

**Nursing and Midwifery Council
Investigating Committee**

Registration Appeal Hearing
Tuesday, 14 January 2025 – Wednesday, 15 January 2025
Friday, 7 February 2025
Wednesday, 5 March 2025 – Friday, 7 March 2025
Wednesday, 19 March 2025 – Friday, 21 March 2025
Wednesday, 21 May 2025 – Friday, 23 May 2025

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ
(14 -15 January 2025, 7 February 2025, 5 – 7 March 2025, 19 - 21 March 2025)
and
Virtual Hearing
(21 - 23 May 2025)

Name of Appellant: **Adaobi Ogbuzuo**

Type of case: Registrations appeal

Panel members: Christopher Taylor (Chair, Registrant member)
Naomi Smith (Registrant member)
Neil Calvert (Lay member)

Legal Assessor: Graeme Dalglish (14 – 15 January 2025)
Trevor Jones (7 February 2025)
Joseph Magee (5 – 7 March 2025)
Attracta Wilson (19 - 21 March 2025, 21-23
May 2025)

Hearings Coordinator: Ruth Bass (14 - 15 January 2025, 5 - 7 March
2025)
Sharmilla Nanan (7 February 2025)
Anya Sharma (19 - 21 March 2025)
Rebecka Selva (21 - 23 May 2025)

**Nursing and Midwifery
Council:** Represented by Harry Perkin, Case Presenter
(14 – 15 January 2025)
Represented by Robert Benzynie, Case
Presenter (7 February 2025, 5-7 March 2025,
19-21 March 2025, 21-23 May 2025)

Ms Ogbuzuo: Present and represented by Neomi Bennett of
Equality for Black Nurses

Decision: **Appeal dismissed**

Introduction

This appeal is made under Article 37(1)(a) of the Nursing and Midwifery Order 2001 (the Order). You appealed the decision of the Assistant Registrar, dated 22 April 2024. The Assistant Registrar's decision was that you fraudulently obtained your CBT results and therefore did not meet the character requirements for admission to the NMC register.

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

Neither party advanced an application to hear any matters in private.

Having considered the papers before it the panel, of its own volition, proposed to hear those parts of the hearing that relate to [PRIVATE] in private in accordance with Rule 30(1) of the 'Nursing and Midwifery Council (Education, Registration, and Registration Appeals) Rules 2004' (the Rules). The panel invited Mr Perkin and Ms Bennett to respond to this proposal.

Mr Perkin, on behalf of the Nursing and Midwifery Council (NMC), agreed that matters relating [PRIVATE] should be heard in private.

Ms Bennett, on your behalf, objected to the proposal and informed the panel that she was not making a privacy application. She said that you had not disclosed any issues regarding [PRIVATE] and that any disclosure of [PRIVATE] to the panel was a breach of the GDPR rules by the NMC.

Mr Perkin informed the panel that matters of [PRIVATE] were contained in the hearing bundle, and that details of [PRIVATE] were included in a letter sent by you to the NMC's registrar for consideration in your initial appeal.

Ms Bennett informed the panel that it was a previous representative who had produced that letter.

The panel accepted the advice of the legal assessor.

Whilst in camera the legal assessor referred to the correct Rules for registration appeals. He reminded the panel that relevant provisions relating to Rule 19 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 and registration appeals are not dissimilar and referred the panel to Rule 30 (1) of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004. Rule 30(1) states *“the hearing should be held in public unless the appeal panel is satisfied that in the interest of justice or for the protection of the private life of the appellant, ... the public should be excluded from all or part of the hearing.”*

Having heard representations from both parties, and having taken the advice of the legal assessor, the panel considered there is information before it relating to your [PRIVATE] within the hearing bundle and determined to hear any matters relating to [PRIVATE] in private.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr Perkin, under Rule 31, to allow the written statement of Witness 1 and Witness 2 into evidence. Mr Perkin submitted that Witness 1 was someone who had admitted to having a human proxy take the test for them at the Yunnik test centre (Yunnik), and Witness 2 described someone who was assisting them to take the test by telling them the answers. He submitted that it was not practical to call these witnesses as, due to the volume of CBT cases relating to Yunnik, they would be required for many hearings and for long periods of time which would significantly impact their jobs and family life.

Mr Perkin submitted that, whilst Witness 1 and Witness 2 were not present on the date you sat the CBT test, these witnesses provided eye-witness evidence of the nature of the fraud which occurred at the Yunnik test centre and how unlikely it was that certain test times could be achieved without cheating.

Mr Perkin referred to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin). He submitted that it was fair to submit their evidence as: it was not sole and decisive evidence; there was a good reason for their non-attendance; and the NMC had put you on prior notice that these witnesses would not be called to give evidence.

Ms Bennett opposed the application on grounds of fairness, relevance and procedural justice.

Ms Bennett stated that Witness 1 and Witness 2 did not allege any connection to the specific circumstances of your CBT attempt. She submitted that their evidence was in relation to their own personal experiences at the test centre, and the NMC did not say that these witnesses had sat the test on the same day as you.

Ms Bennett submitted that to suggest systemic fraud at the test centre prejudiced you and shifted the burden of proof onto you to disprove the burden of fraud. Ms Bennett further submitted that Witness 1 and Witness 2 would not be available for cross examination, and she would not be able to challenge the veracity of their statements, which denied your fundamental rights.

Ms Bennett further submitted that Witness 1 and Witness 2 had engaged in fraudulent conduct, and as such their evidence should be considered carefully. She submitted that Witness 1 and Witness 2's accounts lacked sufficient detail to validate the alleged systemic fraud. The NMC has relied heavily on statistical data, and witness statements purporting to describe fraud should not be used as evidence against you.

Ms Bennett submitted that the NMC had not demonstrated that it had made reasonable efforts to secure the attendance of Witness 1 and Witness 2, and that time commitments did not meet the threshold for excusing their non-attendance. Ms Bennett referred to the cases of *Thorneycroft and Nursing and Midwifery Council v Ogbonna* [2010] EWCA Civ 1216. She opposed the admission of Witness 1 and Witness 2's statements as hearsay and submitted that there was a risk of perpetuating harmful stereotypes that black Nigerian nurses are inherently linked to

fraudulent behaviour. She said that this would risk creating an implicit association that fraud at this test centre was endemic amongst black Nigerian professionals and has a disproportionate effect on black nurses. She said that this is representative of the systemic racism at the NMC identified in the recent Independent Culture Review (July 2024).

Ms Bennett said she wished to apply for this to be placed before the panel, but was advised by the legal assessor that this is a document which is in the public domain and the panel would have access to it whenever required.

Ms Bennett submitted that there was no evidence that you had engaged in similar conduct to Witness 1 and Witness 2, and that to allow their evidence in as hearsay would create an unfair assumption of you being guilty by association rather than decided on individual evidence. She submitted that any decision made by the panel needed to be made on an individual basis, free from assumptions.

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

The panel was of the view that the statements of Witness 1 and Witness 2 are not sole and decisive in this matter but are relevant to the case overall, in particular to the allegation of generic fraud at the Yunnik test centre. When considering whether it is fair to allow these statements into evidence, the panel noted that they do not provide direct evidence against you of fraud and do not suggest that the events described by Witness 1 and Witness 2 occurred on the day of your test. The panel balanced this against the NMC's statutory duty to maintain the integrity of the register and the public interest in these proceedings.

The panel considered that the accounts of Witness 1 and Witness 2 were not contradicted by anything else before it. The panel acknowledged that the NMC have not taken steps to have the witnesses attend, however, it was satisfied that you had been given reasonable prior notice of the NMC's intention to have Witness 1 and Witness 2's evidence as hearsay.

It therefore determined to allow the statements of Witness 1 and Witness 2 into evidence as hearsay and to determine what weight if any to give to their evidence when it comes to fact finding.

Application for evidence of Ms 3 to be adopted by Witness 4

Mr Perkin made an application for the statement of Ms 3 to be adopted by Witness 4. He submitted that Ms 3 was a corporate witness for the NMC, who was not available due to unforeseen circumstances, and that Witness 4 was also a corporate witness for the NMC who was available to give evidence in Ms 3's place.

Ms Bennett opposed the application. She said that she would require Ms 3 to attend for cross examination, failing which their statement should be excluded from the bundle. Ms Bennett said that the principles of procedural fairness dictated that any evidence relied on by the NMC should be open to scrutiny, and without Ms 3 being present to take the oath and answer questions, her evidence would be untested and could not form a reliable basis for the panel's decision.

Ms Bennett further stated that, by Witness 4 adopting Ms 3's statement, it would not allow the panel to test the credibility or accuracy of the original statement and would amount to speculation and second-hand evidence which would be inherently unreliable and undermine the fairness of the hearing. Ms Bennett informed the panel that if Ms 3 was not available, she would like the hearing to be adjourned until she was available.

Ms Bennett referred to the case of *R (Dutta) v General Medical Council* [2020] EWHC 1974 and stated that Witness 4 would be required to have first-hand knowledge, and she did not believe that they did.

Ms Bennett said that the nature of Ms 3's statement was hearsay. She submitted that Ms 3 had no direct involvement in this case and that her evidence is based on generalised knowledge obtained as an employee of the NMC, who was relying on the evidence of Witness 5 who was not present, and that the panel would therefore

be relying on a second-hand accounts with no opportunity to test their reliability where serious allegations, such as fraud, had been made. She further stated that the inclusion of Ms 3's statement fed into broader systemic issues which perpetuated harmful racial stereotypes by targeting black Nigerian candidates based on generalised assumptions rather than specific proof.

Ms Bennett said that Ms 3's statement attempted to justify the NMC's reliance on Witness 5's statistical thresholds and Pearson VUE's investigation, but that Ms 3 was not a statistician, and her statement was not sufficient to explain or defend the methodology used.

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

The panel considered that Witness 4 is currently employed at the NMC as the Deputy Director for Business Transformation and, as a former Assistant Director for Registration and Revalidation and a former Deputy Director with specific responsibility for the Register, would be appropriately experienced in these areas in dispute to substitute for Ms 3. The panel also considered that, where reference had been made to the evidence of Pearson VUE and reference has been made to the evidence of Witness 5, both of these witnesses would be produced by the NMC and, therefore, Ms Bennett would have the opportunity to directly cross examine the source of that information. It therefore determined to accede to Mr Perkin's application and allow Witness 4's witness statement into evidence and allow Witness 4 to give evidence on behalf of Ms 3.

Application for disclosure of raw data

Ms Bennett made an application for the original data of the CBT tests to be provided for analysis. She stated that there were some inconsistencies with the original timings and suggested that timings may have been falsified or incorrectly recorded. Ms Bennett told the panel that the NMC have repeatedly refused to supply this data and asked that the panel order its disclosure.

Ms Bennett told the panel that she did not want a table that had been manually

populated for the original tests and retakes. She said that the absence of the original raw data raised questions about the integrity of the evidence, and that without access to the raw data it was impossible to verify whether the data provided accurately represented the original test records.

Ms Bennett said that there was potential for human error or deliberate manipulation with manually populated tables, which undermined the evidence. She stated that the NMC owed a duty of procedural fairness to make sure that the data was capable of independent verification, and that transparency was further compromised as the NMC could not show the logs as to how the spreadsheets were created.

Ms Bennett said that the NMC is expected to adhere to rigorous standards, particularly when dealing with allegations of dishonesty, and that it had not met the burden of proof due to the lack of reliable evidence.

Mr Perkin submitted that the questions raised by Ms Bennett could be asked of Witness 6 or Witness 5. He submitted that the raw data was essentially data that would be unintelligible to a lay person and would need expert analysis to be understood.

Mr Perkin informed the panel that an example of raw data was previously sent to you at your request, on 28 November 2024 and there was no response from you as to whether this is what you required. He submitted that last minute requests for disclosure at the hearing would frustrate the hearing.

Before retiring to consider the matter, the panel directed that the NMC disclose any communications relating to this issue. The NMC provided these to all parties.

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

Following receipt of email correspondence between your current representative and the NMC on 26 and 28 November 2024, the panel was satisfied that there was no evidence that the NMC have refused to provide you with the data. Reference was made on 28 November 2024 in an email to your current representative that the

unused data had multiple files and thousands of rows of data, and it would only be useful if you were to instruct your own independent analysis by a data expert. The panel noted that your representative did not respond to this communication and made no further enquiry until the first day of the hearing.

The panel was satisfied from the information before it, that the NMC had provided analysis of the data from Pearson VUE along with producing an independent expert witness report, both of whom will appear as witnesses and be available for cross examination.

The panel did not consider it appropriate or proportionate to direct the NMC to disclose all raw data of tests completed at Yunnik which contains the personal data of other candidates. However, the panel concluded that it was fair and proportionate to direct the NMC to disclose your individual raw test data from the tests sat with Pearson VUE within seven days.

In these circumstances the panel allowed the application. The NMC produced this data on the day of the application.

Invitation to apply for recusal

Whilst preliminary matters were being heard on day one of the hearing Ms Bennett made a number of comments suggesting that the chair and the legal assessor, on occasion, had demonstrated racial discrimination and that the legal assessor and members of the panel, on occasion, had demonstrated bias towards the NMC in their approach.

At the start of the hearing on day two, the chair reminded Ms Bennett of the NMC's guidance on Managing Behaviour in Hearings (CMT-9), and asked Ms Bennett to desist from making personal remarks about members of the panel and legal assessor. The chair reminded Ms Bennett that there are systems in place should she have any concerns regarding any member of the panel or the legal assessor.

The chair invited Ms Bennett to request the recusal of anyone who she considered was demonstrating bias or racial discrimination and the panel would consider these.

Ms Bennett stated that she could not recall making any assertions of this nature, she had no concerns and stated that she did not want to make any applications for recusal.

Application for part of the hearing to be heard in private

Mr Benzynie on behalf of the NMC, made an application under Rule 30(1) of the NMC (Education, Registration and Registration Appeals) Rules 2004 for parts of the hearing to be heard in private. He informed the panel that a matter had been reported to the Information Commissioner's Office regarding Exhibit 13, which was still a live issue and as such the matter should be heard in private.

Ms Bennett opposed the application. She stated that the application was inappropriate and against fairness and justice in the proceedings. Ms Bennett said that Rule 30(1) did not provide an automatic basis for the hearing to be heard in private, there would be discussions around the image in Exhibit 13 and there would be no risk of harm to a third party. Ms Bennett stated that there was a public interest which demanded transparency and that the hearing must be heard in public to uphold the integrity of the proceedings.

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

The panel noted that Rule 30(1) does not apply where a hearing is conducted by audio or video conferencing. However, in circumstances where parts of this hearing were conducted face-to-face, and parts by video conferencing, the panel determined that Rule 30(1) applies, notwithstanding the exception in Rule 30(1)(1A).

The panel took into account that there was a person identified in Exhibit 13 who is not involved in this case, and that this had led to an investigation by the Information Commissioner's Office that is ongoing. The panel determined that any applications made regarding Exhibit 13 should be heard in private to protect the identity of the third party who is not involved in these proceedings and to maintain the integrity of the ongoing third-party investigation.

Application to disregard evidence

Mr Benzynie made an application for Exhibit 13 to be disregarded. He submitted that the photograph and signature identified in Exhibit 13 was sent in error to your former representative at Unison, and the NMC had notified Unison of the error and supplied the correct information a week later. Mr Benzynie stated that the Information Commissioner's Office have been advised of this breach and the investigation is ongoing. Mr Benzynie stated that your previous representative had been made aware of this by the NMC and agreed to delete the documents. Mr Benzynie expressed his surprise that these documents had not been deleted as agreed. He submitted that Exhibit 13 was not relevant to the matters to be decided by the panel and should therefore be disregarded.

Ms Bennett stated that this was not a minor procedural request, but an attempt to erase a fundamental failure in the NMC's investigative process. She said that if the application were to be allowed, it would undermine the fairness of the proceedings and undermine your appeal.

Ms Bennett stated that the NMC had informed you that a male nurse had undertaken the tests on your behalf, and to support that claim provided the photo contained in Exhibit 13. It later became clear that this individual was not even in the country when you sat your test and only after being challenged did the NMC check and later sent another image of you taking the test. Ms Bennett said that this raised severe concerns as false evidence had been presented and only corrected by the NMC when opposed.

Ms Bennett stated that there was no clear verification as to how the NMC obtained the false information, and an innocent nurse could have faced consequences. She said that the NMC had adjusted its case to fit around the narrative which contradicts its original case, and that both versions could not be correct.

Ms Bennett stated that the NMC's application was an attempt to remove its failure. She said that the NMC had provided incorrect evidence against you, and this was

directly relevant to your case and demonstrated that the process is unreliable. She urged the panel not to disregard the evidence pertaining to the third party.

The panel heard and accepted the legal advice.

The panel carefully considered the application and was mindful that Exhibit 13 was not produced by the NMC in its case against you and not provided by you to the NMC in advance of the hearing, but was introduced during cross-examination by your representative for the purposes of asking Witness 6 to comment on it. The panel took into account that the information contained in Exhibit 13 did not come from Witness 6 but was provided to you by the NMC, and was not within the knowledge of Witness 6. It therefore did not consider it would be fair for Witness 6 to be questioned on it and therefore refused the application at this time.

The panel informed Ms Bennett that it was open to her to make a new application on alternative grounds to have this evidence brought back at a future point in these proceedings, should she consider it relevant.

Application to introduce Pearson VUE practice questions

During the cross examination of Witness 6, Ms Bennett made an application to introduce a set of sample CBT practice questions which were publicly available on the Pearson VUE website.

Mr Benzynie opposed the application. He submitted that the request had been made very late and following being told by Ms Bennett that she would not be producing any more evidence.

Witness 6 stated that he had no knowledge of the practice materials and was not involved in content generation, only data analysis.

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

The panel refused the application on the basis that Witness 6 could not be expected to comment on material in respect of which he had no knowledge, and which was not taken into account by him in the preparation of his report. The panel reminded Ms Bennett that Witness 6 had provided a report on online practice materials which she could test under cross examination. It determined that it would not be just or reasonable to adduce the practice materials into evidence.

Second invitation to apply for recusal

During cross examination of Witness 6 on 7 March 2025, Ms Bennett made a further accusation of racial bias against the chair in these proceedings and said that the proceedings should be stopped, and the case be thrown out. The chair stood down Witness 6 and reminded Ms Bennett that this is a registration appeal brought by you and you can retract your appeal at any time.

The chair again reminded Ms Bennett of the NMC's guidance on Managing Behaviour in Hearings (CMT-9). The chair reminded Ms Bennett that there are systems in place should she have any concerns regarding any member of the panel or the legal assessor.

The chair again invited Ms Bennett to request the recusal of anyone who she considered was demonstrating bias or racial discrimination and the panel would consider these.

Ms Bennett, following consultation with you, informed the panel that you do not wish to withdraw your appeal, you do not have any concerns, and do not wish to apply for the recusal of any member of the committee.

Decision and reasons on application to adjourn proceedings until Thursday 20 March 2025

The hearing resumed on Wednesday 19 March 2025, with Ms Bennett due to continue her cross examination of Witness 6. You were present at the hearing, along with two Equality for Black Nurses (E4BN) representatives, Sharon and Karabo. The

Chair invited the E4BN representatives to address the panel as to why Ms Bennett was not present.

E4BN representative Sharon offered her apologies to the panel and explained that whilst Ms Bennett was anticipating joining the hearing today, [PRIVATE] she was now unable to join. Sharon set out that Ms Bennett should [PRIVATE] tomorrow and for proceedings to therefore be adjourned until then.

The chair invited you to confirm whether it is your wish to adjourn proceedings until Ms Bennett is able to join the hearing. You confirmed that you wish to adjourn proceedings until tomorrow.

Mr Benzynie informed the panel that he is taken aback as he had spoken to Ms Bennett with the legal assessor during the preliminary meeting, 20 minutes earlier. He submitted that whilst the NMC would expect him to oppose the application to adjourn proceedings, he cannot see any merit in it given that it is your wish to adjourn proceedings, and you are effectively unrepresented. Mr Benzynie submitted that in light of this, he takes a neutral stance.

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

The panel considered that the application to adjourn proceedings was made on the basis that Ms Bennett is unable to attend the hearing due to [PRIVATE] The panel adjourned the hearing until the following day.

The hearing resumed on Thursday 20 March 2025. You were present and represented by Ms Bennett who was supported by E4BN representatives Sharon and Karabo.

Background

On 16 March 2023, Pearson VUE, the Nursing and Midwifery Council's (NMC) computer-based test (CBT) provider, alerted it to unusual data relating to tests taken at Yunnik Technologies Ltd test centre in Ibadan, Nigeria (Yunnik). The CBT is in two

parts, numeracy and clinical. The data raised questions about whether some or all of the CBT results at Yunnik had been obtained through fraud and called into question the validity of all tests taken at Yunnik.

Following completion of the NMC's initial investigation into this issue it concluded that there was evidence of widespread fraud at the Yunnik centre, where a large number of candidates had allegedly fraudulently obtained their CBT results. The NMC asked Pearson VUE to provide it with assurance that the data concerning tests taken at Yunnik were accurate, and not the result of a system error, cyber-attack, or other technical issue. Pearson VUE confirmed that, following a detailed investigation into the testing facility at Yunnik and review of the data, it was satisfied that there was no evidence of system error, cyber-attack, or other technical error and that the data was indicative of one or more proxy testers operating at the centre. A proxy tester is an individual who takes a test on another's behalf.

The NMC next asked an independent data analytics expert of OAC Limited (OAC), Witness 5, to provide the NMC with an objective analysis of the data provided by Pearson VUE. OAC looked at the times in which CBT candidates at Yunnik took to achieve their CBT pass, compared with times taken by CBT candidates from other test centres in Nigeria and globally. Using this data, OAC then calculated the probability that each CBT candidate at Yunnik could achieve their CBT pass within the time it took them to complete the test. OAC's analysis of the data supports Pearson VUE's conclusion that there may have been widespread fraudulent activity at Yunnik probably through a proxy tester acting on behalf of test candidates.

Witness 5's data analysis in relation to your CBT shows that you achieved a pass in your tests in the following times at Yunnik:

- Numeracy: 3.37 Minutes (Time allocated for test: 30 minutes).
- Clinical: 6.12 Minutes (Time allocated for test: 150 minutes).

Comparing your time to complete your tests with times taken by candidates globally, it was considered very unlikely by the NMC that you could have achieved a pass in your tests within the times it took you to complete them.

Taking into account the times in which your tests were taken, in a centre in which the NMC have found there to have been widespread fraudulent activity, it was considered by the NMC to be more likely than not that your CBT result was obtained fraudulently.

When considering your application to be admitted to the register, the Assistant Registrar took into account the following documentation:

- Your completed application
- Expert reports by Witness 5, an independent Data Analyst who provided the NMC with an analysis of the data provided by Pearson VUE.
- Witness statements of Witness 6, Director of Information Security and Security Services at Pearson VUE
- Witness statements of Ms 3, Executive Director of Professional Practice at the NMC

In your correspondence you stated that you were not aware of any fraudulent activity at Yunnik and denied that you obtained your CBT result from Yunnik fraudulently.

It is your case that you chose to sit your CBT at the Yunnik test centre in Ibadan as you were in the area to fulfil family obligations and there were no CBT centres in your home state of Rivers. You stated that on the day of the test, nothing appeared out of the ordinary. You said you had ample time to prepare; that you had completed CBT past questions, study materials and practice questions on Pearson VUE's website.

The Assistant Registrar considered your explanation. The Assistant Registrar had regard to your CBT times in Yunnik and noted the explanation you provided in relation to the time in which you took your CBT. However, the Assistant Registrar

determined that this did not explain how you were able to obtain your test result from Yunnik in the time you did when comparing it against times taken by candidates globally.

The Assistant Registrar took into account your resit CBT times, which took place in the United Kingdom on 10 November 2023:

- Numeracy: 29.18 Minutes (Time allocated for test: 30 minutes) - Pass.
- Clinical: 115.92 Minutes (Time allocated for test: 150 minutes) - Fail.

The Assistant Registrar also took into account your second Clinical resit CBT time as you had failed this in the first resit, which took place in the United Kingdom on 11 December 2023:

- Clinical: 63.68 Minutes (Time allocated for test: 150 minutes) - Pass.

The Assistant Registrar was not satisfied that they had been presented with anything that changed the conclusion that you more likely than not obtained your CBT result at Yunnik fraudulently. The Assistant Registrar therefore determined that you did not meet the character requirements to be considered capable of safe and effective practice.

On 26 March 2024, you were informed that the Assistant Registrar had refused your application onto the register. You appealed the decision on 22 April 2024, within the 28-day time limit.

Evidence

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

- Witness 4: The Deputy Director for Business Transformation and a

member of the Executive Team
for Professional Regulation.

- Witness 6: Director of Information Security and Security Services at Pearson VUE.
- Witness 5: An independent Data Analyst who provided the NMC with an analysis of the data provided by Pearson VUE.

Application to admit documents into evidence

Ms Bennett referred the panel to her written submissions in respect of an application to admit the following documents into evidence:

- Email correspondence and photographs provided by the NMC regarding the allegations against you
- Meeting notes from NMC discussions regarding the allegations of fraud related to the Yunnik Test Centre

Mr Benzynie submitted that the NMC does not accept what is contained in the documents, the subject matter of Ms Bennett's application and the assertions that have been made, but the NMC should be able to deal with those matters through cross examination.

Ms Bennett reminded the panel that she has [PRIVATE]. She said that the NMC are in receipt of supporting evidence in relation to this and requested that this be considered as part of a reasonable adjustment in accepting it has led to a delay in the submission of evidence, when assessing compliance with procedural deadlines. Ms Bennett stated that the [PRIVATE] evidence she has provided demonstrates that any delay caused to proceedings was not intentional, [PRIVATE].

Ms Bennett stated that the documents are central to the fairness and truth of these proceedings, and denying admissibility on procedural grounds would cause far greater injustice than any minor administrative delay.

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

The panel accepted Ms Bennett's explanation for the late submission of this evidence and determined that all of the documents be admitted into evidence as they are relevant, and it would be fair to you to consider them. The panel further considered that there is no unfairness to the NMC in admitting them.

Resuming Evidence

The panel also heard evidence from you under oath.

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

In light of Ms Bennett's disclosure of [PRIVATE] and requests for adjustments to be made, the panel considered Rule 30(1) and proposed that any matters relating to Ms Bennett's [PRIVATE] should be heard in private.

Mr Benzynie confirmed that he had no objection.

Ms Bennett confirmed that she supported this proposal.

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

The panel determined to go into private session as and when such issues are raised to protect Ms Bennett's right to privacy.

Further late evidence application

In advance of closing submissions on 21 May 2025 Ms Bennett provided the panel with 5 testimonials and requested that these be placed into evidence. Ms Bennett requested that the testimonials be admitted despite being sent after the deadline set for evidence by the panel. She clarified that this was being presented late due to her previously disclosed [PRIVATE] and requested that it be accepted under reasonable adjustment.

Ms Bennett said that the testimonials go directly to your character, professionalism and your fitness to practise, and they are essential in demonstrating your integrity. Ms Bennett stated that these should be weighed against the allegations made and refusing to admit them solely on timing grounds risks an unbalanced assessment of your case.

Ms Bennett outlined that the NMC has not identified any actual prejudice it would suffer by the admission of the documents. She stated that excluding Exhibit 24 would seriously prejudice your ability to fully defend yourself.

Ms Bennett requested that the panel exercise its discretion and admit the character references ensuring a fair and complete assessment of the case.

Mr Benzynie made an observation that as the character references have been served on Day 10, there hasn't been an opportunity for any consideration of those references or any checks that could be made if they had been served earlier.

Mr Benzynie outlined that the testimonials are dated from 46 days ago. He questioned why Exhibit 24 was not sent to the NMC earlier.

Mr Benzynie submitted that the relevance of Exhibit 24 is to be questioned as the panel is determining whether or not the CBT test was obtained by way of fraud.

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

The panel determined that there could be prejudice to you if Exhibit 24 was not admitted. The panel considered that it is relevant in determining character, and the testimonials are recent. The panel considered that any weight to be attributed to these will be identified at the fact-finding stage.

Closing submissions

Mr Benzynie reminded the panel that the consideration for the panel is whether you submitted or caused to be submitted a CBT result obtained at Yunnik Test Centre on 15 December 2022 and secondly, whether this CBT result was obtained through fraud.

Mr Benzynie submitted that the evidence before the panel is accurate and reliable in regard to the fraudulent activity at Yunnik test centre. He outlined that Witness 5 and Witness 6's live evidence corroborated each other. He reminded the panel that Witness 5 and Witness 6's findings are supported by the admissions made by Witness 1 and Witness 2.

Mr Benzynie outlined that you agree that you submitted or caused to be submitted a CBT result obtained at Yunnik Test Centre on 15 December 2022 as part of your application to the NMC register.

Mr Benzynie submitted that the way in which a proxy test taker would have been used at Yunnik is not of importance for the panel nor are the reasons for a registrant to have used one.

Mr Benzynie referred to Witness 6's evidence, and in regard to assertions that there was racial bias – Witness 6 clarified that he deals with data and not demographics.

Mr Benzynie submitted that there is nothing before the panel that outweighs the compelling evidence that you likely obtained your CBT result on 15 December 2022 by way of fraud. He submitted that there is no plausible reason as to how the test was completed in such a fast time. He added that on the same day two other candidates also completed their tests in times that were '*extremely fast*'.

Mr Benzynie reminded the panel that the photo of a male being sent to you was an administrative error. Mr Benzynie stated that this was admitted by the NMC at the time, reported to the Information Commissioner's Office as a breach, and it was agreed with Unison (your previous representatives) that it would be destroyed. Mr Benzynie reiterated his concern that this was not honoured, and it has been presented in this hearing.

Mr Benzynie outlined that there is a significant difference between your CBT time and resit test times.

Mr Benzynie reminded the panel that the burden of proof lies on the NMC in order to prove fraud in this case.

Ms Bennett stated that you have over 15 years of unblemished professional experience.

Ms Bennett said that this appeal is not only about exam timings, but also about truth, justice, fairness, due process and accountability in the face of a flawed discriminatory system that has failed you.

Ms Bennett reminded the panel that there is no direct evidence that you had engaged in fraud, no CCTV footage from Yunnik, no biometric evidence to show someone else took your test, and no witness testimony identifying a proxy test taker.

Ms Bennett stated that this case rests solely on alleged statistical anomalies and an assumption that fast completion equals fraud.

Ms Bennett told the panel that, had you not challenged the photo of the man which was provided as evidence of the person sitting your test, the NMC would have upheld a fraudulent claim based on false identity.

Ms Bennett said that you passed the CBT again in the UK under strict exam supervision and achieved an even higher score.

Ms Bennett stated that there is racial bias in the fraud detection systems. She referred to Witness 6's evidence in which he stated that the fraud detection is based on statistical models and not individualised reviews. She said that the algorithmic system flags candidates disproportionately who are from Asia or Africa but applies lower scrutiny to candidates predominantly from the Global North. Ms Bennett told the panel that such profiling fails to account for cultural norms around test preparation.

Ms Bennett referred the panel to the County Court Appeal case of *Esther Temitayo Ayelabowo v NMC* [2025], another CBT case relating to Yunnik. She stated that the judge had expressed serious concerns over the reliability of the generic evidence on which the NMC have relied, which is only data and statistical models and commented on a fundamental lack of transparency or analytical rigour. She later clarified that this is not reflected in the official judgement but was taken from the notes that she had written whilst at the hearing.

Ms Bennett referred the panel to the NMC Independent Culture Review dated July 2024.

Ms Bennett stated that you were pressured to falsely confess to fraud as you were told that your PIN could be reinstated if you signed a false reflection. She said that this is because of structural racism in the NMC.

Ms Bennett said that your preparation for your CBT was entirely lawful and legitimate. She referred to your oral evidence in which you stated that approximately 85 per cent of the questions you saw in the CBT were the same as those in the practice materials, and you also stated that it was the easiest exam you had done in your career.

Ms Bennett outlined that for over 19 months you have had income and career disruption as well as living with the stigma and reputational damage. [PRIVATE]

Ms Bennett referred the panel to Exhibit 24.

Ms Bennett referred to previous NMC CBT cases involving Yunnik and challenged the reliability of Pearson VUE data and highlighted recognition that power outages in Nigeria are credible and common which may affect test times, especially where candidates are compelled to work quickly to avoid test disruptions.

Ms Bennett stated that in the absence of direct evidence or credible alternative explanations and procedural failings, the NMC cannot meet the burden of proof.

Ms Bennett said that this case offers the NMC an opportunity not just to correct an injustice, but to reaffirm its commitment to equitable regulation, free from structural bias. She told the panel there is covert racism present in these cases.

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

Panel's decision

The panel decided to dismiss your appeal against the decision of the Assistant Registrar of the NMC.

In making its decision, the panel first considered whether the NMC had discharged the burden of proof in relation to whether there was widespread fraud occurring at Yunnik. The panel noted that there is no direct evidence of you acting fraudulently. The panel had sight of statements and analysis provided by Witness 6. It also had sight of Witness 5's data analysis including graphs, '*histoplots*' and charts which evidence the times taken at Yunnik, globally, as well as at other test centres in Nigeria. The panel bore in mind that Pearson VUE had a long-standing commercial relationship with the NMC, however the panel also considered that the conclusions of Witness 6 are supported by the independent evidence of Witness 5 who is an actuary and as such a regulated professional. The evidence of both witnesses was consistent with their written reports and statistical information, and both remain consistent under cross examination.

The panel considered that Witness 6's findings were corroborated by Witness 5's independent research which outlined the significant difference in the pattern of test times taken at Yunnik as opposed to both the rest of Nigeria (excluding Yunnik), and also globally. The panel noted that the separate distribution curves for both the rest of Nigeria and the global groups are almost alike, showing a smooth distribution of completion times, whereas that for Yunnik is anomalous in that it bears no resemblance to the others. The panel noted that the majority of the completion times at Yunnik are faster than any recorded for either the rest of Nigeria or for the global groups. The panel noted Witness 6's conclusion that, *'The data set for the period between 15 March 2019 and 31 March 2023 indicates a specific pattern of probable fraudulent behaviour with proficient proxy testing, that is not present in any other test centre in Nigeria.'* The panel considered that the most likely explanation for this anomaly is a widespread fraud occurring at Yunnik.

The panel took into account that Witness 6's report and analysis further stated that there was no evidence of any hacking or malfunction of the Pearson VUE software or of any power failures at Yunnik.

The panel considered Ms Bennett's assertion that the evidence before it, and the NMC's investigation, was *'tainted by racial bias'*. The panel noted Witness 6's evidence that no demographic data was initially analysed as part of the investigation, and that he stated in his live evidence that any investigation into suspected fraud *'starts with only a nine-digit reference ID'* and makes no reference to demographic data, names, or location. The panel noted in the evidence of Witness 6 that the investigation was commenced due to the identification of suspicious timings, the location of the centre being incidental. The panel also considered that, in Witness 5's evidence, the results from Yunnik were not only compared to the global group. The panel noted that, in comparing Yunnik to the rest of Nigeria as a comparator, efforts were made to eliminate any cultural or racial differences. The panel further noted that the distribution plots for the rest of Nigeria mirrored those for the global population. The panel concluded that it was unable to identify any evidence in the data to support the assertion of racial or cultural bias.

The panel further noted that the concerns were not initially identified by the NMC but were raised by Pearson VUE. The NMC then passed the information supplied by Pearson VUE to an independent party, Witness 5, for further scrutiny and analysis prior to taking any regulatory action. The panel was therefore satisfied that the NMC was not directly involved in identifying fraudulent activity and that further once concerns were raised the NMC commissioned an independent investigation. The panel therefore do not accept that there is evidence to support the assertion that the NMC's approach to this case is *'tainted by racial bias'*.

The panel considered that the witness statements of both Witness 1 and Witness 2, although hearsay in nature and not speaking of the day you took your test, provide contextual evidence that proxy activity was taking place during the period in question. The panel also noted the evidence of Ms 3 detailing the pattern of proxy behaviour reported on days when the NMC have received admissions of fraudulent behaviour. Again, the panel considered that these do not provide direct evidence of the day you took your test at Yunnik but provide further contextual evidence to support the proposition of fraudulent activity at Yunnik.

For all of the above reasons, the panel concluded that the evidence relied upon by the NMC is cogent and compelling. The panel is therefore satisfied that it was more likely than not that a widespread generic fraud was occurring at Yunnik during the reporting period.

The panel next considered whether it was more likely than not that you obtained your test result by fraudulent means at Yunnik on 15 December 2022.

The panel noted the assertion about the incorrect photograph but considered the contemporaneous emails, Exhibit 20, and accepted that they were regrettably sent in error by the NMC. The panel considered that the photograph of you at Yunnik may indicate your presence at the test centre on the day of the test but does not provide evidence as to whether you took the CBT yourself or not.

The panel considered Witness 5's analysis of your specific data, which provided the following odds of how achievable your test times were at Yunnik:

- Evaluated Clinical Test Timing: 6.12 minutes, Odds of less than 1 in 56,478
- Evaluated Numeracy Test timing: 3.37 minutes, Odds of less than 1 in 58,123

This analysis identified that, as result of your test times, it was likely that you used a proxy tester at Yunnik.

The panel noted that Ms Bennett raised a concern in respect of the reliability of the data in relation to your CBT times. The panel had regard to Witness 6's oral evidence, where he accepted that there is a theoretical risk of the data being inaccurate. However, he confirmed that there are safeguards in place to mitigate any such risks and that the data globally has never been called into question. Further he stated that there is nothing to suggest that the data in respect of your CBT times was not accurate. Witness 6 was closely cross examined by Ms Bennett on your behalf. His evidence remained consistent under cross examination and is consistent with his reports. The panel therefore accepted on the balance of probabilities that the data was reliable.

The panel took into account your explanation as to why you chose to sit your CBT at Yunnik. The panel is satisfied that you provided a plausible explanation which is not disputed.

The panel had regard to the explanation you provided in respect of your fast test time. The panel took into account the practice materials you described, to evidence your extensive preparation for the CBT. The panel considered that this could have assisted with your preparation, however it did not consider that it is plausible that the diligent preparation you described would have enabled you to achieve the time recorded for you at Yunnik, the fastest time recorded in the world outside Yunnik. The panel considered that the materials you described studying were available to over 56,000 other candidates globally, including Nigeria other than Yunnik, none of whom was able to achieve similar fast testing times.

The panel considered that the plausibility of your account is further undermined by your resit performance. The panel considered the resit data submitted by the NMC in response to Ms Bennett's assertion that you had performed better at your resit. The panel considered that you had access to the same materials for your resit on 10 November 2023, yet you failed your clinical test and had to complete a further clinical resit on 11 December 2023. The panel further noted that in your first resit you took 115 mins and in the second resit you took 63 minutes for the clinical test which is a significant difference from the 6 mins you took in Yunnik. The panel considered that the resit evidence provides further support to the NMC's case that you obtained your result at Yunnik fraudulently.

The panel noted that your test was the second of three times recorded that morning in Yunnik in a 30-minute period that established an implausible pattern of the three fastest candidates ever (when compared to the global population of candidates excluding Yunnik) being in the same centre, on the same day at the same time. The panel considered on balance that a more likely explanation is that a proxy tester was present and completing tests on behalf of candidates that morning. The panel further considered that these test times on 15 December 2022 are consistent with the patterns demonstrated in Exhibit 4. The panel considered Witness 5's oral evidence where he stated that it was highly unlikely that three candidates finished their CBTs so fast within such a short time frame of each other. The panel did not find your account credible that you did not see anyone else at the test centre given the short windows of time between:

- You and the candidate who completed their CBT three minutes before you began; and
- The candidate who began their CBT three minutes after you completed yours.

For all of the above reasons, the panel was satisfied that it is more likely than not that you obtained your CBT result fraudulently.

The panel noted Ms Bennett's reference to the case *Ayelabowo v NMC*, and her submission that the judge commented negatively on the reliability of the evidence in

NMC CBT appeals relating to Yunnik. The panel reviewed the decision of the County Court and identified no such reference. The panel further noted Ms Bennett's clarification that she was referring to her handwritten notes taken during the proceedings, rather than the published judgement. The panel relied upon the published County Court judgement when evaluating the assertions made.

Finally, the panel went on to consider whether you meet the character requirements for admission to the NMC register. The panel had regard to the NMC guidance on health and character, in particular '*Factors that we take into account when considering character cases*', last updated on 5 September 2024. The panel was aware that it was for you to satisfy it that you have met the character requirements for successful admission on the register.

The panel took into account the positive character references and testimonials provided. It considered that the testimonials spoke highly of your character and came from professionals at a senior level in regulated professions. However, having found on the balance of probabilities that you fraudulently procured your CBT results the panel noted that none of the testimonials addressed the allegations you face.

The panel considered that candidates for admission to the register must satisfy the good character requirements which require them to demonstrate honesty and integrity. The panel therefore is not satisfied that there is evidence before it to determine that you are of sufficient good character for admission to the NMC register.

The panel therefore decided to dismiss your appeal, to uphold the decision of the Assistant Registrar, thereby refusing your application to the NMC register.

You have the right to appeal this decision. If you appeal the decision, you must submit your appeal to the County Court within 21 days of this decision.

This will be confirmed to you in writing.

That concludes this determination.