

**Nursing and Midwifery Council
Investigating Committee**

**Fraudulent/Incorrect Entry Hearing
Wednesday 27 March 2024**

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

Name of Registrant:	Benedicta Obiri
NMC PIN	22J11810
Part(s) of the register:	Registered Nurse – Adult Nursing
Relevant Location:	Nigeria
Type of case:	Incorrect/Fraudulent entry
Panel members:	Judith Ebbrell (Chair, Registrant member) Eleanor Harding (Lay member) Kathryn Evans (Registrant member)
Legal Assessor:	Nigel Ingram
Hearings Coordinator:	Sophie Cubillo-Barsi
Nursing and Midwifery Council:	Represented by Susanna Bennett, Case Presenter
Benedicta Obiri:	Present and represented by Damian Mark Krushner
Outcome:	Registration entry fraudulently procured
Direction:	The panel directs the Registrar to remove Ms Obiri's entry on the register in accordance with Article 26 (7) of the Order
Direction:	Interim suspension order (18 months)

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 Tests results, obtained at Yunnik Technologies Limited test centre, that had been obtained through fraud:

- a. RNA Numeracy test, taken on 9 June 2022
- b. RNA Clinical test, taken on 9 June 2022

And, in light of the above, your entry on the NMC register, in the name of Benedicta Obiri, PIN 22J1181O, was fraudulently procured and/or incorrectly made.

Background

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

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

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

On 15 March 2023, Pearson VUE identified that the Yunnik centre was delivering exams for multiple candidates who were completing the clinical part of the CBT in 10 minutes (2.5 hours is allowed for this part of the exam). The number of candidates was initially unknown.

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

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

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

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

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

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

On 9 June 2022, you completed the CBT Test at the Yunnik centre. According to the data, you completed the numeracy test in 3.03 minutes and the clinical test in 9.18 minutes. It is the NMC's case that the reason you were able to complete the test so quickly was that it was undertaken using fraud.

Decision and reasons on the facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Bennett on behalf of the NMC, Mr Krushner on your behalf and your oral evidence.

The panel was advised that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged. Once, and if established then the burden shifts to you to satisfy the panel on the balance of probabilities that you had not committed fraud in relation to your CBT.

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

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

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

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

The panel also heard evidence from you under oath.

Charge 1

1. Submitted or caused to be submitted, the following Computer Based Tests results, obtained at Yunnik Technologies Limited test centre, that had been obtained through fraud:

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- b. RNA Clinical test, taken on 9 June 2022

And, in light of the above, your entry on the NMC register, in the name of Benedicta Obiri, PIN 22J1181O, was fraudulently procured and/or incorrectly made.

This charge is found proved.

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

Witness 2 in his statement stated:

“Pearson VUE conducted a thorough and detailed investigation into the testing centre hosted by Yunnik Technologies Ltd and identified testing anomalies. The

data analysis Pearson VUE conducted has two layers, firstly an analysis into the data across all test centres globally and then secondly, an analysis of the data at the exam level across candidates....

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

The panel also took account of the evidence of Witness 1. His conclusion was that data showed that the Yunnik test centre statistically had significantly lower test times than the global benchmark population. The report also determined that other centres in Nigeria matched the global times as well. It is not country specific, namely that Nigeria has remarkably fast results, it is purely the Yunnik test centre that has results with testing speeds significantly lower both within Nigeria and globally.

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

The panel considered the witness statements of both Witness 4 and Witness 5. It noted that Witness 4 accepts that she used a proxy as she felt pressured to do so. Witness 5's experience was different as she stated she did not use the proxy at the Yunnik test centre. However, she stated that she was being rushed and shouted at with answers, threatened and felt pressured. The panel was satisfied that both witness statements provided context to what was occurring at the Yunnik centre, and their evidence was supported by the evidence of Witness 1 and Witness 2.

In light of the above the panel was satisfied that the NMC had satisfied its evidential burden that contemporaneous fraud was occurring at the Yunnik centre. It noted that the evidential burden had shifted to you. The panel took account of the evidence you provided.

When questioned by the NMC, you confirmed that you arrived in the United Kingdom (UK) in 2016 and that, from 2018, you obtained employment as a Health Care Assistant (HCA). You stated that you had previously undertaken a CBT test in 2019 and that it took you three attempts to complete the test. On the first attempt you failed, on the second attempt there was a technical difficulty which prevented you from taking the test and on the third attempt you passed. You told the panel that the results of that test expired in May 2021. You stated that in 2021, the NMC was going into a new scheme of testing, so you decided to 'take your time' in studying for your next test.

You explained to the panel that in preparation for your CBT, you registered for lectures and invested into meeting your grades. You stated that you had booked a CBT in the UK but that you had to cancel [PRIVATE]. You stayed in Nigeria for two weeks in June 2022 and decided to use this opportunity to complete your test and that the Yunnick centre happened to be the closest one to you.

[PRIVATE]

[PRIVATE]

When referred [PRIVATE] to Able Business Solution Ltd, you informed the panel that this was a Nigerian company which supports nurses in their preparation for CBT. You stated that the learning is completed online via Whatsapp and Telegram over a period of three months including lectures and support.

You told the panel that when you received the report with regards to your timings in the CBT examination, you were 'surprised' and stated that you spent more than three minutes on your numeracy test and more than nine minutes on the clinical assessment. In your written statement, you estimated that your test times were around eight to ten minutes for the numeracy test and around 45 minutes for the clinical test.

You explained that upon arrival to the Yunnick centre, you noted that there appeared to be a problem with the electrical generator and that it was in the process of being

mended. You were told to sit outside and when it was your time to take the test, a lady came out, searched your bag, took your phone and ushered you to a computer. Despite noticing an issue with the electrical generator, you stated that you did not notice any power supply problem or any interruption whilst you were completing your examination. However, you stated that the Yunnick's server was 'slow' and that as a result, you would not have been able to complete the examination in the time alleged.

You denied that a proxy completed the CBT for you.

[PRIVATE]

You denied that you had purposefully arranged to go to Yunnick in order to be assisted in taking the CBT exam. You stated that you were not sure why the results of your resit, successfully completed in December 2023, were not before the panel today and that you had followed the NMC's instructions with regards to the resit.

It is the NMC's case that the evidence before the panel is compelling and the fact that you chose to attend the Yunnick centre, after undertaking very little revision, points towards you cheating on the CBT.

Mr Krushner submitted that it was wrong for the NMC to assert that the burden of proof would shift to you once it had established that fraudulent activity had occurred at the Yunnick test centre. He submitted that the evidence before the panel consists of technical analysis only and that the NMC lack any actual link to dishonest conduct on your part.

Mr Krushner further submitted that due to the time delay in this matter, you have been deprived of contemporaneous evidence which may have been available, such as CCTV. He stated that you have never asserted that you were able to complete the tests in the alleged times. Mr Krushner submitted that you have given full and truthful account
[PRIVATE].

The panel noted the evidence of Witness 2 that neither CCTV nor biometrics were available at the Yunnick centre.

The panel noted that according to the report of Witness 1 the odds of you completing your clinical assessment in 9.18 minutes was one in 56478 and that the odds of you completing your numeracy assessment in 3.03 minutes was one in 58123. It noted that you raised an issue regarding the electrical generator at the Yunnick centre however, when asked directly by the NMC, you confirmed that there was no power outage before, during or after you taking the CBT. 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 test without fraud. Witness 2 reported that there were no computer errors, cyber hacking or power outages at the Yunnick centre in his report.

Further, when considering the circumstances of your case, the panel was of the view that your decision to complete the CBT at Yunnick during a two week trip instead of the UK, where you reside, [PRIVATE], seems somewhat perverse.

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 Yunnick test centre that had been obtained through fraud.

The panel therefore find this charge proved.

Decision on Fraudulent Entry

The panel decided, for the above reasons, that in respect of the charge the entry on the register in your name was fraudulently procured.

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

'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often

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

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

The panel therefore found that the entry on sub part 1 of the NMC register in the name of Benedicta Obiri, PIN 22J1181O, 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 Bennett submitted that, as the panel have found that your entry onto the NMC Register had been fraudulently procured, a serious finding, it should direct the Registrar to remove your entry from the register.

Mr Krushner submitted that it is a matter for the panel as to what direction it should make. He told the panel that you do not agree with the panel's findings that your entry was fraudulently procured and that you will be appealing the decision.

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

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

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

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

You will be notified of the panel's decision in writing. You have the right to appeal the decision under Article 38 of the Order. This order cannot take effect until the end of the 28 day appeal period or, if an appeal is made, before the appeal has been concluded.

Decision and reasons on interim order

Having directed that the Registrar remove your entry from the register, the panel then considered whether an interim order was required under Article 26(11) of the Order, in relation to the appeal period.

Ms Bennett submitted that an interim suspension order for 18 months would be appropriate in this case in order to allow for any appeal period.

Mr Krushner invited the panel to find that an interim order is not necessary at this time as there have been no other challenges made with regards to your professional practice.

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

In reaching its decision on whether to impose an interim order, the panel had regard to the reasons set out in its decision on the facts and its decision to direct the Registrar to remove your entry from the Register. It also had regard to the NMC's published Guidance on Fraudulent and incorrect entry cases. It noted that the imposition of an interim order is not an automatic outcome but is a matter for the panel's discretion in the circumstances of the case, having regard to the public interest in maintaining the integrity of the register. It also had regard to Article 31 of the Order and the NMC's Guidance on interim orders.

The panel first considered whether to impose an interim conditions of practice order. It determined that an interim conditions of practice order was not workable or appropriate in this case.

Accordingly, the panel determined that an interim suspension order was in the public interest to protect the reputation of the profession and the NMC as its regulator. Not to make an interim suspension order would be inconsistent with the panel's earlier findings.

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.