

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

**Substantive Hearing
Monday 9 – Friday 13 January 2023**

Virtual Hearing

Name of Registrant: **Christine Brown**

NMC PIN 98Y0021S

Part(s) of the register: Registered Nurse – Sub Part 1
RNC: Children’s Nurse, Level 1 (03 September 2001)

Relevant Location: Fife

Type of case: Misconduct

Panel members: Simon Banton (Chair, Lay member)
John McGrath (Registrant member)
Darren Shenton (Lay member)

Legal Assessor: Marian Killen

Hearings Coordinator: Sharmilla Nanan

Nursing and Midwifery Council: Represented by Ayla Iridag, Case Presenter

Mrs Brown: Not present and not represented

Facts proved: Charges 1a, 1b, 1d, 2a, 2b, 2d, 3a, 3b, 3d and 4
(in its entirety), 5, 6 (in its entirety) and 7

Facts not proved: Charges 1c, 2c, and 3c

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Brown was not in attendance and that the Notice of Hearing letter had been sent to Mrs Brown's registered email address by secure email on 10 November 2022.

Ms Iridag, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and link to the hearing and, amongst other things, information about Mrs Brown's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Brown has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Brown

The panel next considered whether it should proceed in the absence of Mrs Brown. It had regard to Rule 21 and heard the submissions of Ms Iridag who invited the panel to continue in the absence of Mrs Brown.

Ms Iridag submitted that there had been limited engagement by Mrs Brown and referred the panel to the latest communication between the NMC and Mrs Brown in relation to these proceedings. As a consequence, she submitted there was no reason to believe that an adjournment would secure Mrs Brown's attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mrs Brown. In reaching this decision, the panel has considered the submissions of Ms Iridag, and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Mrs Brown's engagement with the NMC has been limited and she has not responded regarding her attendance at this hearing;
- No application for an adjournment has been made by Mrs Brown;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses have attended to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2018;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Brown in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered email address she will not be able to challenge the evidence relied upon by the NMC and will not

be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Brown's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Brown. The panel will draw no adverse inference from Mrs Brown's absence in its findings of fact.

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

At the outset of the hearing, Ms Iridag made a request that parts of this case be held in private on the basis that proper exploration of Mrs Brown's case involves reference to her health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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.

The panel determined to go into private session in connection with Mrs Brown's health as and when such issues are raised in order to protect her privacy.

Decision and reasons on application to admit written statement of Witness 1

The panel heard an application made by Ms Iridag under Rule 31 to allow the written statement of Witness 1 into evidence. She referred the panel to the considerations set out in *Thorneycroft v NMC* [2014] EWHC 1565 (Admin).

Ms Iridag invited the panel to admit Witness 1's written statement and exhibits into evidence. She submitted Witness 1's evidence relates to Mrs Brown's lapse of NMC registration and does not relate to controversial matters in dispute. She submitted that Witness 1's statement is comprehensive and a reliable source of information. She noted that she did not have any questions for Witness 1 but noted that the panel should consider if it has any questions that would require Witness 1's attendance at the hearing.

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

The panel gave the application in regard to Witness 1 serious consideration. The panel noted that Witness 1's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, *'This statement ... is true to the best of my information, knowledge and belief'* and signed by her.

The panel considered whether Mrs Brown would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Witness 1 to that of a written statement.

The panel considered that as Mrs Brown had been provided with a copy of Witness 1's statement and, as the panel had already determined that Mrs Brown had chosen to absent herself from these proceedings, she would not be in a position to cross-examine this witness in any case. The panel was of the view that Witness 1's evidence had been obtained during the course of her employment duties and was technical and factual in nature. The panel bore in mind that Witness 1's evidence was not the sole and decisive evidence in this case. The panel also determined that it did not have any questions for Witness 1.

In these circumstances, the panel came to the view that the statement of Witness 1 is relevant and as there would be no unfairness, it determined to accept it into evidence. The panel determined it would give what it deemed appropriate weight once it heard and evaluated all the evidence before it.

Details of charge

That you, a registered nurse:

1. On Application Form 1, as set out in Schedule A, provided inaccurate information relevant to your:
 - a. Employment dates.
 - b. Banding.
 - c. Contract type.
 - d. Experience.

2. On Application Form 2, as set out in Schedule A, provided inaccurate information relevant to your:
 - a. Employment dates.
 - b. Banding.
 - c. Contract type.
 - d. Experience.

3. On Application Form 3, as set out in Schedule A, provided inaccurate information relevant to your:
 - a. Employment dates.
 - b. Banding.
 - c. Contract type.

- d. Experience.
4. On Application Form 4, as set out in Schedule A, provided inaccurate information relevant to your:
 - a. Employment dates.
 - b. Banding.
 - c. Contract type.
 - d. Experience.
 5. Providing inaccurate information as set out in any or all of 'a' through 'd' of charges 1 and/or 2 and/or 3 and/or 4, was dishonest in that you sought to mislead any reader of the application form(s) as to the accuracy of the information written within them.
 6. Failed to disclose your loss of NMC registration (between 1 October 2016 and 1 November 2017 inclusive) on the following applications set out in Schedule A:
 - a. Application Form 1.
 - b. Application Form 2.
 - c. Application Form 3.
 - d. Application Form 4.
 7. Your failure to disclose your loss of registration as set out in any or all of 'a' through 'd' of charge 6 was dishonest in that you sought to mislead any reader of the application form(s) as to your NMC registration status.

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

Schedule A

Application Form 1 – Children’s Community ADHD Nurse – FW507/11/17LB -

Received 17/01/2018

Present post details on application form	Paediatric Nurse – Band 6 – NHS Fife	Actual present post details	Bank N/A within NHS Fife – Band 2
Employment with NHS Fife on application form	1 March 2014	Actual employment details relating to NHS Fife	CB did not join the NHS Fife bank until 11 April 2016 and had no previous service with NHS Fife
Employment with NHS Grampian on application form	Paediatric Nurse – 26 October 2016 to present	Actual employment details relating to NHS Grampian	Bank contract only and on 26 October 2016 had no NMC registration so could not be working as a trained nurse until registered again from February 2018
Employment with Rachel House on application form	Paediatric Nurse 01 March 2004 until 31 March 2014	Actual employment details relating to Rachel House	Only held a bank contract for the majority of time working there

Application Form 2 – Glenmar Respite and Homecare Staff Nurse – FW577/01/18LB

– Received 17/01/2018

Present post details on application form	Paediatric Nurse – Band 5 – NHS Fife	Actual present post details	Bank N/A within NHS Fife – Band 2
Employment with NHS Fife on application form	1 March 2014	Actual employment details relating to NHS Fife	CB did not join the NHS Fife bank until 11 April 2016 and had no previous service with NHS Fife

Employment with NHS Grampian on application form	Paediatric Nurse – 17 May 2017 - to present	Actual employment details relating to NHS Grampian	Bank contract only and on 17 May 2017 had no NMC registration so could not be working as a trained nurse until registered again from February 2018
Employment with Rachel House on application form	Paediatric Nurse 01/03/2004 until 31/03/2014	Actual employment details relating to Rachel House	Only held a bank contract for the majority of time working there

Application Form 3 – Neonatal Staff Nurse – HH648/12/17/EBL – Received 19/02/2018

Present post details on application form	Paediatric Nurse – Band 5 – NHS Fife	Actual present post details	Bank N/A within NHS Fife – Band 2
Employment with NHS Fife on application form	1 March 2014	Actual employment details relating to NHS Fife	CB did not join the NHS Fife bank until 11 April 2016 and had no previous service with NHS Fife
Employment with NHS Grampian on application form	Paediatric Nurse – 17/ May 2017 - to present	Actual employment details relating to NHS Grampian	Bank contract only and on 17 May 2017 had no NMC registration so could not be working as a trained nurse until registered again from February 2018
Employment with Rachel House on application form	Paediatric Nurse 01 March 2004 until 31 March 2014	Actual employment details relating to Rachel House	Only held a bank contract for the majority of time working there

Application Form 4 – Community Staff Nurse – FW709/06/18LB – Received

25/07/2018

Date of Employment with NHS Fife in present post	17 June 2018	Actual detail relating to date of employment with NHS Fife in this post	Commenced on 16 April 2018 and remained on the NHS Fife bank
Employment with NHS Fife on application form	Paediatric Nurse – Child Development Centres, NHS Fife from 2015 until present	Actual employment details relating to NHS Fife	Not employed within NHS Fife in 2015 as bank contract commenced 11 April 2016 had no NMC registration most of the time on the bank and only undertook a handful of shifts within the CDCs
Employment with Rachel House on application form	Paediatric Nurse - 2004 to 2015	Actual employment details relating to Rachel House	Only held a bank contract for the majority of time working there and dates have now changed from previous applications
Employment with NHS Grampian on application form	No mention on this application of this work	Actual employment details relating to NHS Grampian	On the 3 other application forms CB details ongoing employment since May 2017

Background

The charges arose whilst Mrs Brown was employed at NHS Fife and the NMC received the related referral on 17 January 2019. Mrs Brown initially registered with the NMC on 3 September 2001 as a children’s nurse.

Mrs Brown commenced work as a bank Band 5 neonatal nurse within NHS Fife on 11 April 2016 until 15 October 2016. Mrs Brown's NMC registration lapsed on 1 October 2016 when she was due to revalidate but she did not submit a revalidation application to the NMC. In the same month, Mrs Brown submitted a re-admission application to the NMC. The NMC registrations team requested further information from Mrs Brown regarding one of her references. It was noted that the reference was provided by an individual who was not an approved referee. Mrs Brown was advised to provide another referee however, she did not respond to the NMC and subsequently her re-admission application was closed.

Mrs Brown completed a return to practise course on 17 October 2017 and applied for re-admission to the NMC register. Her application was accepted and her NMC registration became effective on 2 November 2017.

On 17 January 2018, Mrs Brown submitted application form FW507/11/17LB, for the role of Children's Community ADHD Nurse. On the same day she submitted application form FW577/01/18LB, for the role of Glenmar Respite and Homecare Staff Nurse.

On 19 February 2018, Mrs Brown submitted application form HH648/12/17/EBL, for role of Neonatal Staff Nurse, which was successful. She began employment in this role on 16 April 2018.

On 28 March 2018, NHS Fife's Social Inclusion Recruitment Coordinator sent a letter to Mrs Brown advising her to disclose the loss of her NMC registration on her future applications.

On 25 July 2018, Mrs Brown submitted application form FW709/06/18LB for the role of Community Staff Nurse.

In August 2018, an HR officer of NHS Fife reported discrepancies within the four job application forms that Mrs Brown had submitted. On 7 September 2018, an investigation

meeting took place with Mrs Brown, Witness 3 and a HR officer. On 19 October 2018, the investigation report was completed. Following a disciplinary hearing on 11 January 2019, Mrs Brown was dismissed for gross misconduct.

It is alleged that Mrs Brown inaccurately completed the application forms she submitted between 17 January 2018 to 25 July 2018, which was dishonest, to mislead the reader of the applications. It is also alleged that Mrs Brown failed to disclose on the application forms that she was not on the NMC register between 1 October 2016 and 1 November 2017 and that this was dishonest as she sought to mislead the reader of her application forms regarding her NMC registration status.

Decision and reasons on application to amend the charge

The panel noted in its deliberations that Schedule A contained an error in relation to a date. It sought legal advice as to its power to amend what appeared to be a typographical error. The panel of its own volition sought to amend a heading in Schedule A to accurately reflect the NMC evidence.

Original heading included in the charges:

*“Application Form 2 – Glenmar Respite and Homecare Staff Nurse –
FW577/01/18LB – Received 17/01/2018”*

Proposed amendment to the heading:

*“Application Form 2 – Glenmar Respite and Homecare Staff Nurse –
FW577/01/18LB – Received ~~17/01/2018~~ **12/2/2018**”.*

The panel invited submissions from Ms Iridag with regard to its proposed amendment. She submitted that the changes can be made as long as there is no injustice caused to Mrs Brown. She noted that the change relates to a date which was provided in the evidence.

She submitted that the NMC would have no difficulty if the panel determined to make this amendment.

The legal assessor repeated the legal advice that was provided in camera. The panel accepted the legal advice which had regard to Rule 28 of the Rules.

The panel was of the view that such an amendment was in the interests of justice. The panel was satisfied that there would be no prejudice to Mrs Brown and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment to ensure accuracy of the date contained within Schedule A.

Details of charge (AS AMENDED)

That you, a registered nurse:

1. On Application Form 1, as set out in Schedule A, provided inaccurate information relevant to your:
 - a. Employment dates. **[PROVED]**
 - b. Banding. **[PROVED]**
 - c. Contract type. **[NOT PROVED]**
 - d. Experience. **[PROVED]**

2. On Application Form 2, as set out in Schedule A, provided inaccurate information relevant to your:
 - a. Employment dates. **[PROVED]**
 - b. Banding. **[PROVED]**
 - c. Contract type. **[NOT PROVED]**
 - d. Experience. **[PROVED]**

3. On Application Form 3, as set out in Schedule A, provided inaccurate information relevant to your:
 - a. Employment dates. **[PROVED]**
 - b. Banding. **[PROVED]**
 - c. Contract type. **[NOT PROVED]**
 - d. Experience. **[PROVED]**

4. On Application Form 4, as set out in Schedule A, provided inaccurate information relevant to your:
 - a. Employment dates. **[PROVED]**
 - b. Banding. **[PROVED]**
 - c. Contract type. **[PROVED]**
 - d. Experience. **[PROVED]**

5. Providing inaccurate information as set out in any or all of 'a' through 'd' of charges 1 and/or 2 and/or 3 and/or 4, was dishonest in that you sought to mislead any reader of the application form(s) as to the accuracy of the information written within them. **[PROVED in relation to charges 1a, 1b, 1d, 2a, 2b, 2d, 3a, 3b, 3d and 4 (in its entirety)]**

6. Failed to disclose your loss of NMC registration (between 1 October 2016 and 1 November 2017 inclusive) on the following applications set out in Schedule A:
 - a. Application Form 1. **[PROVED]**
 - b. Application Form 2. **[PROVED]**
 - c. Application Form 3. **[PROVED]**
 - d. Application Form 4. **[PROVED]**

7. Your failure to disclose your loss of registration as set out in any or all of ‘a’ through ‘d’ of charge 6 was dishonest in that you sought to mislead any reader of the application form(s) as to your NMC registration status. **[PROVED]**

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

Schedule A

Application Form 1 – Children’s Community ADHD Nurse – FW507/11/17LB - Received 17/01/2018

Present post details on application form	Paediatric Nurse – Band 6 – NHS Fife	Actual present post details	Bank N/A within NHS Fife – Band 2
Employment with NHS Fife on application form	1 March 2014	Actual employment details relating to NHS Fife	CB did not join the NHS Fife bank until 11 April 2016 and had no previous service with NHS Fife
Employment with NHS Grampian on application form	Paediatric Nurse – 26 October 2016 to present	Actual employment details relating to NHS Grampian	Bank contract only and on 26 October 2016 had no NMC registration so could not be working as a trained nurse until registered again from February 2018
Employment with Rachel House on application form	Paediatric Nurse 01 March 2004 until 31 March 2014	Actual employment details relating to Rachel House	Only held a bank contract for the majority of time working there

Application Form 2 – Glenmar Respite and Homecare Staff Nurse – FW577/01/18LB – Received 12/2/2018

Present post details on application form	Paediatric Nurse – Band 5 – NHS Fife	Actual present post details	Bank N/A within NHS Fife – Band 2
Employment with NHS Fife on application form	1 March 2014	Actual employment details relating to NHS Fife	CB did not join the NHS Fife bank until 11 April 2016 and had no previous service with NHS Fife
Employment with NHS Grampian on application form	Paediatric Nurse – 17 May 2017 - to present	Actual employment details relating to NHS Grampian	Bank contract only and on 17 May 2017 had no NMC registration so could not be working as a trained nurse until registered again from February 2018
Employment with Rachel House on application form	Paediatric Nurse 01/03/2004 until 31/03/2014	Actual employment details relating to Rachel House	Only held a bank contract for the majority of time working there

Application Form 3 – Neonatal Staff Nurse – HH648/12/17/EBL – Received

19/02/2018

Present post details on application form	Paediatric Nurse – Band 5 – NHS Fife	Actual present post details	Bank N/A within NHS Fife – Band 2
Employment with NHS Fife on application form	1 March 2014	Actual employment details relating to NHS Fife	CB did not join the NHS Fife bank until 11 April 2016 and had no previous service with NHS Fife
Employment with NHS Grampian on application form	Paediatric Nurse – 17/ May 2017 - to present	Actual employment details relating to NHS Grampian	Bank contract only and on 17 May 2017 had no NMC registration so could not be working as a trained nurse until

			registered again from February 2018
Employment with Rachel House on application form	Paediatric Nurse 01 March 2004 until 31 March 2014	Actual employment details relating to Rachel House	Only held a bank contract for the majority of time working there

Application Form 4 – Community Staff Nurse – FW709/06/18LB – Received
25/07/2018

Date of Employment with NHS Fife in present post	17 June 2018	Actual detail relating to date of employment with NHS Fife in this post	Commenced on 16 April 2018 and remained on the NHS Fife bank
Employment with NHS Fife on application form	Paediatric Nurse – Child Development Centres, NHS Fife from 2015 until present	Actual employment details relating to NHS Fife	Not employed within NHS Fife in 2015 as bank contract commenced 11 April 2016 had no NMC registration most of the time on the bank and only undertook a handful of shifts within the CDCs
Employment with Rachel House on application form	Paediatric Nurse - 2004 to 2015	Actual employment details relating to Rachel House	Only held a bank contract for the majority of time working there and dates have now changed from previous applications
Employment with NHS Grampian on	No mention on this application of this work	Actual employment details relating to	On the 3 other application forms CB details ongoing employment since May 2017

application form		NHS Grampian	
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Decision and reasons on facts

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

The panel has drawn no adverse inference from the non-attendance of Mrs Brown.

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 into account the signed written statement admitted as hearsay evidence:

- Witness 1: UK Registrations Team Manager at the NMC.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Witness 2: Associate Director of Midwifery at NHS Fife and was a member of the disciplinary panel. She knew Mrs Brown in a professional capacity and had not worked with her directly.

- Witness 3: Senior Charge Nurse at NHS Fife. At the material time she was Mrs Brown's direct line manager. She interviewed Mrs Brown for the role of Band 5 Neonatal Nurse on the Neonatal Unit. She knew Mrs Brown in a professional capacity.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. The legal advice included guidance on the legal principles and NMC guidance that the panel should take into account when considering the charges of dishonesty. It considered the witness and documentary evidence provided by the NMC.

The panel then considered each of the disputed charges and made the following findings.

Charge 1a, 1b, 1c and 1d

“That you, a registered nurse:

1. On Application Form 1, as set out in Schedule A, provided inaccurate information relevant to your:
 - a. Employment dates.
 - b. Banding.
 - c. Contract type.
 - d. Experience.”

Charges 1a, 1b and 1d are found PROVED.

Charge 1c is found NOT PROVED.

The panel took into consideration the application Mrs Brown submitted for the role of Children's Community ADHD Nurse (job reference FW507/11/17LB).

The panel considered the employment dates outlined by Mrs Brown on Application Form 1 under 'Employment History' in respect of NHS Grampian, NHS Fife and Rachel House Hospice. It noted that Mrs Brown indicated on the form that she was employed as a Paediatric Nurse on 1 March 2004 with Rachel House Hospice. The application also indicates that she was employed as a Paediatric Nurse since 1 March 2014 with NHS Fife and as a Paediatric Nurse since 1 March 2014 with NHS Grampian. The panel has accepted the evidence of Witness 3 who informed the panel that her investigations confirmed that Mrs Brown did not begin any employment with NHS Fife until April 2016. The panel accept this evidence as reliable. The panel concluded that the information included on the Application Form 1, in respect of Mrs Brown's employment dates, was inaccurate.

The panel next considered the banding that was included on Application Form 1 by Mrs Brown. It noted that Mrs Brown recorded on the application form that she had been working at a Grade 6 since 1 March 2014 in her role as a Paediatric Nurse at NHS Fife. There is no evidence that Mrs Brown ever achieved a Band 6 nursing position. It noted that for the period that Mrs Brown's NMC registration lapsed she could only be employed as a Band 2 nursing auxiliary and not as a registered nurse. It also took into consideration the evidence of Witness 3 who outlined the differences between Band 2, which was a role that was not subject to clinical training and was a supportive administrative role, and Band 6, which was a clinical nursing role. In Witness 3's written statement, the panel noted she stated that:

"I found she did not start within NHS Fife until 11 April 2016 when she joined the bank and she was in a Band 2 role. She had no previous service with the Health Board prior to 11 April 2016. Furthermore, she had no registration since 26 October 2016 to 2018 and yet she is saying she is a Band 6 Paediatric Nurse when she was only able to work in a Band 2 role."

The panel also considered the 'Management Report of Investigation' dated 29 October 2018, regarding Mrs Brown's banding as recorded on Application Form 1. The report stated:

"In relation to the Band 6 work which was detailed on her application where she stated that this was as a Paediatric nurse within NHS Fife at this point in time she was not employed within the Neonatal Unit or Paediatric ward within NHS Fife and only held a band 2 nurse bank contract. Christine advised that she thought that she was a Band 6 whilst working in Rachel House and had muddled this up. However we were clear that she had written NHS Fife twice in relation to claiming she had worked with us as a Band 6 nurse."

The panel therefore determined that the information Mrs Brown had recorded on application Form 1 in respect of her banding, was inaccurate.

The panel next considered the contract type recorded on Application Form 1 by Mrs Brown. It noted that under the 'Employment History' section of the application Mrs Brown had not stated that she was working as a bank nurse. However, the panel took into account that Mrs Brown stated under 'Role Purpose / Summary of Responsibilities' that *"I have worked with NHS Fife as a band 6 as a paediatric nurse. I am still at present working on the bank with the NHS Fife also on the bank with NHS Grampian."* The panel was satisfied that Mrs Brown had not inaccurately recorded her contract type on Application Form 1.

The panel next considered the experience recorded on Application Form 1 by Mrs Brown. The panel reminded itself of Witness 3's comments in respect of Mrs Brown's experience outlined above. It also took into consideration Witness 2's written evidence which stated:

"My understanding of the registrant's employment history is that ... from 11 April 2016 up until 14 October 2016 she ... held an NHS Fife Temporary

Staff Bank Contract with us as a Band 5 Neonatal Nurse. However with effect from 15 October 2016 (a few months after she was put on the Staff Bank) we could only employ her in a Band 2 role as she had not been able to re-register with the NMC and had lapsed due to failure to meet the PREP standards (she did not accrue enough clinical hours to meet the PREP hours) so she came off the register. Within the Neonatal unit, a Band 2 role does not involve any patient care whatsoever and is an administrative level role only or a basic cleaning role. She would be required to do things in the unit like stock up cots. It is a nursing support role. We did not know anything about her loss of registration due to her failure to meet the PREP standards. From 15 October 2016 she undertook a Band 2 role within NHS Fife's neonatal unit and she was in this role from 15 October 2016 until 5 February 2018."

The panel noted that the application omitted to record Mrs Brown's lapse in NMC registration as described in Witness 1's NMC statement, "*Mrs Brown's registration lapsed from 1 October 2016 up until she was readmitted on 2 November 2017.*" The panel determined to attach weight to Witness 1's evidence as it was completed during the course of Witness 1's duties. Her evidence was factual, and process driven. The panel concluded that Mrs Brown had inaccurately recorded her actual experience on Application Form 1.

The panel therefore found charges 1a, 1b and 1d proved on the balance of probabilities and was satisfied that the NMC had discharged its burden of proof in respect of these charges. The panel found charge 1c not proved on the balance of probabilities as outlined in the reasons above.

Charge 2

"2. On Application Form 2, as set out in Schedule A, provided inaccurate information relevant to your:

- a. Employment dates.
- b. Banding.
- c. Contract type.
- d. Experience.”

Charges 2a, 2b and 2d are found PROVED.

Charge 2c is found NOT PROVED.

The panel took into consideration the application Mrs Brown submitted for the role of Glenmar Respite and Homecare Staff Nurse (job reference FW577/01/18LB).

The panel considered the employment dates outlined by Mrs Brown on Application Form 2 under ‘Employment History’. It noted that Mrs Brown indicated on the form that she was employed as a Paediatric Nurse by the Royal Hospital for Sick Children between 2002 to 2004 then as a Paediatric Nurse in 2004 to 2014 with Rachel House Children’s Hospice. She recorded that she was employed by NHS Fife as a Paediatric Nurse from 1 March 2014 and with NHS Grampian from 17 May 2017.

The panel also considered the ‘Management Report of Investigation’ dated 29 October 2018, regarding Mrs Brown’s employment dates as recorded on Application Form 2. The report stated:

“Christine advised us that she must have just mixed up the dates from one application to another and that she would just use the same application form for any vacancies she was applying for however this did not then support why the dates would be different. ... We advised Christine that some of the dates varied by a number of months and also a number of years and at this point she was unable to provide a reason for this.”

The panel took into account Witness 3’s NMC statement that stated:

“...my understanding of the registrant’s employment history following my investigation is that: she only started working substantively at NHS Fife (i.e. in a contract of employment) when I had appointed her on 16 April 2018 as a Band 5 Neonatal Nurse. When she started in this role on 16 April 2018 she was on a Fixed Term Contract for 9 Months (providing Maternity Cover). Previous to that, from 11 April 2016 up until 14 October 2016 she only held an NHS Fife Temporary Staff Bank Contract with us as a Band 5 Neonatal Nurse. However with effect from 15 October 2016 (a few months after she was accepted for the Staff Bank) NHS Fife could only employ her as a Bank nurse in a Band 2 role as she had not been able to re-register with the NMC and had lapsed due to failure to meet the PREP standards (she did not accrue enough clinical hours to meet the PREP hours). Within the Neonatal unit, a Band 2 role does not involve any patient care whatsoever and is an administrative level role only or a basic cleaning role so she would be required to do things in the unit like stock up cots. It is a nursing support role.”

Witness 3 gave oral evidence to the panel which was consistent with her NMC witness statement and exhibits generated during the course of her local investigation. The panel accepted the evidence of Witness 3 who informed the panel that her investigations confirmed that Mrs Brown did not begin any employment with NHS Fife until April 2016. The panel accept this evidence as reliable. The panel therefore concluded that the information included on the Application Form 2, in respect of Mrs Brown’s employment dates, was inaccurate.

The panel next considered the banding that was included on Application Form 2 by Mrs Brown. It noted that Mrs Brown recorded on the application form that she had been working at a Grade 5 since 2001 in her role as a Paediatric Nurse at Victoria Hospital, NHS Fife. The panel also took into consideration the ‘Employment History’ outlined in Application Form 2 which indicated that she was working as a Paediatric Nurse at Royal

Hospital for Sick Children (2002 to 2004) and Rachel House Children's Hospice (2004-2014). However, as outlined above in charge 1 by Witness 3, Mrs Brown was working on the bank in a Band 2 role when she started with NHS Fife in April 2016 which was not stated on Mrs Brown's application form.

The panel also considered the 'Management Report of Investigation' dated 29 October 2018, regarding Mrs Brown's banding as recorded on Application Form 2. The report stated:

"In relation to the Band 5 work it became evident that a lot of the time she claimed to work at this level she was actually working at Band 2. Christine was unable to provide a reason for this."

The panel therefore determined that the information Mrs Brown had recorded on Application Form 2 in respect of her banding, was inaccurate.

The panel next considered the contract type recorded on Application Form 2 by Mrs Brown. It noted that under the 'Employment History' section of the application Mrs Brown had not stated that she was working as a bank nurse. However, the panel took into account that Mrs Brown stated under 'Role Purpose / Summary of Responsibilities' that *"I am still at present working on the bank with the NHS Fife also on the bank with NHS Grampian."* The panel was satisfied that Mrs Brown had not inaccurately recorded her contract type on Application Form 2.

The panel next considered the experience recorded on Application Form 2 by Mrs Brown. The panel reminded itself of Witness 3 and Witness 2's evidence in respect of Mrs Brown's experience outlined in charge 1. The panel had regard to the evidence of Witness 1 and its reasons as to why it determined to rely on it, regarding Mrs Brown's lapse in her NMC registration as outlined in charge 1. The panel noted that Application Form 2 had omitted Mrs Brown's lapse in NMC registration. The panel concluded that the information Mrs Brown had recorded on Application Form 2 in respect of her experience, was inaccurate.

The panel therefore found charges 2a, 2b and 2d proved on the balance of probabilities and was satisfied that the NMC had discharged its burden of proof in respect of these charges. The panel found charge 2c not proved on the balance of probabilities as outlined in the reasons above.

Charge 3a, 3b, 3c and 3d

“3. On Application Form 3, as set out in Schedule A, provided inaccurate information relevant to your:

- a. Employment dates.
- b. Banding.
- c. Contract type.
- d. Experience.”

Charges 3a, 3b and 3d are found PROVED.

Charge 3c is found NOT PROVED.

The panel took into consideration the application Mrs Brown submitted for the role of Neonatal Staff Nurse (job reference HH648/12/17/EBL).

The panel considered the employment dates outlined by Mrs Brown on Application Form 3 under ‘Employment History’. It noted that Mrs Brown indicated on the form that she was employed as a Paediatric Nurse by the Royal Hospital for Sick Children between ‘1/10/2002’ to ‘24/11/2004’ then as a Paediatric Nurse in ‘01/03/2004’ to ‘31/3/2014’ with Rachel House Hospice. She recorded that she was currently, employed by NHS Grampian from ‘17/05/2017’ and NHS Fife from ‘01/03/2014’ as a Paediatric Nurse.

The panel also had regard to the ‘Management Report of Investigation’ dated 29 October 2018, as outlined in charge 2.

The panel also took into account Witness 3's NMC statement as outlined in charge 2. It noted that Witness 3 gave oral evidence to the panel which was consistent with her NMC witness statement and exhibits generated during the course of her local investigation. The panel accepted the evidence of Witness 3 who informed the panel that her investigations confirmed that Mrs Brown did not begin any employment with NHS Fife until April 2016. The panel accept this evidence as reliable. The panel therefore concluded that the information included on the Application Form 3, in respect of Mrs Brown's employment dates, was inaccurate.

The panel next considered the banding that was included on Application Form 3 by Mrs Brown. It noted that Mrs Brown recorded on the application form that she had been working at a Grade 5 since '01/03/2001' in her role as a Paediatric Nurse at NHS Fife. The panel also took into consideration the 'Employment History' outlined in Application Form 3 which indicated that she was working as a Paediatric Nurse at Royal Hospital for Sick Children ('1/10/2002' - '24/11/2004') and Rachel House Hospice ('01/03/2004' to '31/3/2014'). However, as outlined above in charge 1 by Witness 3, Mrs Brown was working on the bank in a Band 2 role when she started with NHS Fife in April 2016 which was not stated on Mrs Brown's application form.

The panel also had regard to the 'Management Report of Investigation' dated 29 October 2018, as outlined in charge 2.

The panel therefore determined that the information Mrs Brown had recorded on Application Form 3 in respect of her banding, was inaccurate.

The panel next considered the contract type recorded on Application Form 3 by Mrs Brown. It noted that under the 'Employment History' section of the application Mrs Brown had not stated that she was working as a bank nurse. However, the panel took into account that Mrs Brown stated under 'Role Purpose / Summary of Responsibilities' that "*I am still at present working on the bank with the NHS Fife also on the bank with NHS*

Grampian.” The panel was satisfied that Mrs Brown had not inaccurately recorded her contract type on Application Form 3.

The panel next considered the experience recorded on Application Form 3 by Mrs Brown. The panel reminded itself of Witness 3 and Witness 2’s evidence in respect of Mrs Brown’s experience outlined in charge 1. The panel had regard to the evidence of Witness 1 and its reasons as to why it determined to rely on it, regarding Mrs Brown’s lapse in her NMC registration, as outlined in charge 1. The panel noted that Application Form 3 had omitted Mrs Brown’s lapse in NMC registration. The panel concluded that the information Mrs Brown had recorded on Application Form 3 in respect of her experience, was inaccurate.

The panel therefore found charges 3a, 3b and 3d proved on the balance of probabilities and was satisfied that the NMC had discharged its burden of proof in respect of these charges. The panel found charge 3c not proved on the balance of probabilities as outlined in the reasons above.

Charge 4a, 4b, 4c and 4d

“4. On Application Form 4, as set out in Schedule A, provided inaccurate information relevant to your:

- a. Employment dates.
- b. Banding.
- c. Contract type.
- d. Experience.”

These charges are found PROVED.

The panel took into consideration the application Mrs Brown submitted for the role of Community Staff Nurse (job reference FW709/06/18LB).

The panel considered the employment dates outlined by Mrs Brown on Application Form 4 under 'Employment History'. It noted that Mrs Brown indicated on the form that she was employed as a Paediatric Staff Nurse by the Royal Hospital for Sick Children between '2002' to '2004' then as a Paediatric Staff Nurse in '2004' to '2015' with Rachel House Children's Hospice. She recorded that she was currently, employed by NHS Fife from '20015[sic]' as a Paediatric Staff Nurse in the Child Development Centres and in the Special Baby Care Unit from '17/06/2018'.

The panel also had regard to the 'Management Report of Investigation' dated 29 October 2018, as outlined in charge 2.

The panel also took into account Witness 3's NMC statement as outlined in charge 2. It noted that Witness 3 gave oral evidence to the panel which was consistent with her NMC witness statement and exhibits generated during the course of her local investigation. The panel accepted the evidence of Witness 3 who informed the panel that her investigations confirmed that Mrs Brown did not begin any employment with NHS Fife until April 2016. The panel accept this evidence as reliable. The panel therefore concluded that the information included on the Application Form 4, in respect of Mrs Brown's employment dates, was inaccurate.

The panel next considered the banding that was included on Application Form 4 by Mrs Brown. It noted that Mrs Brown recorded on the application form that she had been working at a Grade 5 since '2001' in her role as a Paediatric Staff Nurse at Victoria Hospital, NHS Fife. The panel also took into consideration the 'Employment History' outlined in Application Form 4 which indicated that she was working as a Paediatric Staff Nurse at Royal Hospital for Sick Children ('2002' to '2004') and Rachel House Children's Hospice ('2004' to '2015'). However, as outlined above in charge 1 by Witness 3, Mrs Brown was working on the bank in a Band 2 role when she started with NHS Fife in April 2016. This was not stated on Mrs Brown's application form.

The panel also had regard to the 'Management Report of Investigation' dated 29 October 2018, as outlined in charge 2.

The panel therefore determined that the information Mrs Brown had recorded on Application Form 4 in respect of her banding, was inaccurate.

The panel next considered the contract type recorded on Application Form 4 by Mrs Brown. It noted that under the 'Employment History' section of the application Mrs Brown had not stated that she was working as a bank nurse nor was this information included anywhere else on the application form. The panel concluded that Mrs Brown had inaccurately recorded her contract type on Application Form 4.

The panel next considered the experience recorded on Application Form 4 by Mrs Brown. The panel reminded itself of Witness 3 and Witness 2's evidence in respect of Mrs Brown's experience outlined in charge 1. The panel had regard to the evidence of Witness 1 and its reasons as to why it determined to rely on it, regarding Mrs Brown's lapse in her NMC registration as outlined in charge 1. The panel noted that Application Form 4 had omitted Mrs Brown's lapse in NMC registration.

The panel also had regard to the letter dated 28 March 2018, sent by the Social Inclusion Recruitment Co-ordinator which states:

"I have reviewed you [sic] application and it would appear that you have not disclosed your loss of registration and steps taken to re-register with the NMC. It is also unclear if you have held a substantive post with NHS Fife or have only worked on a Bank basis... I would recommend that you ensure that this information is included in any future applications you may submit."

The panel noted that this letter was sent prior to Mrs Brown submitting Application Form 4

The panel concluded that the information Mrs Brown had recorded on Application Form 4 in respect of her experience, was inaccurate.

The panel therefore found charge 4 (in its entirety) proved on the balance of probabilities and was satisfied that the NMC had discharged its burden of proof.

Charge 5

“5. Providing inaccurate information as set out in any or all of ‘a’ through ‘d’ of charges 1 and/or 2 and/or 3 and/or 4, was dishonest in that you sought to mislead any reader of the application form(s) as to the accuracy of the information written within them.”

This charge is found PROVED in respect of charges 1a, 1b, 1d, 2a, 2b, 2d, 3a, 3b, 3d and 4 (in its entirety).

In reaching this decision, the panel took into account the evidence outlined and its findings in relation to charges 1a, 1b, 1d, 2a, 2b, 2d, 3a, 3b, 3d and 4 (in its entirety).

The panel considered whether the errors on the application forms were reasonable. It noted that there was a lot of errors and that each application had different inaccurate information including: the information included in the ‘Employment History’, that Mrs Brown had not clarified within any of the applications that she was undertaking work in a Band 2 capacity or that she was not a registered nurse with the NMC between 1 October 2016 and 1 November 2017. The panel determined that these were not simple typographical errors.

The panel had regard to the letter dated 28 March 2018, sent by the Social Inclusion Recruitment Co-Ordinator which states:

“I have reviewed you [sic] application and it would appear that you have not disclosed your loss of registration and steps taken to re-register with the NMC. It is also unclear if you have held a substantive post with NHS Fife or

have only worked on a Bank basis... I would recommend that you ensure that this information is included in any future applications you may submit.”

The panel noted that this letter was not contested by Mrs Brown.

The panel also bore in mind that Mrs Brown was subject to the NMC's re-registration process as she had lost her registration as a nurse for just over a year. The panel also took into consideration the completely different roles and responsibilities of working as a Band 2 nursing auxiliary as opposed to a Band 5 nurse which Mrs Brown would have been aware of given her experience.

The panel noted that each job application form had a declarations section which Mrs Brown signed which stated amongst other points *“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 heard evidence from Witness 2 and Witness 3 as to the explanations provided by Mrs Brown as to why the errors occurred, which were provided during NHS Fife's investigation and disciplinary proceedings. In summary these included, in relation to employment dates she was unable to provide a reason for the variation in dates. In relation to banding, she was unable to provide a reason for claiming to working at Band 5 and 6 when she was working at Band 2. In relation to her NMC registration, Mrs Brown said she had forgotten about the letter sent by the Social Inclusion Recruitment Coordinator and *“she had just changed the reference numbers of previous applications”*. Regarding Mrs Brown's experience and the description, she provided on the application forms, she said *“she realised it was misleading due to how she had written it”*.

The panel noted that the 'Management Report of Investigation' dated 29 October 2018, had stated that Mrs Brown would *“use the same application form for any vacancies she was applying for however this did not then support why the dates would be different”*.

Both Witness 2 and Witness 3 gave evidence to the panel that when Mrs Brown was interviewed for NHS Fife's investigation process and at the disciplinary proceedings, she was unable to provide any explanation for the inconsistencies and discrepancies in her application forms.

[PRIVATE]

In the circumstances the panel considered that there was no satisfactory alternative explanation as to why this information was inaccurately recorded on the applications submitted by Mrs Brown. The panel was of the view that a fully informed, reasonable member of the public, would consider that Mrs Brown has submitted these application forms with inaccurate information, which was dishonest, to mislead the reader of the form to secure employment. The panel therefore found this charge proved on the balance of probabilities.

Charge 6a, 6b, 6c and 6d

“6. Failed to disclose your loss of NMC registration (between 1 October 2016 and 1 November 2017 inclusive) on the following applications set out in Schedule A:

- a. Application Form 1.
- b. Application Form 2.
- c. Application Form 3.
- d. Application Form 4.”

These charges are found PROVED.

In reaching this decision, the panel took into account the evidence and findings outlined in charges 1, 2, 3 and 4. The panel determined that there was no information within

application forms 1, 2, 3 and 4 which stated that Mrs Brown had lost her NMC registration as a registered nurse between 1 October 2016 and 1 November 2017.

The panel therefore found this charge proved.

Charge 7

“7. Your failure to disclose your loss of registration as set out in any or all of ‘a’ through ‘d’ of charge 6 was dishonest in that you sought to mislead any reader of the application form(s) as to your NMC registration status.”

This charge is found PROVED.

In reaching this decision, the panel took into account its findings in relation to charge 6 (in its entirety).

The panel had regard to the letter dated 28 March 2018, sent by the Social Inclusion Recruitment Co-Ordinator which states:

“I have reviewed you [sic] application and it would appear that you have not disclosed your loss of registration and steps taken to re-register with the NMC. It is also unclear if you have held a substantive post with NHS Fife or have only worked on a Bank basis... I would recommend that you ensure that this information is included in any future applications you may submit.”

The panel noted that this letter was not contested by Mrs Brown.

The panel also took into the evidence of Witness 2 which stated:

“The Recruitment Officer sent her a letter ... advising her to be open and honest with her future applications. However, she did not heed the advice on

the form FW709/06/18LB submitted in July 2018. She carried on lying on this application form. I understand from the NMC the registrant's response at the time was that Christine said she had forgotten about this letter hence why she did not add this information to the July application as advised. However, even if the registrant had forgotten the letter, she should not have forgotten her last registration."

The panel also bore in mind that Mrs Brown was subject to the NMC's re-registration process as she had lost her registration as a nurse for just over a year before she re-joined the NMC register on 2 November 2017 as outlined in Witness 1's statement. The panel considered this to be a significant event in Mrs Brown's nursing career.

[PRIVATE]

The panel did not have any reasons from Mrs Brown as to why she had not disclosed her lapse of registration on her application forms.

In the circumstances the panel considered that there was no satisfactory alternative explanation as to why Mrs Brown has not included her lapse in NMC registration on her submitted applications forms. The panel was of the view that a fully informed, reasonable member of the public, would consider that Mrs Brown has submitted these application forms without this information to mislead the reader of the form to secure employment and would consider Mrs Brown's actions to be dishonest. The panel therefore found this charge proved on the balance of probabilities.

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 Brown'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 Brown's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Ms Iridag referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Iridag invited the panel to take the view that the facts found proved amount to misconduct. Ms Iridag referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and identified the specific, relevant standards where Mrs Brown's actions amounted to misconduct.

Ms Iridag submitted that Mrs Brown's failure to honestly represent her employment history, experience and registration status is serious. She referred the panel to the witnesses' evidence that Mrs Brown's dishonest actions fell below the standards expected of a registered nurse. Ms Iridag invited the panel to find that Mrs Brown's actions in relation to the charges found proved amount to misconduct as her actions clearly fell far short of the standards expected of a registered nurse.

Submissions on impairment

Ms Iridag moved on to the issue of impairment and addressed the panel on the need to have regard to protecting 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. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2008] EWHC 581 (Admin).

Ms Iridag applied the test set out in *Grant* and submitted that limbs a, b, c and d applied in this case. She submitted that whilst no harm occurred on this occasion, the panel heard witness evidence that there was potential for harm as Mrs Brown would not have been aware of certain procedures or equipment reserved for certain nursing grades and roles. She also submitted that a registrant who was allowed to continue their nursing practice with the facts found proved in this case would erode public trust in the profession. She submitted that Mrs Brown has a duty to keep clear records, to communicate accurately and not to misrepresent important things such as her experience. Additionally, she submitted that honesty, integrity and trustworthiness are considered the bedrock of any nurses' practice which was not adhered to in this case.

Ms Iridag submitted that the conduct in this case is not easily remediable due to the finding in respect of the dishonesty charges. She submitted that Mrs Brown was given an opportunity to remedy her dishonesty in Application Form 4, but she failed to do so which indicates that she is likely to repeat her conduct.

Ms Iridag referred the panel to relevant NMC guidance and invited the panel to find Mrs Brown's fitness to practice impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000]

1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) and *Cohen v GMC*.

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

'10 Keep clear and accurate records relevant to your practice

To achieve this, you must:

10.3 complete 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 time

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...'

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 Mrs Brown has repeated the inaccuracies in relation to her employment dates, banding, experience and lapse of her NMC registration on her job applications. The panel bore in mind that Mrs Brown was advised by a Social Inclusion Recruitment Co-ordinator at NHS Fife, in March 2018, to ensure that she included her lapse of NMC registration in her future application forms. However, the panel noted subsequent to this letter, Mrs Brown failed to do this when she completed Application Form 4. The panel was of the view that Mrs Brown had inaccurately

misrepresented her employment dates, banding, experience and NMC registration status which it found to be a fundamental act of dishonesty

The panel therefore found that Mrs Brown's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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 found that all limbs of the Grant test are engaged.

The panel determined that there was a potential for patients to be put at risk of harm had Mrs Brown been appointed inappropriately into a role that she had applied for as a result of her misconduct. Mrs Brown'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 took into account that the applications submitted by Mrs Brown would have required some planning and forethought before they were submitted. In light of this, the panel bore in mind that Mrs Brown repeatedly provided inaccurate information on the application forms over an extended period of time. It noted that she submitted a further

inaccurate job application despite being warned about its accuracy by a Social Inclusion Recruitment Co-Ordinator at NHS Fife.

The panel took into consideration that it had no information regarding Mrs Brown's insight in relation the facts found proved. The panel took into account that it had no evidence before it that Mrs Brown has taken steps to strengthen her practice, had not provided a reflective statement or that she had acknowledged the dishonesty in her application forms during the NHS Fife investigation and disciplinary process or in the NMC process.

The panel took into consideration that Mrs Brown was sent a letter in March 2018, by a Social Inclusion Recruitment Co-Ordinator at NHS Fife, which advised her to include information regarding her loss of NMC registration in future application forms. The panel bore in mind that Mrs Brown submitted Application Form 4 after this letter was sent to her and that she did not include on this application the loss of her NMC registration. The panel is of the view that Mrs Brown failing to provide accurate information on future application forms means that risk of repetition is very likely. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel considered the Cohen test and recognised that dishonesty, whilst difficult to remediate, noted that it was still possible. However, in the circumstances in this case it determined that, having been provided with no evidence of reflection, strengthening practice or remorse, it was not satisfied that the misconduct and dishonesty identified in this case had been remedied.

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 determined that a finding of impairment on public interest grounds is required. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Brown's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Brown's fitness to practise is currently impaired.

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 Brown off the NMC register. The effect of this order is that the NMC register will show that Mrs Brown has been struck-off the NMC 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.

Submissions on sanction

Ms Iridag submitted that in determining what sanction, if any, should be imposed, the panel must act proportionately by balancing the interests of the public against those of Mrs Brown and that it should consider all the sanctions available starting with the least restrictive. She outlined to the panel the aggravating and mitigating features of this case. Ms Iridag took the panel through the sanctions available to it and submitted that the NMC's sanction bid in this case, is a striking-off order.

Decision and reasons on sanction

Having found Mrs Brown'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:

- The fundamental dishonesty underlying Mrs Brown's misconduct.
- The pattern of Mrs Brown's dishonesty which underpinned the panel's finding of misconduct which was not limited to a single act.
- Mrs Brown's lack of insight and recognition regarding the potential risk of harm her misconduct could have had on potential patients, colleagues in the workplace and the wider nursing profession.
- The very likely risk of repetition despite a warning from NHS Fife regarding Mrs Brown's submission of inaccurate job applications which indicates a deep-seated attitudinal problem.
- Mrs Brown's lack of engagement with the NMC process.

[PRIVATE]

Before considering the proportionate and appropriate sanction to apply in this case, the panel bore in mind the NMC Guidance, SAN-2 'Considering sanctions for serious cases: Cases involving dishonesty', dated 17 December 2021, which states:

"The most serious kind of dishonesty is when a nurse, midwife or nursing associate deliberately breaches the professional duty of candour to be open and honest when things go wrong in someone's care."

However, because of the importance of honesty to a nurse, midwife or nursing associate's practice, dishonesty will always be serious.

In every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- ...
- ...
- ...
- *personal financial gain from a breach of trust*
- *direct risk to patients*
- *premeditated, systematic or longstanding deception*

Dishonest conduct will generally be less serious in cases of:

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *no risk to patients*
- ...

The law about healthcare regulation makes it clear that a nurse, midwife or nursing associate who has acted dishonestly will always be at risk being removed from the register.”

The panel considered, in the circumstances of this case, that the dishonesty was not at the lower end of the spectrum of seriousness.

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 Brown'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 Brown'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 Brown's registration would be a sufficient and appropriate response. The panel noted that Mrs Brown is not currently working and so it had no information that she would be able to fulfil any conditions. However, the panel also considered that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Brown'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:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel considered each of the factors outlined in SG in turn in relation to suspension. It noted the facts found proved amounted to several instances of misconduct by Mrs Brown. The panel bore in mind that Mrs Brown has repeated her misconduct on four occasions, in respect of inaccurately recording her employment dates, banding, experience and the loss of her NMC registration on her job applications. It noted that NHS Fife had advised Mrs Brown to include the loss of her NMC registration on future applications however, she continued to submit another job application without this information. The panel took into account that it had no information regarding Mrs Brown's insight and took into consideration its earlier finding that the *"risk of repetition is very likely"*.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Brown's actions is fundamentally incompatible with Mrs Brown remaining on the register.

In this particular case, 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 Brown'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 had regard to the NMC Guidance, 'Considering sanctions for serious cases: Cases involving dishonesty'. The panel was of the view that the findings in this particular case demonstrate that Mrs Brown'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.

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 effect of Mrs Brown'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.

This will be confirmed to Mrs Brown 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 in Mrs Brown's own interests until the striking-off sanction takes effect.

Submissions on interim order

The panel took account of the submissions made by Ms Iridag. She submitted that an interim order is necessary to accommodate any potential period of appeal. She invited the panel to impose an interim suspension order for a period of 18 months.

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.

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 determined that an interim suspension order was necessary and proportionate in this case. The panel then considered the period for the interim order. It concluded an interim suspension order for a period of 18 months to cover any potential period of appeal was appropriate.

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

That concludes this determination.