EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 50
XA42/26

Lord Malcolm
Lord Tyre
Lady Wise

OPINION OF THE COURT

delivered by LORD TYRE

in an appeal under Article 38 of the Nursing and Midwifery Order 2001

by

SIFISO SHARON NCUBE

Appellant

against

a decision of the Fitness to Practise Committee of the Nursing and Midwifery Council dated 24 March 2026

Appellant: Party
Respondent: Clancy (sol adv); Nursing and Midwifery Council

19 November 2026

Introduction

[1] This is an appeal against a decision of the Fitness to Practise Committee ("the panel") of the Nursing and Midwifery Council finding the appellant's fitness to practise impaired and making an order striking her off the register of registered nurses. The charges against the appellant arose while she was employed as a registered nurse by NHS Tayside. A total of 12 charges, some of which were subdivided, were made. Following upon a substantive hearing conducted virtually over a period of several days, the panel found some of the

charges to be admitted, some to have been proved, and some not to have been proved. The panel concluded that public protection and public confidence necessitated removal of the appellant from the register. An interim suspension order, which remains in force, was also imposed.

[2] The appellant appeals against the entirety of the panel's decision, including its findings of dishonesty on certain charges, its findings of misconduct, its finding of current impairment of fitness to practise, and the sanction of removal from the register. In its answers to the grounds of appeal, the council has conceded that in relation to two charges which included findings of dishonesty, the panel failed properly to apply the relevant law and that its decision on those two sub-charges cannot be supported. The council has also conceded that there was a procedural irregularity in that it appeared that the panel had not correctly applied the council's current sanctions guidance. The council's motion to the court was that the appeal should be allowed and the matter remitted to a panel of its Fitness to Practise Committee for reconsideration on the question of sanction only. The appellant did not accede to this motion but maintained her appeal against the decision as a whole.

[3] Although the appellant was represented by a solicitor in the proceedings before the panel, she represented herself throughout the appellate proceedings. She confirmed that the grounds of appeal, notes of argument and other documents that she lodged for the purposes of the appeal were prepared with assistance from artificial intelligence. The effect of this has been to obscure rather than to elucidate the bases of her challenge to the panel's decision. The written material produced is grossly excessive in length; the grounds of appeal alone run to 56 pages. Very little of this constitutes grounds of appeal properly so-called; it consists rather of broad assertions of fact and of law stated in a repetitive and verbose manner which has rendered it extremely difficult to identify what are alleged to be errors of

law on the part of the panel. Matters were made worse by the equally lengthy and repetitive written and oral submissions made by the appellant with the further assistance of AI. In advance of the hearing, she had been invited by the court to use her address to set out, concisely and in her own words, the main reasons why she asked the court to uphold her challenge to the findings made by the panel. She did her case no favours by declining to accept that invitation. The court has instead had to attempt to make sense of an unfocused and often irrelevant tract of material, in order to satisfy itself that all points which could be made in her favour have been given due consideration.

The charges against the appellant

[4] The following charges were made against the appellant. The identity of the care home has been anonymised. The charges found not to have been proved (charges 3 and 5) are shown in strike-through:

> "That you, a registered nurse:
>
> 1. In/or around March 2022, when applying for a job with X Care Home, did not disclose your employment with NHS Tayside in:
>   a. Your CV.
>   b. Your job application.
>   c. Your job interview.
>
> 2. After starting employment at X Care Home on 27 April 2022, did not disclose your employment with NHS Tayside.
>
> ~~3. Your actions as set out in charges 1 and 2 were dishonest in that:~~
>   ~~a. You knew you were required to disclose any secondary employment to X Care Home.~~
>   ~~b. You intended X Care Home to believe that you did not have any other employment as a nurse.~~
>
> 4. Did not disclose starting employment with X Care Home on 27 April 2022 to NHS Tayside.

~~5. Your actions as set out in charge 4 were dishonest in that:~~
   ~~a. You knew you were required to disclose any secondary employment to NHS Tayside.~~
   ~~b. You intended NHS Tayside to believe that you did not have any other employment as a nurse.~~

6. As director of Thurso Care Services Limited:
   a. In your application form to X Care Home, dated 28 July 2022, stated that Thurso Care Services Limited was registered with the Care Inspectorate when this was not the case.
   b. Published and/or were responsible for approving a company introduction document which stated:
      i. All employees were Registered with the Scottish Social Services Council.
      ii. All employees were under the Protecting Vulnerable Group Scheme.
      iii. Thurso Care Services Limited would comply with all relevant legislation and regulatory bodies.
   c. Prior to 13 October 2022, did not take appropriate steps to ensure staff had been through appropriate background checks.

7. Your actions as set out in charge 6a-c were dishonest in that:
   a. You misrepresented Thurso Care Services Limited, and the services and staff provided.
   b. You intended those using the services of Thurso Care Services Limited to believe you were registered with appropriate authorities when this was not the case.
   c. You intended those using the services of Thurso Care Services Limited to believe staff had been appropriately vetted when this was not the case.

8. Your actions as set out in charge 6c did not provide appropriate safeguards for patients.

9. On one or more occasions, between 27 April 2022 and 13 September 2022, cancelled and/or arranged to be cancelled X Care Home bookings for staff from another agency, and replaced those bookings with staff from Thurso Care Services Limited, without appropriate justification and/or following appropriate procedure.

10. On 5 October 2022, in your application for registration with the Care Inspectorate, incorrectly declared that you had not 'provided an agency supplying nurses to registered health or social care service'.

11. On 5 October 2022, in an email to the Care Inspectorate, asserted that Thurso Care Services Limited had acted in accordance with relevant legislation when this was not the case.

12. Your actions in charges 10 and 11 were dishonest in that:
    a. You knew Thurso Care Services Limited had supplied nurses without being registered with the Care Inspectorate.
    b. You knew Thurso Care Services Limited was not entitled to supply nurses without registering with the Care Inspectorate.
    c. You intended the Care Inspectorate to believe that Thurso Care Services Limited, while unregistered, had not supplied nurses.

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

The panel noted that charges 4, 6a and 6b were admitted.

The panel's decision

[5] The panel heard evidence from four witnesses called on behalf of the council and from the appellant.

[6] Charge 1a was found proved on the basis that the CV produced by the appellant when applying to the care home for employment made no mention of her employment with NHS Tayside. Charge 1b was similarly found proved on the basis that the appellant's job application made no reference to employment with NHS Tayside. Charge 1c was found proved under reference to minutes of the appellant's job interview which made no such reference. Charge 2 was found proved on the basis of oral evidence, which the panel accepted, of a witness who stated that no disclosure of her employment with NHS Tayside had been made by the appellant.

[7] Charge 3a and 3b, on the other hand, were found not to have been proved. The panel accepted as plausible the appellant's evidence that she had not read the contractual documentation in detail before signing and was unaware of the requirement to disclose secondary employment. In the absence of proof that the appellant knew of the requirement to disclose, it determined that it could not safely conclude that she formed an intention to

mislead, and that there was insufficient evidence that she deliberately sought to create a false impression regarding her employment status. The council had not proved that she intended the care home to believe that she did not have any other employment.

[8] The panel also found it not proved that the appellant's failure to disclose her employment with the care home to NHS Tayside was dishonest (charge 5). Although there was evidence that there were policies requiring staff to disclose secondary employment, the panel had no documentary evidence that the appellant had received, read or been made aware of such a requirement. Nor was there sufficient evidence to establish that she had deliberately sought to create a false impression regarding her employment status.

[9] As regards charge 6c (6a and 6b having been admitted), the panel accepted evidence from a witness as to what constituted appropriate background checks at the material time, under reference to the Protection of Vulnerable Groups (PVG) Scheme managed by Disclosure Scotland. The panel noted the appellant's evidence that she had relied on information available in files held at the care home, and that there was no evidence that she had made any applications under the PVG Scheme. The panel found that simply reviewing existing files without carrying out the checks described was not appropriate and concluded that the appellant did not take appropriate steps to ensure that staff had been through appropriate background checks.

[10] Charge 7 was that the appellant's actions as set out in charges 6a-c were dishonest. The panel found each of the charges within charge 7 proved. As regards charge 7a, that the appellant misrepresented Thurso Care Services Limited and the services and staff provided, the panel noted that the appellant had stated in her application form to X Care Home, and in the company's published introduction document, that Thurso Care Services Limited was registered with the Care Inspectorate when this was not the case. The panel rejected the

appellant's explanations as inconsistent, unsupported by evidence and lacking in credibility. It concluded that the appellant had made misrepresentations that she knew were false or at least that she had no reasonable basis for making them. Applying the objective test, the panel concluded that ordinary, decent people would consider such conduct to be dishonest.

[11] It is appropriate to note at this point that in making its determinations as to whether particular conduct on the part of the appellant was dishonest, the panel was required to apply the two-stage test in *Ivey* v *Genting Casinos (UK) Ltd* [2017] UKSC 67; [2018] AC 391 at paragraph 74, ascertaining firstly (subjectively) the actual state of the individual's knowledge or belief as to the facts, and secondly whether his conduct was honest or dishonest by applying the (objective) standards of ordinary decent people. It is conceded by the council that in its conclusion on charge 7a, the panel fell into error of law in relation to the first part of the *Ivey* test by conflating actual knowledge of misrepresentation with absence of a reasonable basis for making the representations. For this reason, the council does not seek to support the panel's determination in relation to charge 7a.

[12] The panel found charge 7b, that the appellant's actions were dishonest in that she intended those using the services of Thurso Care Services Limited to believe she was registered with appropriate authorities, proved under reference to its findings in charges 6a-6c, in particular the appellant's statement in a recruitment agencies application form that the company was registered with the Care Inspectorate. It concluded that the only reasonable inference was that she intended those using the company's services to believe that it was registered when she knew that this was not the case and that her actions were intended to create a false impression. Charge 7c, that the appellant's actions were dishonest in that she intended those using the services of Thurso Care Services Limited to believe that staff had been appropriately vetted when this was not the case, was found proved on the

basis of statements made in the company documentation that staff had been appropriately vetted which the appellant knew to be untrue. In each case, applying the objective test, the panel determined that ordinary, decent people would consider such conduct to be dishonest.

[13] In finding charge 8 proved, the panel took account of its findings in charge 6c, namely that the appellant did not take appropriate steps to ensure that staff had been through appropriate background checks. In the absence of such checks, there was no assurance that the staff supplied were suitable to work with vulnerable patients. The panel found charge 9 proved on the basis of oral evidence which the panel found to be credible and reliable, and contemporaneous documentary evidence consisting of the minutes of the appellant's probationary review meeting. The minutes recorded an admission by the appellant that she had cancelled staff bookings from another agency and replaced them with staff from Thurso Care Services Limited without authorisation and without following the appropriate procedure. Charge 10 was found proved on the basis of a statement made by the appellant in her application for registration with the Care Inspectorate which the panel, having heard and accepted evidence that the appellant had provided nursing services to a registered care home, found to have been incorrectly made. Charge 11 was found proved on the basis of an email sent by the appellant to the Care Inspectorate in which she asserted that Thurso Care Services Limited was not partaking in any illegal activities and stated that her application for registration had been submitted and was awaiting consideration. Taking account of its findings in earlier charges, the panel found that the assertion that the company had acted in accordance with the relevant legislation was incorrect. The panel further determined that the email was misleading in suggesting that an application had already

been submitted when in fact it was submitted on the same day as the email, thereby adding to the overall misleading nature of the communication.

[14] Charge 12 was concerned with whether the actions in charges 10 and 11 were dishonest. In relation to charge 12a, the panel referred again to the appellant's admission that she had arranged and supplied staff without authorisation, and to its finding that Thurso Care Services Limited was not registered with the Care Inspectorate at the relevant time, and concluded that the appellant knew that nurses had been supplied without the required registration. However the panel made no finding as to whether this conduct was honest or dishonest by applying the standards of ordinary decent people: in other words, it failed to address the second part of the *Ivey* test. In so failing the panel erred in law, and the council does not seek to support the panel's finding of dishonesty in relation to charge 12a.

[15] As regards charge 12b, the panel had regard to the appellant's role as director of the company and to the fact that she had made an application for registration, which demonstrated that she was aware that registration was required in order lawfully to supply nurses. The panel concluded that she knew that the company was not entitled to supply nurses without being registered with the Care Inspectorate. Applying the objective test, the panel determined that ordinary, decent people would consider her conduct, in making the declarations set out in charges 10 and 11, to be dishonest. In relation to charge 12c, the panel referred to its findings in charges 9, 10 and 11, and concluded that the only reasonable inference was that the appellant intended the Care Inspectorate to believe that Thurso Care Services Limited had not supplied nurses while unregistered. The panel determined that the appellant knew that the statements made were untrue and that ordinary, decent people would consider such conduct to be dishonest. The panel accordingly found charges 12b and 12c proved.

[16] Having made its determinations on the facts, the panel moved on to consider (i) whether the facts found proved amounted to misconduct and, if so, (ii) whether the appellant's fitness to practise was currently impaired. In assessing whether the facts found proved amounted to misconduct, the panel had regard to the Code of professional standards of practice and behaviour for nurses and midwives (2015), observing that breaches of the Code did not automatically result in a finding of misconduct. As regards charges 1, 2 and 4, the panel decided that although these matters demonstrated failings in the appellant's professional practice and judgment, they did not reach the threshold of serious professional misconduct when considered in isolation. Charges 6 to 12, however, involved the provision of false information and misrepresentation in formal and professional contexts, and were not minor inaccuracies or administrative errors. The panel considered and rejected the appellant's explanation that her conduct could be explained by confusion, disorganisation or lack of knowledge. It amounted to a series of dishonest acts which when taken together demonstrated sustained dishonest behaviour. The appellant had allowed or facilitated individuals to work without appropriate checks being carried out, which was contrary to legal and regulatory requirements and created a risk that vulnerable individuals could be exposed to harm. The panel considered that this conduct engaged core professional responsibilities relating to patient safety and safeguarding. It represented serious departures from the standards expected of a registered nurse and amount to serious breaches of fundamental tenets of the profession, in particular honesty, integrity and the duty to protect the public. This constituted misconduct.

[17] The panel next addressed the question whether the appellant's fitness to practise was currently impaired. The panel cited the following passage from the NMC Guidance on Impairment (DMA-1, last updated January 2026):

> "Being fit to practise is not defined in our legislation but for us it means that a professional on our register can practise as a nurse midwife or nursing associate safely and effectively without restriction."

The panel also referred to the judgments in *Council for Healthcare Regulatory Excellence* v *Nursing and Midwifery Council and Grant* [2011] EWHC 927 (Admin) and *Sawati* v *General Medical Council* [2022] EWHC 283 (Admin). In assessing the appellant's level of insight and the risk of repetition, the panel took into account that her reflections did not demonstrate an understanding of the potential impact of her actions on patients, vulnerable individuals, or public confidence in the profession, and that her account went beyond presenting events in a more favourable light than eventually proved warranted. The panel applied the test set out at paragraph 76 of *Grant* which is in the following terms:

> "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 answered each of these questions in the affirmative.

[18] The panel then considered the appellant's level of insight, under reference to a reflection statement that she had provided. The panel determined that the appellant's insight was limited. Her continued reliance on her account of confusion and lack of knowledge indicated that she had not fully accepted the panel's findings, and that the underlying concerns identified remained unaddressed and ongoing. The panel was not satisfied that she had demonstrated sufficient remediation to address the attitudinal concerns identified, and that remediation remained incomplete. In the absence of full

insight and remediation, there remained a real risk of repetition. For these reasons the panel concluded that a finding of impairment was necessary on grounds of public protection. As to the wider public interest, the panel concluded that public confidence in the profession would be undermined if a finding of impairment was not made, and that such a finding was required to declare and uphold proper professional standards.

[19] Finally, the panel addressed the issue of sanction. Having identified various aggravating and mitigating features, the panel considered the possible sanctions in ascending order of severity. It concluded that taking no action or imposing a caution order would not reflect the seriousness of the charges. A conditions of practice order could not properly address the appellant's dishonesty and deep-seated attitudinal issues. A suspension order would not address the concerns about public protection or maintaining public confidence in the profession. Nor would such an order be a sufficient, appropriate or proportionate sanction to address the appellant's failure to demonstrate meaningful insight which evidenced a lack of realistic prospect that she would address the concerns identified or return to safe practice. Lastly, the panel considered a striking-off order. When so doing, the panel considered certain paragraphs of the sanctions guidance published by the council (SAN-3e; "Striking-off order", last updated May 2025) containing the following questions: (i) Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism? (ii) Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register? (iii) Is striking off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards? Having addressed those three questions, the panel expressed its conclusion as follows:

> "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 your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that no lesser sanction would be sufficient in this case.
>
> The panel concluded that public protection and public confidence necessitate removal from the register."

[20] In its answers to the grounds of appeal, the council observes, with regard to the three questions addressed, that it appears that the panel directed itself to a previous version of the council's sanctions guidance, rather than the version updated on 28 January 2026 (SAN-2e; "Striking-off order") and currently in use. In terms of the up-to-date version, the panel ought to have addressed the following questions: (i) Do the charges found proved raise fundamental questions about their professionalism? (ii) Can public confidence in the profession be maintained if the professional is not removed from the register? (iii) Is there any amount of insight and reflection which could keep people receiving care and members of the public safe, maintain public confidence in the profession, and uphold professional standards? (iv) Is there a realistic prospect that, after suspension, the professional will have gained insight and strengthened their practice such that the risk they pose will have reduced? The council accepts that in view of the panel's failure to address these questions. there is insufficient evidence that the panel correctly applied the council's sanctions guidance. The council therefore concedes that there was a procedural irregularity such that the panel has gone plainly wrong when considering the question of the appropriate sanction.

Submissions on disposal of the appeal

[21] In view of the errors of law identified above in relation to charges 7a and 12a, and the procedural irregularity in relation to application of the out-of-date sanctions guidance, the council's motion to the court was to (i) allow the appeal; (ii) quash the findings in fact on charges 7a and 12a (without substitution); (iii) quash the panel's decision in respect of the sanction imposed by the panel of a striking off order; and (iv) remit the matter to a differently constituted panel of the council's Fitness to Practise Committee for reconsideration on the question of sanction only.

[22] The appellant did not concur with this motion. Her motion was that the court should (i) allow the appeal; (ii) quash all of the findings of dishonesty in charges 7 and 12; (iii) quash the finding of current impairment of fitness to practise; (iv) quash the striking-off order; (v) if the court concluded that no finding of current impairment survived, quash the decision without further order or remit; (vi) if the court preserved findings sufficient to establish current impairment, substitute a suspension order or such other decision as the panel could lawfully have made; (vii) refuse to remit on sanction only; (viii) alternatively, to remit the case to a differently-constituted panel for disposal in accordance with the directions of the court.

The appellant's grounds of appeal

[23] As previously noted, the grounds of appeal run to over 50 pages. The appellant subsequently lodged a "Schedule of Grounds of Appeal as Brief Numbered Propositions" which accords more closely with the requirements of the rules of court. These are as follows:

1. The panel misdirected itself in law on dishonesty and reached internally inconsistent findings at charges 7a and 12a.
2. The decisive inferential case was not crystallised before it was relied upon, and the appellant had no fair opportunity to meet it.
3. The panel mischaracterised the appellant's reflective evidence and founded the finding of limited insight upon that mischaracterisation.
4. The determination does not disclose performance of the forward-looking evaluation of current impairment which the statutory question required.
5. The panel applied superseded sanctions guidance and did not demonstrate that erasure was necessary.
6. The panel failed to evaluate material contextual factors bearing on state of mind, misconduct, impairment and sanction.
7. The panel did not perform the subjective-first analytical sequence which *Ivey* v *Genting Casinos (UK) Ltd* requires.
8. The inferential findings of dishonesty were produced in conditions which deprived them of the stability the law requires of such findings.

We shall address each of the grounds of appeal in turn and in the course of so doing we shall take into account the oral submissions made by the appellant at the summar roll hearing.

Ground 1: The panel misdirected itself in law on dishonesty and reached internally inconsistent findings at charges 7a and 12a

[24] In this ground of appeal the appellant founds upon the errors made by the panel in its application of the two-part test in *Ivey* v *Genting Casinos (UK) Ltd.* She submits that the

errors also infected the panel's approach to charges 7b, 7c, 12b and 12c. In each case the panel proceeded by way of inference from facts found rather than by subjective identification of actual state of knowledge or belief. The panel had stopped short of making a necessary finding as to what the appellant in fact knew or believed; a conclusion that a state of mind was the "only reasonable inference" was not sufficient. In the absence of a finding as to the appellant's actual knowledge or belief, the panel's characterisation of her conduct as deliberate, premeditated and attitudinal lacked a legally sufficient foundation. The findings of misconduct and impairment rested upon this unfounded characterisation.

[25] Separately, there was internal inconsistency between the panel's approach to charges 3 and 5 on the one hand and its approach to charges 7 and 12 on the other. In relation to charges 3 and 5, the panel declined to draw inferences as to the appellant's knowledge from her position, background or education, and found the charges of dishonesty not proved. At charges 7 and 12 the panel addressed analogous questions of state of mind in relation to the regulatory status of Thurso Care Services Limited and made findings of dishonesty on the same inferential basis as it had previously declined to apply. The two approaches were not reconcilable. No reason was given for this divergence in the evidential threshold applied to the central issue of knowledge. In the absence of adequate reasoning by the panel, the court was entitled to intervene.

[26] On behalf of the council, it was submitted that the panel correctly applied the *Ivey* test to the facts found proved in relation to each of charges 7b, 7c, 12b and 12c. It made findings as to the actual state of the individual's knowledge or belief as to the facts and thereafter made findings as to whether the conduct was dishonest by applying the standards of ordinary and decent people. The panel's reasons, when read in their entirety and in their proper context, were sufficient to leave an informed reader in no real and substantial doubt

as to why it took the decision it did. The submission that the panel applied different evidential standards to charges 3 and 5 as compared to charges 7 and 12 was without merit. The issues being determined were different, and there was no internal inconsistency.

[27] We are not persuaded that the appellant has identified any error of law made by the panel, other than the misapplication of the *Ivey* test to charges 7a and 12a as previously discussed. The distinction that the appellant attempts to draw between an inference as to her state of mind and a finding of actual knowledge or belief is entirely misconceived. When a judicial body is tasked with making a finding as to a person's state of mind, it is obviously impossible to look inside that person's head, and so it is necessary to draw inferences from primary facts. Such a process is carried out routinely by judges and juries in cases where a person's knowledge or belief is in issue. The inference drawn is itself a fact upon which the fact-finder is entitled to rely in making its determination. The standard of proof is the normal standard of balance of probabilities: is dishonesty more probable than not? (*McLennan* v *General Medical Council* [2020] CSIH 12; 2020 SC 305 at paragraph 76.)

[28] In the present case, the panel stated, in relation to each of charges 7b, 7c, 12b and 12c, the facts from which it drew an inference that the appellant possessed the state of knowledge and intention necessary to establish the subjective element of the *Ivey* test. For charge 7b, the panel inferred that the appellant intended those using the services of Thurso Care Services Limited to believe that it was registered with the appropriate authorities when this was not the case from the statements made in her application form to X Care Home and in published documentation, and from the fact that she knew that the company was not registered with the appropriate authorities. For charge 7c, the panel inferred that the appellant intended those using the services of Thurso Care Services Limited to believe that staff had been appropriately vetted when this was not the case from the fact that the

company document indicated that staff were appropriately vetted and registered and from the fact that the appellant knew that appropriate background checks had not been carried out. In each case the panel was entitled to draw the inference that the appellant had made statements that she knew to be untrue. For charge 12b, the panel inferred that the appellant knew that Thurso Care Services Limited was not entitled to supply nurses without registration from the fact that the appellant had made an application to the Care Inspectorate for registration. It followed that she knew that the statements forming the basis of charges 10 and 11 that she had made were false. For charge 12c, the panel inferred that the appellant intended the Care Inspectorate to believe that Thurso Care Services Limited had not supplied nurses while unregistered, when she knew that it had done so, from the declaration to that effect in the company's application for registration and from the assertion in the email referred to in charge 11. Again the panel was entitled to make a finding that the appellant had made statements that she knew to be untrue.

[29] The panel then went on, in respect of each of charges 7b, 7c, 12b and 12c, to apply the objective test in accordance with *Ivey*, and in each case concluded that ordinary, decent people would consider such conduct to be dishonest. That too was a finding that the panel was entitled to make. The consequence is that even if the panel's decision in relation to charges 7a and 12a is quashed, its decision in relation to charges 7b, 7c, 12b and 12c is unaffected and unimpugned.

[30] We also reject the appellant's submission that there is an inconsistency amounting to an inadequacy of reasoning arising out of the panel's differential treatment of charges 3 and 5 on the one hand and charges 7 and 12 on the other. In each case the panel explained why it decided that it could or could not draw an inference of intention to mislead. As regards charge 3, the panel found no direct evidence that the appellant had read or

understood a specific contractual provision relating to disclosure of secondary employment to the care home and declined to make an assumption based upon the appellant's background or level of education that she must have read or understood the terms. On charge 5, the panel accepted the appellant's evidence that she had not been made aware of the requirement to disclose her secondary employment to NHS Tayside. The inferences drawn in relation to charges 7 and 12 to support findings of dishonesty were based upon statements made by the appellant that she knew to be incorrect. There is no inconsistency in the panel's treatment of the various allegations of dishonesty. On the contrary, the panel has demonstrated a discriminating approach and has given proper, adequate and intelligible reasons for drawing inferences in some cases and declining to do so in others.

Ground 2: The decisive inferential case was not crystallised before it was relied upon, and the appellant had no fair opportunity to meet it

[31] We find it difficult to discern exactly what is the substance of the appellant's complaint. The ground of appeal consists largely of assertions of duties said to be incumbent on a fact-finding tribunal or on an appellate court. The appellant disavows any intention to criticise the legal representation that she received at the hearing but asserts that the process as conducted did not give her a fair opportunity to meet the case on the decisive issues from which the panel's findings of dishonesty were drawn. At pages 22 and 23 of her grounds of appeal she lists nine matters which "were not in substance put in contest at the hearing". These consist mainly of matters that, according to the appellant, were not explored in evidence. Although she contends that each of these matters bore directly on knowledge, intention or credibility, she does not explain what difference any of them might arguably have made to the panel's decision.

[32] In her core note of argument, the appellant presents this ground somewhat differently. She states that she "knew the charges" but "did not, on the decisive proposition, know the case". Her specific complaint appears to be that she was not given an opportunity to give evidence as to whether inferences could be drawn about her state of knowledge: in particular, whether she had a reasonable basis for a particular belief. There is no substance to this criticism. As the party under investigation, she had no entitlement to have put to her the terms of the submission that would be made by the council's representative after the evidence had been heard. In so far as she is complaining about the use of the "no reasonable belief" alternative in the panel's decision on charge 7a, that part of the decision is acknowledged to be wrong in law and will be quashed.

[33] More generally, we find neither error of law nor procedural unfairness in the manner in which the hearing was conducted. The appellant was aware of the charges against her and was professionally represented. The proceedings were properly and fairly conducted. Through her representative, the appellant had the opportunity to lead whatever evidence she wished and to make whatever submissions she wished to make on the evidence that was led. This ground of appeal is without merit.

Ground 3: The panel mischaracterised the appellant's reflective evidence and founded the finding of limited insight upon that mischaracterisation

[34] This ground of appeal is concerned with the reflection statement submitted by the appellant to the panel. As already mentioned, the statement is referred to by the panel in its decisions on impairment of fitness to practise and on sanction. In essence, the appellant submits that the panel's assessment of the statement is directly contradicted by its terms. Contrary to the panel's assessment, the statement expressly addressed patient impact and

the purpose of regulation as safeguarding. The appellant accepted responsibility for the matters from which dishonesty was inferred. Maintaining a defence was equated by the panel with lack of insight, contrary to the principles set out in *Sawati* v *General Medical Council* (above). The panel's reasoning disregarded evidence of insight submitted on the appellant's behalf. The panel's conclusions on impairment and sanction were accordingly based upon an unfounded appraisal of the appellant's reflection.

[35] The assessment of insight, as demonstrated by a reflection statement, is a matter clearly falling within the specialist expertise of the Fitness to Practise Committee. The court will not lightly interfere with its findings. We accept the appellant's submission that if a panel's assessment was demonstrably inconsistent with the terms of the statement, the court would be entitled to intervene. We are not satisfied that that is the case here. Read as a whole it is clear that the panel's overriding concern regarding the appellant's statement was the absence of acceptance that her actings had been dishonest. Within that overall finding, it was a matter of judgment by the panel as to whether the appellant's reflections including her acknowledgment that by allowing the agency to operate before full registration, she had failed to uphold the protection of people cared for, demonstrated an understanding of the potential impact of her actions on patients, vulnerable individuals or public confidence in the profession. Had it been necessary to decide this point, we would not have been minded to hold that the panel had made any error of law in so far as its decisions on impairment and sanction took account of its conclusions on the reflection statement.

[36] However, it is unnecessary to make a finding to this effect. It is not in dispute that the court will require to allow the appeal and remit the case to a panel of the council's Fitness to Practise Committee on the question of sanction. For the reasons given later in this opinion, we consider that it is also necessary for the court to remit the question of

impairment of fitness to practise for fresh determination. It follows that everything said by the current panel in relation to impairment and sanction will be set aside, and the issue raised by this ground of appeal will become academic.

Ground 4: The determination does not disclose performance of the forward-looking evaluation of current impairment which the statutory question required

[37] This ground of appeal is directed against the panel's finding that the appellant's fitness to practise was impaired. In summary, the appellant's submission is that the panel was bound to consider whether she was likely in future to act in a manner engaging the four questions in *Grant* (see paragraph 17 above), and to address three core questions identified in *Cohen* v *General Medical Council* [2008] EWHC 581 (Admin) at paragraph 65, namely whether the conduct is capable of remediation, whether it has been remedied, and whether repetition is highly unlikely. The appellant contends that the panel's reasoning on impairment proceeded through steps directed to past conduct and current insight but was not directed to future liability. The evaluative task required by *Grant* and *Cohen* was not performed. Forward-looking evidence before the panel was disregarded in its reasoning on impairment.

[38] This ground of appeal amounts to no more than disagreement with the panel's conclusion. It is clear from the terms of the panel's reasoning on impairment that it had the tests in *Grant* and *Cohen* in mind. In relation to *Cohen*, the panel identified the central concern as being the appellant's dishonesty and lack of candour. The panel concluded that remediation remained incomplete and that in the absence of full insight and remediation there remained a real risk of repetition. The forward-looking issue was accordingly addressed, and the panel's reasoning was adequate and intelligible. Had it been necessary

to do so, we would have found this ground of appeal to be without merit, but as the panel's decision on impairment is to be quashed, the matter is academic.

Ground 5: The panel applied superseded sanctions guidance and did not demonstrate that erasure was necessary

[39] This ground of appeal is concerned with the panel's decision to make a striking-off order. The appellant submits that the determination did not articulate why the sanction of suspension was rejected. It did not engage with what an informed member of the public would regard as necessary in the specific circumstances of the case. It did not take account of material considerations including the fact that the conduct was non-clinical, cessation of the business context, unblemished clinical record, safe current practice, evidence of remediation, and absence of patient harm. In her note of argument, the appellant refers to the council's concession that the panel appeared to have applied a superseded version of the sanctions guidance, and points out that the current version directs a panel to ask itself *inter alia*: Is there a realistic prospect that, after suspension, the professional will have gained insight and strengthened their practice such that the risk they pose will have reduced?

[40] As we have already noted, the council concedes that in failing to answer the questions in the current sanctions guidance, there has been a procedural irregularity and that the panel has gone plainly wrong when considering the question of the appropriate sanction. The panel's decision on sanction will be quashed. As the issue of sanction will require to be considered afresh in its entirety, it is unnecessary for the court to address the appellant's criticisms of the panel's decision that striking off was the appropriate sanction to impose.

Ground 6: The panel failed to evaluate material contextual factors bearing on state of mind, misconduct, impairment and sanction

[41] In this ground of appeal, the appellant submits that the panel's determination disclosed a number of contextual factors which were before the panel and were capable of bearing directly on the legal questions it required to determine, but which were not evaluated in the reasoning. The contextual factors identified by the appellant are:

- the absence of a formal induction of the appellant within NHS Tayside in the context of the COVID period, which bore upon her actual state of knowledge and belief in relation to disclosure of secondary employment and regulatory expectations;
- the involvement of the appellant in Thurso Care Services Limited at a time when she suffered personal and medical disruptions which were capable of affecting her state of mind and degree of culpability;
- independent evidence of the appellant's insight in practice, including feedback from medical students, which was relevant to the forward-looking assessment;
- the appellant's engagement with bodies including Disclosure Scotland and the Care Inspectorate, and steps taken by her to address regulatory failings, which were relevant to insight, remediation and risk of repetition;
- the appellant's reflection statement and action plan directed to the prevention of repetition.

[42] In support of her submission the appellant cites *Masood* v *General Medical Council* [2024] CSIH 27, under reference to the quotation at paragraph 37 in that case from the observation of the court in *PSA* v *Nursing & Midwifery Council* [2017] CSIH 29; 2017 SC 542 at paragraph 25 that "…The court can interfere if it is clear that there is a serious flaw

in the process or the reasoning, for example where a material factor has not been considered". The appellant's contention is that the panel's reasoning does not demonstrate that the above factors were considered in its decision-making process regarding state of mind, misconduct, impairment or sanction.

[43] This ground of appeal is essentially a challenge to the adequacy of the panel's reasons. As the appellant acknowledges in her note of argument, the test, as enunciated in *Wordie Property Co Ltd* v *Secretary of State for Scotland* 1984 SLT 345, is whether an informed reader is left in no real or substantial doubt as to the reasons for the decision. The law on the giving of reasons is well settled. A tribunal is not obliged to address in its decision every item of evidence laid before it. The weight to be attached to a particular item of evidence is a matter for the fact-finder, whose assessment will not readily be interfered with by an appellate court, especially where the fact-finder is a specialist tribunal and the evidence concerns matters within its specialist expertise. In the present case the critical issue as regards misconduct and impairment of fitness to practise was dishonesty. The submission made on the appellant's behalf included reference to a disorganised and informal environment. The panel has provided a fully reasoned explanation of why it rejected the appellant's contention that the provision of false information could be explained by confusion, disorganisation or lack of knowledge. Its reasons for concluding that remediation remained incomplete, with a consequent risk of repetition, were also clearly explained. There is no reason to conclude that the panel did not consider all material factors.

Ground 7: The panel did not perform the subjective-first analytical sequence which Ivey v Genting Casinos (UK) Ltd requires

[44] This ground of appeal concerns the same issue as ground 1, namely the panel's application of the two-stage *Ivey* test to the three charges within charge 7. In her core note of argument, the appellant focuses on charge 7c. She submits that the finding that she "knew this to be untrue" has no factual basis but relies on the same flawed reasoning as has been conceded in relation to charge 7a. This is a misreading of the panel's decision. The panel found that the appellant knew that the appropriate background checks had not been carried out. That finding followed from the appellant's admissions (i) that she had published documents stating that all employees were properly registered and vetted and (ii) that she had not in fact carried out PVG applications, registered with Disclosure Scotland, registered with an umbrella body or taken any steps to independently verify the suitability of staff. From these admissions the panel was entitled to draw the inference that the appellant knew it to be untrue that staff had been appropriately vetted. The subjective element of the *Ivey* test was accordingly met. As regards charges 7b and 12c, this ground adds nothing to ground 1 which we have already addressed.

Ground 8: The determination is unsafe because the central dishonesty findings were reached in the absence of a legally recognisable adversarial determination on the decisive issues

[45] This ground is not easy to understand. It appears to raise issues similar to those in ground 6, but from a different perspective. As with the other grounds of appeal, the court has had to attempt to identify a complaint specific to the panel's decision amidst a blizzard of general assertions and propositions. Here the complaint is that certain matters were "not properly contested in substance", namely the (late) admission in evidence of a document

setting out the appellant's contemporaneous response to the allegations made against her, the provenance of the probationary review interview minutes, the timing of the invoice referred to by the panel in connection with charge 10, the contextual implications of the death of a colleague of the appellant, and the scope of the appellant's admission of charge 4.

[46] The appellant has provided no intelligible explanation of why any of these matters might have had a bearing on the panel's findings of dishonesty. Nor has she offered any explanation of why, if they were of significance, they were not founded upon in the arguments made in her defence at the hearing. As regards the document admitted late, the fact of it being allowed to be lodged did not of itself confer any evidential value on it. In the absence of any reliance being placed upon it by either party, there was no reason for the panel to have regard to it in reaching its decision. This ground of appeal is without substance.

Disposal

[47] It is common ground that the panel's decisions on charges 7a and 12a and on the sanction imposed, must be quashed due to error of law. The question arises as to whether in the light of the quashing of the decisions on charges 7a and 12a, other parts of the panel's determination also require to be quashed. The appellant submitted that the panel's finding of misconduct should be set aside in the light of the quashing of its decisions on charges 7a and 12a. We are not persuaded that this is so. The panel's determination of misconduct was based on its finding that the appellant's conduct demonstrated an intention to mislead, in a series of dishonest acts which, when taken together, demonstrated sustained dishonest behaviour (Decision, page 39). The panel also determined that the appellant had allowed or facilitated individuals to work without appropriate checks being carried out, which created

a risk of vulnerable individuals being exposed to harm. These conclusions remain valid and applicable to the conduct narrated in each of charges 7b, 7c, 12b and 12c, in respect of which we have found no reason to disturb the panel's findings of dishonesty and of risk of harm to vulnerable individuals. We are satisfied that even in the absence of charges 7a and 12a, the panel's finding that the appellant's actions amounted to misconduct is soundly based and properly reasoned.

[48] On the other hand, the issue of current impairment of the appellant's fitness to practise ought to be considered afresh. Impairment requires to be considered in the light of all the charges found proved, and without regard to charges 7a and 12a. The fact that misconduct has been established in relation to the remainder of charges 6 to 12 does not automatically mean that impairment of fitness to practise is also established by those charges. The question of whether what remains justifies a finding of impairment is one of specialist judgment to be exercised by a panel considering only the remaining charges, including charges 7b, 7c, 12b and 12c.

[49] We have carefully considered whether the case should be remitted to the same panel or to a differently constituted panel. Remitting the matter to the same panel would have the advantage that the panel members would be familiar with the facts of the case and would bring to the decision the benefit of having heard the witnesses who gave evidence. On the other hand, there is a risk that the panel might not or at least would not be seen by the appellant to approach the reconsideration of impairment and sanction with an entirely open mind. On balance we conclude that it would be preferable to remit the case to a differently constituted panel, for whom the issues of impairment and sanction will be entirely at large. In practical terms, everything in the current panel's decision from the heading "Decision and reasons on impairment" on page 40 to the end will be set aside. The new panel will hear

parties' submissions on impairment and sanction. We presume that the new panel will apply the correct version of the sanctions guidance.

[50] We shall accordingly pronounce an interlocutor (i) allowing the appeal; (ii) quashing the panel's findings on charges 7a and 12a; (iii) quashing the panel's decision in respect of the finding of impairment of fitness to practise and the sanction imposed; and (iv) remitting the matter to a differently constituted panel of the council's Fitness to Practise Committee for redetermination on the questions of current impairment of fitness to practise and sanction.