigeria
<b>Type of case:</b>	Incorrect/Fraudulent entry
<b>Panel members:</b>	Angela Williams QPM (Lay, Registrant member) Kathryn Evans (Registrant member) Mandy Kilpatrick (Lay member)
<b>Legal Assessor:</b>	John Bromley-Davenport KC (15-16 April 2024) Charlotte Mitchell-Dunn (10 May 2024)
<b>Hearings Coordinator:</b>	Max Buadi
<b>Nursing and Midwifery Council:</b>	Represented by Alice Kuzmenko, Case Presenter (15-16 April 2024)  Pamela Muniya, Case Presenter (10 May 2024)
<b>Ms Ayelabowo:</b>	Present and represented by Marc Walker, ('What Rights')
<b>Outcome:</b>	<b>Charged proved, Registration entry fraudulently procured</b>
<b>Direction:</b>	<b>The panel directs the Registrar to remove Ms Gbenro's entry on the register in accordance with Article 26(7) of the Order</b>
<b>Interim Order:</b>	<b>Interim suspension order (18 months)</b>

## **Details of charge**

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 Numeracy test taken on 7 June 2022
  - b. RNA Clinical test taken on 7 June 2022

And, in light of the above, your entry on the NMC register, in the name of Tomilola Abosedo Gbenro, PIN 23C1950O, was fraudulently procured and/or incorrectly made.

After the charge was read the panel heard from Mr Walker, who informed the panel that you denied the charge.

## **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 up to 30 minutes. Part B is a clinical test consisting of 100 multiple-choice questions and lasts up to 2 hours and 30 minutes. All questions are scored as either correct or incorrect.

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

On 15 March 2023, Pearson VUE identified that the testing 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 testing centre that had led to the data set and that human interference was more likely involved.

The NMC commissioned a report from Witness 2, 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 the testing centre, 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 alleged widespread fraudulent activity at the testing centre, the NMC were unable to be confident in any of the CBT results obtained at the testing 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 testing centre if they wanted 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 7 June 2022, you completed the CBT Test at the testing centre. According to the data, you completed the numeracy test in 3.07 (3 minutes and 4 seconds) and the clinical test in 9.65 (9 minutes 39 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 to admit written statements of Witness 4 and Witness 5 into evidence**

The panel heard an application from Ms Kuzmenko 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.

Ms Kuzmenko submitted that Witness 4's statement details that she felt forced to use a proxy and to pay a monetary fee to undertake the CBT on her behalf. She submitted that Witness 4 cannot speak to your experience at the testing centre, rather Witness 4 provides background and contextual evidence of a proxy being used at the testing centre.

Ms Kuzmenko submitted that Witness 5, provides a different experience at the testing centre where she details a woman shouting the answers at her. Ms Kuzmenko submitted that Witness 5 cannot speak to your experience at the testing centre but provides background and contextual evidence of a proxy being used.

Ms Kuzmenko submitted that both statements of Witness 4 and Witness 5 are relevant because they address the NMC's case pertaining to fraud at the testing centre.

With regards to fairness, Ms Kuzmenko referred the panel to the guidance in the case of *Thornycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) which pertains to the admissibility of hearsay evidence.

Ms Kuzmenko submitted that the witness statements are not the sole or decisive evidence in this case. She submitted that it is unclear what challenge could be made relating to what both Witness 4 and Witness 5 speak to. She submitted that there is no evidence to suggest either have fabricated these allegations.

Ms Kuzmenko submitted that there are a high number of these NMC hearings pertaining to the test centre. She submitted that it would not be practical for Witness 4 and Witness 5 to attend each hearing and give live evidence. She informed the panel that both Witness 4 and Witness 5 were aware of today's proceedings but had not been formally warned to attend, but enquiries could be made if it was deemed their attendance was necessary. She submitted that it would not be practical to call these witnesses to every hearing of this nature, as their evidence provides background and context.

Ms Kuzmenko submitted that you were given notice that the NMC would apply to read the witness statements of Witness 4 and Witness 5 at the end of February 2024.

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

Mr Walker opposed the application. He submitted that the evidence of Witness 4 and Witness 5 are decisive. He submitted that the NMC's case is based on generic evidence of testing based on the evidence of all the NMC witnesses including Witness 4 and Witness 5. He submitted that the Witness 4 and Witness 5's statements support the NMC's case in respect of this and do not just provide context.

Mr Walker submitted Witness 4 and Witness 5's statements deal with part of the NMC's case which is the use of a proxy at the test centre. He reminded the panel that Witness 3's witness statement refers to potential human interference and the fact that candidates were booking the test at the testing centre when others were closer.

Mr Walker submitted that neither Witness 4 or Witness 5 admit to booking the CBT at the testing centre to take advantage of the proxy testing services offered. He submitted that he would like to question both Witness 4 and Witness 5 regarding this to ascertain whether they are telling the truth.

Mr Walker submitted that both Witness 4 and Witness 5 have reason to fabricate the allegations. He submitted that they both could have told their employers of what took place and minimised their involvement to portray themselves in the best possible way.

Mr Walker submitted that Witness 4 and Witness 5 are available so there is no good reason for their non-attendance.

Mr Walker submitted that Witness 4 and Witness 5's statements were sent at the end of February 2024 however he submitted that it was not indicated that the statements would be read. He submitted that this was only done last week. He submitted that the indication given to the NMC was that all witnesses were required to give live evidence.

Mr Walker invited the panel to have Witness 4 and Witness 5 attend the hearing so their evidence can be challenged.

In response to panel questions, Ms Kuzmenko informed the panel that an email was sent to you on 29 February 2024 which detailed documents that the NMC intended to rely upon, namely the statements of Witness 4 and Witness 5. She also submitted that you/Mr Walker were also asked to inform the NMC by midday on 8 March 2024 whether you require them to attend the hearing. She submitted that there was no record of a response but the email did inform you that the statements of Witness 4 and Witness 5 were going to be relied upon.

### **Panel's Decision on Witness 4 and Witness 5's witness statements**

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

The panel noted that it had read the statements of Witness 4 and Witness 5. It considered that it could either accept their witness statements, refuse to admit them into evidence and cast what it had read out of its mind or ask Ms Kuzmenko to call both as live witnesses.

The panel considered *Thorneycroft* and determined the following:

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

The panel determined that the witness statements of Witness 4 and Witness 5 were not the sole and decisive evidence in support of the charge. The panel noted it had the written evidence of Witness 1, Witness 2 and Witness 3 and all three witnesses would be called to give live evidence.

The panel noted that Witness 1 would be able to give evidence of the NMC's investigation into concerns raised at the Yunnik test centre. Witness 2 provided the NMC with a data analysis of the data provided by Pearson Vue which was specific to you. Witness 3 provided the NMC with evidence regarding the test centre, the software used, how Pearson VUE had become aware of the concerns at the Yunnik test centre and specific data in relation to you.

Further, Witness 4 and Witness 5's evidence related to alternative dates to the allegations brought against you. As such the panel considered that it could only be regarded as contextual evidence.

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

The panel acknowledged that you challenged the contents of Witness 4 and Witness 5's statement on the basis that they are not telling the truth about booking their CBT at the Yunnik test centre. Neither witness has admitted to booking the CBT at the testing centre to take advantage of the proxies. While the panel accepted that the content of Witness 4 and Witness 5's statement are challenged by you on this basis, given the fact that Witness 4 and Witness 5 only provide contextual evidence, and do not provide direct evidence of your alleged experience at the test centre, this challenge has limited weight to the panel's overall decision making process.

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

While there may be a reason for Witness 4 and Witness 5 to fabricate the allegation, there is no evidence to suggest that this is the case. Additionally, 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;*

The panel considered its previous conclusions in respect of the evidence not being sole and decisive and providing contextual background. The panel noted that Witness 4 and Witness 5's evidence will be used in a significant number of cases before NMC panels due to the nature of the investigation. Given the panel's findings in this case about Witness 4 and Witness 5's evidence, it considered it would be impractical and disproportionate for Witness 4 and Witness 5 to attend.

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

On 29 February 2024, you/Mr Walker were sent an email asking you to inform the NMC by 8 March 2024 whether you required Witness 4 and Witness 5 to attend. There is no record of a response. As a result, the NMC did not take steps to secure Witness 4 and Witness 5's attendance at today's hearing.

*(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 noted that Witness 4 took her CBT on 19 April 2022 and Witness 5 took her CBT on 13 December 2022. It bore in mind that neither Witness 4 nor Witness 5 know you or your particular circumstances on the day that you took the test, but they provided an account of their personal experiences at the testing centre. The panel considered that their experience provides context as to what had occurred on those occasions at the testing 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 as hearsay evidence. In due course the panel will determine what weight, if any, to attach to them.

### **Decision and reasons on application for panel to not ask questions relating to your November 2023 CBT examination**

Mr Walker reminded the panel that it had asked Witness 3 questions in relation to the CBT exam you had retaken in November 2023. In light of this, Mr Walker made an application for the panel to direct itself not to ask any further enquiries into the matter.

Mr Walker submitted that when the issue arose in the hearing on 15 April 2024, he outlined the NMC's position in a letter they had sent to all registrants in September 2023. He submitted that the NMC's position at the time was that they were offering registrants, who had undertaken the CBT at the testing centre, the opportunity to retake the CBT. Further, he submitted that the NMC would not draw a new conclusion based on the new CBT time, nor the number of attempts or use either as evidence that the original CBT was obtained through fraud.

Mr Walker submitted that you were not obligated to use the results of the retaken CBT if you did not want to do so in the Investigation Committee (IC) proceedings.

Mr Walker submitted that in May 2023, the NMC wrote to all registrants telling them that they were looking into the concerns. He submitted that the letter informed you that they would be invited to take a new CBT and the reason given was for concerns of the original CBT taken at the testing centre.

Mr Walker submitted that the implication here is that the CBT would be a “correcting” CBT. He submitted that in September 2023 you were given further information and the times you had taken for completing the CBT at the testing centre meant that the NMC was going to refer your case to the IC panel.

Mr Walker submitted that this amounted to a clear promise that the NMC would not seek to rely on the CBT you had retaken in these proceedings. He submitted that you could, but you do not have to. He submitted that you had retaken the CBT, in November 2023, in reliance of this position.

Mr Walker submitted that you were not informed of the risk of an IC panel asking about this despite the NMC promising otherwise.

Mr Walker submitted that this was a significant failing by the NMC. He submitted that the NMC sought to remedy this failing in correspondence, not before the panel, in February 2024 when they told registrants that any panel may wish to ask questions about any retaken CBT test results and timings. He submitted however that the test had already been undertaken and the potential damage had already been done.

Mr Walker submitted that the issue is likely to arise during your oral evidence.

Mr Walker submitted that if these proceedings continue without steps to mitigate the issue, then this would amount to an abuse of process. He submitted that if an abuse of process did arise, then he would apply for a stay of these matters.

Mr Walker invited the panel to direct itself not to ask questions about the CBT you have retaken.

Ms Kuzmenko submitted that the NMC are neutral.

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

The panel took account of the NMC letter dated 19 September 2023 which stated that you could ask the IC to take into account your new CBT test results if you wanted to. It also took account of the NMC's written submissions which stated that the IC are entitled to make enquires where the registrant relies on their CBT resit time to argue that they did not use a proxy.

The panel noted that you are not relying on your resit time at this hearing.

In light of the above, the panel determined that it would not ask you any questions pertaining to your resit of the CBT in November 2023.

### **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 Kuzmenko on behalf of the NMC and by Mr Walker 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.

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 Numeracy test taken on 7 June 2022
  - b. RNA Clinical test taken on 7 June 2022

### **Charge 1a and 1b are found proved.**

The panel would normally consider sub-charges separately but as the evidence in relation to each is similar, and both parts of the CBT were taken at the same time at the same test centre, it has dealt with each sub-charge under one heading. 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.

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 he considered computer-based attacks, some type of simulation or technical entity to explain the testing anomalies. However, he said the log data ruled this out. Under cross examination, he was asked if there was an issue with the software which would explain a potential incorrect time recorded. Witness 3 stated that there was no indication of this in the log data reviewed. He said that if there were software issues, then this pattern would have presented itself in other test centres around the world.

He also stated that if there was anybody trying to modify the software or “cover their tracks”, this would be present in the log data.

The panel reviewed the global data and noted that there was no evidence of other test centres achieving test times similar to that in the test centre, refuting the suggestion of a software issue. In addition, this occurred over several years, again refuting the suggestion of a software issue.

The panel bore in mind that pertaining to the numeracy section of the CBT you had undertaken on 7 June 2022, according to Pearson VUE’s analysis, you completed this in about 3 minutes. In relation to the clinical section of the CBT on the same date, according to Pearson VUE’s analysis, you completed this in about 11 minutes. Witness 3 stated that these times do not include you reviewing your answers, going through the tutorial, or signing the NDA.

Witness 3 in his oral evidence hypothesised that a proficient test taker would potentially take over 30 minutes on clinical CBT, a proxy test taker would potentially take less than 30 minutes and a proficient proxy test taker would potentially take less than 15 minutes.

Witness 3 in his witness statement also stated that:

*“The set up at the Yunnik testing centre was that there were two workstations placed next to each other, which were separated by a space (at least 1.2m as per requirements). The site had two certified test administrators. The site also had secure lockers for candidates to store personal items in.”*

The panel took account of a table provided by Witness 3, showing data relating to some of the individuals who sat their CBT at the testing centre on the same day you did, 7 June 2022. It noted that there were five other candidates taking the test. Of those five, there were four where there were concerns pertaining to fraud.

The panel considered how so many candidates could be admitted into the test centre with only two workstations during one morning session accepting that test takers were allowed

to use up to three hours time to sit both tests. It also noted that a high volume of candidates could represent a financial incentive for the test centre.

Witness 3's statement also stated:

*“After the investigation, Pearson VUE were alerted to a screenshot that was uploaded on the NMC portal by a candidate, Candidate A, as part of their application. The screenshot showed an image of a computer screen showing another candidate, Candidate B's live CBT at the testing centre.”*

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. 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 calculated that you had completed the numeracy test in 3.07(3 minutes and 4 seconds) and the clinical test in 9.65 (9 minutes and 39 seconds).

Using Witness 2's analysis, he calculated only you out of 56,478 completed the clinical test in the time that you did. For the numeracy test, he calculated that only you out of 58,123 completed it as fast as you did. Witness 2 confirmed that no one was quicker at completing either test than you in the benchmark groups.

Witness 2's conclusion was that data showed that the test centre statistically had significantly lower, and therefore faster 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 testing centre that has results with testing speeds significantly lower, and therefore faster both within Nigeria and globally.

The panel found the evidence of Witness 2 to be compelling, both written and orally.

In summary, when he looked at the data from the testing centre and compared it to the Global results and other Nigerian test centres, the test centre's results were significantly faster than anywhere else. The panel also noted that the test speeds flagged as outliers significantly increased at the test centre in 2022 as did the volume of tests being taken in the year you had taken the CBT, compared to previous years.

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 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. The panel therefore found that it could attach limited weight to the statements of Witness 4 and Witness 5. The panel considered however, that both witness statements provided some contextual background as to fraudulent activity occurring at the Yunnik test centre on the dates they attended.

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 testing Centre. The panel bore in mind that the NMC considered that the evidential burden now shifts to you, however the panel was of the view that the NMC still had to prove, on the balance of probabilities, that you obtained your CBT results through 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 told the panel that when you had undertaken the legacy CBT exam, in December 2020, you wanted to do this because it would provide you with opportunities to travel and work abroad. You said that you used online resources, practice questions and spoke to colleagues, including outside of Nigeria. You also said that you used the NMC website to prepare for the legacy CBT.



You also said that the testing centre was local to you according to the Pearson VUE website. You completed the legacy exam at the test centre and the panel noted that you did so in 81 minutes out of the allocated 180 minutes.

You then told the panel that you applied for work outside of Nigeria and got an offer in a Hospital in Yorkshire. However, you were told by their HR department that you had to do a new CBT exam.

You said that you could not register with Pearson VUE again because your legacy CBT had not yet expired. You went back to the testing centre, you had sat your legacy test at, and explained that you needed to undertake a new CBT. You were told to contact the NMC. You were told you would get a "new voucher" which would allow you to undertake a new CBT.

You told the panel that the CBT was now split into a numeracy and clinical sections. You said that numeracy test was new to you and you focused your studying on this area as you were worried about it. You told the panel that you prepared using the same resources as you did the legacy CBT. You also said that you were in WhatsApp study groups.

On 7 June 2022, you said that you got to the test centre early and there were others present in the test centre building. You said that the process was the same as the legacy CBT. You also said that you used the same room as before and that you took the test alone and there was no other candidate in the room.

You said that you were delighted to find that the numeracy test was similar to the practice questions you utilised from the Pearson VUE website and that is how you completed it so quickly.

You stated that you were not aware of how quickly you had completed the tests until the NMC had written to you. You denied using a proxy.

The panel bore in mind that you were an experienced nurse with no concerns raised about your experience. It also took account of the positive reference you provided from your Ward Sister who was aware of the matters being considered today.

The panel noted that you prepared extensively for the legacy CBT and completed it in just over 81 minutes out of the allowed 180 minutes. The panel accept that your preparation would have carried over into your new CBT you had undertaken in June 2022.

However, the panel bore in mind that you had stated you were worried about the numeracy section of the CBT as it was new to you. It also bore in mind that you needed to complete the exam to secure the job at the hospital in Yorkshire. However, you were able to complete it in approximately three minutes of the allowed 30 minutes.

The panel was not persuaded by your evidence that you took significantly longer, namely 81 minutes to complete the legacy CBT, but were able to complete the new CBT (both part A and part B) in significantly less time, namely 12 minutes in total in the three hours allowed.

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. You chose not to use your CBT resit information at today's hearing. It was not persuaded by the explanation you put forward to the panel with regards to how you had been able to complete both tests in twelve minutes of the three hours allowed.

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 the testing centre 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.

On the basis of the panel's conclusions above the panel determined that this was a deliberate attempt to mislead by you.

The panel therefore found that the entry on sub part 1 of the NMC register in the name of Tomilola Aboosed Gbenro, PIN 23C1950O, 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 Muniya 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. She submitted that given that the panel has found fraudulently entry, a direction by the panel to take no action or to amend the entry would be inappropriate.

Mr Walker reminded the panel of the NMC Guidance and submitted that the panel could “move away” from it. He submitted that it is open to the panel to take no further action. He referred the panel to the positive testimonial provided by your employer who was aware of this hearing and attested to your nursing practice.

Mr Walker submitted that you had taken a legacy CBT, prior to the CBT the panel had determined had been obtained through fraud. He submitted that passing the legacy CBT proved your ability to practice effectively as a nurse.

Mr Walker also submitted that you had since undertaken a “correcting” CBT. He submitted that because you have obtained registration through a “clean” exam result, the public's trust in the accuracy of the Register would not be undermined if your entry was retained on the register.

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

The panel noted that you had taken a legacy CBT, prior to CBT it had found you had obtained through fraud. It also noted in mind that you had undertaken a subsequent CBT. The panel also took account of the positive testimonial from your employer who spoke highly of your practice as a registered nurse. However, the panel noted that this hearing was not about your fitness to practice as a nurse.

The panel bore in mind that this hearing is, in part, about maintaining the integrity of the NMC Register. 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. The panel reminded itself that you had consistently denied the use of a proxy when you had undertaken the CBT to obtain entry onto the NMC Register. It therefore 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 this was not a case where an error had been made 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 Muniya 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 and its subsequent direction to remove your entry from

the NMC register. She submitted allowing you to continue to practice without restriction would be seriously damage the public confidence in the profession.

After questions from the panel, Ms Muniya submitted that as this is not a case about your fitness to practice, the strongest argument is in relation to the public confidence in the profession.

Mr Walker informed the panel that he had received a determination with the panel's decision seemingly already having been made. He quoted submissions that had not been made by himself or by Ms Muniya. He submitted that this suggested that you are not having a fair hearing.

Each member of the panel and the legal assessor assured Mr Walker that it had not seen the determination that had been sent. The panel also assured Mr Walker that it had not discussed matters in relation to whether an interim order had been necessary.

The panel adjourned to review the determination that yourself, Mr Walker and Ms Muniya had received.

The panel confirmed that it had not seen the determination that yourself, Mr Walker and Ms Muniya had received. It assured Mr Walker that it had not seen or discussed the document which had been sent. The panel assured that it had only made determinations to direct to the Registrar to remove your entry from the NMC Register. The panel spoke to the Hearings Coordinator who informed the panel that he was working from a template. The panel apologised to you and Mr Walker that this template was sent to you.

The Hearings Coordinator confirmed that the panel had not discussed an interim order and also apologised.

Mr Walker submitted that there were no public protection issues in this case. He submitted that you had not been subject to any interim restrictions either by the NMC or by your employer. He submitted that you have worked well in your role for over a year and retained goodwill and support from your employer. He submitted that there was no suggestion as to any lack of competence or lack of integrity during that period.

Mr Walker referred the panel to the case of *Shiekh v General Dental Council [2007] EWHC 2972 (Admin)* and reminded the panel of the high bar in imposing an interim order on public interest grounds alone. He submitted that this high bar had not been met.

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 took account of the submissions made by Mr Walker and Ms Muniya. It was not persuaded that there were public protection concerns in this case and considered whether an interim order should be imposed on public interest grounds alone.

In all the circumstances, the panel determined that the high bar had been met and that an interim order was required on the grounds that it was otherwise in the public interest. It bore in mind that the panel's finding of fraudulent entry adversely affected the integrity of the register and met the high bar required for an interim order to be made on public interest grounds alone. The panel considered its previous conclusions 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. In light of these findings the panel considered that the high bar for imposing an interim order on the grounds of public interest alone were met. The panel considered that this would protect the reputation of the profession and the NMC as its regulator.

The panel first considered whether to impose an interim conditions of practice order. It determined that as this was a case concerning your integrity and honesty, an interim conditions of practice order was not workable or appropriate in this case.

Accordingly the panel determined that an interim suspension order was the necessary and proportionate order in your case.

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.