

**Nursing and Midwifery Council  
Investigating Committee**

**Fraudulent/Incorrect Entry Hearing  
Tuesday, 19 March 2024**

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

**Name of Registrant:** Busayo Tosin Akinola

**NMC PIN** 22L0248O

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

**Relevant Location:** Nigeria

**Type of case:** Incorrect/Fraudulent entry

**Panel members:** Mahjabeen Agha (Chair, Lay member)  
Sally-Ann Glen (Registrant member)  
Godfried Attafua (Registrant member)

**Legal Assessor:** Nigel Ingram

**Hearings Coordinator:** Max Buadi

**Nursing and Midwifery Council:** Represented by Alice Kuzmenko, Case  
Presenter

**Ms Akinola:** Present and not represented

**Charges proved:** Charge 1

**Charges found not proved:** None

**Outcome:** Registration entry fraudulently made

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

**Direction:** Interim suspension order (18 months)

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

At the outset of the hearing, Ms Kuzmenko, on behalf of the Nursing and Midwifery Council, informed the panel that, in your written response to the charges you made [PRIVATE]. Ms Kuzmenko made a request that those parts of this case be held in private. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You supported this application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

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

### **Details of charge**

1. Submitted or caused to be submitted, the following Computer Based Test results, obtained at Yunnik Technologies Limited test centre, that had been obtained through fraud:
  - a. RNA Numeracy test, taken on 25 March 2022
  - b. RNA Clinical test, taken on 25 March 2022

And, in light of the above, your entry on the NMC register, in the name of **Busayo Akinola, PIN 22L02480**, 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.

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. A security review was also conducted which found several instances of the Yunnik centre submitting suspicious admission photos for NMC candidates.

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. He reached essentially the same conclusion – i.e. 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.

### **Decision and reasons on your application to adjourn the hearing**

During your oral evidence, a point made by the NMC was that when you had undertaken the test at the Yunnik Centre this was done exceptionally fast. However, when you resat the exam at a later date it was undertaken at a significantly slower speed.

You were asked if there was any information you had to assist the panel in determining how you were able to undertake the test at the Yunnik Centre at the speed that you did.

You said that you could contact your former employer. You also said that you could contact your school who could provide information that speaks about your academic competence.

The panel noted that, in effect, you were asking for an adjournment so you could gather this information.

Ms Kuzmenko, on behalf of the NMC, opposed the application.

Ms Kuzmenko submitted that you have had the NMC bundle for since September 2023 and you knew what the NMC's case was. She submitted that you have had plenty of time to gather this information.

Ms Kuzmenko submitted that you have already provided the NMC with documentation that spoke to your academic capabilities. She submitted that it is unclear how your employer would be aware of your testing capabilities. She submitted that the fact that you are a capable nurse is irrelevant to the panel's consideration regarding the charge.

Ms Kuzmenko submitted that it is unclear how you will find witness evidence from an usher at the school you attended who can testify how quickly you completed tests given that some years have passed.

Ms Kuzmenko submitted that she does not understand what possible evidence you could find that would assist the panel and therefore invited the panel to reject your application.

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

The panel bore in mind that the allegations pertain to the speed at which you had undertaken the exam. With that in mind, it considered the evidence you were going to gather.

The panel was of the view that feedback from your former employer relating to your competency as a practicing nurse is irrelevant to the charges the panel are considering at this hearing today. The allegation is the speed at which you allegedly completed the CBT at the Yunnik centre. It determined that the evidence you seek obtain does to speak to this.

The panel have considered fairness to you and the NMC and decided not to grant the adjournment.

## **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 you.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

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

- Witness 1: Director of Information Security and Security Services at Pearson Vue, undertook the initial investigation into the anomalies;
- Witness 2: Executive Director of Professional Practice at the NMC;
- Witness 3: Band 5 nurse in the UK provides her experience sitting an exam at Yunnik Test centre;
- Witness 4: Band 4 Pre-registration nurse, in the UK provides her experience sitting an exam at Yunnik Test centre.

The panel also heard oral evidence from you under affirmation.

## Charge 1

1. Submitted or caused to be submitted, the following Computer Based Test results, obtained at Yunnik Technologies Limited test centre, that had been obtained through fraud:
  - a. RNA Numeracy test, taken on 25 March 2022
  - b. RNA Clinical test, taken on 25 March 2022

### **This charge is found proved.**

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

Witness 1 in his statement stated:

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

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

The panel took into account the OAC expert report provided by Mr 5. 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.

The panel took account of your oral evidence. [PRIVATE]. In spite of this, you stated that you completed the exam quickly to get it completed.

You stated that you always complete your exams quickly. Additionally, you also stated that you were an exceptional student that always finished within the top five students of your class. These were reasons you presented to the panel to as to how you were able to complete your exam.

However, the panel noted that the academic transcripts from the school of nursing you provided does not suggest you are an exceptional student but an average student.

The panel took account of the letter you received from the NMC, dated 19 September 2023, which expressed concern about your CBT result. The NMC provided you with an opportunity to resit the exam. Despite this, you scored slightly lower and took more time to take the test the second time around under what appeared to be better circumstances.

The panel bore in mind that the case against you is that there you had another opportunity to take the exam and demonstrate you could complete it quickly. However, despite this, you decided to take your time the second time around. The panel were not persuaded by your reasons for doing this.

The panel also bore in mind that you stated you had undertaken a lot of practice questions in preparation for the exam. However, the panel noted that there was only a total of 50 test questions available to practice on.

The panel concluded, on the balance of probabilities, that the evidence presented by the NMC was sufficient find charges 1 proved.

### **Decision on Incorrect/Fraudulent Entry**

The panel decided, for the above reasons, that in respect of each 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 Busayo Akinola, PIN 22L0248O, was fraudulently procured by use of a proxy.

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

You said that you did not accept the panel's decision and maintained that you had not used a proxy.

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

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

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

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

If no appeal is made then the interim order will lapse upon the removal of your entry in the Register 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.