

**Nursing and Midwifery Council
Fitness to Practise Committee**

**Substantive Meeting
Thursday, 16 July 2020**

Nursing and Midwifery Council
Virtual Hearing

Name of registrant: Leslie Elizabeth Fernie

NMC PIN: 83B0490S

Part(s) of the register: General Nurse, Sub Part 2 – February 1996
Adult Nurse, Sub Part 1 – March 2006

Area of registered address: Dundee

Type of case: Misconduct

Panel members: John Brookes (Chair, Lay Member)
Manjit Darby (Registrant Member)
Jennifer Portway (Lay Member)

Legal Assessor: Karen Rea

Panel Secretary: Xenia Menzl

Facts proved: **All**

Fitness to practise: **Impaired**

Sanction: **Striking-off order**

Interim order: **Interim suspension order (18 Months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that Mrs Fernie was not in attendance and that the Notice of Meeting had been sent electronically to Mrs Fernie's e-mail address on the register on 15 June 2020.

The panel noted that under the recent amendments made to the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) ("the Rules") during the COVID-19 emergency period notice of hearing must be sent to a registrant's registered address by recorded delivery and first class post or to a suitable email address on the register.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and method of the meeting.

The panel noted that the notice of meeting was sent 29 days prior to the meeting and therefore was within the time frame set out in Rule 11A.

The panel accepted the advice of the legal assessor.

The panel took into account the Notice of Meeting provided as well as the email communication between the NMC Case officer and Mrs Fernie.

In the light of all of the information available, the panel was satisfied that Mrs Fernie has been served with notice of this meeting and agreed for the meeting to be held in her absence.

Details of charge

That you, a registered nurse, in relation to an application for employment with as a Band 5 Nurse in the Medicine for the Elderly Service with NHS Tayside:

1. *Inaccurately completed an application form for employment dated 16 May 2018 in that you failed to declare/disclose:*
 - a. *A period of employment at Ninewells Hospital; [PROVED]*
 - b. *That you had been downgraded from a registered nurse post to a Band 2 role whilst employed at Ninewells Hospital; [PROVED]*

2. *Failed to declare/disclose at an interview:*
 - a. *A period of employment at Ninewells Hospital; [PROVED]*
 - b. *That you had been downgraded from a registered nurse post to a Band 2 role whilst employed at Ninewells Hospital; [PROVED]*

3. *Your conduct at any and/or all of charges 1 and/or 2 above was dishonest in that:*
 - a. *You knew that you were required to disclose the information referred to in the charges; [PROVED]*
 - b. *Intended to create a misleading impression in relation to your career history [PROVED]*

And in light of the above, your fitness to practise is impaired by reason of your misconduct

Facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case.

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 had regard to the written statements of the following witness on behalf of the NMC:

- Colleague 1: Clinical Nurse Manager at Dundee
Health and Social Care Partnership;
Royal Victoria Hospital

The panel also had regard to an email communication from Mrs Fernie to her NMC Case Officer, dated 10 March 2020, in which she states:

'Although I do not accept the charges against me, I do not intend to complete the Case Management Form or respond to the charges.'

Background

Mrs Fernie had a previous sanction against her registration resulting in her suspension on 19 June 2014. Mrs Fernie was suspended for a period of 6 months whilst she was employed by NHS Tayside working at Ninewells Hospital, Dundee. The suspension was replaced with an 18 month conditions of practice order on 1 August 2015 and revoked on 3 June 2016. Mrs Fernie was downgraded to work as a Band 2 HCA whilst the suspension was in place and worked in that role for approximately 2 years.

On the 16 May 2018 Mrs Fernie applied for the post of Band 5 Registered Nurse with NHS Tayside in the Stroke and Rehabilitation Ward at Royal Victoria Hospital, Dundee. She was offered the role and started working there on 10 July 2018. In her application form and

job interview it is alleged that Mrs Fernie dishonestly failed to disclose her period of employment at Ninewells Hospital.

Finding on Facts

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor, including the following case law:

- *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67;
- *Uddin v GMC* [2012] EWHC 2669 (Admin);
- *Soni v GMC* [2015] EWHC 364 (Admin);
- *PSA v NMC and Ndlovu* [2019] EWHC 1181;
- *Hussain v GMC* [2014] EWHC Civ 2246;
- *Lusinga v NMC* [2017] EWHC 1458 (Admin).

The panel also considered the documentary evidence provided by the NMC.

The panel then considered each of the disputed charges and noted that Mrs Fernie has not made any admissions to them.

The panel made the following findings.

Charge 1a)

1. *Inaccurately completed an application form for employment dated 16 May 2018 in that you failed to declare/disclose:*
 - a. *A period of employment at Ninewells Hospital;*

This charge is found proved.

In reaching this decision, the panel took into account the Application Form signed and submitted by Mrs Fernie, dated 16 May 2018 as well as the NHS Tayside Management Investigation Report, dated January 2019.

The panel considered the application form and its contents. It concluded that there is a lot of information covering the relevant time period, however, although all the other employers, roles and times were filled in meticulously the employer for the time period in question, Ninewells Hospital, is missing. Instead, the panel noted, it states '*medical nursing*' on the application form for the period of '*Oct 2012*' to '*March 2015*'. The panel found that this is in stark contrast with the rest of the document. The panel considered Mrs Fernie's explanation as stated in the management investigation report: '*admin error, and that at no time had she meant to be dishonest*'. However, the panel was of the view that as stated above, the rest of the document seems to be filled in meticulously. Additionally, the panel was of the view that working as a band 2 health care support worker would be significant change in Mrs Fernie's career. The panel concluded that it would be very unlikely in these circumstances to accidentally omit this on an application form.

The panel concluded, as the other parts of the document were filled in meticulously, that this shows that Mrs Fernie was aware of her duty to supply all of the information on the application form to the best of her knowledge, in a true and complete manner. The panel also noted that Mrs Fernie checked the box on page three of the application form which confirms that she has read, agreed and understood the declaration on the application form. This declaration states:

'I have completed Parts A to D of this application form and the details I have supplied are, to the best of my knowledge, true and complete.'

The panel was therefore satisfied that Mrs Fernie inaccurately completed an application form for employment dated 16 May 2018 in that she failed to declare/disclose a period of employment at Ninewells Hospital.

Charge 1b)

1. *Inaccurately completed an application form for employment dated 16 May 2018 in that you failed to declare/disclose:*
 - b. *That you had been downgraded from a registered nurse post to a Band 2 role whilst employed at Ninewells Hospital;*

This charge is found proved.

In reaching this decision, the panel took into account the Application Form signed and submitted by Mrs Fernie, dated 16 May 2018 as well as the NHS Tayside Management Investigation Report, dated January 2019.

The panel had regard to its findings in relation to charge 1a). It determined that, for the same reasons as stated in relation to charge 1a), it was satisfied, on the balance of probabilities, that Mrs Fernie inaccurately completed an application form for employment dated 16 May 2018 in that she failed to declare/disclose that she had been downgraded from a registered nurse post to a Band 2 role whilst employed at Ninewells Hospital. Further, all positions are completed as having the role as staff nurse, except the entry 'medical nursing' with no job title.

Charge 2a)

2. *Failed to declare/disclose at an interview;*
 - a. *A period of employment at Ninewells Hospital;*

This charge is found proved.

In reaching this decision, the panel took into account the Application Form signed and submitted by Mrs Ferny, dated 16 May 2018, the NHS Tayside Management Investigation Report, dated January 2019 and the witness statement of Colleague 1, who was on the board of the interview.

The panel noted that it unfortunately did not have the interview record before it and that it was not part of the investigation report by NHS Tayside as these records are only retained for a period of six months following the interview before being destroyed. The panel noted that Colleague 1 was part of the interview panel:

'I was involved in Lesley's interview but cannot now recall whether I was involved in the shortlisting process. I have a vague recollection of Lesley's interview and I recall taking notes during the interview.'

The panel noted that Colleague 1 said the following about the interview:

'I could not recall the information about Lesley being downgraded from a Band 5 to a Band 2 being included in her application form. Nor had she mentioned it at the interview. If it had been mentioned, it is absolutely something I would have remembered.

[...]

I confirmed that Lesley had no obligation to tell us because her sanction was spent and the NMC's involvement was over. However, Lesley had not provided an honest outline of her career and work history in her application for the post.'

The panel found that the account given by Colleague 1 was persuasive. It was of the view that this is arguably further supported by the fact that when concerns regarding Mrs Fernie's practice arose Colleague 1 was surprised by the information found. The panel noted that Colleague 1's account of her finding the newspaper article on Mrs Fernie's six month suspension and her further research on this supported the credibility of her account of events.

The panel reminded itself of its findings on charge 1a) and 1b). The panel concluded that omitting important information regarding her job history could provide a motivation to lead Mrs Fernie to omit these facts in the interview itself as well. The panel found that this is further supported by Colleague 1's statement:

'If I saw someone who had been qualified for 20 years but had only provided 5 years of career history, I would question that further, and it would open up the possibility of further examination of that at an interview.'

The panel was therefore satisfied that it is more likely than not that Mrs Fernie failed to declare/disclose at an interview a period of employment at Ninewells Hospital.

Charge 2b)

2. *Failed to declare/disclose at an interview:*

b. *That you had been downgraded from a registered nurse post to a Band 2 role whilst employed at Ninewells Hospital;*

This charge is found proved.

In reaching this decision, the panel took into account the Application Form signed and submitted by Mrs Ferny, dated 16 May 2018, the NHS Tayside Management Investigation Report, dated January 2019 and the witness statement of Colleague 1, who was on the board of the interview.

The panel reminded itself of its findings in relation to charge 1a), 1b) and 2a). It determined that for the same reasons as stated above in charge 1a), 1b) and 2a) it is more likely than not that Mrs Fernie failed to declare/disclose at an interview that she had been downgraded from a registered nurse post to a Band 2 role whilst employed at Ninewells Hospital.

Charge 3a)

3. *Your conduct at any and/or all of charges 1 and/or 2 above was dishonest in that:*

a. *You knew that you were required to disclose the information referred to in the charges;*

This charge is found proved.

In reaching this decision, the panel took into account that the leading case on dishonesty, *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67, gives a two stage test:

1. To decide subjectively the actual state of the registrant's knowledge or belief as to the facts. The reasonableness or otherwise of his/her belief is a matter of evidence (often in practice determinative) going to whether he/she held that belief, but there is not an additional requirement that his/her belief must be reasonable; the question is whether it is genuinely held;

2. Once the subjective state of mind is established, the panel should apply the objective test of ordinary decent people. Is the conduct complained of dishonest by the objective standards of ordinary decent people?

The panel also took into account the Application Form signed and submitted by Mrs Fernie, dated 16 May 2018, the NHS Tayside Management Investigation Report, dated January 2019 and the witness statement of Colleague 1, who was on the board of the interview.

The panel noted that Mrs Fernie had listed her complete employment history with great detail and that the only employer that was not listed was Ninewells Hospital, with the information containing that period stating '*medical nursing*'. The panel therefore concluded that this information was not missed and seems to have deliberately been left out. The panel further noted the declaration completed by Mrs Fernie which confirmed that the information given in the application form was complete. The panel was of the view that Mrs Fernie would have known what was expected of her in the application form. The panel noted that Mrs Fernie states that the omission of Ninewells Hospital and her downgrading to a band 2 was an administrative error and that she had not meant to be dishonest. However, the panel was of the view that Mrs Fernie would have had the chance to correct her error at the stage of the interview and be open and honest with her future employer. It determined that the omissions by Mrs Fernie and the actions following her discovery lead to the conclusion that the omission was a deliberate concealment to avoid admitting to her downgrading and subsequently her involvement with the regulatory process. The panel found that this is supported due to this being the only job which was not referenced within the application form, and the omission of the particular job that would have raised questions during a job interview. The panel noted that the statement on the application form of '*medical nursing*' covers the whole period in question and concluded that this indicates a level of deception with an intent to mislead. The panel further concluded that it is standard practice to disclose relevant information in either an application form or during an interview.

The panel concluded that this omission was not careless, negligent or reckless. It determined that Mrs Fernie held a genuine knowledge and belief that her actions and omissions in this respect were deceitful and intending to mislead her potential employer in

her application form and in her interview with them. The panel concluded that these actions were deliberate on her part as evidenced by the findings in the charges 1a), 1b), 2a) and 2b).

The panel then determined that ordinary decent people would consider this conduct to be dishonest, as it offended the principles expected by the public of a professional registered nurse.

The panel therefore found it more likely than not that Mrs Fernie's conduct at any and/or all of charges 1 and/or 2 above was dishonest in that she knew that she was required to disclose the information referred to in the charges.

Charge 3b)

3. *Your conduct at any and/or all of charges 1 and/or 2 above was dishonest in that:*
 - b. *Intended to create a misleading impression in relation to your career history*

This charge is found proved.

In reaching this decision, the panel took into account the Application Form signed and submitted by Mrs Fernie, dated 16 May 2018, the NHS Tayside Management Investigation Report, dated January 2019 and the witness statement of Colleague 1, who was on the board of the interview.

The panel reminded itself of its findings in relation to charge 3a). It already determined that the omission of her time at Ninewells Hospital and her downgrading to a band 2 was deliberate with the intention of obtaining employment without revealing her past employment history.

The panel noted that Mrs Fernie was working as a health care support worker for approximately two years and that this is a significant period of time which Mrs Fernie would be unlikely to forget to mention. It concluded that this would have stood out in Mrs Fernie's employment history and long career as a nurse. The panel was of the view that

this leads to the conclusion that Mrs Fernie was intentionally trying to mislead her potential employer in order to gain employment with them.

The panel was of the view that its previous findings on charges 1a), 1b), 2a) and 2b) support these findings.

The panel concluded that disclosing her employment with Ninewells Hospital and her downgrading to a band 2 health care support worker would have led to further questions during an interview in which Mrs Fernie consequently would have had to disclose her going through the regulatory process with the NMC and her previous suspension of six months. The panel also further concluded that Mrs Fernie previously going through the regulatory process would mean that she would have been even more aware of what was required of her as a registered nurse and that honesty and integrity are an integral part of the fundamental tenets of nursing. The panel concluded that an ordinary, decent person would expect a nurse to disclose her full employment history without omitting undesired and unfavourable jobs.

The panel determined that Mrs Fernie held a genuine knowledge and belief that her actions and omissions in this respect were deceitful and intending to mislead her potential employer in her application form and in her interview with them. The panel concluded that these actions were deliberate on her part as evidenced by the findings in the charges 1a), 1b), 2a) and 2b).

The panel then determined that ordinary decent people would consider this conduct to be dishonest, as it offended the principles expected by the public of a professional registered nurse.

For these reasons the panel found it more likely than not that Mrs Fernie's conduct in relation to charges 1 and 2 above was dishonest in that she intended to create a misleading impression in relation to her career history.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mrs Fernie's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs Fernie's fitness to practise is currently impaired as a result of that misconduct.

Misconduct

The panel had regard to some of the definitions set out in case law for misconduct. These included conduct falling far short of what would have been proper in the circumstances, deplorable conduct, a serious falling short of the standards required by omission or commission and a serious departure from acceptable practice and standards.

The panel also had regard to "The Code: Professional standards of practice and behaviour for nurses and midwives (2015" ("the Code") in making its decision.

The panel bore in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Mrs Fernie's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Fernie's actions amounted to a breach of the Code. Specifically:

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the conduct Mrs Fernie was a serious breach of the fundamental tenets of the nursing profession. Mrs Fernie deliberately omitted information on a previous position that might have been disadvantageous in gaining employment. She deliberately misled the interview panel regarding her employment history and therefore her abilities in the past which was relevant to her practice and competency as a nurse. The panel was of the view that these actions

ultimately put patients at risk of harm as her omissions were only discovered when there were concerns about her performance in the new role.

The panel found that Mrs Fernie's actions did fall seriously short of the conduct and standards expected of a nurse. The panel therefore determined that the facts found proved amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mrs Fernie's fitness to practise is currently impaired.

The panel accepted the advice of the legal assessor, which included the following cases:

- *Karwel v GMC* [2011] EWHC 826 (Admin);
- *PSA v GMC and Uppal* [2015] EWHC 1304 (Admin);
- *GMC v Chaudhary* [2017] EWHC 2561 (Admin);
- *CHRE v NMC* [2011] EWHC 927 (Admin);
- *PSA v NMC & Ndlovu* [2019] EWHC 1181 (Admin) - "Honesty is the bedrock of the profession."
- *Yeong v GMC* [2009] EWHC 1923 (Admin);
- *The Council for Healthcare Regulatory Excellence (CHRE) v (1) NMC and (2) Paula Grant* [2011] EWHC 927 (Admin);
- *Kimmanca v GMC* [2016] EWHC 1808.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel was satisfied that all four arms of Grant were engaged in this case. It found that this was not an isolated incident of omitting information. The panel concluded that even if the omission on the application form was an 'administrative error' Mrs Fernie would have had the chance to correct it at the time of the interview. However, the panel found that Mrs Fernie deliberately mislead and hid information from her potential employer to hide previous regulatory issues. The panel further noted that Mrs Fernie's actions potentially

prevented other applicants for this post from being successful in being appointed. It is of the view that Mrs Fernie's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel was satisfied that Mrs Fernie's deliberate dishonest actions and omissions put her in an employment position that exposed her deficiencies and put her patients at risk of harm.

Regarding insight, the panel considered that Mrs Fernie has not provided the panel with a reflective piece or stated any regret regarding her actions. The panel therefore had no information with regards to Mrs Fernie's insight and concluded that there is a serious risk of repetition of the actions found proved.

The panel concluded that the misconduct in this case is difficult to remediate due to Mrs Fernie's dishonesty. The panel noted that Mrs Fernie stated in her communication to the NMC that she had retired from nursing and that therefore it would also be difficult for her to remediate her practice in that regard. Furthermore, the panel noted that Mrs Fernie's dishonesty only came to light because her competence as a nurse was questioned and she was underperforming.

The panel is of the view that there is a high risk of repetition based on lack of Mrs Fernie's insight and the difficulty to remediate her dishonest behaviour. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel concluded that public confidence in the profession would be undermined and the public would be put at risk of harm if a finding of impairment were not made. The

panel therefore finds that Mrs Fernie's fitness to practise is impaired on the grounds of public protection and the wider public interest.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Fernie off the register. The effect of this order is that the NMC register will show that Mrs Fernie has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC.

The panel accepted the advice of the legal assessor which included the following case law:

- *Brennan v HPC* [2011] EWHC 41 (Admin);
- *R (on the application of Hassan) v General Optical Council* [2013] EWHC 1887 (Admin);
- *Khan v GMC* [2015] EWHC 301 (Admin);
- *Parkinson v NMC* [2010] EWHC 1898 (Admin);
- *Lusinga v NMC* [2017] EWHC 1458 (Admin);
- *Wisniewska v NMC* [2016] EWHC 2672;
- *PSA v NMC & Ndlovu* [2019] EWHC 1189.

Decision and reasons on sanction

Having found Mrs Fernie's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Previous history of falsifying records
- Repeated dishonesty
- Opportunity to correct at interview stage and failed to do so
- Deliberate omission was therefore repeated
- For gain of a job in a higher band than Mrs Fernie was potentially able to fulfil
- By doing so she put the health, safety and welfare of the public at risk of harm
- Kept other potentially suitable, capable candidates out of that position
- Previous regulatory issues

The panel found no mitigating factors in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Fernie's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Fernie's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Fernie's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The dishonesty identified in this case was not something that can be addressed through retraining or conditions of practice. Furthermore, the panel concluded that the placing of conditions on Mrs Fernie's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *No evidence of repetition of behaviour since the incident;*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel found that Mrs Fernie was repeatedly dishonest and did not correct her dishonesty at the stage of the interview. It concluded that Mrs Fernie omitted the downgrading of her position at Ninewells Hospital to conceal that she has previously been subject to NMC proceedings. This taken together with what appears to be a lack of insight and the potential impact her actions had on patients and the fact her omissions only came to light when her competency was questioned leads the panel to the conclusion that Mrs Fernie is very likely to repeat the actions found proved. The panel further noted that Mrs Fernie had already been subject to NMC proceedings and that it was the dishonesty about these proceedings that led to today's meeting. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Fernie's actions is fundamentally incompatible with Mrs Fernie remaining on the register.

In light of this, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Mrs Fernie's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Fernie's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

In the panel's judgement Mrs Fernie's actions were so serious as to put the health, safety and welfare of the public at risk of harm. Thus, the panel has determined that the findings in this case demonstrate that the risk of harm will continue if a striking-off order were not imposed in this case.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mrs Fernie's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse. The panel also considered that this order was necessary to protect the public.

This will be confirmed to Mrs Fernie in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or is in the interest of the registrant themselves until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. In addition the panel noted that Mrs Fernie has a history of working as an agency nurse, which could put the public at further risk of harm should an interim order not be imposed.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

If no appeal is made, then the interim suspension order will be replaced by the striking off order 28 days after Mrs Fernie is sent the decision of this hearing in writing.

That concludes this determination.