

**Nursing and Midwifery Council
Investigating Committee**

**Fraudulent/Incorrect Entry Hearing
Friday, 22 November 2024
Friday, 29 November 2024**

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

Name of Registrant: Obiageri Peace Onuhurironye

NMC PIN 23C0156O

Part(s) of the register: Registered Nurse Adult

Relevant Location: Nigeria

Type of case: Incorrect/Fraudulent entry

Panel members: Godfried Attafua (Chair, Registrant member)
John Anderson (Lay member)
Alison Fisher (Lay member)

Legal Assessor: Nigel Ingram

Hearings Coordinator: Max Buadi (22 November 2024)
Monsur Ali (29 November 2024)

Nursing and Midwifery Council: Represented by Pamela Muniya, Case Presenter (22 November 2024)
Janice Burgess, Case Presenter (29 November 2024)

Mrs Onuhurironye: Present and represented by Peter Jewell, (Maya & Co Solicitors)

Outcome: **Charge 1a proved, Registration entry fraudulently procured**

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

Interim Order: **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, a Computer Based Test result, obtained at Yunnik Technologies Limited test centre (the test centre) on 27 May 2022, that:
 - a. had been obtained through fraud;

And / or, in the alternative,

- b. was subsequently invalidated by the NMC due to concerns about the manner in which tests were being conducted at the test centre.

And, in light of the above, your entry on the NMC register, in the name of **Obiageri Peace Onuhuronye**, PIN **23C01560**, was fraudulently procured and incorrectly made with regard to charge 1a and charge 1b or, incorrectly made with regard to charge 1b only.

After the charges were read, the panel heard from Mr Jewell, on your behalf, who informed the panel that you deny all the charges.

Decision and reasons on application to admit written statements of Witness 1, Witness 2 and Witness 3's into evidence

The panel heard an application from Ms Muniya, on behalf of the Nursing and Midwifery Council (NMC) to admit the witness statements of Witness 1 and Witness 2.

Ms Muniya referred the panel to the cases of *Bonhoeffer v GMC* [2011] EWHC 1585 (Admin), and *Ogbonna v NMC* [2010] EWCA Civ 216 with regards to its consideration of whether it is fair to admit the witness statements.

Ms Muniya submitted that as per the case of *Bonhoeffer*, there is no absolute entitlement to cross-examine witnesses. She informed the panel that your representative, Mr Jewell had indicated to the NMC that he had no intention of cross examining the witnesses.

Ms Muniya took the panel through the factors to consider when deciding whether to include hearsay evidence as outlined in the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565.

Ms Muniya submitted that the NMC, in an email dated 18 June 2024, had provided prior notice to you and Mr Jewell that this hearsay application would be made.

Ms Muniya submitted that the witness statements are not sole or decisive evidence in support of the charges. She submitted that the witness statements are background evidence and only corroborate the evidence, in the NMC bundle, provided by Witness 4 and Witness 5 namely that it was likely there were proxy testers at Yunnik Technologies Limited (the test centre) rather than evidence to demonstrate that you used proxy tester.

Ms Muniya submitted that the NMC does not say that Witness 1 and Witness 2 sat their Computer Based Test (CBT) exams on the same day that you did. She submitted that these witnesses cannot speak to your case specifically.

Ms Muniya submitted that there was no plausible reason why Witness 1 and Witness 2 would lie in their statements. She submitted that by admitting to fraud, they have put themselves at risk by not being permitted to practise as nurses in the United Kingdom.

Ms Muniya submitted that the witness statements and admissions apply as generic evidence to a large number of Yunnik fraud cases. She informed the panel that there are around 717 individuals with CBT's undertaken at the test centre which were likely undertaken by fraud. She submitted that it would be impractical, disproportionate and inappropriate to call Witness 1 and Witness 2 each time when the matter considered today is not their own conduct. She submitted that this may also discourage others from making admissions in the future.

Ms Muniya invited the panel to admit the witness statements of both Witness 1 and Witness 2.

Mr Jewell submitted that there was no reason to suggest that Witness 1 and Witness 2 would make untrue statements. He submitted that their statements are hearsay. He submitted that you had done nothing wrong and were content for the panel to use the statements on the basis that they are hearsay.

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

The panel considered *Thorneycroft* and determined the following:

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

The witness statements of Witness 1 and Witness 2 were not the sole or decisive evidence in support of the charge. They both provide their own personal experience at the test centre and background context.

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

Mr Jewell informed the panel that he was content with the witness statements being admitted as hearsay.

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

There is no evidence to suggest that Witness 1 and Witness 2 had a reason to fabricate this evidence. They have admitted to fraudulently procuring a proxy which comes at a great risk to themselves.

(4) the seriousness of the allegations, taking into account the impact that adverse findings might have on the Registrant's career;

The charge is serious and relates to fraudulent entry which could have an adverse impact on your nursing career.

(5) whether there was a good reason for the non-attendance of the witness;

The panel bore in mind that according to the NMC there are around 717 individuals who had undertaken CBTs at the test centre fraudulently. The panel accept that it could be impractical for both witnesses to attend all these types of hearings which would be disproportionate and cause them great inconvenience as they are registered nurses.

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

There is no evidence of the steps the NMC had taken to secure the attendance of Witness 1 and Witness 2. The panel bore in mind the NMC's position regarding how impractical it would be for them to attend these hearings.

(7) the fact that the registrant did not have prior notice that the witness statement was to be read.

You had prior notice that the NMC would apply to read the witness statements of Witness 1 and Witness 2.

The panel bore in mind that Witness 1 and Witness 2 are giving an account of their personal experiences at the test centre. While the panel accept that both Witness 1 and Witness 2 were not present at the test centre at the same time you were, the panel considered that their experience provides context in respect of the established fraud that was occurring at the test centre. It also noted significantly that Mr Jewell did not contest this application.

In light of the above, the panel decided that it would be both fair and relevant to admit the witness statements of Witness 1 and Witness 2. In due course the panel will determine what weight, if any, to attach to them.

Background

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

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

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

On 15 March 2023, Pearson VUE identified that the test 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 test 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 test, which was not present in other test centres in other parts of Nigeria or globally.

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

The NMC commissioned a report from Witness 4, instructed as an independent expert to analyse and report on data provided by the NMC. He reached essentially the same conclusion, namely, that there were a significant number of exceptionally quick test times at the test centre, compared to global averages.

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

Because of the evidence of alleged widespread fraudulent activity at the test centre, the NMC were unable to be confident in any of the CBT results obtained at the test 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 test centre if they wanted to take a new CBT at no cost to them individually. In the absence of a valid CBT an individual should not have been allowed entry to the NMC register.

On 27 May 2022, you completed the CBT Test at the test centre. According to the data analysis provided by Witness 4, you completed the clinical test in 15.07 minutes and the Numeracy test in 3.95 minutes. It is the NMC's case that the reason you were able to complete the test so quickly was that you used a proxy to sit the test on your behalf.

Decision and reasons on 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 Muniya on behalf of the NMC and by Mr Jewell on your behalf.

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

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

- Witness 1: Band 5 nurse in the UK provides her experience sitting an exam at the test centre;
- Witness 2: Band 4 Pre-registration nurse, in the UK provides her experience sitting an exam at the test centre;
- Witness 3: Executive Director of Professional Practice at the NMC;
- Witness 4: An independent data analyst who provided the NMC with an analysis of the data provided by Pearson Vue;
- Witness 5: Director of Information Security and Security Services at Pearson Vue, undertook the initial investigation into the anomalies.

The panel also heard evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. In particular, he 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.'

Charge 1a

That you, as part of your application to join the NMC register:

1. Submitted or caused to be submitted, a Computer Based Test result, obtained at Yunnik Technologies Limited test centre (the test centre) on 27 May 2022, that:
 - a. had been obtained through fraud;

This sub-charge is found proved.

In making its decision, the panel first considered whether it had sufficient evidence before it to substantiate the NMC's case that there was widespread fraud occurring at the test centre.

The panel considered the witness statements of both Witness 1 and Witness 2. It noted that Witness 1 accepts that she used a proxy as she felt pressured to do so. Witness 2's experience was different as she stated she did not use the proxy at the test centre. However, she stated that she was being shouted at with answers, threatened and felt pressured.

The panel was mindful that this amounted to hearsay as neither Witness 1 nor Witness 2 had attended to give evidence at this hearing. As a result, there was no way to test the veracity of what is in their respective witness statements. It bore in mind that both Witness 1 and Witness 2 are providing their own personal experiences, they attended the test centre on different days than you did. Therefore, their accounts did not indicate that there was a proxy tester on the day you took the CBT. However, the panel was satisfied that both witness statements provided context to the fraudulent activity that was occurring at

the test centre and their evidence was supported by the evidence of Witness 3, Witness 4 and Witness 5.

The panel bore in mind the general principles that emerged from the *Upper Tribunal (Immigration and Asylum Chamber) in DK and RK v Secretary of State for the Home Department* [2022] UKUT 112 (IAC) and *SSHD v Akter* [2022] 1 WLR 3868 and *Ram v SSHD* [2023] EWCA Civ 1323. In its consideration of your case, it took account of the ‘Generic’ evidence of proxy test-taking at the test centre.

Witness 3 in her witness statement stated:

“Because of the evidence of widespread fraudulent activity at the Yunnik centre, we 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.”

Witness 5 in his witness statement stated:

“Pearson VUE conducted a thorough and detailed investigation into the Yunnik centre and identified testing anomalies. They 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....

At test centre level, Pearson VUE found that the score and response time differences between the testing centre and the global average were significantly different. At the candidate exam level, each individual candidate’s score and response time delivered at the testing centre was compared to the average score and response time of candidates globally. Pearson VUE used ‘Item Time’ as the metric used to measure the time taken to undertake a CBT. This does not include any additional time spent by a candidate on reviewing and correcting answers after

visiting a review screen. This was rounded to the nearest minute.

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

The panel bore in mind that according to Pearson Vue’s data, on 27 May 2022, you completed the numeracy section of the CBT in 4 minutes, and the clinical section of the CBT in 16 minutes.

The panel also took account of a table provided by Pearson Vue showing data relating to five other candidates who sat their CBT at the test centre on the same date as you. All five candidates’ results, as well as your results, were flagged as ‘*suspicious*’.

The panel also took account of the evidence of Witness 4. In his report titled “Review of Pearson VUE Computer Based Test Data for the Nursing and Midwifery Council” dated 14 September 2023, it stated that Pearson Vue’s analysis of the time candidates took to complete the CBT “...*does not include any time spent on review of answers.*” However, in Witness 4’s analysis of the test times “...*includes any time spent reviewing answers and so should be more accommodating to those candidates who spent a larger proportion of the test time on review*”

The panel also had sight of the analysis of the data, provided by Witness 4, including diagrams which evidence the time taken globally, including other centres in Nigeria, to complete the CBT, compared to the times achieved at the test centre. This analysis identifies that, as result of your test times, it is likely that you used a proxy tester at the test centre.

In light of all of the above information, the panel was satisfied that there is evidence before it to support the fact that widespread fraud occurred at the test centre. However, the panel bore in mind that the NMC still had to prove, on the balance of probabilities, that you obtained your CBT results through fraud. It also bore in mind the speed in which you allegedly completed the CBT was what was being scrutinised.

The panel considered that according to Witness 4's analysis, the odds of you completing the numeracy section of the CBT in 3.95 minutes was 1 in 29061.5 and the odds of you completing the clinical section of the CBT at your time of 15.07 minutes was 1 in 18826.0.

The panel took account of the evidence you provided and had particular regard to your evidence that you completed the CBT yourself without the use of a proxy tester.

In your oral evidence, you stated that the time for your test was 12:00 and you arrived at the test centre 11 minutes before your start time. You also stated that it was just you and a middle aged man at the test centre. You said that when you started your test, it was just you in the room alone and there was a single laptop on a desk. In contrast the panel had evidence that there were in fact two computer terminals in the test centre.

In cross examination, you confirmed that you had a good memory of 27 May 2022. Ms Muniya drew your attention to the data provided by Pearson Vue which confirmed that you had started the test at 11:21. The data also confirmed that when you started your test another candidate started their test at 11:47 which would suggest there was another candidate present, however, you maintained you were alone in the room. You then confirmed that the start time you had provided to the panel was incorrect and that you had made a mistake. You told the panel that you had remembered the appointment time was 11 and not 12.

In your oral evidence you stated that in preparation for the CBT you participated in group discussions with classmates who had previously undertaken the CBT. You also stated that you had used past papers and study groups. However, it noted that in cross examination you accepted that the panel did not have before it today evidence of the past papers you had accessed to assist with your preparation nor any other evidence of your preparation for the CBT.

The panel also bore in mind that it was your case that the timings obtained by Pearson Vue of your CBT undertaken at the test centre were incorrect. You told the panel, under affirmation, that it had taken you 18 to 19 minutes to complete the numeracy section of the CBT and more than 60 minutes to complete the clinical section of the CBT. You also

stated that you were not a fast test taker at all. The panel also bore in mind that the data provided by Pearson Vue showed that you completed the numeracy section of the CBT in 4 minutes and the clinical section of the CBT in 16 minutes. Despite your assertion that it had taken you longer to complete both sections of the CBT, you had not provided any evidence to support this. The panel had regard to Witness 5's evidence where he has confirmed that the data provided was 100% accurate and that there was no possibility that the data generated was inaccurate.

The panel considered that you accept you took your test at the centre on 27 May 2022. It noted that, according to the data provided by Pearson Vue, there were five other candidates who had taken the CBT that day and that all the candidates had completed the CBT quickly. The panel considered that it would be unlikely that six candidates taking the test on the same day, at the same test centre where there is an established fraud, would all complete the CBT so quickly. It concluded that the reason why six candidates were able to complete the CBT so quickly was more likely than not due to the use of a human proxy test taker.

The panel considered the evidence, adduced on your behalf and relied upon in your evidence, of your resit CBT undertaken in October 2023. On 13 October 2023 you completed the clinical section of the CBT in 141 minutes. However, the panel noted that you had failed the numeracy section of the CBT. You stated that you had initially failed the numeracy section of the CBT due to a personal matter. However, you passed the numeracy section of the CBT, on 31 October 2023, in 20 minutes.

The panel noted that in cross examination you were asked questions in respect of the NMC's case in regard to the data generated by Pearson Vue from the test centre. However, in the panel's judgement no evidence was produced by you or on your behalf to rebut their case on this point.

Therefore, in light of all the evidence before it, the panel was satisfied that it was more likely than not that your test was conducted fraudulently to obtain satisfactory test results from the test centre in Nigeria and was submitted or caused to be submitted by you as part of your application to join the NMC register.

The panel therefore found the sub-charge 1a proved.

Charge 1b

And / or, in the alternative,

That you, as part of your application to join the NMC register:

- b. was subsequently invalidated by the NMC due to concerns about the manner in which tests were being conducted at the test centre.

In light of the panel's finding of charge 1a proved, it did not go onto consider charge 1b in the alternative.

Decision on Incorrect/Fraudulent Entry

The panel decided, for the above reasons, that in respect of charge 1a the entry on the register in your name was fraudulently procured.

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 Obiageri Peace Onuhurironye, PIN 23C0156O, 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 Burgess 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.

Mr Jewell made no submissions in respect of the available orders for fraudulent entry.

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:

- The fact that the CBT test was taken at the test centre.
- Your subsequent decision to use those results for your registration.
- You did not inform the regulator in respect of the circumstances pertinent to your attendance at the test centre.

The panel 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 fraudulently 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 Burgess submitted that an interim suspension order for 18 months would be appropriate in this case on public protection and public interest grounds. She submitted that imposing an interim order would be consistent with the panel's finding that your entry onto the NMC register was fraudulently procured. She submitted that the integrity of the NMC register is of great importance.

Mr Jewell made no submissions.

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 not to impose an interim suspension order would be inconsistent with its earlier determination and was required to protect the public and is also 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.